No. 12988

Supreme Court of Illinois

Burnham et al

---

vs.

City of Chicago

State of Illinois } ss.

In the Supreme Court at Ottawa.

William Brady

v.

Horace G. Anderson & John L. Proctor

Error to Peoria.

Supersedeas Bond.

Know all men by these presents, that we William Brady as principal, and Smith Frye as surety, are held and firmly bound unto Horace G. Anderson and John L. Proctor, in the penal sum of One Thousand Dollars, for the payment whereof well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Witness our hands and seals at Peoria, this 28th day of March A.D. 1860.

The condition of this obligation is such that whereas the said Horace G. Anderson and John L. Proctor, did, at the November Term A.D. 1859, of the Circuit Court within and for the County of Peoria, in the State of Illinois, recover by the consideration of said court, a judgment and decree in a certain proceeding for Mechanics Lien against the said William

Brady for the sum of Six Hundred and Ninety Four Dollars and four cents, besides costs of suit; and whereas the Honorable Pinckney H. Walker, one of the justices of the Supreme Court of the State of Illinois, in vacation, to wit, on the 21st day of March A.D. 1860. after inspecting a copy of the record of the proceedings aforesaid, did order and allow a writ of error to reverse the judgment and decree aforesaid, to be made a supersedeas, upon condition that the said William Brady enter into bonds in the penal sum of One thousand dollars, with Smith Frye security, conditioned according to law Now therefore, provided the said William Brady shall duly prosecute said writ of error and shall pay said judgment and decree and all costs, interest, and damages, in case said judgment and decree shall be affirmed by the said Supreme Court, then this obligation to be void, otherwise to remain in full force and effect.

William Brady (seal)

Smith Frye (seal)

In the Supreme Court

William Brady
v.
Anderson et al.

Supersedeas Bond

Smith Frye - Sureties

Filed April 2, 1860
L. Leland
Clerk

Charles C. Bonner
attorneys for Plaintiff

Printed by Beach & Barnard, 14 Clark Street, Chicago

SUPREME COURT OF ILLINOIS.

Third Grand Division,
APRIL TERM, A. D. 1860.

BURNHAM et al,
vs.
CITY OF CHICAGO.

DEFENDANT'S POINTS.

The first point made by appellant, raises the question as to the legality of the special January Term of the Superior Court, inferrentially arguing against it, upon the ground that the time appointed therefor, a general term was being then and there held, commencing anterior to the day appointed for the special term, because, as they, in legal effect, say, "a general term cannot be adjourned, so as to give effect to the appointment of a special term, immediately following the adjournment of the general term; and, therefore, the holding the Court, as a special term, is without authority. If this reasoning be sound, there is an end to this case.

The cases, cited by appellants, to support this reasoning, fall far short of doing so, as will be seen by looking into them. The law of 1859, sec. 9, organizing the Court not sec 8, provides the time of holding the terms of the Court, and are in these words: "Said court shall be held on the first Monday of every month, and the terms thereof shall respectively be called after the different months, in which they are held; and said Court *may be* continued, and held, from the time of its commencement, every day, Sundays excepted, until, and including, the last Saturday of the same month, and longer, if necessary to complete the trial of any cause then on trial. The judges of said Court, or a majority of them, may adjourn the same on any day previous to the expiration of the term, for which the same may be held; and, also, from any one day in term over to any other day in the same term, if, in their

Authorities on Constitutional point
to be brief handed the Court

opinion, the business of the Court will admit thereof." Upon this statute, there cannot be a question that the general term may be adjourned at any time; and we are to see if there is any power given the Court, to call special terms, for any purpose. The first section of this act provides, "That the Court, known as the Cook County Court of Common Pleas, is hereby continued, with all its powers, jurisdiction and authority, and with the additional jurisdiction conferred by this act."

The several acts establishing this Court, and constitutional saving provision, are to be found as follows:

Act creating the Court, granting its powers, &c., 21st of Feb., 1845, R. S., page 574, as to judges' power to appoint special terms. See 2d clause of section 4. Act amendatory, 6th of February, 1849, session laws 1849, p. 69.

Act changing name of Court, to Cook County Court of Common Pleas, Nov. 5th, 1849, 2 sess. laws 49, p. 14, 15, constitutional provision, § 21, schedule to the constitution of 1848.

By examination of the 4th section of the act of 21st of February, 1845, it will be seen that power to call terms is granted expressly to the Cook County Court, and, by succession, it is granted to the Superior Court.

The power then, exists, to call special terms, and the only question is, as to the time of calling it.

That it could not be called for a day upon which the general term commenced, by law, is admitted, as it would be simply nugatory, but, that it might be for any other day, is clear enough, and no reason drawn, from the supposed duty of the Court, to hold a term open any given length of time, can make the doing it a violation of official duty; and the cases cited upon this point, are entirely inapplicable to this case.

As to the second point, made by Appellants, there are two answers—

1st. That the Superior Court is specially authorized to run one term into, and beyond another, when necessary to finish a trial, &c.

2d. That, admitting that the special term ended on the last day of January—by operation of law—and that the regular February Term commenced February 1st, and continued until, and after the 13th day of February, and that the judgment was rendered at the February Term. It by no means follows, that the judgment was void. To hold so, would be to say, that the closing of the January Term worked a discontinuance of all pending suits. That will not be contended, if the suits were not discontinued, they were continued to the next term, in course of which appellants show to have been held, and at which this judgment was rendered.

It cannot be held, that a Court sitting, at a time authorized by law, for holding a general term of Court, is acting without authority, and, therefore, its proceedings are *coram non judice.*

Nor will the misprison of a clerk, in stating that a particular day is of a particular term, which has closed, oust the Court of its authority to pronounce judgment on that day, if the authority to do so is otherwise made to appear. The words which counsel have emphasized, in the history of the proceedings, might be stricken out, without destroying the evidence of a judgment, and the Court may intend that this is a clear clerical mistake.

The case of *Goodsel vs. Boynton*, 1 Scam, 555, was where a term of Court was held at the usual time of a general term, as by law, as it formerly stood, it ought to have been held to-wit, in March; upon the 2nd day of the same month, the legislature passed an act changing the term to April. This was not known, by the officers of the Court, until long after, in the meantime a term was held, &c.

The Court there held that the law, changing the time of holding the Court to April, took immediate effect, and that, as the law fixing the Court at first Monday of March, was thereby repealed, the proceedings at the term were "*coram non judice.*" This surely is no authority in this case.

The case of *Archer vs. Ross*, was a case upon the power to appoint a special term, to commence upon the same day in one county that a regular term, to be

held by the same judge, commenced in another and distant county. Such a question does not arise here, nor does the reason exist upon which that case is put, to-wit: That the appointment was a violation of official duty in the judge, and not sufficiently noticed.

The case of *Downey vs. Smith*, 13th Ill. was, as to the right to dismiss a cause, upon the ground that two terms had elapsed, and no declaration had been filed; and, the question was, whether there is a term of Court, when there is no judge to hold it, within the meaning of the statute, authorizing dismissals for want of declaration, and the Court simply decides that there is.

There is no doctrine in any of these cases, applicable to the case at bar, and this disposes of all questions involved in the 1st and second points made by the plaintiff.

II.

The 3d point, made by the plaintiffs, is, "that the Court had no jurisdiction, without filing a certificate of publication of notice that application for judgment would be made, &c., such certificate should appear in the record to render the judgment.

In answer to this, I say that the statute, under which these proceedings were had, makes no such requirement. [See sec. 40 of amended charter of 1857.]

Pease vs. City of Chicago, 21 Ill. 506.
Bristol vs. City of Chicago, 22 Ill. 588.

The case of *Bristol vs. the City of Chicago* is perfectly decisive of this point.

III.

The next point which the plaintiff makes is that the Court erred in *not* permitting the plaintiff to show that the city had failed to comply with the provisions of a certain *ordinance* upon the subject of assessments. There is no pretense what-

ever that the city charter required any such thing as the ordinance pretended to require; therefore, whether the ordinance was complied with or not makes no sort of difference.

City of Ottawa vs. Macey, 20 Ill. 482.
Ex parte Mayor of Albany, 23 Wend. 279.

The above cases are directly in point and are decisive.

IV.

The next point made by plaintiff—that the city had no authority to assess for graveling streets—has no force in it whatever; graveling a street being only a mode of paving, and the city charter, § 7 page 38, of municipal laws, gives the city express power "to cause any street, alley or highway to be *graded*, leveled, *paved* McAdamized or planked and to keep the same in repair, while sec. 54, page 26, of the charter gives the city exclusive control to regulate, repair, amend and improve streets in any way, and from the very nature of things a city without any express law would have power to improve its streets in any way it chose, if it did not, it would be different from any city now in existence on *this* continent.

V.

The sixth and seventh points made by the plaintiff have already been passed upon by the Court—*Bristol vs. the City of Chicago*, 22 Ill. 590–1. The ten per cent. "*additional costs*" is expressly authorized by section 52 of the amended charter of the City of Chicago.

In regard to the eighth and ninth points, as made by the plaintiff, I insist that the assessment was fairly and regularly made by the commissioners, and that the plaintiff had no right to inquire into the value of the lots at all, except for the purpose of showing that the whole proceedings were fraudulent and void; and that the only evidence which the plaintiff offered to prove fraud, was an attempt to show excessive valuation, which, unaccompanied by other circumstances, totally failed.

The State vs. Ross, 3 Zabriskie 517—89.
Betts vs. New Hartford, 25 Conn. 189.

Albany & Woodstock Railroad Co. vs. Canaan, 16 Barb. 244.
Haight vs. Day, 1 Johns. ch. 18.
Ex parte Mayor of Albany, 23 Wend. 280.
Extenson of Hancock street, 18 Penn. 323.
19 Penn. 271.
16 Barb. 248.

Nota Bene. *Town of Rochester*, 3 N. H. 349.
Matter of Pearl street, 19 Wend. 651.
Matter of John and Cherry streets, 19 Wend. 668–9.
William and Anthony streets 19 Wend. 679.

The fact, that Gray, the commissioner, signed the assessment roll, is conclusive evidence that he adopted the valuations which were placed upon the lots by Bragg; it should not vitiate an assessment because the commissioners or commissioner adopts the opinions of others, as a matter of fact no man in the City of Chicago knew the value of property better than this same F. A. Bragg; he has held the office of superintendent of special assessments and been engaged in that particular business for years, and the evidence shows that he and Gray were down in the vicinity of the property in question but a few days before, for the purpose of levying an assessment, and that they looked the property all over; the property was near where Gray had his office, and both Gray and Bragg knew every foot of the ground and were in all probability as familiar with the premises in question as he was with his own house.

Another thing, the commissioner who levied this assessment was personally liable for a faithful and honest discharge of duty, and if he was guilty of any misconduct he should be held responsible.

Tompkins vs. Sands, 8 Wend. 462.
Loomis vs. Spencer, 1 Ohio 153.
And numerous other authorities.

It should not invalidate the assessment and the city should not be compelled to incur a great expense, because a person who is elected for a specific purpose, and who, in the language of the charter, is "sworn faithfully and impartially to execute his duty" does not do it; let the guilty suffer and not the innocent. But the testimony in this case shows no misconduct whatever, and if Mr. Gray, upon an examination, either long or short, was satisfied that the assessment was right he

had a perfect right to adopt it and make it his own. Moreover, there is no testimony in the case that shows that Mr. Gray had not been studying the matter all over and was not perfectly familiar with the whole subject. In the language of Judge Cowen, in the case of the *Mayor of Albany*, 23 Wend. 280—

"We cannot interrogate the functionaries or agents appointed under the law as 'to the operations of their minds; we might otherwise send our writ to every as-'sessor, every board of road commissioners or village or school district trustees in 'the state to ascertain whether they have assessed A. or B. more or less than they 'should."

The property in this case was not assessed at more than three per cent on its value. The assessment was perfectly regular and all the proceedings both in Court and out of Court were legal and the judgment should be affirmed.

ELLIOTT ANTHONY,

Attorney for Defendant.

219 – 125

The City of Chicago

at the suit of

Frederick H. Burnham

Points

Filed May 11. 1860

L. Leland

Clerk

United States of America
State of Illinois. Cook County } ss.

Pleas before the Honorable the Judges of the Superior Court of Chicago within and for the County of Cook and State of Illinois at a Special Term of said Superior Court of Chicago begun and holden at the Court House in the City of Chicago in said County and State on the fourth Monday thereof being the Twenty sixth day of January in the Year of our Lord Eighteen hundred and sixty and of the Independence of the United States of America the Eighty fourth, also Notice of the time and place of holding said Special Term of the Court, having been printed and published in the Daily Press & Tribune the Corporation Newspaper of the City of Chicago for Twenty days previous to the holding of said Term of Court in accordance with the Statute in such case made and provided, and in pursuance of an order made by the Judges of said Court on the Fourth day of January A. D. Eighteen hundred and sixty.

Present. The Honorable John M. Wilson. Chief Justice of the Superior Court of Chicago.
Van H. Higgins and Grant Goodrich .. Judges
Carlos Hamen . . . . . Prosecuting Attorney
John Gray . . . . Sheriff of Cook County.

Attest
Walter Kimball
Clerk.

Be it remembered that on this twenty sixth day of January A. D. Eighteen hundred and forty, Adolph J. G. Miller City Collector of the City of Chicago reported and filed with the Clerk of this Court a list of Lands, Lots and parcels of land and other Real Estate situated in the City of Chicago aforesaid on which taxes remained due and unpaid for the year therein set forth, and attached to said Report was a Certificate of the Press and Tribune Company signed by G. D. Wilcoxon of the due publication of Notice as required by law of the making and delivering of the Warrant for the collection of said taxes to the said A. J. G. Miller City Collector as aforesaid And also attached to said Report was a Certificate, signed as aforesaid of the publication in the daily Edition of the Chicago Press and Tribune of the Notice of the intended application for a Judgment against said Lands and other Real Estate, at this term of Court, as required by the law of this State, approved February fourteenth A. D. Eighteen hundred and fifty seven (A Copy of which said Report, Notice, Certificate and Collectors Warrant is hereinafter set forth.)

Ordered by the Court that all objections to Judgment or the General Warrant for taxes, and or Special Warrants for Assessment be made in writing and filed with the Clerk of this Court by Saturday morning next at Ten o'clock.

" 3-

Copy

Collectors Report hereinbefore mentioned and referred to.

"Of the January Special Term of the Superior Court of Chicago in the year of our Lord one thousand eight hundred and sixty.

To the Honorable John M. Wilson, Van H. Higgins and Grant Goodrich - Judges of the Superior Court of Chicago

The Report of Adolph F. E. Mueller City Collector of the City of Chicago respectfully represents that the Special Warrants mentioned in the Schedule hereunto attached, issued for the Collection of the Special Assessments and Taxes, authorized by law, for the purposes therein generally set forth, made out in the manner required by law, and countersigned by the City Comptroller, were delivered to him the said City Collector on or before the second Tuesday of October A. D. 1859.

That forthwith after the delivery of said Warrants to him, he published a Notice in the Corporation Newspaper of said City, that such Warrants were in his hands for Collection, briefly describing the nature of each of said Warrants, and requesting all persons forthwith to make payment thereof at his office, and that in default of such payment, the said taxes and Assessments would be Collected at the Cost and Expense of the persons liable for the payment of such taxes and assessments, which said Notices were generally published for thirty days in said Corporation Newspaper -

That he has given ten days Notice of his intended application to this Court for Judgment against the Lands, Lots and Parcels of Land for the amount of Taxes, Assessments, Interest and Costs so

" 3-

respectively due thereon before the first day of the January Special Term of this Court A.D. 1860, briefly specifying the nature of the said Warrants upon which said application was to be made and requesting all persons interested therein to attend at such term. A Copy of which said Notice is herewith filed, together with a Certificate of the due publication of said Notice from the Publisher of the said Corporation Newspaper, in which the said Notice was published.

That the Annexed Schedule is a Correct list of the Lands Lots and Parcels of Land, together with the amounts of Taxes and Assessments, interest and cost respectively due thereon as set forth in the said Warrants which remain unpaid and uncollected.

Wherefore your said Petitioner prays that Judgment may be rendered as in such cases made and provided.

(Signed) A. G. C. Mueller
City Collector."

"State of Illinois }
Cook County .. } ss

A. Adolph G. C. Mueller, City Collector in and for the City of Chicago, do solemnly swear, that the annexed Report by me made is to the best of my Knowledge and belief, true and the Annexed Schedule is a true and correct list of the delinquent Lots, Lands and Parcels of Land, upon which I have been unable to collect the taxes and Assessments, as required by Law for the year 1859, as herein set forth. - That said Taxes and Assessments, remain due and unpaid and uncollected as above

" 5.

Stated.
Subscribed and sworn to before
me this Twenty sixth day of January } (Signed) A. F. C. Mueller."
1860 . . . . . .

Walter Kimball, Clerk
Superior Court of Chicago."

(Copy Notice and Certificate)

"City of Chicago

City Collectors Office, October 11th 1859.

"Notice is hereby given that the following Warrants are in my hands for Collection.

"Warrant 316 South

"For gravelling South Street from the Roadway of State Street
"to the roadway of the Archer Road."

And persons are requested forthwith to make payment of said Warrants at my Office, or the same will be Collected at the Cost and expense of the persons liable to the payment of said Assessments.

A. F. C. Mueller
City Collector."

"We the undersigned Publishers of the Chicago Press and Tribune do hereby Certify That a Notice of which the annexed is a true Copy, was published Thirty consecutive days next after the 12th day of October 1859 in the Daily Edition of the Chicago Press and Tribune, a Newspaper published in, and of general Circulation throughout the County of Cook, State of Illinois

" 5.

"6"

Chicago, Illinois - January 25: 1860.
Press of Tribune Co.
By Geo: D. Willeston".

(Copy Collectors Warrant and Return)

" Special Warrant No 316 S.

"State of Illinois }
City of Chicago } Ss.

The People of the State of Illinois to the Collector of the City of Chicago, Greeting,

Whereas the Common Council of the City of Chicago did on the Eleventh day of October 1859 confirm the Assessment duly made and filed in the Clerks' Office by the Commissioners appointed by the said Common Council to assess the sum of Three thousand four hundred and forty ($3440) dollars, upon the Real Estate in the South Division of said City deemed benefitted by Grading South Street from the Roadway of State Street to the Roadway of the Archer Road in proportion to the benefits resulting thereto in pursuance of an order for said Assessment made by the said Common Council on the second day of September 1859 after duly perfecting the same, and did thereby assess the said sum of money upon the Real Estate described in the Roll of said Assessment in the respective proportions thereof marked "Assessment" set opposite to each Lot, Part of Lot and Real Estate described in said Roll; Which said is in the words and figures following to wit:-

" Assessment Roll "

A description of the Real Estate in the South Division of the

"7"

City of Chicago Owners benefitted by Graveling South Street from State Street to the Drake Road with the valuations thereof and the sums of Money Severally assessed thereon for benefits by the Commissioners, to wit:

Canal Trustees Subdivision of S. E. 1/4 of Section 21. 39. 14						
Name of Owner	Part of Lot or Lots	Sub Lot	Lot	Block	Valuation Dollars	Assessment Dollars Cents.
Unknown		12	1	45	200	75
"		13	"	"	200	1 00
"		14	"	"	200	1 25
"		15	"	"	200	1 50
"		16	"	"	200	2 00
"		17	"	"	200	3 00
"		2/3	2. 3 4 + 5	"	1900	55 25
"		2/3	"	"	1000	21 25
"		24	"	"	800	21 25
William Holz		25	"	"	800	21 25
Unknown		26	"	"	800	21 25
"		27	"	"	800	21 25
John Baker		28	"	"	800	21 25
Unknown		29	"	"	800	21 25
"		30	"	"	800	21 25
"		31	"	"	800	21 25
"		32	"	"	800	21 25
"		33	"	"	800	21 25
"		34	"	"	800	20 40
"		35	"	"	750	20 40
"		36	"	"	750	20 40
"		34	"	"	750	20 40

"7"

Name of Owner	Part of Lot or Land	Sub Lot	Lot	Block	Valuation Dollars	Assessment Dollars	Cents
Unknown		38	2. 3 4 + 5	45	750	20	40
"		39	"	"	750	20	40
"		40	"	"	750	20	40
"		41	"	"	750	20	40
"		42	"	"	750	20	40
"		43	"	"	750	20	40
"		44	"	"	750	20	40
"		45	"	"	1400	39	85
"			3	46	3000	30	00
"			4	"	5000	132	90
"	S1/2 of SE1/4 Paid 3.75 (750 S1/2 of NE1/4 + N1/2 SE1/4 Paid		3	47	3000	30	00
Patrick Hero		1	4	"	2300	67	15
Joseph King		2	"	"	1000	8	00 /la
John Seitz		3	"	"	1000	6	00 /la
August Desch		4	"	"	1000	5	00
Mathias Neumann		5	"	"	1000	4	00
George Kohl		6	"	"	1000	5	00
John P. Thomas		7	"	"	1000	7	00
Thos Skerritt		8	"	"	2300	67	15
Unknown			5	48	1500	6	00
"			6	"	1500	12	00
"			7	"	1500	16	00
"			8	"	5000	136	94
"			5	49	1500	5	00
"			6	"	1500	10	00
"			7	"	1500	15	00

Name of Owner	Part of Lot or Land	Sub Lot	Lot	Block	Valuation Dollars	Assessment Dollars	Cents
Unknown			8	49	5000	135	96
"			10	50	1500	3	00
Silas Burton			11	"	1500	3	00
Unknown			14	"	1500	8	00
"			15	"	5200	155	53
"			16	"	5600	155	53
A. B. Walters Subdivision of 18 acres in N. E. 1/4 Section 28 - 39. 14.							
F. W. Burnham			1		1000	26	25
"			2		800	21	25
A. B. Walter			3		800	21	25
M. Bullwick			4		800	21	25
J. Cumpey			5		800	21	25
A. B. Walter			6		800	21	25
Jas. P. Lowe			7		800	21	25 Paid
"			8		800	21	25 Paid
A. B. Walter			9		800	21	25
"			10		800	21	25
"			11		800	21	25
"			12		800	21	25
John Klore			13		800	21	25
John Dutch			14		800	21	25
Peter Klock			15		800	21	25
P. Stephens			16		800	21	25
A. Holz			17		800	21	25
P. Stephens			18		800	21	25

"10

Names of Owner	Part of Lot or Land	Sub Lot	Lot	Book	Valuation Dollars	Assessment Dollars	Cents
A. Leonard			19		800	21	25
"			20		800	21	25
A. L. Milliken			21		800	21	25
"			22		800	21	25
A. B. Walker			23		800	21	25 Pa
"			24		800	21	25 Pa
O Marshall			25		800	21	25
"			26		800	21	25
			27		800	21	25
			28		900	22	00
Lands in City of Chicago.							
		Sec	Town	Range			
C. G. Ulrich	N E¼ of N E¼ except that portion owned by the C & R. I & P. R. R Co 12 acres 100 feet wide	28	39	14	40000	1146	34
C & R. I. & P. R. R Co	running North & South through E½ of N E¼ & S E¼	"	"	"	500	104	00
				Total		$3440.	00

Now therefore you are hereby Commanded to levy make and Collect of the Goods and Chattels of the respective owners of the Real Estate above described, the several Sums of Money assessed thereon for which each may be liable as aforesaid and hereof make due return in what manner you shall execute this Writ within Thirty days from the date hereof.

Witness John C. Haines, Mayor of the City of Chicago and the Corporate Seal thereof this Eleventh day of October 1859.

Seal

John C. Haines Mayor."

Attest

Saml D. Ward. Comptroller."

H. Kreismann. City Clerk."

(Collectors Return)

"State of Illinois } ss. City Collectors Office
City of Chicago } 185 .

The undersigned Collector of the City of Chicago makes return to the Common Council of the within and foregoing Warrant, that he has Collected the Assessments on the Real Estate described in said Warrant opposite to which in the appropriate Column, the word "Paid" is written, that a demand of payment has been made of the several other assessments not marked "Paid" in every case, of the persons mentioned in said Warrant as liable to the payment thereof, and that he has not been able to find any personal property belonging to any of them, subject to the payment thereof.

He therefore returns the said Warrant unsatisfied as to all Assessments not marked "Paid" on the face of the said Warrant.

City Collector."

11-

And afterwards to wit on the thirteenth day of February A. D. Eighteen hundred and sixty (being one of the days of the said January Special Term of said Court) the following proceedings were had in said Cause and entered of record in said Court to wit

"City of Chicago
—— vs ——
William Haas et al) Suit for Assessment on Warrant No 316 S. October 11th 1859. for gravelling South Street from the Roadway of State Street to the Roadway of —

the Archer Road.

And now on this thirteenth day of February A.D. 1860 comes the said City of Chicago by George F. Crocker, City Attorney, and due Notice having been given of the time and place of making the intended application for Judgment against the lots pieces and parcels of Real Estate in said Warrant set forth, and objections being filed to rendition of Judgment by White and Williams Attorneys for many owners of the following property to wit; Public 22. 23. 24. 33 & 38 in Subdivision of Lots 2. 3. 4 & 5 in Block 45 in Canals Trustees Subdivision of S. E. 1/4 Sec 21. 39. N. R. 14. Public 25 of Subdivision of Lots 2. 3. 4. & 5 Block 45 in said Section Public 25, Block 45 Public 26. 27. 28. 29. 30. 37. 40. 41. 42. 43. 44 & 45 31. 32. 34. 35. 36. 39 in Subdivision of Lots 23. 4 & 5, in Block 45 of Due of Canals Trustees S. E. 1/4 Sec 21. 39. 14. Also Lot 4 Block 46 Lots 15 & 16 Block 50 said Section, Lots 1 & 2 of J. H. Burnham in S. B. Myers Sub of 18 acres in N. E. 1/4 Sec 28. 39. 14. E. of Public N. E. 1/4, of N. E 1/4 of Sec 28. 39 R 14 E. 3. P. M. Except that portion owned by Chicago and Rock Island Railroad Company - and Chicago and Rock Island R. R. Co. 12 acres, 100 feet wide running N. & S.

through E 1/2 of N. E. 1/4 and S. E 1/4 of Sec 28. T. 39. R 14 E 3 P.M. Also lots 3.6.9.10, 11. 12. 23. 24. 4. 5. 7, 8. 13, 14. 15, 16. 18. 17. 19. 21. 22. 25. 26. 27 and 28 in S. B. Waters Sub of 18 acres. in N. E. 1/4 Sec 28. 39. 14.- by Miram . T. Hait owner of Lots No 4 in Block 48, & lot 8 Block 48. in Canal Trustees Subdivision of S. E. 1/4 Sec 21 T. 39. N. R 14 E 3 P. M. Also Sublots 1. Lot 4 Block 47. Lot 2 Lot 4 Block 47. Sublots 3. 4. 5, 6. 7 & 8 of Lot 4 Block 47 also in Canal Trustees Sub: of S. E 1/4 Sec 21. 39. 14. and Counsel being heard on said objections and due deliberation being thereupon had and the premises being fully understood it appears to the Court that said objections are sufficient and valid as to part of said property hereinbefore described, and not sufficient as to the balance and remaining part, to which objections are filed, to taking of Judgment, the objections are therefore hereby sustained as to the following lots pieces and parcels of land set forth in said objections and hereinbefore described to wit Sublots 22. 23. 24. 25, 26. 27. 29. 30. 31. 32. 33. 34. and 45 in Subdivision of Lots 2. 3, 4 & 5 in Block 45. Lot 4. Block 46. Lots 15 & 16 Block 50 and Horace . T. Waits Lot 8 Block 45 also in Canal Trustees Subdivision of S. E 1/4 of Sec 21. T. 39. R. 14 E and Judgment thereon refused at Costs of said City - And said objections are hereby overruled as to all of said remaining Lots set forth in said objections, and no cause now appearing to make defence or show cause why judgment should not be entered the remaining Lots pieces and parcels of land in said Warrant, not objected to, and on which said objections are overruled and on Motion of said Attorneys

It is therefore Considered by the Court that Judgment be and it hereby entered against the remaining Lots pieces and parcels of land described in the aforesaid Warrant (excepting the lots hereinbefore described

through E 1/2 of N. E. 1/4 and S. E 1/4 of Sec 28. T. 39. R 14 E 3 P.M. Also lots 3.6.9.10, 11. 12. 23. 24. 4. 5. 7, 8. 13, 14. 15, 16. 18. 17. 19. 21. 22. 25. 26. 27 and 28 in S. B. Waters Sub of 18 acres. in N. E. 1/4 Sec 28. 39. 14.- by Miram . T. Hait owner of Lots No 4 in Block 48, & lot 8 Block 48. in Canal Trustees Subdivision of S. E. 1/4 Sec 21 T. 39. N. R 14 E 3 P. M. Also Sublots 1. Lot 4 Block 47. Lot 2 Lot 4 Block 47. Sublots 3. 4. 5, 6. 7 & 8 of Lot 4 Block 47 also in Canal Trustees Sub: of S. E 1/4 Sec 21. 39. 14. and Counsel being heard on said objections and due deliberation being thereupon had and the premises being fully understood it appears to the Court that said objections are sufficient and valid as to part of said property hereinbefore described, and not sufficient as to the balance and remaining part, to which objections are filed, to taking of Judgment, the objections are therefore hereby sustained as to the following lots pieces and parcels of land set forth in said objections and hereinbefore described to wit Sublots 22. 23. 24. 25, 26. 27. 29. 30. 31. 32. 33. 34. and 45 in Subdivision of Lots 2. 3, 4 & 5 in Block 45. Lot 4. Block 46. Lots 15 & 16 Block 50 and Horace . T. Waits Lot 8 Block 45 also in Canal Trustees Subdivision of S. E 1/4 of Sec 21. T. 39. R. 14 E and Judgment thereon refused at Costs of said City - And said objections are hereby overruled as to all of said remaining Lots set forth in said objections, and no cause now appearing to make defence or show cause why judgment should not be entered the remaining Lots pieces and parcels of land in said Warrant, not objected to, and on which said objections are overruled and on Motion of said Attorneys

It is therefore Considered by the Court that Judgment be and it hereby entered against the remaining Lots pieces and parcels of land described in the aforesaid Warrant (excepting the lots hereinbefore described

to which objections are sustained and Judgment thereon refused) in favor of the City of Chicago for the sums annexed to each lot piece and parcel of land being the amount of Assessment & also for costs of suit severally thereon, and that said City of Chicago have & recover the further sum of Ten per Cent upon the amount of assessments respectively due & unpaid upon each of the remaining lots pieces and parcels of land therein set forth and for her additional costs.

And it is further Ordered by the Court that said several remaining lots, pieces and parcels of land or so much thereof as shall be deemed sufficient of each of them to satisfy the amount of assessments and costs annexed to them severally so fold as the law directs.

And thereupon comes F. W. Burnham another of said objectors and enters his exceptions and prays an Appeal herein to the Supreme Court for Lots 1 & 2 in A. B. Wallers Sub of 18 acres in N.E. 1/4 Sec 28. T. 39. R. 14, described in said Warrant; Which is allowed on filing bond in the sum of Two hundred one dollar and twenty four cents. with Bill of Exceptions by 1st day March next

And thereupon comes A. B Waller another of said objectors and enters his Exceptions and prays an Appeal herein to the Supreme Court for Lots 3. 6. 9. 10. 11 & 12 in A.B. Wallers Sub of 18 acres in the N.E. 1/4 Sec 28. T. 39. R. 14 described in said Warrant; which is allowed on filing bond in the sum of Two hundred thirty five dollars Twenty six cents with Bill of Exceptions to be filed by 1st day of March next.

And thereupon comes M. Bulbeck another of said objectors and enters his Exceptions and prays an Appeal herein to the Supreme Court for Lot 11 in A.B. Wallers Sub of 18 acres in N.E. 1/4 Sec 28 T. 39. R 14. described in said Warrant, which is allowed on filing Bond

in the sum of One hundred Seventy three dollars & seventy five Cents with Bill of Exceptions to be filed by 1st day of March next

And thereupon comes T. Lumpy another of said objectors and enters his exceptions and prays an Appeal herein to the Supreme Court for Lot 5 in A.B. Walkers Sub: of 18 acres in N. E. 1/4 Sec 28. T. 39. 14. described in said Warrant: Which is allowed on filing Bond in the sum of One hundred Seventy three dollars and seventy five Cents with Bill of Exceptions by 1st day of March next

And thereupon comes John Keane, another of said objectors and enters his exceptions and prays an Appeal herein to the Supreme Court for Lot 13 in A.B. Walkers Sub. of 18 acres in N. E 1/4 Sec 28. 39. 14. described in said Warrant. Which is allowed on filing Bond in the sum of One hundred Seventy three dollars and seventy five Cents with Bill of Exceptions to be filed by 1st day of March next.

And thereupon comes John Dutch another of said Objectors and enters his exceptions and prays an Appeal herein to the Supreme Court for Lot 14 in A.B. Walkers Sub: of 18 Acres in N E. 1/4 Sec 28. 39. 14 described in said Warrant: Which is allowed on filing Bond in the sum of One hundred Seventy three dollars and seventy five Cents, with Bill of Exceptions to be filed by 1st day of March next

And thereupon comes Peter Klock another of said objectors and enters his exceptions and prays an Appeal herein to the Supreme Court for Lot 15 in A.B. Walkers Sub of 18 acres in N E 1/4 Sec 28. 39. 14. described in said Warrant: which is allowed on filing Bond in sum of One hundred Seventy three dollars & seventy five Cents with Bill of Exceptions to be filed by 1st day of March next.

And thereupon comes P. Stephens another of said objectors and enters his exceptions and prays an Appeal herein to the Supreme

And thereupon comes Michael Schmitt another of said objectors and enters his exceptions herein and prays an Appeal herein to the Supreme Court for Public 35 in Subdivision of Lots 2, 3, 4 and 5 in Canal Trustees Sub. of S. E 1/4 of Sec 21, T. 39, R. 14, described in said Warrant which is allowed on filing Bond in the sum of One hundred Seventy two dollars and forty four Cents with Bill of Exceptions by 10th day of March next.

And thereupon comes Anton Schmitt another of said Objectors and enters his exceptions herein and prays an Appeal herein to the Supreme Court for Public 36 in Subdivision of Lots 2, 3, 4 & 5 in Canal Trustees Sub: of S. E. 1/4 of Sec 21, T. 39, R. 14, described in said Warrant which is allowed on filing Bond in the sum of One hundred Seventy two dollars and forty four Cents with Bill of Exceptions by 10th day of March next.

And thereupon comes Patrick Ahern another of said Objectors and enters his exceptions herein, and prays an Appeal herein to the Supreme Court for Public One Block 47 in Canal Trustees Subdivision of S. E 1/4 Sec 21, T. 39, R. 14, described in said Warrant which is allowed on filing Bond in the sum of Two hundred and Seventy three dollars and eighty five Cents until Bill of Exceptions by 10th day of March next.

And thereupon comes William Merrill another of said objectors and enters his exceptions herein and prays an Appeal

herein to the Supreme Court for Public B. Block 44
in Canas Trustees Subdivision of S. E 1/4 Sec 21. T 39
R. 14 described in said Warrant, which is allowed on
filing Bond in the sum of Two hundred and
twenty three dollars and eighty five Cents with Bill of Exceptions
by 1st day of March Next.

And thereupon comes A. Holy another of said objectors
and enters his exceptions herein and prays an Appeal herein
to the Supreme Court for Lot 14 in A.B. Wallers Sub of
18 Acres in N. E 1/4 Sec 28. T 39. 14. described in said
Warrant: Which is allowed on filing Bond in the sum of One
hundred twenty three dollars and twenty five Cents with Bill
of Exceptions to be filed by 1st day of March next.

And thereupon also comes said A. Leonard another of
said objectors and enters his Exceptions and prays an Appeal
herein to the Supreme Court for Lots 19 & 20 in A.B. Wallers
Subdivision of 18 acres in N. E. 1/4 Sec 28 T 39. 14.
described in said Warrant; Which is allowed on filing Bond in
the sum of One hundred twenty seven dollars and fifty cents with
Bill of Exceptions by 1st day of March next.

And thereupon comes A. L. Millikan another of said
Objectors and enters his Exceptions herein and prays an Appeal
herein to the Supreme Court for Lots 21 and 22 in A.B.
Wallers Sub of 18 acres in N. E. 1/4 Sec 28. 39. 14. described
in said Warrant; which is allowed on filing Bond in the sum
of One hundred twenty seven dollars and fifty cents with Bill of
Exceptions by 1st day of March next.

And thereupon comes P Marshall another of said objectors and enters his Exceptions and prays an Appeal herein to the Supreme Court for lots 25. 26. 27. & 28 in S.B. Walters Sub of 18 Acres in N E. 1/4 Sec 28. 39. 14. described in said Warrant Which is allowed on filing Bond in sum of Two hundred forty five dollars with Bill of Exceptions by 1st day of March next.

And thereupon also comes S H. Ulrich another of said objectors and enters his exceptions and prays an Appeal herein to the Supreme Court for N E 1/4 of N E. 1/4 of Section 28 Township 39. range 14 East, except that portion owned by Chicago and Rock Island Railroad Company in City of Chicago and described in said Warrant, Which Appeal is allowed to him on filing Bond in penalty of Thirteen hundred dollars with his Bill of Exceptions to be filed by 1st day of March Next.

And thereupon also comes Chicago and Rock Island Railroad Company another of said objectors and enters Exceptions herein, and prays an Appeal herein to the Supreme Court for Twelve acres One hundred feet wide running North and South through the East half of the North East Quarter and South east Quarter of Section 28 T 39. R. 14 East of 3rd Principal Meridian as described in said Warrant, which Appeal is allowed to said Company on filing Bond in penalty of Five hundred Sixty four dollars and forty cents with Bill of Exceptions to be filed by first day of March Next.

And thereafter to wit on the twenty ninth day of February A. D. Eighteen hundred and sixty came the said Defendants and filed in the Office of the Clerk of said Court, their certain Bill of Exceptions, together with Appeal Bond in said cause, Which said Bill of Exceptions and Appeal Bond, are in words and figures as follows, to wit:

"City of Chicago

vs.

Frederick H. Burnham and Lots One and Two in Waters Subdivision. For the gravelling of South Street from State Street to Archer Road. Warrant 316 South.

Superior Court of Chicago.
January Special Term
A. D. 1860.

Be it remembered that on the Trial of this cause at the January Special Term of said Court the said Plaintiffs gave in evidence the Report of the Collector of the City of Chicago of the amounts remaining and unpaid upon the Assessment on the Warrant in said suit, and applied for judgment against Lands, Lots, and parcels of Land described in said report for the amount of the Assessment, interest and costs, together with a Copy of the Advertisement of his intended application for such Judgment and a Certificate of the due publication thereof in accordance with the form of the Statute in such cases made and provided. Which said Report or so much thereof as pertains to, and upon which Judgment was asked against the property of this Defendant was in the words and figures following, to wit,

A. B. Hallers subdivision of 18 acres in North East Quarter of Section 18, Town. 39, R. 14.

Name of Owner	Description	Sub Lot	Lot	Block	Valuation Dolls	Assessment Dolls.
F. H. Burnham			1		1000	26.25
F. H. Burnham			2		800	21.25

To the granting of which Judgment against the said property of this Defendant by his Counsel Here and Here objects for the following reasons, to wit:

First: The Assessments made on said lots was made in accordance with what they were deemed benefitted and not in accordance with the value of the property assessed. Neither with reference to the Assessment being uniform in respect to persons and property within the jurisdiction of the body making the Assessment Said is therefore unconstitutional and void.

Second: Said lots were assessed fraudulently - fraudulently and willfully upon a valuation of from two to three times the real and true valuation of said Lots at the time of making said Assessment.

Third: Said lots were taxed for said improvement above named from five to two per cent per annum on the value of the property assessed, and of the value of said Lots

Fourth: There was no Assessment Roll published by the City

Clerk upon the return of the Assessment Rolls to him by the Special Assessor as required by Section 3rd of an "Ordinance concerning Assessments for public improvements" showing the Names of the Owners of the property, or a description of said Lots assessed for said improvement prior to the confirmation of said Assessment by the Common Council.

Fifth. That there was not fifty per Cent of the cost of said graveling of South Street paid into the City Treasury before the work was Commenced

Sixth. The City Charter gives no power to the Common Council to assess for graveling Streets.

The City Attorney demurred orally to all of said Objections, and the Court sustained said demurrer to all of said objections, except the Second and Third - and overruled all of said objections, except the Second and Third, and refused to admit any evidence in support of said Objections so overruled

To which overruling and refusal the said Frederick H. Burnham at the time of the Judgment of the Court overruling as aforesaid then & there excepted.

The demurrer to the Second and Third being overruled

The said Frederick H. Burnham to sustain said Second and Third objections called F. A. Pragg as a witness who after being duly sworn testified as follows

I am George M. Gray was down in the vicinity of the property. Cannot say whether I was on the property - I was

on some of the property included in this Assessment - I and Gray was down for the purpose of examining property with reference to making an Assessment for the opening of South Street from the Stewart Avenue to the River - I did Gray's clerical work - In this Assessment I listed the property and carried out the valu

I exercised my own judgment in making this Assessment, and made the Assessment according to the front foot - I made out the Assessment Roll and carried it to Gray and to sign it."

Cross Examined by City Attorney.

"I was Clerk of Mr Gray, and to confirm the roll I made - Mr Gray decided upon the value of the lots in this Assessment in general terms - I did also the writing for Mr Gray

Direct resumed.

"I made out the valuation, and the Assessment Roll in this case is the one that I made. Mr. Gray changed none of my figures or calculation on said valuation - He spent some five or ten minutes in the examining of said roll, when he signed it - don't know that he saw a single valuation of said property - The Assessment Roll was kept by me in my drawer"

Cross resumed.

"Mr Gray might have examined the Assessment roll I inserted the valuation of the property - Mr Gray was in the Office a very little of his time - When I made out the Assessment Rolls I sometimes carried them to Gray to sign."

The said Frederick H. Burnham next offered and read in evidence to show that said Assessment was too high - One Assessment of the same property made by the said George M. Gray and the said F. A. Bragg and another person on or about the 10th day of September A. D. 1859, for the purpose of opening South Street from Stewart Avenue to the South branch of the Chicago River - so much of said Assessment Roll as relates to the property in dispute, is in the words and figures as follows, to wit:-

"S. B. Walkers Subdivision of 18 acres in N. E. 1/4 Sec 28. 39. 14.

Names of Owner	Description S. Lot	Lot	Block	Valuation Dollars	Benefit Dollars	Cost Dollars	Net benefit Dollars
F. H. Burnham		1		400	8.25	8	8.33
" " "		2		650	4.50	15	4.65

Said Frederick H. Burnham next called John H. Hedges for the purpose of showing that said Assessment was too high. who upon being duly sworn testified as follows.

"Have lived in Chicago seven years, and have been an exclusive dealer in Real Estate the last four or five years - have owned property in the Vicinity of the property in this case have a general knowledge of the value of real Estate in that Vicinity - I should consider lots One and Two in S. B. Walkers Sub: of 18 acres in the North East 1/4 of Sec 28. Town 39 - Range 14. E. On the 13th day of September A. D. 1859 - worth Three hundred Dollars, each.

The said Frederick W. Burnham also called James M. Rees for the same purpose who being duly sworn deposed as follows

" I have been a Real Estate dealer in the City of Chicago for the past Ten or Twelve years - Have made it a study - I don't Know of any Sales being made in September or October A. D. 1859 in the Vicinity of Lots One and Two in Walkers Sub of 18 Acres in N. E. 1/4 Sec 28 - 39 - 14 East - but know the general value of said property and should say that it was worth on the 13th of September A. D. 1859 - about as follows. Said Lot One from Five hundred & fifty to Six hundred dollars - Lot Two, Five hundred dollars.

The said Frederick W. Burnham also called Nicholas P. Inglehart, for the same purpose - who being duly sworn deposed as follows.

" Have been a dealer of Real Estate in the City of Chicago, and should fix the same price on Lots One & Two as James M. Rees has just fixed"

Said Frederick W. Burnham also read in Evidence [illegible] of an "Ordinance Concerning Assessment for Public Improvements" which was in the words and figures following

" Where any Assessment rolls for any local improvement except "for Culverts and Sidewalks and for grading Where the same is "Ordered Singly or by itself, shall be Completed and returned to "the City Clerk, as now provided by law. it shall be his duty at "the time of giving the Necessary Notice of said return in the

"Corporation Newspaper to cause to be published accompanying the
"same the Roll containing the Names of the owners of real Estate,
"when known - a description of the Lots and parts of Lots which
"may be assessed, the valuation of each Separately and the sums
"of money assessed thereon, at least one before said Assessment Roll
"can be confirmed by the Common Council -

"Passed March 4. 1859.

"Attest. A. Kreismann Clk.

"Approved. Thos. C. Haines, Mayor."

Deft offered to prove that the Publication therein required was not made But the Court being of the opinion that the Ordinance was only directory to the Clerk and not imperative rejected said evidence.

To which decision of the Court in rejecting said evidence, at the time the same was defendants made in Exception.

This being all the evidence in the case the Court directed that a Judgment should be entered against said Lots One and Two in Walters Sub of 18 acres in N. E. 1/4 Sec 28. T. 39. Range 14 East. 3. P. M. for the Assessment against said Lots, made by the Common Council of the City of Chicago for grading South Street from Roadway of State Street to Roadway of Archer Road together with Curb and Gutter in addition.

To all of which ruling and decisions of the Court the said Frederick H. Burnham

at the times, when they were respectively so
made - accepted.

And now prays that this his Bill of Exceptions may be signed
Sealed and made a part of this record - Which is accordingly
done.

(Signed) Chas. M. Wilson (Seal)
Grant Goodrich (Seal)
Van H. Higgins (Seal).

Know all Men by these Presents That we Frederick. H. Bumham
and William F. Tucker are held and firmly bound unto the City
of Chicago in the penal sum of Two hundred & one & 24/100 dollars
to which payment well and truly to be made we hereby bind
ourselves our heirs and personal representatives by these presents
Sealed with our Seals and dated this 29 day of
February A. D. 1860.

The Condition of this Obligation is such that whereas
judgment has been entered at the February Term of the Superior
Court of Chicago against Lots Number One and Two in S. B.
Sellers Subdivision of Eighteen acres in the North East Quarter of
Section Number Twenty eight in Township Thirty nine North of
Range Fourteen East 3rd P.M. for the amount of the assess-
ment against said Lots or Land - made by the Common Council
of the City of Chicago for grading South Street from Roadway
of State Street to Roadway of Archer Road, together with costs
and Ten per cent in Addition which amounts to
to not more than Twenty dollars.

And whereas the said Frederick H. Burnham as owner of said Lots or Land has prayed an Appeal from said judgment to the Supreme Court of the State of Illinois.

Now if the said Frederick H. Burnham shall duly prosecute said Appeal and in case said Judgment shall be affirmed shall duly pay the amount of said judgment against said Lots or Land and all costs, interest and damages then this obligation to be void. Otherwise to remain in full force and virtue.

(Signed) F. H. Burnham (Seal)
Wm. F. Tucker (Seal)."

Approved by
Grant Goodrich
Chicago Ills".

And also on the said twenty ninth day of February A. D. Eighteen hundred and sixty, there was filed in the Office of the Clerk of said Court, a certain Cert. Stipulation in said cause, among others then pending in said Court; Which said Stipulation is in words and figures as follows, to wit.

"Superior Court of Chicago.

"City of Chicago.

vs

Frederick H. Burnham

Appeal to Supreme Court from judgment against Lots 1 & 2 Walkers Sub 18 acres - N.E. 1/4 Sec 28. 39. 14. For Grading South Street. Warrant 316. S.

City of Chicago	Appeales from
—— vs ——	Judgment against Lots 21 & 22 of Wallers
Isaac L. Millikin	Sub 18 acres N.E. 1/4 Sec 28. 39. 14.

For same.

City of Chicago	Appeales from Judgment
—— vs ——	against Lots 34. 40. 41. 42. 43 and 44 in
Mary Ann Shays	Canal Trus. Subs; S.E 1/4 Sec 21. 39. 14.

For same.

City of Chicago	Appeales from Judgment against 12 acres land
—— vs ——	100 feet wide running North and South
Chicago & Rock I. R. R. Co.	through N.E. 1/4. N.E 1/4. & S.E 1/4 of Sec 28. 39. 14

For same.

City of Chicago	Appeales from Judgment against
—— vs ——	N.E. 1/4 of N.E. 1/4 Sec 28. 39. 14. (except 12
Carl H. Ulrich	Acres owned by Chicago & Rock Is. R. R. Co.

For same.

It is hereby stipulated and agreed - That whereas an Appeal has been perfected in the first of the above named cases to wit vs Frederick H. Burnham, that the following cases above named shall be governed and abide by the decision rendered by the Supreme Court in said case of Burnhams. Unless the Supreme Court should reverse the decision rendered in that case by the Court below. On the ground that owing to the excessive valuation of said Lots by the Special Assessor. Their judgment should be reversed. Then and in that case the reversal shall apply only to the cases of Millikin & Shays - And the judgment against said Ulrich

and Rock Island Railroad Company- shall be affirmed.

If the Judgment is reversed upon any other ground than the reversal is upon all of said cases = If the judgment below is affirmed in whole or in part as above provided then so far as affirmed Appeal Bonds to be withdrawn and the City allowed to proceed and sell.

(Signed) White & Williams
"Attys for Defts"
George F. Crocker
City Attorney!

State of Illinois }
Cook County .. } ss.

I Walter Kimball, Clerk of Superior Court of Chicago, within and for the County of Cook and State of Illinois Do hereby certify the above and foregoing to be a full true and perfect Transcript of the Collectors Report, Notice of application for Judgment - Certificate of publication of Notice - Collectors Warrant and Return - Bill of Exceptions, - Appeal Bond and Stipulation, now on file in my Office; together with all Orders and Judgment entered of record in said Court in a certain cause heretofore pending therein, wherein

The City of Chicago was Plaintiff and Frederick H. Burnham (owners of Lots one and two Walkers Subdivision, Special Assessment Warrant 316 South) was Defendant.

In testimony whereof I have hereunto set my hand and affixed the Seal of said Superior Court at Chicago in said County the twenty seventh day of March A. D. Eighteen hundred and sixty.

Walter Kimball Clerk

And the said plaintiff in error comes & says that in the record & proceedings aforesaid & also in giving the judgment aforesaid there is manifest error in this to wit 1 The court erred in over ruling the said plaintiffs objection to the entering of the judgment 2 In refusing the evidence offered by said plaintiff 3 In rendering judgement against said lots &c Wherefore he prays that said judgment may be reversed &c

Wheeler & Williams atty for pltff

And now comes the said defendant in Error by E. Arthur his attorney & says that in record aforesaid & in the proceedings & rendition of judgment there is no error and also that the judgment be affirmed

E. Arthur
Atty for Deft.

State of Illinois
Cook County

218

District Court of Chicago

219

City of Chicago

vs

Frederick H. Burnham

Record.

Filed April 18, 1860
L. Leland
Clerk

Fee $10. paid by
White & Williams.

Printed by Beach & Barnard, 14 Clark Street, Chicago

SUPREME COURT OF ILLINOIS.

Third Grand Division,
APRIL TERM, A. D. 1860.

BURNHAM et al,
vs.
CITY OF CHICAGO.

DEFENDANT'S POINTS.

The first point made by appellant, raises the question as to the legality of the special January Term of the Superior Court, inferrentially arguing against it, upon the ground that the time appointed therefor, a general term was being then and there held, commencing anterior to the day appointed for the special term, because, as they, in legal effect, say, "a general term cannot be adjourned, so as to give effect to the appointment of a special term, immediately following the adjournment of the general term; and, therefore, the holding the Court, as a special term, is without authority. If this reasoning be sound, there is an end to this case.

The cases, cited by appellants, to support this reasoning, fall far short of doing so, as will be seen by looking into them. The law of 1859, sec. 9, organizing the Court not sec 8, provides the time of holding the terms of the Court, and are in these words: "Said court shall be held on the first Monday of every month, and the terms thereof shall respectively be called after the different months, in which they are held; and said Court *may be* continued, and held, from the time of its commencement, every day, Sundays excepted, until, and including, the last Saturday of the same month, and longer, if necessary to complete the trial of any cause then on trial. The judges of said Court, or a majority of them, may adjourn the same on any day previous to the expiration of the term, for which the same may be held; and, also, from any one day in term over to any other day in the same term, if, in their

authorities on the constitutional point is on the big bundle the Court

opinion, the business of the Court will admit thereof." Upon this statute, there cannot be a question that the general term may be adjourned at any time; and we are to see if there is any power given the Court, to call special terms, for any purpose. The first section of this act provides, "That the Court, known as the Cook County Court of Common Pleas, is hereby continued, with all its powers, jurisdiction and authority, and with the additional jurisdiction conferred by this act."

The several acts establishing this Court, and constitutional saving provision, are to be found as follows:

Act creating the Court, granting its powers, &c., 21st of Feb., 1845, R. S., page 574, as to judges' power to appoint special terms. See 2d clause of section 4. Act amendatory, 6th of February, 1849, session laws 1849, p. 69.

Act changing name of Court, to Cook County Court of Common Pleas, Nov. 5th, 1849, 2 sess. laws 49, p. 14, 15, constitutional provision, § 21, schedule to the constitution of 1848.

By examination of the 4th section of the act of 21st of February, 1845, it will be seen that power to call terms is granted expressly to the Cook County Court, and, by succession, it is granted to the Superior Court.

The power then, exists, to call special terms, and the only question is, as to the time of calling it.

That it could not be called for a day upon which the general term commenced, by law, is admitted, as it would be simply nugatory, but, that it might be for any other day, is clear enough, and no reason drawn, from the supposed duty of the Court, to hold a term open any given length of time, can make the doing it a violation of official duty; and the cases cited upon this point, are entirely inapplicable to this case.

As to the second point, made by Appellants, there are two answers—

1st. That the Superior Court is specially authorized to run one term into, and beyond another, when necessary to finish a trial, &c.

2d. That, admitting that the special term ended on the last day of January—by operation of law—and that the regular February Term commenced February 1st, and continued until, and after the 13th day of February, and that the judgment was rendered at the February Term. It by no means follows, that the judgment was void. To hold so, would be to say, that the closing of the January Term worked a discontinuance of all pending suits. That will not be contended, if the suits were not discontinued, they were continued to the next term, in course of which appellants show to have been held, and at which this judgment was rendered.

It cannot be held, that a Court sitting, at a time authorized by law, for holding a general term of Court, is acting without authority, and, therefore, its proceedings are *coram non judice.*

Nor will the misprison of a clerk, in stating that a particular day is of a particular term, which has closed, oust the Court of its authority to pronounce judgment on that day, if the authority to do so is otherwise made to appear. The words which counsel have emphasized, in the history of the proceedings, might be stricken out, without destroying the evidence of a judgment, and the Court may intend that this is a clear clerical mistake.

The case of *Goodsel vs. Boynton*, 1 Scam, 555, was where a term of Court was held at the usual time of a general term, as by law, as it formerly stood, it ought to have been held to-wit, in March; upon the 2nd day of the same month, the legislature passed an act changing the term to April. This was not known, by the officers of the Court, until long after, in the meantime a term was held, &c.

The Court there held that the law, changing the time of holding the Court to April, took immediate effect, and that, as the law fixing the Court at first Monday of March, was thereby repealed, the proceedings at the term were "*coram non judice.*" This surely is no authority in this case.

The case of *Archer vs. Ross*, was a case upon the power to appoint a special term, to commence upon the same day in one county that a regular term, to be

held by the same judge, commenced in another and distant county. Such a question does not arise here, nor does the reason exist upon which that case is put, to-wit: That the appointment was a violation of official duty in the judge, and not sufficiently noticed.

The case of *Downey vs. Smith*, 13th Ill. was, as to the right to dismiss a cause, upon the ground that two terms had elapsed, and no declaration had been filed; and, the question was, whether there is a term of Court, when there is no judge to hold it, within the meaning of the statute, authorizing dismissals for want of declaration, and the Court simply decides that there is.

There is no doctrine in any of these cases, applicable to the case at bar, and this disposes of all questions involved in the 1st and second points made by the plaintiff.

II.

The 3d point, made by the plaintiffs, is, "that the Court had no jurisdiction, without filing a certificate of publication of notice that application for judgment would be made, &c., such certificate should appear in the record to render the judgment.

In answer to this, I say that the statute, under which these proceedings were had, makes no such requirement. [See sec. 40 of amended charter of 1857.]

Pease vs. City of Chicago, 21 Ill. 506.
Bristol vs. City of Chicago, 22 Ill. 588.

The case of *Bristol vs. the City of Chicago* is perfectly decisive of this point.

III.

The next point which the plaintiff makes is that the Court erred in *not* permitting the plaintiff to show that the city had failed to comply with the provisions of a certain *ordinance* upon the subject of assessments. There is no pretense what-

ever that the city charter required any such thing as the ordinance pretended to require; therefore, whether the ordinance was complied with or not makes no sort of difference.

City of Ottawa vs. Macey, 20 Ill. 482.
Ex parte Mayor of Albany, 23 Wend. 279.

The above cases are directly in point and are decisive.

IV.

The next point made by plaintiff—that the city had no authority to assess for graveling streets—has no force in it whatever; graveling a street being only a mode of paving, and the city charter, § 7 page 38, of municipal laws, gives the city express power "to cause any street, alley or highway to be *graded*, leveled, *paved* McAdamized or planked and to keep the same in repair, while sec. 54, page 26, of the charter gives the city exclusive control to regulate, repair, amend and improve streets in any way, and from the very nature of things a city without any express law would have power to improve its streets in any way it chose, if it did not, it would be different from any city now in existence on *this* continent.

V.

The sixth and seventh points made by the plaintiff have already been passed upon by the Court—*Bristol vs. the City of Chicago*, 22 Ill. 590–1. The ten per cent. "*additional costs*" is expressly authorized by section 52 of the amended charter of the City of Chicago.

In regard to the eighth and ninth points, as made by the plaintiff, I insist that the assessment was fairly and regularly made by the commissioners, and that the plaintiff had no right to inquire into the value of the lots at all, except for the purpose of showing that the whole proceedings were fraudulent and void; and that the only evidence which the plaintiff offered to prove fraud, was an attempt to show excessive valuation, which, unaccompanied by other circumstances, totally failed.

The State vs. Ross, 3 Zabriskie 517—89.
Betts vs. New Hartford, 25 Conn. 189.

Albany & Woodstock Railroad Co. vs. Canaan, 16 Barb. 244.
Haight vs. Day, 1 Johns. ch. 18.
Ex parte Mayor of Albany, 23 Wend. 280.
Extenson of Hancock street, 18 Penn. 323.
19 Penn. 271.
16 Barb. 248.

Nota Bene. *Town of Rochester*, 3 N. H. 349.
Matter of Pearl street, 19 Wend. 651.
Matter of John and Cherry streets, 19 Wend. 668–9.
William and Anthony streets 19 Wend. 679.

The fact, that Gray, the commissioner, signed the assessment roll, is conclusive evidence that he adopted the valuations which were placed upon the lots by Bragg; it should not vitiate an assessment because the commissioners or commissioner adopts the opinions of others, as a matter of fact no man in the City of Chicago knew the value of property better than this same F. A. Bragg; he has held the office of superintendent of special assessments and been engaged in that particular business for years, and the evidence shows that he and Gray were down in the vicinity of the property in question but a few days before, for the purpose of levying an assessment, and that they looked the property all over; the property was near where Gray had his office, and both Gray and Bragg knew every foot of the ground and were in all probability as familiar with the premises in question as he was with his own house.

Another thing, the commissioner who levied this assessment was personally liable for a faithful and honest discharge of duty, and if he was guilty of any misconduct he should be held responsible.

Tompkins vs. Sands, 8 Wend. 462.
Loomis vs. Spencer, 1 Ohio 153.
And numerous other authorities.

It should not invalidate the assessment and the city should not be compelled to incur a great expense, because a person who is elected for a specific purpose, and who, in the language of the charter, is "sworn faithfully and impartially to execute his duty" does not do it; let the guilty suffer and not the innocent. But the testimony in this case shows no misconduct whatever, and if Mr. Gray, upon an examination, either long or short, was satisfied that the assessment was right he

had a perfect right to adopt it and make it his own. Moreover, there is no testimony in the case that shows that Mr. Gray had not been studying the matter all over and was not perfectly familiar with the whole subject. In the language of Judge Cowen, in the case of the *Mayor of Albany*, 23 Wend. 280—

"We cannot interrogate the functionaries or agents appointed under the law as 'to the operations of their minds; we might otherwise send our writ to every as-'sessor, every board of road commissioners or village or school district trustees in 'the state to ascertain whether they have assessed A. or B. more or less than they 'should."

The property in this case was not assessed at more than three per cent on its value. The assessment was perfectly regular and all the proceedings both in Court and out of Court were legal and the judgment should be affirmed.

ELLIOTT ANTHONY,

Attorney for Defendant.

219 – 125

The City of Chicago.

at the suit of

Frederick H. Burnham

Points

Filed May 11. 1880

L. Leland

Clerk

219 – 125

~~The City of Chicago~~

~~at the suit of~~

SUPREME COURT OF THE STATE OF ILLINOIS

OF THE APRIL TERM, A. D. 1860.

FREDERICK W. BURNHAM et. al.,
Appellant,
vs.
THE CITY OF CHICAGO,
Appellee.

APPELLANT'S BRIEF.

I. The record shows the Application for Judgment in this case to have been made to a *special* term of the Supreme Court of Chicago, commencing on the 23th day of January, which was within the time fixed by law for the regular January Term of the Court, and the judgment is therefore void.—[Laws of 1859, P. 85, Sec. 8.

Goodsell vs. Boynton, I. Scam. 555.
Archer vs. Ross, II. do 303.
Gregg vs. Cooke, Peck (Tenn.) 82.
Downey vs. Smith, XIII. Ills. 671.

II. The judgment is alleged to have been rendered on the 13th day of February "one of the days of the January Special Term," when by law the February Term of the Court commenced on the 1st of February.—[Laws of 1859. Supra and cases above cited.

* III. The Court had no jurisdiction without the filing of a certificate of publication of notice that applicatien for judgment would be made, and such certificate should appear in the record to render the judgment prima facie valid.

Miami Exp. Co. vs. Brown VI Hamm, R. 535, Laws 1857, P. 902, Sec. 40, 41 and 42.
Jones vs. Kenny, Hardin, R. 96. Ogden et. al. vs. Bowen, II. Scamm. R. 333.
Bergen Co. vs. State; I. Dutch (N. J.) R. 554, Boyland vs. Boyland; XVIII. Ills. 551.

IV. The proof of non compliance with the provisions of the ordinance by which the city had limited its own power, was competent, and the city was estopped to deny its binding force. II. Sm. Leadg Cases 619.

Hale vs. Union, M. Ins. Co. XXXII. N. H. 295.

V. The City had no authority to assess for *graveling* streets.—[Laws 1851, P. 155, Section 1.

Butts v Merrau Bee R. (Aff) 14
Asheville v Means VII Ind R. 406

* In the case in XX Ills R. 421, Court's dec^{n} is based on the fact that citizens were not prejudiced by councils non compliance with its own ordinance

VI. The amount of the Judgment is not clearly specified, and it is therefore void.

Boyker vs. State III. Yerger 426.
II. Pike, 101.
Douglas vs. Hendricks, Walker, 230.

VII. The Assessor's report purported to contain amount of assessments, interests and costs, and the Judgment of the Court for costs, and ten per cent. and additional costs was unauthorized.—[Laws 1857, P, 905, Sec. 53. (and 1x cero cannot be omitted)
903, Sec. 43.

Dowling v Stewart III Scamm. R. 195
Roman v People ~~XVIII~~ Ills 159

VIII. The amount of assessment was more than 3 per cent. on the value of the lots as proved, and the assessment was therefore invalid.—[Laws 1851, P. 155, Sec. 2.

~~Botts vs. Menard, Breese R. (App) 14.~~

Morrison v city of Chicago ~~XXII~~ Ills 573
Peace v do ~~XXI~~ " 501
Kemper v McC ~~XIX~~ O. R. 327

IX. The Assessment was made by another than the regular Assessor who signed the roll.

Granger v Parsons
~~II~~ Pick R. 392

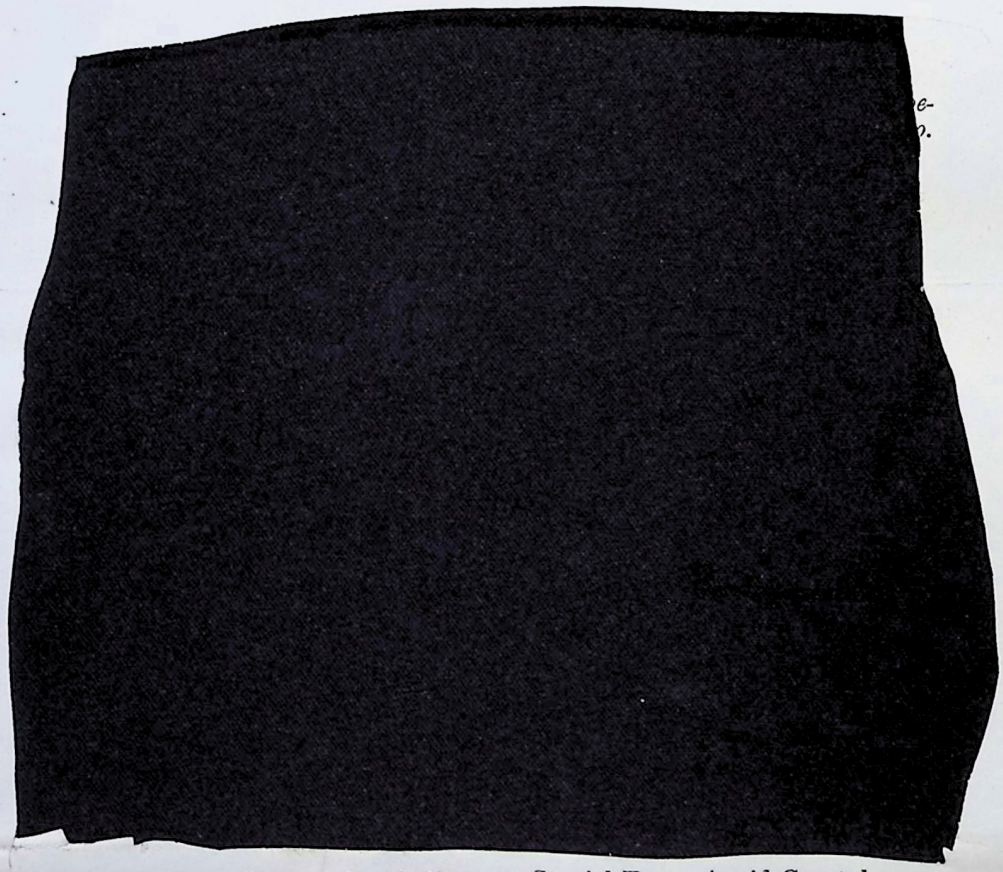
~~X~~. No collector upon the roll did not show that assessment or warrant were dated within two years next preceding and did not give court jurisdiction
Laws 1857 p. 902 Sec 2/6
Hamilton v City of Chicago ~~XXII~~ Ills 585
VI Wheat. (U.S.) R. 119
City of Chicago v R. I. R. R. Co ~~XX~~ Ills 290
Young v Lorain ~~XI~~ Ills 636

WHITE & WILLIAMS.
JESSE B. THOMAS,
Attorney for Plaintiff.

Jameson & Morse, Printers, 14 La Salle Street, Chicago.

SUPREME COURT

OF THE STATE OF ILLINOIS.



See Record p. 3 & 4

The Collector of said City, at a Special Term of said Court, begun and held on the fourth Thursday, being the 26th day of January, A. D. 1860, filed his report, setting forth that the special warrants mentioned in the schedule annexed to said report, for the collection of the special assessments and taxes authorized by law for the purposes therein set forth, were issued as required by law, and delivered to him on or before the second Tuesday of October, A. D. 1859. That forthwith after the delivery of said warrants to him, he published a notice in the corporation

newspaper of said City—that said warrants were in his hands for collection—describing the nature of each of said warrants, and requesting all persons forthwith to make payment thereof at his office. And that, in default of such payment, the said taxes and assessments would be collected at the cost and expense of the persons liable for the payment thereof. Which said notices were published for thirty days in said corporation newspaper. That he had given ten days notice of his intended application to said Court for judgment against the lands, lots and parcels of land for the amount of taxes, assessments, interest and costs respectively due thereon before the first day of the January Special Term of the said Court, A. D. 1860, briefly specifying the nature of the warrants upon which said application was to be made, and requesting all persons interested therein to attend at said Term. And that the schedule annexed to said report contained a correct list of the lands, lots and parcels of land, together with the amount of assessments, interest and costs respectively due thereon, as set forth in the said warrants which remained due and unpaid, and praying that judgment might be rendered as in such cases made and provided. The schedule annexed to said report and referred to therein, is a copy of the Collector's warrant for the collection of the assessments in question:

6, 10 Which sets forth that the Common Council of the City of Chicago did, on the 11th day of October, A. D. 1859, confirm the assessment made and filed in the Clerk's office, by the Commissioners appointed by the Common Council, to assess the sum of $3440, upon the real estate in the south division of said City, deemed benefitted by the gravelling of South street from the Roadway of State street to the Roadway of Archer road, in proportion to the benefits resulting thereto, in pursuance of an order for said assessment, made by the Common Council the 2d day of September, A. D. 1859. And that the Common Council did assess said sum of money in accordance with the Roll of said assessment, a copy of which Roll is set forth in the warrant; the heading of which Roll, and so much of the body thereof as relates to the matter now in controversy in this suit is as follows, to wit:

ASSESSMENT ROLL.

7, 10 A description of the real estate in the South Division of the City of Chicago deemed benefitted by Gravelling South Street from State Street to the Archer Road, with the valuations thereof, and the sums of money severally assessed thereon for benefits, by the Commissioners, to wit:

Canal Trustees' subdivision of the	S.E. ¼ sec. 21 T.	39	R. 14 E.	3rd P. M.	Assess't.	
Name of Owner.	P't of lot or land	Sub-Lot.	Lot.	Blo'k	Val. Dolls.	Dolls. cts
Unknown. (Mary Ann Shays.)		37	2, 3, 4, 5,	45	750	20 40
" "		40	"	"	750	20 40
" "		41	"	"	750	20 40
" "		42	"	"	750	20 40
" "		43	"	"	750	20 40
" "		44	"	"	1400	39 85

J. B. Wallers, subdivision of	18 ac. in n.e. $\frac{1}{4}$	s. 28	t. 39	r. 14 e.	3 p.m.		
F. W. Burnham,			lot 1		1000	26	25
F. W. Burnham,			" 2		800	21	25
L. Milliken,			" 21		800	21	25
L. Milliken,		s. 28	" 22		800	21	25
C. G. Uhlich,	N. E. $\frac{1}{4}$ N. E. $\frac{1}{4}$		t. 39	r. 14 e.			
	Except that portion owned by C.	"	"		4000	1146	34
	& R. I. R.R. Co.	"					
Chicago & R. I. R. R. Co.,	12 acres 100 ft. wide running N. & S. through the e $\frac{1}{2}$ of ne $\frac{1}{4}$ & se $\frac{1}{4}$		"	"	500	104	00

Said warrant further commanded the Collector to levy, make and collect the several sums of money assesssed in said Roll, and make return of the execution thereof within thirty days from the date of said warrant. Said date being the eleventh day of October, A. D. 1859.

Attached to said warrant is a writing purporting to be the Collector's return upon said warrant, which is without date or signature.

The Collector filed with his report a copy of notice that warrants were in his hands for collection, describing the warrant in this case as follows, to wit:

"Warrant 316 South.

"For gravelling South Street from the Roadway of State Street to the Roadway of Archer Road," and a certificate of the publication thereof according to law; but no copy of any advertisement of application for judgment, and certificate of publication thereof.

Objections were filed, in accordance with the orders of Court, by the defendant Frederick W. Burnham, to the rendition of a judgment against Lots One and Two in Waller's Subdivision, and by the other defendants to the property above set forth, as part of the Assessment Roll for said improvement—and so described in said warrant, as follows, to wit:

in examining said Roll, when he signed it. Witness doesn't know that Gray saw a single valuation of said property.

On cross examination witness states that Mr. Gray decided upon the value of the lots in this assessment in general terms, and confirmed the Roll made by the witness.

25 The defendant Burnham further offered in evidence an assessment upon the same property made by the said George M. Gray and the said witness Bragg, about the 10th day of September, A. D. 1859, in which said lots in controversy belonging to said Burnham were valued for the purpose of an assessment, as follows, to wit: Lot No. 1 at $700. Lot No. 2 at $650. The defendant Burnham further called John H. Kedzie as a witness, who testified that he had lived in Chicago seven years, and been an extensive dealer in real estate for the first 4 or 5 years. Had owned property in the vicinity of the property in this case. Had a general knowledge of the value of real estate in that vicinity; would consider Lots One and Two, in controversy, worth on the 13th day of September, A. D. 1859, $300 each.

26 James H. Rees, witness for defendant, testified that he had been a real estate dealer in the City of Chicago for the past ten or twelve years. Had made it a study. Knew the general value of property in the vicinity of the said Burnham's Lots in question, and they were worth on the 13th day of September, A. D. 1859, about as follows: Lot One, $550 @ $600; Lot Two, $500.

Nicholas P. Iglehart, witness for defendant, testified that he had been a dealer in real estate in the City of Chicago, and fixed the same price on Lots One and Two as had been fixed by James H. Rees.

29, 27 The said defendants then read in evidence, Sec. 3d of an "ordinance —concerning assessments for public improvements," which was in the words and figures following: "Where any assessment-roll for any local improvement, except for culverts and sidewalks, and for grading when the same is ordered single or by itself, shall be completed and returned to the city clerk, as now provided by law, it shall be his duty at the time of giving the necessary notice of said return, in the corporation newspaper, to cause to be published accompanying the same, the roll containing the name of the owners of real estate, when known, a description of the lots and parts of lots which may be assessed, the valuation of each separately—and the sums of money assessed thereon, at least once before said assessment-roll can be confirmed by the common council. Passed, March 7, 1859. Attest: H. KREISMANN, *Clerk.*

Approved, JOHN C. HAINES, *Mayor.*"

And offered to prove that the publication therein required was not made, but the court refused to admit such evidence, to which decision of the court the defendants excepted.

The foregoing being all the evidence in the case and so stated in the bill of exceptions, the court overruled the defendants' objections and rendered a judgment against said lots one and two, in Waller's subdivision, and against the other lots and lands above set forth, as belonging to the various defendants above named and described in said warrant, in favor of the city of Chicago, for the sums annexed thereto, and also for costs of suit severally thereon; and for the further sum of ten per cent., and for her additional costs, and ordered that said lots be sold to satisfy the same. The defendants excepted and prayed an appeal to the supreme court, which was granted and perfected within the time prescribed by the court.

It is stipulated between the city and defendants, that the cases named in the title hereof shall abide the decision of the supreme court in the case of Burnham. Unless the decision of the court therein shall be reversed on account of excessive valuation of lots and property by assessor. If reversed on that ground alone, then the reversal shall apply only to Burnham, Milliken and Shay's property, and the judgment against Uhlich and the Chicago & Rock Island Rail Road Co., shall be affirmed.

The appellant assigns the following errors:

1st.—The collectors report and application for judgment were not made to any legally authorized term of the court.

2nd.—The judgment was not rendered at any legally authorized term of said court.

3rd.—No copy of advertisement of application for judgment, or certificate of publication thereof, appears in the record as having been filed with the report, as required by law.

4th.—The court erred in overruling the defendants' objections, and each of them.

5th.—The court erred in excluding the evidence offered to support the 1st, 4th, 5th and 6th objections.

6th.—The city of Chicago has no power to assess for gravelling streets.

7th.—The amount assessed on each lot was more than three per cent. upon the value thereof.

8th.—The judgment was void, for uncertainty as to the amount thereof.

9th.—The court erred in rendering judgment for costs of suit, and for ten per cent., and for additional costs, in addition to the amount specified in the collector's report.

10th.—The assessment-roll and the estimate therefor were not made by the assessor or assessors, who signed the same.

11th.—Judgment should have been for the defendant below, for costs, and not for the plaintiff.

WHITE & WILLIAMS,
JESSE B. THOMAS,
Attorneys for Appellants.

219.-125-

J. W. Bumbaugh

v

City of Chicago

Abstract

Filed April 20. 1865

L. Leland

Clerk

United States of America
State of Illinois Cook County } ss.

Be it remembered that heretofore to wit at a Special Term of the Superior Court of Chicago begun and holden at the Court House in the City of Chicago in said County and State on the Fourth Thursday being the twenty fifth day of January in the year of our Lord Eighteen hundred and fifty one and of the Independence of the United States of America the eighty fourth, due notice of the time and place of holding said Special term of the Court having been printed and published in the daily Press and Tribune the Corporation Newspaper of the City of Chicago, for twenty days previous to the holding of said term of Court, in accordance with the Statute in such case made and provided, and in pursuance of an order made by the Judges of said Court, on the fourth day of January A. D. Eighteen hundred and fifty

Present The Honorable John M. Wilson
Chief Justice of the Superior Court of Chicago
" Van H. Higgins Grant Goodrich Judges
Albert " Carlos Haven Prosecuting Attorney
Walter Newberry " John Gray Sheriff of Cook County
Clerk.

Be it remembered, that on the 26th day of January in the year of our Lord Eighteen hundred & sixty, came J. F. C. Mueller city Collector of the city of Chicago, & filed in the office of the Clerk of the Superior Court of Chicago the following, among other notices & certificates, in the words & figures following, to wit:

City of Chicago
City Collectors office, October 11th 1859.

Notice is hereby given that the following Warrants are in my hands for Collection.

Warrant 316. South. For gravelling South Street from the roadway of State Street to the roadway of the Archer Road.

All persons are requested forthwith to make payment of said Warrants at my office, or the same will be collected at the cost and expense of the persons liable to the payment of said assessments.

J. F. C. Mueller
City Collector.

We the undersigned, publishers of the Chicago Daily Times and Tribune, do hereby certify that a

notice, of which the annexed is a true copy, was published thirty consecutive days next after the 12th day of October 1859. in the Daily Edition of the Chicago Press and Tribune, a Newspaper published in, and of general circulation throughout the County of Cook, State of Illinois

Chicago. Illinois. January 25th 1860.

Press Tribune Co.

By Geo D. Williston

State of Illinois
City of Chicago. City Collectors office
January 26th 1860.

Notice is hereby given, that on Thursday the twenty fifth day of January A. D. 1860. at a Special Term of the Superior Court of Chicago, to be begun and holden, at the Court House, in said City of Chicago, on the last aforesaid day. I shall report to said Superior Court of Chicago, all the lots, lands and parcels of land, for which the taxes and assessments, charges in the collection Warrants hereinafter more particularly described, have not been collected or paid, for judgment against said lands lots and parcels of land, for the

amount of taxes, assessments, interest and costs respectively due thereon, to wit:

Warrant 316. South. dated October 11 1859.
For gravelling South Street from State Street to the Archer Road.

All persons interested therein are requested to attend at said Term of said Court.

A. F. C. Muller, Collector.

We the undersigned publishers of the Chicago Press and Tribune, do hereby certify that the notice, of which the annexed is a true copy, was published Ten consecutive days next after the 1st day of January 1860. in the daily edition of the Chicago Press and Tribune, a newspaper published in and of general circulation throughout the County of Cook, State of Illinois

Chicago Illinois. Jany 25th 1860.

Press and Tribune Co.
By J. D. Shillaber

State of Illinois
County of Cook ss.

I Walter Kimball
Clerk of the Superior Court of Chicago,
within & for the County and State aforesaid.
do hereby certify, the foregoing to be a
true copy of certain notices & certificates
filed in my office, by A. F. C. Mueller.
City Collector, of the city of Chicago. on
the 26th day of January A. D. 1860.

Witness Walter Kimball
Clerk of said Superior Court
of Chicago, & the Seal thereof
at the city of Chicago, this
29th day of April A. D. 1860.
Walter Kimball Clerk

219

City of Chicago

vs

Scanlan.

Transcript of Notices & Certificates

Filed Apl. 28. 1860
L. Leland
Clk.

Fees $1.50 Paid by City.
W Kimball Clk

SUPREME COURT OF THE STATE OF ILLINOIS

OF THE APRIL TERM, A. D. 1860.

FREDERICK W. BURNHAM et. al.,
Appellant,
vs.
THE CITY OF CHICAGO,
Appellee.

APPELLANT'S BRIEF.

I. The record shows the Application for Judgment in this case to have been made to a *special* term of the Supreme Court of Chicago, commencing on the 23th day of January, which was within the time fixed by law for the regular January Term of the Court, and the judgment is therefore void.—[Laws of 1859, P. 85, Sec. 8.

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Gregg vs. Cooke, Peck (Tenn.) 82.
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II. The judgment is alleged to have been rendered on the 13th day of February "one of the days of the January Special Term," when by law the February Term of the Court commenced on the 1st of February.—[Laws of 1859. Supra and cases above cited.

III. The Court had no jurisdiction without the filing of a certificate of publication of notice that application for judgment would be made, and such certificate should appear in the record to render the judgment prima facie valid.

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IV. The proof of non compliance with the provisions of the ordinance by which the city had limited its own power, was competent, and the city was estopped to deny its binding force. II. Sm. Leadg Cases 619.

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V. The City had no authority to assess for *graveling* streets.—[Laws 1851, P. 155, Section 1.

Betts v Menard Breese R (Ill) 14
Asheville v Means VII Ired R. 406

VI. The amount of the Judgment is not clearly specified, and it is therefore void.

Boyker vs. State III. Yerger 426.
II. Pike, 101.
Douglas vs. Hendricks, Walker, 230.

VII. The Assessor's report purported to contain amount of assessments, interests and costs, and the Judgment of the Court for costs, and ten per cent. and additional costs was unauthorized.—[Laws 1857, P, 905, Sec. 53. and ex case cannot be remitted
903, Sec. 43.
Dowling v Kinnare III Scam 195
Rorran v People XVIII Ills 159

VIII. The amount of assessment was more than 3 per cent. on the value of the lots as proved, and the assessment was therefore invalid.—[Laws 1851, P. 155, Sec. 2.

~~Betts vs. Menard, Breese R. (App) 14.~~
Morrison v City of Chicago XXII Ills 573
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Kempsen v Do XIX O. R. 327

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Grange v Parsons II Pick R. 392
X collectors report did not show when ass't was made
Hamilton v City of C XXII Ills 555
VI Wheaton R. S. R. 119
City of C v R R R Co XX Ills 290
Young v Lorain XI Ills 636
Bates v Planters Bk ~~WHITE & WILLIAMS.~~ VIII Porter (Ala) 101

JESSE B. THOMAS,
~~Attorney for Plaintiff.~~
Of Counsel for Appellants

Frederick W Bunham et al
Appellants
vs
City of Chicago
Appellee

Appeal from
Superior Court
of Chicago

Appellants Argument

II.

The first point made by the appellant is that the proceedings of the court were coram non judice, because the alleged special term of the Court, at which they were held was not authorized by law —

We contend 1st That from the legal construction of the Statute organizing the Superior Court of Chicago, from the intention of the legislature as evident from the language used, and from the reason of the case, the power of calling special terms does not belong to this Court —

2d That if such power does exist such terms cannot be fixed to commence between the first ~~Saturday~~ Monday and the last Saturday of any month, and that any term so appointed and attempted to be held is illegal, and proceedings thereat a nullity

Legislation in Stat. Law. 423
Southern Commentaries 655

The general words in the act referred to by the City Attorney continuing in the new Court, "all the powers jurisdiction and authority of the Court of Common Pleas", must be understood to apply to those general powers, not specifically referred to, and modified or redelegated specification in the new act — Where such general words conferring powers follow a general grant, the general words are limited by the narrower ones, as to the subject matter to which they relate — In this case the terms of the Court are specifically appointed by the act, —

The language used by the Legislature further excludes the idea of any other than the terms so appointed. They say "the terms" of the Court shall be called after the month in which they are held — respectively, excluding the idea that terms may be called running from one month into the other, —

It is further to be noticed that all necessity for special terms was obviated by the provisions of this act — and rationa cessante lex ipsa que cesat. — Under the old law the terms of the Court were to occur at intervals of three months, whereas by the provisions of this act a term must be held commencing on the first Monday of every month, and the court must continue in

session should its business require, until the last Saturday, and longer if necessary to complete a case on trial — While ten days service of process is required to entitle a plaintiff to a hearing, and terms commence once in thirty days, and the ~~courts~~ continue four weeks out of every five throughout the year, it is difficult to conceive what occasion could require a further multiplication of terms —

But further, we contend that by the act in question not only the commencement but the close of each term of the Court is fixed, and the intermediate space is appropriated by law to that term, and is a legal term, whether or not the court is in session — This was the original mode of appointing terms of court, in England, their commencement and close being both fixed by law

See Bouvier's Law Dictionary "Terms" —

The Legislature evidently discriminate between the actual session of "the Court", and the continuance of the statutory "term" — for they say the Court may adjourn from one day to another "in the same term", or "before the end of the term". Can it be held that any proceedings or orders of the entered during such temporary adjournment are to be entered as in vacation and not in term?

The court in the case in 13th Ga 671 decide that a day having been appropriated by Law, for the commencement of a term, such term accrues in contemplation of Law although not court out — will not the same rule apply where a specific time has been appropriated for the continuance of a term? In 2 Scam 303, the court decide that an appointment of a special term, when in contemplation of Law a general term commenced was a nullity — The evident intent then being that the term of court should embrace the period allotted, and the provisions for intermediate adjournment of court must be understood as providing for contingencies where no actual session of court for the trial of cases is required, but for all other purposes the term is in progress — and the appointment of an conflicting special term is a nullity —

III —

The record recites this judgment as rendered "on the 13th of February being one of the days of the January Special term &"

On the first Monday of February (the 6th of the month) the regular February term of the Court commenced by Law:— the holding open of the January Special term, beyond

that time was therefore a violation of law and all proceedings therein subsequent to said 6th day of February were void.

The provision of the statute authorizing the Court to hold over the term to finish a cause on trial does not cure the defect. That only authorizes the continuance of court during the week intervening between the close of one term and the beginning of the next; to complete the trial of a cause, which the court without such authority could not do. The inability to complete the trial within that time would only involve the necessity of a new trial, and not the discontinuance of the cause.

It would certainly seem absurd if the February term in contemplation of law commenced on the statutory day, that the Court should be in session at the same time as of two terms. No such inconsistency is required in a fair interpretation of the statute.

But in this case the record shows that the whole trial of this case occurred on the 13th of February, therefore the statutory contingency of completing a trial to authorize the extension of the term did not here arise.

III

This objection seems to be cured by the supplemental record

In Peace v the City 21st Ills 508, the Court say that the court may inquire into and consider "every thing which shows that the tax or assessment ought not to be collected".

The appellants claim that the city having enacted the ordinance offered in evidence, and led the public to believe that no assessment could be confirmed without a publication of the roll, as therein required, were equitably estopped from setting up that they could not bind themselves by such an ordinance.

The case referred to in Wendell was on a certiorari, and decided to be inapplicable to proceedings like these, by this court.

The case of City of Ottawa v Macy 20th Ills 421 proceeds on the ground that the omission of duty in that case "could not injuriously affect the owner" being for the benefit of the common council alone. The case was here materially different - and injustice and fraud might be accomplished by the course here taken on the part of the city.

IV

The power of the city to assess for specific improvements is derived from the express provisions of its charter alone - Whatever power the city may have "to regulate repair & streets &c" as set forth in the Municipal Laws page 66 § 37 and referred to by the city attorney, its power to assess specific property is limited (See Munic. Laws page 38 Sec 2) to the particular improvements specified in Section 1st of the same Chapter (page 38) viz: "grading leveling, paving macadamizing or planking"

The first two of these terms refers clearly to the preparation of the natural surface for the reception of the road bed - The case in question therefore must be included in one which allude to the structure of the road bed itself of the other terms used - Each of those terms has a specific and well defined meaning; "paved" alluding to a surface formed by regularly laid and adjusted blocks of solid material: "macadamizing" to a road bed formed of broken stone (See Webster Dict'y) - Neither of these therefore include the specific improvement in question - Whether or not the legislature ought to have directed the specific mode in which the city might improve her streets is immaterial:- it is enough that they have done so, and having done so, we presume

facit cessare tacitum - The council are bound by the strict letter of the act conferring their powers, and can have no power to levy an assessment except for a purpose literally within its terms — (The nature of the improvement can be taken notice of here although the assessment role was not offered in evidence, because the statute expressly requires the collector to give notice of the nature of the assessment, and the clerk to entitle the case in such a way as to show its character The collectors report, and the entitling of the cause were therefore evidence as to the object of the assessment - Were this not so how would parties know what particular assessment was meant by the case called, and how to introduce their evidence.?)

VII

The judgment rendered was against the lots "described in the collectors warrant" "for the ~~sums~~ amounts assessed thereto being amounts assessed thereon, and for costs of suit levied thereon, and for the further sum of ten per cent, and for additional costs" - It does not appear what these "additional costs" are - Further, the collectors report states that the roll attached this report contains

the description of lots lands &c, "and the amount of assessment interest and costs severally due thereon"- Then is but one amount attached to each lot, and that amount must therefore include the assessment interest and costs referred to, but how much thereof is the assessment does not appear -
The judgment is therefore uncertain and void -

VII

But, if it should be held that the words "being the amount assessed thereon" are surplusage, still the judgment is erroneous, being excessive -
The collectors report is conclusive against the city, of the facts stated therein; The court look only at the facts stated therein, and at the list of property, and the same description attached thereto - see Bristol v City 22 Gr
The collector states that the amount so attached to each lot comprises the "assessment, interest and costs" thereon; He has evidently misapprehended the statute, and instead, when the assessment remained unpaid, of "making report thereof" that is of the amount so remaining unpaid, as required by the statute, for the purpose of obtaining a judgment for such

amount, and for "interest" (towit: the statutory ten per cent, to be allowed by the court) and "costs" (towit the costs of suit) he has computed interest, estimated costs, and reported a gross sum of "assessment, interest and costs," on the whole of which he asked and received a judgment for ten per cent — The statute provides for the collection of ten per cent interest after thirty days notice that the warrant is in his hands, but this alludes clearly to cases where the assessment is paid ~~without~~ before suit — If general in its application it ~~is~~ and the ten per cent damages allowed by the court is not in lieu of it, it must continue down even to the day of sale, — (See Laws, 65) p 902 &c Secs. 40. 52.

VIII

This court has before it the elements from which it may determine that the assessment in question was excessive and void: viz. the amount assessed on each lot in the collectors report (provided anything definite can be ascertained therefrom), and the value of each lot as proved by competent witnesses — from which it appears that the assessment is more than three per cent on the value — The testimony as to value is uncontradicted by the city, not even the assessment roll being given in evidence by them

to show a less valuation by the assessors, and it is therefore conclusive on that point - The presumption is that they, as honest men, valued it, at its real worth, and which is proved - The statute restricting the power of the, as assessment, to 3 per cent per annum, on property, would be inoperative, ~~as specific~~ were the valuation affixed by the appraisers in each case, for the basis of assessment for that valuation might be different in every assessment during the year, and how could the court say that whether the statute had been violated - The commissioners are required to distribute the expense of the improvement equitably upon the property benefited and to "describe briefly the real estate assessed and the value thereof" (see Municipal Laws p 39 Sec 41)

~~The cases cited of general assessments~~ in applying an expression of opinion only, which is not intended to be conclusive - The cases cited where assess valuations are made as part of a system of general taxation are not analogous - The true question for the court to determine was, what was the real value of the property in question, and was the assessment more than 3 per cent on that value

IX.

The maxim *delegatus non delegare* applies with peculiar force, where as in this case a trust was reposed implying *personal confidence*. — The qualifications made by the statute essential to an appointment as assessor and the duties committed to him, are consistent only with the intention to require a *personal* investigation of the facts, and an *independent personal* conclusion thereon —

X.

The Court acting under a special authority in a statutory proceeding *in rem* was *pro hac vice* a court of special jurisdiction, and the facts entitling it to proceed and render judgment must appear affirmatively in the record. — (See 11th Barr 636)

The collector's report which is here the fountain of jurisdiction does not show when the assessment in question was levied, and that the same was within two years or since 1856 — and therefore did not make a *prima facie* case, —

see especially 22 Ill 575

Jesse B Thomas

Of Counsel for Appellants

219 125

Burnham et al

vs

City of Chicago

Appellants Points

& argument

Filed May 14, 1860

L. Leland

Clerk

Isaac B. Norris

of Counsel for appts

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SUPREME COURT OF ILLINOIS.

Third Grand Division,
APRIL TERM, A. D. 1860.

BURNHAM et al,
vs.
CITY OF CHICAGO.

DEFENDANT'S POINTS.

The first point made by appellant, raises the question as to the legality of the special January Term of the Superior Court, inferrentially arguing against it, upon the ground that the time appointed therefor, a general term was being then and there held, commencing anterior to the day appointed for the special term, because, as they, in legal effect, say, "a general term cannot be adjourned, so as to give effect to the appointment of a special term, immediately following the adjournment of the general term; and, therefore, the holding the Court, as a special term, is without authority. If this reasoning be sound, there is an end to this case.

The cases, cited by appellants, to support this reasoning, fall far short of doing so, as will be seen by looking into them. The law of 1859, sec. 9, organizing the Court not sec 8, provides the time of holding the terms of the Court, and are in these words: "Said court shall be held on the first Monday of every month, and the terms thereof shall respectively be called after the different months, in which they are held; and said Court *may be* continued, and held, from the time of its commencement, every day, Sundays excepted, until, and including, the last Saturday of the same month, and longer, if necessary to complete the trial of any cause then on trial. The judges of said Court, or a majority of them, may adjourn the same on any day previous to the expiration of the term, for which the same may be held; and, also, from any one day in term over to any other day in the same term, if, in their

opinion, the business of the Court will admit thereof." Upon this statute, there cannot be a question that the general term may be adjourned at any time; and we are to see if there is any power given the Court, to call special terms, for any purpose. The first section of this act provides, "That the Court, known as the Cook County Court of Common Pleas, is hereby continued, with all its powers, jurisdiction and authority, and with the additional jurisdiction conferred by this act."

The several acts establishing this Court, and constitutional saving provision, are to be found as follows:

Act creating the Court, granting its powers, &c., 21st of Feb., 1845, R. S., page 574, as to judges' power to appoint special terms. See 2d clause of section 4. Act amendatory, 6th of February, 1849, session laws 1849, p. 69.

Act changing name of Court, to Cook County Court of Common Pleas, Nov. 5th, 1849, 2 sess. laws 49, p. 14, 15, constitutional provision, § 21, schedule to the constitution of 1848.

By examination of the 4th section of the act of 21st of February, 1845, it will be seen that power to call terms is granted expressly to the Cook County Court, and, by succession, it is granted to the Superior Court.

The power then, exists, to call special terms, and the only question is, as to the time of calling it.

That it could not be called for a day upon which the general term commenced, by law, is admitted, as it would be simply nugatory, but, that it might be for any other day, is clear enough, and no reason drawn, from the supposed duty of the Court, to hold a term open any given length of time, can make the doing it a violation of official duty; and the cases cited upon this point, are entirely inapplicable to this case.

As to the second point, made by Appellants, there are two answers—

1st. That the Superior Court is specially authorized to run one term into, and beyond another, when necessary to finish a trial, &c.

2d. That, admitting that the special term ended on the last day of January—by operation of law—and that the regular February Term commenced February 1st, and continued until, and after the 13th day of February, and that the judgment was rendered at the February Term. It by no means follows, that the judgment was void. To hold so, would be to say, that the closing of the January Term worked a discontinuance of all pending suits. That will not be contended, if the suits were not discontinued, they were continued to the next term, in course of which appellants show to have been held, and at which this judgment was rendered.

It cannot be held, that a Court sitting, at a time authorized by law, for holding a general term of Court, is acting without authority, and, therefore, its proceedings are *coram non judice.*

Nor will the misprison of a clerk, in stating that a particular day is of a particular term, which has closed, oust the Court of its authority to pronounce judgment on that day, if the authority to do so is otherwise made to appear. The words which counsel have emphasized, in the history of the proceedings, might be stricken out, without destroying the evidence of a judgment, and the Court may intend that this is a clear clerical mistake.

The case of *Goodsel vs. Boynton*, 1 Scam, 555, was where a term of Court was held at the usual time of a general term, as by law, as it formerly stood, it ought to have been held to-wit, in March; upon the 2nd day of the same month, the legislature passed an act changing the term to April. This was not known, by the officers of the Court, until long after, in the meantime a term was held, &c.

The Court there held that the law, changing the time of holding the Court to April, took immediate effect, and that, as the law fixing the Court at first Monday of March, was thereby repealed, the proceedings at the term were "*coram non judice.*" This surely is no authority in this case.

The case of *Archer vs. Ross*, was a case upon the power to appoint a special term, to commence upon the same day in one county that a regular term, to be

held by the same judge, commenced in another and distant county. Such a question does not arise here, nor does the reason exist upon which that case is put, to-wit: That the appointment was a violation of official duty in the judge, and not sufficiently noticed.

The case of *Downey vs. Smith*, 13th Ill. was, as to the right to dismiss a cause, upon the ground that two terms had elapsed, and no declaration had been filed; and, the question was, whether there is a term of Court, when there is no judge to hold it, within the meaning of the statute, authorizing dismissals for want of declaration, and the Court simply decides that there is.

There is no doctrine in any of these cases, applicable to the case at bar, and this disposes of all questions involved in the 1st and second points made by the plaintiff.

II.

This notice is on file — it was omitted from the record but was by leave of the court filed herein April 28.

The 3d point, made by the plaintiffs, is, "that the Court had no jurisdiction, without filing a certificate of publication of notice that application for judgment would be made, &c., such certificate should appear in the record to render the judgment.

In answer to this, I say that the statute, under which these proceedings were had, makes no such requirement. [See sec. 40 of amended charter of 1857.]

Pease vs. City of Chicago, 21 Ill. 506.
Bristol vs. City of Chicago, 22 Ill. 588.

The case of *Bristol vs. the City of Chicago* is perfectly decisive of this point.

III.

The next point which the plaintiff makes is that the Court erred in *not* permitting the plaintiff to show that the city had failed to comply with the provisions of a certain *ordinance* upon the subject of assessments. There is no pretense what-

ever that the city charter required any such thing as the ordinance pretended to require; therefore, whether the ordinance was complied with or not makes no sort of difference.

City of Ottawa vs. Macey, 20 Ill. 482.
Ex parte Mayor of Albany, 23 Wend. 279.

The above cases are directly in point and are decisive.

IV.

The next point made by plaintiff—that the city had no authority to assess for graveling streets—has no force in it whatever; graveling a street being only a mode of paving, and the city charter, § 7 page 38, of municipal laws, gives the city express power "to cause any street, alley or highway to be *graded*, leveled, *paved* McAdamized or planked and to keep the same in repair, while sec. 54, page 26, of the charter gives the city exclusive control to regulate, repair, amend and improve streets in any way, and from the very nature of things a city without any express law would have power to improve its streets in any way it chose, if it did not, it would be different from any city now in existence on *this* continent.

V.

The sixth and seventh points made by the plaintiff have already been passed upon by the Court—*Bristol vs. the City of Chicago*, 22 Ill. 590–1. The ten per cent. "*additional costs*" is expressly authorized by section 52 of the amended charter of the City of Chicago.

In regard to the eighth and ninth points, as made by the plaintiff, I insist that the assessment was fairly and regularly made by the commissioners, and that the plaintiff had no right to inquire into the value of the lots at all, except for the purpose of showing that the whole proceedings were fraudulent and void; and that the only evidence which the plaintiff offered to prove fraud, was an attempt to show excessive valuation, which, unaccompanied by other circumstances, totally failed.

The State vs. Ross, 3 Zabriskie 517—89.
Betts vs. New Hartford, 25 Conn. 189.

Albany & Woodstock Railroad Co. vs. Canaan, 16 Barb. 244.
Haight vs. Day, 1 Johns. ch. 18.
Ex parte Mayor of Albany, 23 Wend. 280.
Extenson of Hancock street, 18 Penn. 323.
19 Penn. 271.
16 Barb. 248.

Nota Bene. *Town of Rochester*, 3 N. H. 349.
Matter of Pearl street, 19 Wend. 651.
Matter of John and Cherry streets, 19 Wend. 668–9.
William and Anthony streets 19 Wend. 679.

The fact, that Gray, the commissioner, signed the assessment roll, is conclusive evidence that he adopted the valuations which were placed upon the lots by Bragg; it should not vitiate an assessment because the commissioners or commissioner adopts the opinions of others, as a matter of fact no man in the City of Chicago knew the value of property better than this same F. A. Bragg; he has held the office of superintendent of special assessments and been engaged in that particular business for years, and the evidence shows that he and Gray were down in the vicinity of the property in question but a few days before, for the purpose of levying an assessment, and that they looked the property all over; the property was near where Gray had his office, and both Gray and Bragg knew every foot of the ground and were in all probability as familiar with the premises in question as he was with his own house.

Another thing, the commissioner who levied this assessment was personally liable for a faithful and honest discharge of duty, and if he was guilty of any misconduct he should be held responsible.

Tompkins vs. Sands, 8 Wend. 462.
Loomis vs. Spencer, 1 Ohio 153.
And numerous other authorities.

It should not invalidate the assessment and the city should not be compelled to incur a great expense, because a person who is elected for a specific purpose, and who, in the language of the charter, is "sworn faithfully and impartially to execute his duty" does not do it; let the guilty suffer and not the innocent. But the testimony in this case shows no misconduct whatever, and if Mr. Gray, upon an examination, either long or short, was satisfied that the assessment was right he

had a perfect right to adopt it and make it his own. Moreover, there is no testimony in the case that shows that Mr. Gray had not been studying the matter all over and was not perfectly familiar with the whole subject. In the language of Judge Cowen, in the case of the *Mayor of Albany*, 23 Wend. 280—

"We cannot interrogate the functionaries or agents appointed under the law as 'to the operations of their minds; we might otherwise send our writ to every as'sessor, every board of road commissioners or village or school district trustees in 'the state to ascertain whether they have assessed A. or B. more or less than they 'should."

The property in this case was not assessed at more than three per cent on its value. The assessment was perfectly regular and all the proceedings both in Court and out of Court were legal and the judgment should be affirmed.

ELLIOTT ANTHONY,

Attorney for Defendant.

Assessments are not taxes – and are based upon different principles allogether, and are constitutional

12 Ill 406
18 " 281
Angel on Highways 149–161

N. Y. 4 Comstock 419 } & numerous other cases.
11 Johns 77.

N. Jersey 3 Zabriskie 335.

Penn 3 Watts 292
2 W & Serg 320
7 Barr 175
6 Harris 30
1 Casey 128
9 Harris 147

Mich 2 Gibbs 561.

Tennessee 6 Humph 368
1 Swan 177.

Louisiana 4 Louisiana annual Repts 2.
2 " " " 329.

Mass 8 Metcalf 180
6 Cushing 223

Conn 23 Conn 106.

Indiana 5 Blackford 384

Ohio 14 Ohio 175.

Kentucky – see Angel on Highways p 166 –
2 3 Conn 206–175
13 B. Monroe 15–26

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Burnham

vs

City of Chicago

Defts Point

Filed May 9th 1860
L. Leland
Clerk

E. Anthony
Atty for Defts in Error