

No. 12855

Supreme Court of Illinois

Ogden et al

vs.

City of Chicago

71641  7

238-117

Am B. Ogden

vs

The City of Chicago

1255

1859

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

Now before the Honorable John M. Wilson
Judge of the Cook County Court of Common Pleas within and
for the County and State aforesaid, at a special Term of the
said Cook County Court of Common Pleas began and holden at
the Court House in the City of Chicago on the twenty seventh
day of January in the year of our Lord one thousand eight
hundred and fifty eight due Notice of the time and place of
holding said Term of Court having been printed and published
in the "Chicago Daily Democratic Press", the Corporation
Newspaper of said City of Chicago, said Notice having been
printed and published twenty days previous to the holding
said Court, in accordance with the Statute in such case
made and provided, and in pursuance of an Order made
by the Judge of said Court on the seventh day of January,
A. D. Eighteen hundred and fifty eight.

Present the Honorable John M. Wilson . . . Judge
John L. Wilson . . . Sheriff
Attest Walter Kimbale . . . Clerk.

The City of Chicago

(20)

A. H. Litcham William } Suit for Taxes
B. Ogden and others }

Be it remembered that on this twenty
seventh day of January in the year of our Lord one thousand
eight hundred and fifty eight Joseph M. Hendricks 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 that attached thereto was a certificate signed
by Scripps, Brofs and Spears, by Spears of the due publication
as required by law of the making and delivering of the warrants
for the Collection of said taxes to the said Joseph M. Hendricks
City Collector as aforesaid, and that attached thereto was a
Certificate signed by Scripps, Brofs and Spears by Spears
of the publication in the Daily Democratic Press of the Notice
of the intended application for a judgment against said lands
and other Real Estate as required by the law of this State
Approved February fourteenth A. D. eighteen hundred and fifty
seven; which said Report, together with the Warrant, Assessment
Roll, Return and Notice of Sale therewith filed, is in the words
and figures following to wit,

To the Honorable John M. Wilson Judge of the
Cook County Court of Common Pleas.

Of the January Term of the Cook County

Court of Common Pleas, in the year of our Lord one thousand eight hundred and fifty eight.

The Report of Joseph M. Hennocks City Collector of the City of Chicago respectfully represents that the Special Warrants mentioned in the Schedule herewith 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. 1857. That forthwith after the delivery of the said Warrant to him he published a Notice in the Daily Democratic Press, the Corporation Newspaper of said City, that such Warrants were in his hands for collection briefly describing the nature of each of said Warrants & 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 to the payment of such taxes and assessments which said notice were severally 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 & 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 this Court A. D. 1858 briefly specifying the nature of the said Warrants upon which said application was not 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 Sears, one of the Publishers of the Chicago Democratic
Press, the Newspaper in which 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 costs respectively due thereon as set
forth in the said Warrants, which remain unpaid.

Geo. N. Harlicks

City Collector."

"Special Warrant No 5. M & H.

State of Illinois,
City of Chicago, } S.S.

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 fifth day of October 1851 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 Sixty four thousand
four hundred and fifty five dollars upon the real Estate in the
North and West Divisions of said City deemed benefited by
Deepening the North Branch of the Chicago River in proportion
to the benefits resulting there to in pursuance of an Order for said
assessment, made by the said Common Council on the 24th
day of August 1851, after duly reviewing 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 a-
 preparations thereof marked "Assessment." set opposite to each
 lot, part of lot and real Estate described in said roll; which
 roll is in the words and figures following, to wit:

"Assessment Roll"

A description of the real Estate in the North and West
 Divisions of the City of Chicago deemed benefited by a
 deepening and widening the North Branch of the Chicago
 River, with the valuation thereof and the sums of money payable
 apportioned thereon for benefits by the Commissioners, to wit:

Wright's Addition to Chicago.

Owner	Description	S Lot	Lot	BR	Valuation	Assessment	
Ogden & Jones			1	1	7500	222 70	
"			2	"	7500	222 70	
"			3	"	7500	222 70	
L. J. Rumsey			4	"	7500	222 70	
"			5	"	7500	222 70	
Parsons & Hume			6	"	7500	223 70	paid
Ogden & Robbins			7	"	7500	222 70	
I & W R R Co;			8	"	7500	222 70	
W. L. Smith			9	"	7500	222 70	paid
"			10	"	8000	53 64	paid
Ogden & Jones			1	3	8000	231 98	
"			2	"	8000	231 98	
"			3	"	8000	231 98	
"			4	"	8000	231 98	

Owner	Description	\$ Lot	Lot	Blk	Natural	Appoint
Copden & Jones			5	3	8000	231 98
"			6	"	8000	231 98
"			7	"	8000	231 98
"			8	"	8000	231 98
"			9	"	8000	231 98
"			10	"	8000	231 98
"			11	"	8000	231 98
"			12	"	8000	231 98
"			13	"	8000	231 98
J. Y. Seaman			1	6	8000	231 98
"			2	"	8000	231 98
Miram Jy			3	"	8000	231 98
"			4	"	8000	231 98
"			5	"	8000	231 98
"			6	"	18000	532 55
Elston's Addition to Chicago,						
Daniel Elston			1		17000	5029 26
			10		6500	1831 18
			1	25	12000	332 61
			2	"	8000	232 90
			3	"	8000	232 90
			11	"	8000	232 90
			5	"	8000	232 90
			6	"	8000	232 90
			7	"	8000	232 90

Owner	Description	S Lot	Net	Bek	Valuation	Upsonnet
			8	25	8000	232 90
			9	"	8000	232 90
			10	"	8000	232 90
			11	"	8000	232 90
			12	"	8000	233 37
			13	"	8000	233 37
			14	"	8000	233 37
			15	"	8000	233 37
			16	"	23500	697 32
			17	"	11300	338 69
			18	"	9000	257 03
			19	"	9000	257 13
			20	"	9000	257 13
			21	"	9000	257 03
			22	"	9000	257 03
			1	28	7500	213 12
			2	"	8000	239 86
			3	"	11500	127 82
			5	"	11500	127 82
			6	"	8000	239 86
			7	"	8000	239 86
			8	"	8000	239 86
			9	"	11500	127 82
			11	"	11500	127 82
			12	"	8000	239 86

Ans: Deut

Cover	Description	Set	La	Block	Value	Close	com
Joseph Dent			13	28	5100	240	33
	100 ft 11 + adj. S. 132 ft 230			"	16000	463	95
	feet deep from River						
	100 ft 11 + adj. S. 132 ft			"	16000	463	95
	240 ft deep from River						
		1	35	15000	442	61	
		2	"	8000	238	47	
		3	"	8000	238	47	
		4	"	8000	238	47	
		5	"	8000	238	47	
		6	"	8000	238	47	
		7	"	8000	238	47	
		8	"	8000	238	47	
		9	"	8000	238	47	
		10	"	8000	238	47	
			36	12000	347	97	
		1	50	16500	491	79	
		2	"	21000	609	36	
		3	"	31000	927	91	Paid
		4	"	12500	364	67	Paid
		5	"	12000	336	86	Paid
		6	"	10500	306	21	
		7	"	10500	306	21	
		8	"	10500	306	21	Paid
		9	"	10500	306	21	Paid

Owner	Description	Lot	Lot	Blk	Valuation	Upfront
			10	50	10500	306 21
			11	"	23500	709 85
			1	51	8000	231 98
			2	"	8000	231 98
			3	"	8000	231 98
			4	"	8000	231 98
			5	"	8000	231 98
			6	"	8000	231 98
			7	"	8000	231 98
			8	"	8000	231 98
			9	"	8000	231 98
			10	"	8000	231 98
			11	"	8000	231 98
			12	"	8000	231 98
			13	"	8000	231 98
			14	"	8000	231 98
			15	"	8000	231 98
			16	"	8000	231 98
			17	"	6750	185 55
			18	"	8000	236 62
			19	"	8000	236 62
			20	"	8000	236 62
			21	"	8000	236 62
			22	"	8000	236 62
			23	"	8000	236 62

Census	Description	S Lot	Lot	Blk	Valuation	Assessm't
			24	51	8000	236 62
			36	"	10500	313 17
			1	48	8500	245 90
			2	"	8500	245 90
			3	"	8500	245 90
			4	"	8500	245 90
			5	"	8500	245 90
			6	"	8500	245 90
			7	"	8500	245 90
			8	"	8500	245 90
			9	"	8500	245 90
			10	"	8500	245 90
			11	"	8500	245 90
			12	"	8500	245 90
			13	"	8500	245 90
			14	"	8500	245 90
			15	"	8500	243 42
			16	"	8500	245 90
			17	"	8500	245 90
			18	"	8500	245 90
			19	"	8500	245 90
			20	"	8500	245 90
			21	"	8500	245 90
			22	"	9000	269 09
			23	"	8500	245 90

Owner	Description	S Lot	S Lot	B Ch	Valuatio	Assessment	
Higgins & Stothel			24	78	83 00	243 91	
			25	"	83 00	243 90	
			26	"	83 00	243 90	
			27	"	83 00	243 90	/paid
			28	"	83 00	243 90	/paid
			29	"	83 00	243 90	
			30	"	83 00	243 90	
			31	"	83 00	243 90	
			32	"	80 00	231 98	
			33	"	80 00	231 98	
			24	"	80 00	231 98	
			35	"	80 00	231 98	
			36	"	80 00	231 98	
			37	"	80 00	231 98	
			38	"	80 00	231 98	
			39	"	80 00	231 98	
			40	"	80 00	231 98	
			1	80	80 00	231 98	
			2	"	80 00	231 98	
			3	"	80 00	231 98	
			4	"	80 00	231 98	
			5	"	80 00	231 98	
			6	"	80 00	231 98	
			7	"	80 00	231 98	
			8	"	80 00	231 98	

1205506

Owner	Description	\$ Lot	Lot	Blk	Valuation	Assessment
Hiram Jory			9	80	8000	231 98
			10	"	12000	357 04
			11	"	12300	371 16
			12	"	13000	389 70
Chas. F. Gray			13	"	24000	700 57 Paid
Wm. B. Ogden					95 113000	3099 01
			1	98	12000	351 23
			2	"	8000	234 76
			3	"	8000	234 76
			4	"	8000	234 76
			5	"	8000	234 76
			6	"	8000	234 76
			7	"	8000	234 76
			8	"	8000	234 76
			9	"	8000	234 76
			10		27000	758 70
			1	99	21000	607 78
			2	"	16000	463 93
			3	"	16000	463 93
			4	"	16300	491 79
			5	"	16300	491 79
			6	"	17000	503 71
			7	"	18000	528 91
			8	"	50,000	1466 09
City of Chicago Ends of Streets						3256 70
Total						\$64415.00.
12 J. H. Hargreaves Wm. B. Greenfield J. H. Hargreaves						Commissioners.

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.

(C.S.)

Witness John Wentworth Mayor of the City of Chicago and the Corporate Seal thereof this seventh day of Oct. 1857.

Attest

John Wentworth Mayor.

McKissiman, City Clerk,

Saml D. Ward - Compt.

Collectors Return.

State of Illinois }
City of Chicago }

City Collectors Office

1857

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 all 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.

Notice of Sale.

Corporation Notice.

City Collector's Office.

Public Notice is hereby given that I shall appear to the Cook County Court of Common Pleas on the first day of a Special Term thereof, to be holden at the Court House in the City of Chicago on the 27th day of January A.D. 1858 for judgment against all blocks, lots, parcels, pieces and parcels of land together with the improvements, if any, situated thereon, for all taxes, assessments, interest and costs thereon remaining unpaid as appears from the following described warrants, now in my hands for collection

"Special Warrant No 5, North and West.

"For deepening and widening the North branch of the Chicago River."

And whereas there was also filed in the Office of the Clerk of said Court the proceedings of the Common Council of the said City of Chicago, which said proceedings are in the words and figures following to wit:

Assessment Roll

For Deepening North Branch of the City of Chicago River

In Common Council August 24th 1857.

Ordered, That the North Branch of the Chicago River be deepened to the depth of Eleven feet below low water mark and widened so as to afford a Channel of fifty feet on the bottom and not less than seventy feet at low water mark in accordance with Superintendents estimate herewith submitted.

Ordered that the sum of sixty four thousand four hundred & fifty

five dollars (\$64455) be assessed upon the Real Estate in the North and West Division of the City of Chicago, deemed benefitted by the said improvement and that the Common Council do now elect by ballot three reputable and disinterested freeholders of the City of Chicago to make said assessment.

The Orders were read and the Council proceeded to the election of Commissioners thereunder. On the first ballot, John H. King, Thomas Hale and Wm. B. Snowhook received each 111 votes and were declared elected.

Attest H. Kriesman, City Clerk,

Oath of Commissioners.

State of Illinois
City of Chicago }

We the undersigned Commissioners appointed by the Common Council of the City of Chicago to assess the sum of sixty four thousand four hundred & fifty five dollars upon the Real Estate, do deemed benefitted by deepening the North Branch of the Chicago River in accordance with the foregoing Order in proportion to the benefits resulting thereto do hereby solemnly swear that we will faithfully and impartially execute our duty according to the best of our ability.

Sworn to and subscribed before me

the 31st day of Aug. 1857.

H. Kriesman.

City Clerk.

John H. King

Thos. Hale

W. B. Snowhook

Commissioners.

Commissions Return.

The undersigned freeholders and residents of the City of Chicago duly elected and appointed by the Common Council of said City to assess the sum of
upon the Real Estate in the North and West Division of said City by us deemed benefited in proportion as nearly as may be to the benefits resulting thereto by reason of deepening and widening the North Branch of the Chicago River between Chicago Avenue and the City limits do hereby report and return to the Common Council,

That in pursuance of said appointment they were duly qualified before entering upon their duties as appears by the Oath recorded here, that they published a Notice of the time and place of their meeting for the purpose of making their Assessment in the Democratic Press, the Corporation Newspaper, for the period of six consecutive days previous to such meeting - a Certificate of which publications herewith attached, that they were present at the time and place and for the purpose designated in said Notice and having first fixed a Valuation on the Real Estate described and set forth in the proper Column of the foregoing Assessment Roll we did then and there and do hereby in pursuance of said appointment assess the said sum of money upon the Real Estate herewith set forth and described as the only Real Estate benefited by said improvement, and that the benefits resulting thereto, to the proportion of said sum set apart to each lot part of lot and land respectively in said assessment roll.

And we further report that such Assessment does not exceed three per Centum per annum on the property assessed

All of which is respectfully submitted

(signed) John H. King }
Wm. B. Snowhock } Commissioners
Thos. Hale }

Chicago, September 22^d 1854.

Commissioners Notice.

Public Notice is hereby given to all persons interested, that the undersigned Commissioners appointed by the Common Council of the City of Chicago to assess the sum of Sixty four thousand four hundred & fifty five dollars (\$64,455) upon the Real Estate of the North and West Divisions, by them deemed benefited by deepening the North branch of the Chicago River to the depth of Eleven (11) feet below low water mark, and widening so as to afford a channel of fifty (50) feet in the bottom, and not less than seventy (70) feet at low water mark will meet at Room No 11 Merchants Exchange Building N. W. corner Lake and Wells Streets on the 1st day of September 1854 at the hour of two o'clock A. M. for the purpose of making said assessment.

John H. King }
Thos. Hale } Commissioners.
Wm. B. Snowhock }

Chicago Aug 31. 1854.

This certifies that the aforesaid Notice relating to Deepening and Widening the North Branch has been published in the Democratic Press, the Corporation Newspaper of the City of Chicago, County of Cook and State of Illinois six days consecutively commencing with Sept 1st 1854. Chicago Sept 1st 1854

Scripps, Brels and Spars. Publishers.
for Wheeler."

"State of Illinois
City of Chicago } ss.

I do hereby Certify that the foregoing Assessment Roll was returned to me and filed in my Office by the Commissioner this 22^d day of Sep. 1857.

St. Kriesman, City Clerk."

Assessment Notice

City Clerk's Office, Chicago
Sept 22: 1857.

Public Notice is hereby given to all persons interested that the Commissioner appointed by the Common Council of the City of Chicago to assess the sum of Sixty five thousand four hundred fifty five dollars upon the real Estate in the North and West Divisions of said City deemed benefited by deepening and widening the North Branch of the Chicago River have completed their Assessment and made return thereof to my office.

Any persons wishing to appeal from said Assessment, must file their objections in writing in my Office on or before Monday the 5th day of October 1857 at 4 o'clock P. M., as the Common Council will at that time in the Council Room hear all objections to said assessment and revise and confirm or annul the same.

St. Kriesman, City Clerk."

This Certifies that the appended Notice has been published in the Daily Democratic Press, the Corporation Newspaper of the

City of Chicago, County of Cook and State of Illinois ten days
consecutively commencing with Sept. 23rd 1857.
Chicago, Oct. 5. 1857.

Scrippo, Bros & Spearo, Publishers:

Order of Confirmation.

In Common Council. Oct 5th 1857.
Whereas due Notice has been given by the City Clerk of the filing
of the foregoing Assessment roll, and no objections thereto having
been filed, it is therefore Ordered, That the said Assessment be
reviewed and corrected by the Council be and the same is hereby
confirmed, and such assessment is hereby required to be paid within
thirty days from this date, and that a Warrant be issued for the
collection thereof, returnable in thirty days from this date.

Passed, H. Keenow. City Clerk."

Mem: Warrant issued Oct. the 7th 1857."

And thereafter to wit on the twenty eighth day of
January A. D. Eighteen hundred and fifty eight came the
said Defendants and filed in the Office of the Clerk of said
Court, their objections to said assessment in the words & figures
following, that is to say,

"North and West

Objections to Special Warrant No 5.

1st Objected to on the ground that there has not been such a
demand and refusal, as provided for in the 6th sec of Chap 7
of Municipal laws, entitled "collection of taxes and assessments"

(20)

to authorize the Collector to bring suits or otherwise proceed at law for the recovery of the same.

That the ten days publication has been only a demand, and that twenty days thereafter has not expired in order to make a refusal under the Statute.

23 That only a part of the work for which the assessment is made has been done.

And afterwards to wit on the thirteenth day of January A.D. Eighteen hundred and fifty eight the following amongst other proceedings were had and entered of record in said Court to wit

The City of Chicago } Suit for Assessment on Warrant No 5
(vs) North and West dated October 2nd 1857
William B. Ogden & others } for deepening & widening the North Branch
of the Chicago River.

And now at this day to wit the thirteenth day of January at this term comes the said City of Chicago by John B. Miller City Attorney, and due notice of the time and place of making application for judgment in this case having been given as required by law, and now also come William B. Ogden and others by their Attorneys, owners of certain lots in said Warrant described and file herein their stipulation whereby they agree that judgment may be entered against them, as by the terms of said stipulation on file is agreed.

Therefore it is considered by the Court that judgment be and is hereby entered against the said lands & so parcels of land

(20)

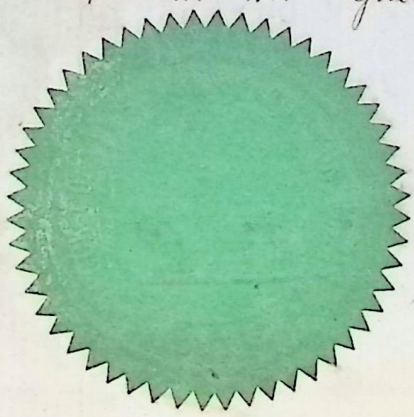
and other real Estate described in the aforesaid Warrant in the name of the City of Chicago for the sum annexed to each lot or parcel of land, being the amount of assessment and for cost of suit thereon.

And that the said City of Chicago have and recover the further sum of ten per cent upon the amount of assessments respectively due and unpaid upon each of the lots lands parcels of land and other real Estate therein set forth as and for her legal damages,

And it is further ordered by the Court that the said several tracts and parcels of land or so much thereof as shall be deemed sufficient of each of them to satisfy the amount of assessment damages and costs annexed to them severally be sold as the law directs.

State of Illinois }
Cook County . . } S.S.

I Walter Kimball Clerk of the Cook County Court of Common Pleas within and for the County and State aforesaid Do hereby Certify the above and foregoing to be a true and correct Copy of the Collectors Report, Warrant, Assessment Rolls, Collectors Return, Notice of Sale, Applications and Council proceedings, together with the order and judgment entered of record in certain proceedings in said Court wherein The City of Chicago is Plaintiff and William B. Ogden and others are defendants.



In testimony whereof I the said Walter Kimball have hereunto set my hand and affixed the Seal of said Court at Chicago in said County this twelfth day of April A. D. Eighteen Hundred and fifty nine,
Walter Kimball Clerk

Supreme Court
Third Grand Division
April Term 1859

Robert R Clarke
Wm B. Ogden
J. Young Scammon
Ogden & Jones
Estate of Daniel Elston
Illinois & Wisconsin Railroad Co

Wm to Cook
County Court
of Common
Pleas.

The City of Chicago

Now this day the said plaintiff
in error by Scates McAllister & Jewett their counsel
and say that in the record and proceedings &
in the rendition of judgment, manifest error
hath intervened viz:

First The Common Council had no power, jurisdiction,
or authority to assess any greater sum than
three per centum upon the value of real
estate of Plaintiffs, in any one year for any
improvement in said city.

Second - The Court below rendered a judgment against ~~the~~ Lots 28. ~~original~~, ~~now City~~ of ~~Chicago~~, for a greater sum than three per centum per annum of ^{the} value for ~~grading~~, ~~filling~~, ~~building~~ area for ~~sleeping~~, and widening the North branch of the Chicago river.

Third - The Court rendered a judgment for ten per cent. over and above the amount assessed by the Common Council on said lots; and made an order to sell said premises for the payment of the same.

Fourth - The Common Council had no jurisdiction to confirm - and the Court below had no jurisdiction to render ^{Judgment} for this assessment because there was no valid assessment made in the case; and because the Commissioners made no assessment of any sum of money against or upon either of the said premises as appears by the assessment Roll returned by them, and because the Common Council has no power to make a special assessment for deepening the North Branch of the Chicago River.

Fifth - The Court erred in rendering judgment for the defendant; and against the plaintiffs in error when ~~the~~ by

the law of the land the judgment
should have been rendered for the
plaintiffs in error. for their costs
Wherefore for the errors ~~off~~ aforesaid and
others apparent upon the record they pray
judgment - that - the same may be
reversed, annulled, and for nothing
estimated, and they be restored to all
their rights, and that - they recover
their costs.

Scat. McAllister. V. Jewell:
for the Plaintiffs in error.

And now comes the said
 defendant ^{in error} by Elliott Anthony its
 attorney & says that there is no error
 in the record & proceedings or in
 the rendition of the judgment aforesaid
 and pray that the said Supreme
 Court, may proceed to examine as
 well the record & proceedings aforesaid
 as the matters aforesaid & that the
 judgment aforesaid, in form aforesaid
 may be in all things affirmed &c
 E. Anthony
 for Deft in Error

State of Illinois
 Cook County Court
 of Common Pleas.

The City of Chicago
 — (vs) —
 Wm B. Ogden & others

Transcript

Filed April 26
 1889

L. L. and
 C. M.

577.14 ch. 12. 1889. 1889. 1889.

In the Cook County Court
of Common Pleas.

January Special Term
A. D. 1858.

City of Chicago

— 120 —

Henry H. Monroe

John Doe

Egden ^{inc} Jones

Egden & Robbins

John B. Girard

Henry Smith

William F. Fleetwood

John A. Cutler

Franklin Hathaway

William B. Egden

Geo: F. Rumors

Charles Butler

Richard P. Hannis

Willst & Stevens

Chicago Land Company

Nelson K. Wheeler

Estate of Daniel Elston

In the Matter of the
application of the City of Chicago for a judgment on Special

Warrant No 5 for the North and West divisions of the City of Chicago, being an agreement for the deepening of the North Branch of the Chicago River,

It is hereby stipulated and agreed by and between the respective parties to the above entitled cause represented by their respective Attorneys that judgment be entered against the property of said defendants in favor of said City, as is asked for by said City, have this day in Court in the same manner in all respects and to the same extent and effect as if this application of said City for said judgment had not been resisted and in no other respect shall said judgment be entered it being hereby agreed that the same shall be entered as if by default, save as is hereinafter mentioned. The property of each several defendant in which said agreement is made being as is hereinafter recited, and the amount of the several agreements against their said several lots or parcels of land being as is also hereinafter recited.

Property assessed to Blank being property of Chicago Land Company included in this Agreement.

Given Part of	Item Description	\$ L	Let	Blk	Valuation	Total Dollars
Night Addition to Chicago.			1	1		222 70
			3	"		222 70
			8	"		222 70
			1	3		231 98
			2	"		231 98
			3	"		231 98
			4	"		231 98
			5	"		231 98
			6	"		231 98
			7	"		231 98
			8	"		231 98
			9	"		231 98
			10	"		231 98
			11	"		231 98
			12	"		231 98
			13	"		231 98
			1	6		231 98
			2	"		231 98
			-	19		1851 18
Elston's Addition			1	25		352 41
			15	"		233 37
			-	36		347 97
			1	50		491 79
			7	"		306 21
			11	"		709 85

Part of	Town	8 Lot	Lot	Per	Valuation	Total Taxes
			1	51		231 98
			2	"		231 98
			3	"		231 98
			4	"		231 98
			5	"		231 98
			6	"		231 98
			7	"		231 98
			8	"		231 98
			9	"		231 98
			10	"		231 98
			11	"		231 98
			12	"		231 98
			13	"		231 98
			14	"		231 98
			15	"		231 98
			16	"		231 98
			17	"		185 55
			18	"		236 62
			19	"		236 62
			20	"		236 62
			21	"		236 62
			22	"		236 62
			23	"		236 62
			24	"		236 62
			25	"		313 17

Part of	Town	S Lot	Lot	Box	Notation	Total Pages
			29	'78		243 90
			30	"		243 90
			31	"		243 90
			32	"		231 98
			33	"		231 98
			34	"		231 98
			35	"		231 98
			36	"		231 98
			37	"		231 98
			38	"		231 98
			39	"		231 98
			40	"		231 98
			1	80		231 98
			2	"		231 98
			3	"		231 98
			4	"		231 98
			5	"		231 98
			6	"		231 98
			7	"		231 98
			8	"		231 98
			9	"		231 98
			10	"		337 24
			12	"		339 72
			13	"		

Chr. F. Gray

Property of Richard J. Harris & Charles Butler, defendants above
named included in above agreement.

Part of	Town	S Lot	Lot	Block	Valuation	Total Taxes
Elston's Add.	to Chicago		1	99		617 78
			2	"		463 93
			3	"		463 95
			5	"		491 79
			6	"		515 71
			7	"		528 91
			8	"		1266 19

Property of Henry Smith defendant above
named included in above agreement,

Elston's Add.	to Chicago.		10	50		316 21
			11	50		709 83

Property of John A. Butler defendant above
named included in above agreement

Elston's Addition	to Chicago			78		243 90
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Property of Nelson H. Wheeler defendant
above named included in above agreement

Elston's Addition	to Chicago		16	78		243 90
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Property of John B. Girard defendant above named
included in this Agreement.

Part of	Town	§ Lot	Block	Valuation	Total Value
Elston Add;	to Chicago		21 25		237 13
" "	" "		22 25		237 13

Property of Willett & Stephens defendants above
named included in this Agreement.

Elston Add;	to Chicago	11	98		234 76
" "	" "	5	98		234 76
" "	" "	11	99		491 74

Property of George F. Rumsey defendant
above named included in this Agreement.

Wright's Add;	to Chicago	4	1		222 70
		5	1		222 70

Property of William B. Ogden defendant
above named included in above Agreement.

Wright's Add;	to Chicago	2	1		222 70
Elston "	" "	1	98		331 23
		2	98		234 76
		3	98		234 76

Property of William H. Fleetwood defendant
above named included in above Agreement.

Elston Addition	to Chicago	10	78		243 00
		11	"		243 00
		22	"		269 19
		23	"		243 90
		24	"		243 90

Property of Franklin Hathaway defendant above named
included in above agreement,

Part of	Town	S Lot	Lot	Block	Valuation	Total Taxes
Elston Addition	to Chicago		14	78		2115 90
			15	"		213 42

Property belonging to the Estate of D. Elston

Elston Add; to Chicago

200 ft N and adjg S 232

and also N 119 feet of

described as

1		3029 26
28		
28		
1	"	213 42
2	"	239 86
3	"	127 82
4	"	
5	"	127 82
6	"	239 86
7	"	239 86
8	"	239 86
9	"	127 82

Henry H. Moore Property
Elston Addition to Chicago

8	98	234 76
9	"	" "
10	"	788 "
1	35	442 61
2	"	238 47
3	"	238 47

it being further understood that this agreement is to apply to all other property of said defendants assessed by and under said Special Warrant hereinbefore first referred to whether included in the foregoing Schedules or not. Which said judgment is to be Entered without Costs to said defendants and said City hereby waived and permits all damages and Costs on above judgments when so entered, and hereby agrees that no execution shall issue on said judgments when so entered except on the occurrence of the default hereinafter referred to, and no sale of any of said property or other property of said defendants by reason of any of said judgments shall be had nor shall any of said defendants property be advertised for sale except on the occurrence of such default hereinafter provided for, and said Defendants shall not be called on to pay said assessments or judgments or the work for which said assessment is made except in pursuance of the agreement heretofore entered into between said City of Chicago & said Defendants, Which said agreement is hereby renewed between the ^{several} said parties hereto, and which said agreement is that said Defendants shall pay for said work from time to time as it progresses in the proportion and rates that their property under said assessment hereinbefore referred to bears to the amount adjudged and declared by the City Superintendent of said City of Chicago Plaintiff above named to be due to the Contractor or other person doing said work for said City and said defendants do each for himself by their and his Attorney hereby waive all objection to the form of said order and said judgment and each for himself does hereby consent that in case they said defendants or either of them

do fail to comply with said agreement on his part when called on
by the proper officer of said Plaintiff to do so that then and in that
case the property of said defendants be in default and who shall
fail to comply with said agreement may be sold on said judgment
hereby entered.

Chicago Jan; 26th 1858.

A. C. Covertus

Atty for Ogden & Jones

Estates D. Clinton

Ogden & Robbins

Wm. B. Ogden

Henry Smith

Chicago Land Co.

Willet & Stephens

Harris & Butler

J. B. Girard

Wm. H. Johnson

J. A. Cutler

Geo. F. Rumsey

Franklin Hathaway

Henry H. Monroe &

Nelson H. Wheeler.

Henry Schoellkopf

defendants above named.

Chas. F. Grey by Sanford

B. Perry his Attorney.

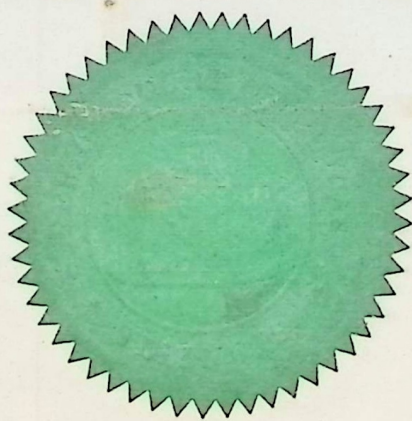
John Miller

City Attorney.

I do hereby as the Attorney of William M. Bliss owner
of Lot 16 B 25 Lots Addition Agreement &
Enter into the above stipulation with said City.
W. T. Burgess.

State of Illinois
Cook County ... ^{ss.}

I Walter Kimball, Clerk of Superior
Court of Chicago (late Cook County Court of Common Pleas) in the
County of Cook and State aforesaid Do hereby Certify the above &
foregoing to be a true and correct copy of a stipulation filed
in my office on the twenty ninth day of January A. D. eighteen
hundred and fifty eight, and still remaining on the files of said
Court, in certain proceedings therein, wherein the City of Chicago
was Plaintiff and William B. Ogden, The Chicago Land Company,
and others were Defendants, said proceedings having reference
to Warrant No 5 for Special Assessments of said City of Chicago,
in the North and West divisions thereof.



In testimony whereof I the said Walter
Kimball have hereunto set my hand and
affixed the Seal of said Court at Chicago
in said County this twenty ninth day of
April A. D. 1859.

Walter Kimball Clerk

238
State of Illinois
Cook County

The City of Chicago

vs

William B. Ogden
Chicago Land Co.

Add to Record

Certified copy

+ Deposition

Filed April 27, 1839

Leland
Clerk

Wm B. Ogden et al }
v }
The City of Chicago } Verdict to both Common
Plead.

Plffs come & ~~file~~ ask leave
to file an amended record.

The plaintiffs filed objections
in the court below to the rendition
of judgment - and afterwards
by a written stipulation
filed - these objections were
withdrawn and it was
agreed that judgment
might be entered as by
Default. Its provisions

in this respect were not recited
in the judgment - the amend-
ment is the incorporation
of that stipulation into the
record - which ~~was~~ is referred
to in the record.

Leaves for plffs in error

Wm B. Ogden et al
vs

The City of Chicago

Motion for leave to
file amended
Record - with
Statement of reasons

Scates

Please read the whole deposition - this is a case of default

Note - See page 20 of Record which shows that this judgment was entered by agreement - & there is no error in it. E. Anthony

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION,

APRIL TERM, A. D. 1859.

WM. B. OGDEN, ROBERT R. CLARKE, OGDEN & JONES, J. YOUNG SCAMMON,
ESTATE OF DANIEL ELSTON *et al.*, vs. THE CITY OF CHICAGO.

Error to Cook County Court of Common Pleas

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This was a proceeding to make a special assessment for deepening and widening the North Branch of the Chicago River.

3, 13, 14. The collector gave due notice of his having the warrant for collection, and also of his intended application to the January Special Term of the Cook County Court of Common Pleas, for judgment against the delinquent lots and lands.

4 to 13. The collector's report contained the warrant at large, and the warrant contained an exact copy of the Assessment Roll, as made and returned by the Commissioners.

The following is a copy of the caption and tabular statement of the property and assessment in said roll:

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"Assessment Roll."

A description of the real estate in the North and West Divisions of the City of Chicago, deemed benefitted by deepening and widening the North Branch of the Chicago River, with the valuation thereof, and the sums of money severally assessed thereon for benefit by the Commissioners, to wit:

Wight's Addition to Chicago.						
Owners.	Description.	S Lot.	Lot.	Block.	Valuation.	Assessment.
Ogden & Jones,			1	1	7,500	222 70
				2	7,500	222 70
				3	7,500	222 70
J. Y. Scammon,			1	6	8,000	231 98
Elston's Addition to Chicago.						
Daniel Elston,				1	170,000	5,029 29
Wm. B. Ogden,				95	105,000	3,099 21 "

14 to 19 The collector also filed the proceedings of the Common Council in ordering the assessment, in which it is set forth that on the 24th August, 1857, it was "Ordered, that the North Branch of the Chicago River be deepened to the depth of eleven feet below low water mark, and widened so as to afford a channel of fifty feet on the bottom, and not less than seventy five feet at low water mark, in accordance with the superintendent's estimate, herewith submitted.

14, 15 Ordered, that the sum of sixty-four thousand four hundred and fifty-five dollars be assessed upon the real estate deemed benefitted by the said improvement," &c.

Commissioners were elected to make the assessment, who made the
16 foregoing return, and that the same did not exceed three per cent. upon
the valuation of the property assessed.

19 The Council confirmed the assessment, Oct. 5th, 1857.

20 Defendants filed objections, and afterwards, by a stipulation, the ob-
jections were withdrawn, and judgment taken as by default.

20 Thereupon the Court rendered a judgment against each lot, &c., for
21 the sum annexed to each parcel of land, together with the further sum
of ten per cent. thereon, and for the sale of the premises therefor.

Assignment of Errors.

First. The Common Council had no power, jurisdiction, or authority
to assess any greater sum than three per cent. upon the value of real es-
tate of plaintiffs in any one year, for any improvement in said city.

Second. The Court below rendered a judgment against the lots for a
greater sum than three per centum per annum of the value, for deepen-
ing and widening the North Branch of the Chicago River.

Third. The Court rendered a judgment for ten per cent. over and
above the amount assessed by the Common Council on said lots, and
made an order to sell said premises for the payment of the same.

Fourth. The Common Council had no jurisdiction to confirm, and the
Court below had no jurisdiction to render judgment for this amount, be-
cause there was no valid assessment made in the case; and because the
Commissioners made no assessment of any sum of money against or up-
on either of the said premises, as appears by the Assessment Roll return-
ed by them; and because the Common Council has no power to make a
special assessment for *deepening* the North Branch of the Chicago River.

Fifth. The Court erred in rendering judgment for the defendant and
against the plaintiffs in error, when, by the law of the land, judgment
should have been rendered for the plaintiffs in error for their costs.

POINTS.

I.

The Common Council exceeded their jurisdiction in assessing more than three per cent. on the valuation of the lots.

The Charter (Mun. Code, p. 38, Sec. 2) provides that "Such assessment *shall not exceed* three per cent. per annum on the property assessed."

The power delegated to municipal corporations to take private property must be strictly pursued.

State vs. Mayor of Jersey City, 1 Dutcher R., 309.

King vs. Croker, 1 Cowp. R., 30.

Thompson vs. Schermerhorn, 2 Seld., 92.

Van Wickle vs. Camden & Amboy R. R. Co., 2 Green. N. J. R., 162.

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The Commissioners of Raleigh vs. Kane, 2 Jones N. C. R., 294.

Wright et al. vs. The City of Chicago, 20 Ill. R., 252.

The City of Chicago vs. The Rock Island R. R. Co., 20 Ill., 286.

II.

The provisions of the 52d section of the amended charter (session acts, 1857, p. 905) imposing a forfeiture of ten per centum of the amount for non-payment, is oppressive, unconstitutional, and void.

The Legislature has no power to impose such a forfeiture.

Article 13 Const., Sec. 8, 9, 10, 14.

Neither is the assessment uniform.

Article 9, Sec. 5, Const.

City of Ottawa vs. Macy et al., 20 Ill., 420.

The Court could not render a judgment for the amount, because it was neither reported nor claimed by the collector.

III.

The assessment was void, because the Commissioners did not assess and apportion any sum of money upon either of the lots. There was no words, figures, letters or abbreviations to show as to what the numbers represented, and so the same was void; and the judgment is equally uncertain and void, because it simply refers to the assessment roll to ascertain the amount.

Lawrence et al. vs. Fast, 20 Ill., 338.

IV.

The Common Council has no power in the charter of the city to make a special assessment upon property deemed benefitted, for the purpose of deepening the North Branch of the Chicago River.

Wright et al. vs. The City of Chicago, 20 Ill., 252.

Scates for RPP

238-117

Ogden et al

vs

The City of Chicago

Abstract of
Deeds

Filed April 28, 1859

L. Helms

Clerk

Defect in abstract
noted

Nota Bene - see last page
E. Anthony

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION,

APRIL TERM, A. D. 1859.

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see page 20 Record which shows that
this judgment was entered by agreement
the whole agreement should be read - it is no case of default.

Commissioners were elected to make the assessment, who made the foregoing return, and that the same did not exceed three per cent. upon the valuation of the property assessed.

The Council confirmed the assessment, Oct. 5th, 1857.

Defendants filed objections, and afterwards, by a stipulation, the objections were withdrawn, and judgment taken as by default.

Thereupon the Court rendered a judgment against each lot, &c., for the sum annexed to each parcel of land, together with the further sum of ten per cent. thereon, and for the sale of the premises therefor.

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Scates for Plff

Note Bend - I contend First - That the stipulation - in this case forms no part of the record - but that said judgment was entered by agreement -

Second - I contend that if the stipulation is a part of the record that the judgment is entered strictly in accordance with the terms of it & that there is no error in the rendition of the judgment -

Third - This is an attempt to wound the city -

E. Anthony
for D. & B. in Error.

238 117

Abstract

Agnes E. Ede

vs
City of Chicago

Abstract & Brief

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The Court could not render a judgment for the amount, because it was neither reported nor claimed by the collector.

III.

The assessment was void, because the Commissioners did not assess and apportion any sum of money upon either of the lots. There was no words, figures, letters or abbreviations to show as to what the numbers represented, and so the same was void; and the judgment is equally uncertain and void, because it simply refers to the assessment roll to ascertain the amount.

Lawrence et al. vs. Fast, 20 Ill., 338.

IV.

The Common Council has no power in the charter of the city to make a special assessment upon property deemed benefitted, for the purpose of deepening the North Branch of the Chicago River.

Wright et al. vs. The City of Chicago, 20 Ill., 252.

Scates for Papp

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Ogden et al

vs

The City of Chicago

Abstract &

Brief

Filed April 28, 1859

A. Deland
Clerk

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