

No. 13247

Supreme Court of Illinois

Clyburgh

vs.

city of Chicago

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 32.

*Dyburgh
vs
Chicago*

STATE OF ILLINOIS—SUPREME COURT.

April Term, 1860.

MARTIN CLAYBURGH,	}	Error to the Superior Court of Chicago.
vs.		
THE CITY OF CHICAGO.		

Declaration filed May 21, 1859, in an action of Trespass on the case, in two counts, as follows :

- 2 For that, whereas, heretofore, to-wit : on the 15th day of October, 1855, at the County of Cook aforesaid, the plaintiff was the owner in his own right, and possessed of that certain lot, piece or parcel of land, situated, lying and being in the city of Chicago, in said county, designated as the East quarter, being one-fourth part of lot number five (5) in block number ninety-six (96) in the School Section addition to the City of Chicago, of great value, to-wit: of the value of six thousand dollars, and being such owner thereof, the Common Council of said City, at a session thereof held in said City on the day and year aforesaid, passed and entered upon its records an order, whereby it was ordered that when the survey should be made, the Clerk of said City should give notice for ten days in the corporation newspaper of said City, that they intended to take and appropriate so much land as should be necessary for the extension of Lasalle street, in said city from its then terminus at Madison street, in a straight line south to Jackson street, to conform in width to that part of Lasalle street then already opened, the said extension to run through blocks ninety-five, ninety-six, ninety-seven, one hundred and sixteen, one hundred and seventeen, and one hundred and eighteen, in the School Section Addition to the City of Chicago; and that the Surveyor of said City proceed forthwith to survey and make out a plat and record in a book to be provided for that purpose, showing particularly
- 3 the proposed improvement: and the real estate required to be taken therefor, of the extension of said Lasalle street from its then present terminus at Madison street, in a straight line south to Jackson street, to conform in width with that part of said street then already open, said extension to run through the above described blocks; and afterwards, to-wit, on the 20th day of Oct., in the year aforesaid, the City Clerk of said City caused to be published in said City a notice to all persons interested that the said Common Council intended to appropriate and take the land necessary to extend said street in manner aforesaid, which notice was published in the Chicago Daily Democrat, the corporation newspaper of said City, and published therein for ten days consecutively next following the said 20th day of October, and afterwards, to-wit, on the 10th day of January, 1856, the said Common Council proceeded to choose by ballot three disinterested freeholders residing in said city, to wit: W. W. Saltonstall, F. A. Bragg, and Thomas Church, as commissioners to ascertain and assess the damages and recompense due the owners of land necessary to be taken and appropriated for the opening of said street, and to determine what persons would be benefitted by said improvement, and to assess the dam-

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ages and expenses thereof on the real estate of persons so benefitted in proportion as nearly as might be to the benefits resulting to each, which said Commissioners were then and there elected by a majority of the Aldermen, authorized by law to be elected to said Council, and afterwards to-wit, on the 16th day of January, 1856, the said Commissioners were duly sworn, and took an oath that they would faithfully execute their duties as such Commissioners according to the best of their ability, and thereafter, and before entering upon their said duties, they, the said Commissioners, caused to be published in the Chicago Daily Democrat, the corporation newspaper of said city, printed and published therein, for ten days successively, a notice to all persons interested in the opening of said street, that on the 24th day of January, 1856, at ten o'clock in the forenoon, they would meet at the Supervisors' Room, in the Court House in said City, for the purpose of viewing the premises, and receiving legal evidence as to the value of the lands appropriated for the said improvement, and afterwards, to-wit, for the space of ten days before the 18th day of February, 1856, a further and like notice was given by the said Commissioners, in said newspaper, that they would meet at the place aforesaid, for the purpose aforesaid, on the 18th day of February, 1856, at ten o'clock in the forenoon, and the said Commissioners, pursuant to the notices aforesaid, met at the times and place aforesaid, and heard the evidence so offered, and viewed the premises; and thereupon the said Commissioners proceeded to make their assessments of the damages and benefits aforesaid, and then and there assessed the damages and recompense due to the said plaintiff by reason of the taking and appropriating of the said lot of ground belonging to the said plaintiff as aforesaid, at the sum of four thousand five hundred dollars, and did also assess against the real estate of other persons benefited by said improvement a large sum of money, to-wit: the sum of one hundred and thirty-nine thousand eight hundred and fifty eight dollars and fifty three cents; and then there the said Commissioners reported to the said Common Council their said assessments, signed by them, and afterwards, to-wit, on the 7th day of April, 1856, the City Clerk of said City caused a notice that said assessments had been returned as aforesaid, and that unless the persons interested in said assessments should file their objections thereto on or before the 21st day of April, 1856, at 7 o'clock in the afternoon, the same would be confirmed by the Common Council of said city, to be published in the Daily Times, the corporation newspaper of said city, and published therein; which said notice was then and there published in said newspaper for ten days successively before the said 21st day of April, 1856; and afterwards, to-wit, on the ninth day of June, 1856, at a meeting of the said Common Council, it was by the said Common Council ordered and adjudged that the said assessments be in all things confirmed, which said order of confirmation of the said assessments still remains in full force, unappealed from, and in no manner set aside or vacated. And the said plaintiff in fact says, that the whole of the said lot, piece or parcel of land owned by him as aforesaid, was and hath been appropriated and taken for a public use in manner aforesaid, whereby he hath been wholly deprived of the use of the said lot, and the total value thereof hath been taken from him in manner aforesaid: and the said plaintiff further saith that it then and there became and was the duty of said defendant to cause the said sum of money so

assessed as aforesaid for the purpose of paying the damages and recompense due to the owners of lands so taken, and among others, to the said plaintiff as aforesaid, to be collected, and to cause the said sum of money so assessed in favor of the said plaintiff, with interest thereon from the time of the appropriation and taking of the said property, to be paid over to the said plaintiff; but, on the contrary thereof, the said defendant hath so wrongfully and negligently behaved and conducted in respect to the said assessments, that the said defendant has hitherto wholly neglected and wilfully refused to cause the said assessments to be collected, although the said plaintiff has expressly demanded of the said defendant to collect and pay the said money so due to the said plaintiff in manner aforesaid, and the same remains wholly unpaid to the said plaintiff, by means whereof the said plaintiff hath been greatly injured and damnified, and his said property of the value aforesaid, hath been wrongfully and unjustly taken from him, without making him any compensation therefor, to-wit, at the county aforesaid.

- 6 And whereas, also heretofore to wit, on the 15th day of October, 1855, at the county aforesaid, the said plaintiff was, and from thence until the appropriating and taking thereof by the said defendant as hereinafter mentioned, continued to be the owner of that certain lot or parcel of land, designated and known as the East quarter of lot number five, in block number ninety-six, in the School Section addition to the City of Chicago, of great value, to wit, of the value of six thousand dollars, and the said defendant, thereupon for the purpose of opening a public street in said city, being a
- 7 continuation of La Salle Street from Madison Street South to Jackson Street, of the same width as the other portions of said Street, by the notices, orders and proceedings of the Common Council, agents and commissioners of the said defendant, appropriated and took the lot of the said plaintiff aforesaid of the value aforesaid, and then and there by said commissioners assessed the value of the said lot and the damages and recompense due to the said plaintiff for the appropriating and taking thereof, for the purpose aforesaid at the sum of four thousand and five hundred dollars, and by their commissioners for that purpose duly appointed the said defendant then and there caused to be assessed upon the real estate of the persons benefitted by the opening of said Street and the making of the said improvement, a large sum of money, to wit, the sum of one hundred and thirty-nine thousand eight hundred and fifty-eight dollars and fifty-three cents, to be collected for the payment of the damages and recompense due to the persons whose property was appropriated and taken, for the purpose aforesaid, and among others to the said plaintiff, and for the payment of the expenses thereof, which said assessments were duly reported by the said agents and commissioners of the said defendant to the said Common Council, and due notice having been given of the said proceedings to all persons interested therein, the said assessments were by said Common Council, on the 9th day of June, 1856, in all things confirmed, and the said assessments still remain in full force and effect, and unappealed from. And the said plaintiff in fact saith, that it
- 5 then and there became and was the duty of the said defendant by its officers and agents to cause the said assessments to be collected, and the said sum of money assessed in favor of the said plaintiff, in manner and for the purpose aforesaid, and interest thereon from the 15th day of

October, 1855, to be paid over to the said plaintiff, but the said defendant not regarding its duty in that behalf, hath so negligently and wrongfully behaved and conducted in reference to the said assessments, that the said defendant has not caused the said assessments to be collected but the same remain wholly unpaid, and there is not in the treasury of the said City, in consequence of said carelessness, negligence, and wrongful and wilful misconduct of the said defendant, in reference to the collection of the said assessments, any money arising or accruing from said assessments wherewith to pay the sum so due to the said plaintiff, and the same remains wholly unpaid, and the said plaintiff has by the wrongful, negligent and wilful misconduct of the said defendant and its agents, in manner aforesaid, wholly lost his said lot of the value aforesaid, and the same hath been taken from him in manner aforesaid, without making him any compensation therefor.

By means of which said several premises the said plaintiff hath been injured and hath sustained damages in the sum of ten thousand dollars, wherefore he sues.

9 June 8, 1859, Defendants filed a general demurrer to the declaration.
10 March 7, 1860, demurrer sustained, and judgment for defendant.

ERROR ASSIGNED.

12 The sustaining of the demurrer and rendering judgment for the defendant.

32 ~~99~~

Clayburgh

vs

City of Chicago

Abstract

Filed April 14, 1860

L. Leland

clerk

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Abstract

Filed April 14. 1860
L. Deland
Clerk

Printed by BEACH & BARNARD, 14 S. Clark St.

IN THE
SUPREME COURT OF ILLINOIS,
THIRD GRAND DIVISION.

MARTIN CLAYBURGH,

VS.

CITY OF CHICAGO.

POINTS FOR DEFENDANT IN ERROR.

— ... —

The facts in this case are precisely the same as those in the case of *Wheeler vs. City of Chicago*, 24 Ill. 105, in which the court held that an action of *assumpsit* would lie.

This court, having decided in the case of *Higgins vs. City of Chicago*, 18 Ill. 276, that mandamus would lie, it is now called upon to decide whether an action on the case will lie.

MANDAMUS ?

ASSUMPSIT ?

CASE ?

Are *all* these remedies proper ?

If they are, then all distinctions in actions should be abolished, and the party be left to his choice without regard to forms or precedents.

The cases which are cited by the plaintiff upon his brief, simply establish a point which is not disputed and never has been, to-wit : that an action on the case may be maintained for a breach of duty which amounts to a tort ; but all breaches of duty are not *torts*, and a failure to pay an amount of money due a person, upon an implied *contract*, is not ordinarily susceptible of being converted into a *tort*, even if it be considered a *breach of duty*.

This court having decided, that where a city takes and condemns the property of a citizen and awards him damages for such taking, that an *implied assumpsit* immediately arises to pay the amount, I submit that a *neglect* to pay does not make such a *breach of duty* as *tort* ; and that the action of trespass on the case cannot be maintained.

I respectfully submit that the case of *Wheeler vs. City of Chicago* is directly in point, and is an adjudication by this court against the *theory* of this case.

ELLIOTT ANTHONY,

Attorney for Defendant in Error.

No 32
Martin Kellogg
vs
City of Chicago

Defts Joins

Filed April 17 1861
L. S. Leonard
Clerk

Printed by BEACH & BARNARD, 14 S. Clark St.

IN THE
SUPREME COURT OF ILLINOIS,
THIRD GRAND DIVISION.

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ELLIOTT ANTHONY,

Attorney for Defendant in Error.

No 32
Martin Clayburgh
or
City of Chicago

Left Point

Filed April 17, 1861
L. L. L. L.
C.R.

State of Illinois, Supreme Court:

April Term, 1860

Martin Czapka } Error at the Ser-
The City of Chicago } pendency of
Chicago.

Samuel B. Gookins, being duly sworn on oath says, that he is of counsel for the plaintiff in error in the above entitled cause; that in the ~~Seized~~ Superior Court the defendant in error was represented by G. F. Crocker Esq., the City Attorney, duly elected and with full power and authority to answer for the City, and also by Elliott Anthony Esq., that Mr. Anthony was not present when the cause was decided for the defendant on demurrer to the plaintiffs declaration, that Mr. Crocker was present in court representing the City, that the Court below was divided in opinion, and the decision was made ~~per~~ pro forma for the express purpose of enabling the cause to be brought to this Court that the question of the liability or non-liability of the City might

be settled and determined at the earliest possible day, as very large interests were involved in the question. This deponent proposed at that time to take an appeal. Mr. Lercher replied that it was unnecessary to do so, that ~~as a matter of~~ he would enter an appearance, waiving process and would aid in having the case brought here and decided with the least delay, or words to that effect, and he did, in pursuance of the agreement then made, waive process and join in error, for the purpose, on this deponent believing of carrying out the agreement in good faith. This deponent states that he would have been here on the second day of this term, but for the fact that an important trial in which he was engaged, which had been specially set down some time before, because the witnesses had to come from foreign States, and it was the only time at which it was found practicable to get the witnesses of both

parties there. That relying upon
the agreement which had been so
made he could not make any other
arrangement for having the cause
attended to on the first call. This
deponent is informed that on the
first call when deponent was so,
detained ~~he is informed that~~ Mr.
Anthony had the cause continued,
that on his arrival soon after he
requested Mr. Anthony to consent
that the continuance be set aside
and that the cause be submitted,
he promised to "see about it" and
deponent has renewed the request
from time to time without any other
result until yesterday, when he
declined.

This deponent states that this is
an action on the case, & brought
against the City for neglect,
for the space of three or four years
to collect the assessments, and
pay the owner for property of his
taken and condemned for the
purpose of opening a street, La
Salle Street, in said City. That there
is pending in this Court other ac-

tions brought for the same purpose,
one of which is *Wm. Wheeler v The*
City of Chicago No. 91, which as
opponent is supposed has already
been submitted. That is an ac-
tion of assumpsit, and the only
difference between that and this
is that this is an action on the
case, on the same state of facts,
and the general question of
the City's liability in the two cases
is identical. That it would be
an important saving of labor to
the Court and parties if both cases
were considered together. That
this opponent has proposed to
Mr. Anthony and now proposes to
accept his printed points in the
case of *Wheeler v The City*, which,
except in respect to the form of
the action are equally applicable
to this, and to waive the making
out of any in this case, and to
submit the cause without ^{oral} argu-
ment on behalf of the plaintiff
in error.

S. B. Hopkins,
Sworn to and subscribed before me this
11th May 1860.

P. H. Walker
"

1st. The most of this affidavit relate to
matters wholly foreign & irrelevant
to this motion.

2. The cause was continued on the regular
call of the docket - & the party shows
no diligence whatever.

Weyler / Geo

E. Anthony
att. for City of Chicago

~~99~~ 32

Martin Delany

Thurs. 9th Chicago

Affidavit of S. B.
Gordon, on M.
to set aside con-
tinuance,

Filed May 11. 1860
L. Leland
Clerk

State of Illinois,

Supreme Court,

April Term, 1861,

Martin Delapung

vs

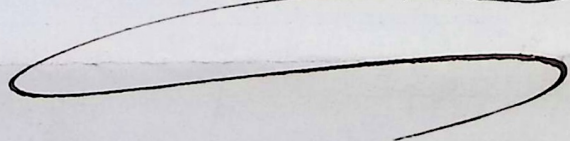
The City of Chicago

} appeal from the
Superior Court of
Chicago.

It is stipulated and agreed by and
between the parties above, that said
cause may be submitted by the appel-
lant, at any time during the above
term, with leave to the appellee to
make an oral argument or to sub-
mit it upon brief, as he may elect,
April, 8. 1861,

Gordon Thomas Roberts,
attys for appellant

Elliott Anthony
attys for appellee



32
Supreme Court

Claybury

v {

The City of Chicago

Stipulation

Filed Apr 18. 1861

A. Deland

clerk

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

Beas before the Honorable
the Judges of the Superior Court, of Chicago, within and
for the County of Cook and State of Illinois, at a regular
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 first Monday being the fifth
day of March, in the year of our Lord Eighteen hundred
and Sixty, and of the Independence of the United
States, ^{of America} the eighty fourth.

Present the Honorable John M. Yelen Chief
Justice, of the Superior Court of Chicago.

Van H. Higgins and Grant Goodrich

Judges, Tom Bray Sheriff of Cook County,

Attest Walter Kimball Clerk,

Be it remembered that here to fore to wit, on the
twentieth of May in the year of our Lord Eighteen
hundred and fifty nine. Martin Clayburgh by
Gookins Thomas & Roberts, his Attorneys filed in the
office of the ^{Clerk of the} Superior Court of Chicago a certain
Declaration which is in words and figures as fol-
lows to wit.

Cover.

State of Illinois Cook County, ss.
 In the Superior Court of Chicago
 June Term 1859.

Martin Clayburgh complains of the City of Chicago of a plea of trespass on the case.

For that whereas therefore to wit. on the 15th day of October 1855, at the county of Cook afore said. The plaintiff was the owner in his own right, and possessed of that certain lot, piece or parcel of land, situated lying and being in the city of Chicago, in said county, designated as the east quarter, being one fourth part of lot number five (5) in block number ninety six (96), in the School section addition to the City of Chicago, of great value to wit. of the value of six thousand dollars, and being such owner thereof, the common council of said city at a session thereof held in said City, on the day and year afore said. Passed and entered upon its records an order whereby it was ordered, that when the survey should be made, the Clerk of said City should give notice for ten days in the corporation news paper of said City, that they intended to take and appropriate so much land as should be necessary for the extension of La Salle Street in said City, from its ^{then} terminus at Madison Street in a straight line south to Jackson Street to conform in width to that part of La Salle Street ^{then} already opened, the extension to run through blocks ninety-five, ninety-six, ninety-seven, ^{one hundred & sixteen} one hundred and seventeen and one hundred and eighteen in the School section addition to the City of Chicago. And that the surveyor of said City proceed forthwith to survey and make out a plat and record in a book provided for the purpose, showing particularly the proposed improvement and the Real Estate

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required to be taken therefor, of the extension of said
Lasalle Street, from its then present terminus at
Madison Street, in a straight line south to Jackson
Street, to conform in width ^{with} to that part of ^{English} Lasalle
Street, ^{then} already opened, said extension to run through
the above described Blocks. And afterwards to wit
on the 20th day of October, in the year aforesaid
the City Clerk of said City caused to be published in
said City a notice to all persons interested that the
said common Council intended to appropriate and take
the land necessary to extend the said Street in man-
ner aforesaid, which notice was published in the
Chicago Daily Democrat, the corporation news-
paper of said City, and published therein for
ten days consecutively next following the said
20th ^{day} of October, and afterwards to wit on the 10th
day of January 1856, the said Common Council
proceeded to choose by ballot, three disinterested
freeholders of residence in said City, to wit W. W.
Saltwater, F. A. Bragg and Thomas Church as
commissioners to ascertain and assess the damages
and recompense due the owners, of land necessary
to be taken and appropriated for the opening of
said Street, and to determine what persons would
be benefitted by said improvement and to assess
the damages ~~thereof~~ and ~~the~~ expenses thereof, on
the real estate of the persons so benefitted, in propor-
tion as nearly as might be, to the benefits resulting
to each, which said commissioners were then and there
elected, by a majority of the aldermen authorized by
law, to be elected to said Council, and afterwards to
wit on the 16th day of January, 1856, the said commis-
sioners were duly sworn and took an oath, that
they would faithfully execute their duties as
such commissioners according to the best of their

ability, and thereafter and before entering upon
 their said duties they the said commissioners caused
 to be published in the Chicago Daily Democrat,
 the corporation newspaper of said City, printed &
 published therein for ten days successively a notice
 to all persons interested in the opening of said street
 that on the 24th day of January 1855 at 10 o'clock
 in the forenoon they would meet at the
 supervisors room in the Court House in said City,
 for the purpose of viewing the premises, and re-
 ceiving legal evidence as to the value of the lands
 appropriated for the said improvement, and after-
 wards to wit for the space of ten days, before the
 18th day of February 1855, a further and like no-
 tice was given by the said commissioners, in said
 newspaper, that they would meet at the place
 aforesaid, on the 18 day of February, 1855, at
 10 o'clock in the forenoon and the said commis-
 sioners pursuant to ^{the} notices aforesaid met at the
 times and place aforesaid and heard the evidence
 so offered and viewed the premises and thereupon
 the said commissioners proceeded to make their
 assessments, of the damages and benefits afore-
 said and then and there assessed the damages
 and recompense due to the said plaintiff by
 reason of the taking and appropriating of the
 said ^{lot} ground, belonging to the said plaintiff as
 aforesaid, at the sum of four thousand and
 five hundred dollars, and did also assess a
 gainst the Real Estate of other persons benefit-
 ed, by said improvement, a large sum of money
 to wit the sum of one hundred and thirty nine
 thousand eight hundred and fifty eight dollars,
 and fifty three cents, and then and there the
 said commissioners reported to the said com-

mon Council. their said assessments signed
 by them, and afterwards to wit on the 7th day
 of April 1856, the City clerk of said City caused
 a notice, that said assessments had been returned
 as aforesaid, and that unless the persons in-
 terested in said assessments should file their
 objections, thereto, on or before the 21st day
 of April 1856, at seven o'clock, in the afternoon
 the same would be confirmed by the common
 Council of said City, to be published in the dai-
 ly Times the corporation newspaper of said
 City, and published therein, which said no-
 tice was then and there published in said
 newspaper for ten days successively before
 the 21st of April 1856, and afterwards to wit on
 the ninth day of June 1856, at a meeting of
 the said common council it was by the said
 common council ordered, and adjudged that
 the said assessments be in all things con-
 firmed, which said order of the confirma-
 tion of the said assessments still remains in
 full force, unappealed from, and in no man-
 ner set aside or vacated, and the said plai-
 niff in fact says, that the whole of the said lot-
 piece or parcel of land, owned by him as
 aforesaid was and hath been appropri-
 ated, and taken for a public use, in manner
 aforesaid, where by he hath wholly been de-
 prived of the use of said lot, and the total
 value thereof hath been taken from him, in
 manner aforesaid, and the said plaintiff
 further saith that it there and then became
 and was the duty of the said defendant, to
 cause the said sums of money, so assessed as
 aforesaid for the purpose of paying the dam-

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= ages and recompense due to the owner of lands
 so taken, and among others to the said plain-
 tiff as aforesaid, to be collected, and to cause the
 said sum of money so assessed in favor of the
 said plaintiff with interest thereon from the time
 of the appropriating and taking of the said
 property, to be paid over to the said plaintiff,

but on the contrary thereof the said defendant
 hath so wrongfully and negligently behaved
 and conducted in respect to the said assess-
 ments that the said defendant hath hereto ~~hath~~ wholly
 neglected and wilfully refused to cause the
 said assessments to be collected although the said

plaintiff has expressly demanded of the
 said defendant, to collect and pay the said
 money so due to the said plaintiff in manner aforesaid,
 and the same ~~has~~ remains wholly un-
 paid to the said plaintiff by means ~~whereof~~
 the said plaintiff hath been greatly injured and
 damaged, and his said property of the value
 aforesaid hath been wrongfully and unjustly
 taken from him, without making ^{him} any com-
 pensation therefor, to wit at the county aforesaid,

And whereas, also heretofore to wit on the 15th
 day of October 1855, at the county aforesaid the
 plaintiff aforesaid was, and from thence untill
 the appropriating ^{and taking} thereof by the said defendant as here-
 in after mentioned continued to be the owner of that
 certain lot, or parcel of land, designated and
 known as the East quarter of lot number five (5)
 in Block number ninety six (96), in the School
 Section Addition to the City of Chicago of great val-
 ue, to wit of the value of six thousand dollars
 and the said defendant thereupon for the pur-
 pose of opening a public street in said City being a
 continuation of La Salle Street from Madison Street

2 Count

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South to Jackson Street of the same width as the
other portions of said street by the notices or orders
and proceedings of the Common Council agents
and commissioners of the said defendant, appropriated
and took the lot of the said plaintiff a-
foresaid of the value aforesaid and then and
there, and then and there by said commissioners
assessed ^{the} value of said lot, and the damages and
recompense due to the said plaintiff for the ap-
propriating and taking thereof for the purpose
aforesaid at the sum of four thousand five hundred
dollars, and by their commissioners for that
purpose ^{by the said defendant, then & their council} duly appointed, to be assessed upon the
real estate benefitted by the opening of the said
street, and the making of said improvement
a large sum of money, to wit, the sum of one
hundred and thirty nine thousand eight hundred
and fifty eight dollars and fifty three cents
to be collected for the payment of the damages
and recompense due to the persons whose prop-
erty was appropriated and taken for the purpose
aforesaid, and among others to the plaintiff
and for the payment of the expenses thereof, which
said assessments were duly reported, by the said
agents and commissioners of the said defendant to
the Common Council of said City, and due
notice having been given of the said proceedings
to all persons interested therein, the said assess-
ments were by the Common Council, on the 9th day
of June 1856, in all things confirmed, and the said
assessments remain in force and effect and un-
appealed from, and the said plaintiff in fact
suits, that it then and there, he came and was the
duty of the said defendant, by its officers and
agents, to cause the said assessments to be collected.

omitted 2
on 3 lines

and the said sum of money and the said sums
of money assessed in favor of the plaintiff in
manner and for the purpose aforesaid and in-
terest thereon from the 15th day of October 1855:-
to be paid over to the said plaintiff, but the said
defendant not regarding its duty in that behalf.
Nath^l negligently and wrongfully behaved and
conducted in reference to the said assessments,
that the said defendant has not caused the said
assessments to be collected but the same remain
wholly unpaid and there is not in the treasury
of the ^{said} city in consequence of said carelessness,
negligence and wrongful and wilful mis-
conduct of the said defendant in reference
to the ^{collection of the} said assessments, any money arising or
accruing from the said assessments where-
with to pay the said plaintiff the said sum
of money so due him^{as} aforesaid, and the same
remain wholly unpaid. And the said plaintiff
Nath^l by and through the wrongful and negli-
gent, and wilful misconduct of the said defen-
dant and its agents, in manner aforesaid, wholly
lost his said lot of the value aforesaid, and the
same has been taken from him in manner a-
foresaid without making him the said plain-
tiff any compensation therefor. By means of
which said several premises, the said plain-
tiff Nath^l been injured and hath sustained
damages in the sum of ten thousand dollars.
Wherefore he sues

Gookins, Thomas & Roberts,
Plf. Atty.

And afterwards to wit on the ^{day} third of June in the
year of our Lord Eighteen hundred and fifty nine
there was filed in the office of the clerk of said court
a certain ^{demurrer}, which is in words and
figures as follows To wit,

In the Superior Court of Chicago,
Of the June Term. AD, 1859,

The City of Chicago
vs
Martin Clayburgh,

And now comes the said
the said defendant by Crocker and Anthony
its attorneys and defends the wrong and injury
wherein and says that the said declaration &
the matters and things therein alleged, are not
sufficient in law for said plaintiff to have or
maintain his aforesaid action thereof against it
and of this it is ready to satisfy. Wherefore it prays
judgment, if the said plaintiff ought to have or main-
tain its aforesaid action thereof against it.

Crocker & Anthony Defts
Attorneys,

And afterwards to wit on the ^{day} third of October, in the
year of our Lord Eighteen hundred and fifty nine.
Said day being one of the days of the October term of
said court, the following among other proceedings
was had and entered of record in said court to
wit,

2 Martin Clayburgh
vs
The City of Chicago.

Freehold,
This day comes said plaintiff by

by Gookins, Thomas, & Roberts his Attorneys,
 And said defendant City of Chicago, by its Attor-
 neys, Crocker and Anthony, also come and counsel
 being heard on the demurrer herein pleaded by
 defendant to Plaintiffs declaration, in this case
 and due deliberation being thereupon had, and
 the premises fully understood, it appears to
 the court that said demurrer is insufficient in
 law to bar said plaintiff from having and main-
 taining his action against said defendant the
 demurrer is therefore overruled, with leave to de-
 fendant to plead over in ten days.

And afterwards to wit on the seventh day of
 March in the year of our Lord Eighteen Hun-
 dred and fifty nine. This day being one of the
 days of the March term of said court, the fol-
 lowing among other proceedings was had and en-
 tered of record in said court, to wit,
 Martin Clayburgh,

vs Trespass on case,
 The City of Chicago.

This day comes Gookins, Thomas, &
 Roberts his Attorneys and said defendant by Geo H.
 Crocker, City attorney also comes, and counsel being heard
 on defendants demurrer herein pleaded to plaintiffs
 declaration, in this case and then, deliberation
 being thereupon had, and the premises being fully
 understood, it appears to the court that defend-
 ants demurrer herein pleaded, in bar to plaintiffs
 declaration in this case is sufficient, in law to bar
 said plaintiff from having and maintaining his
 action against said defendant the demurrer is
 therefore sustained. Therefore it is considered that

said defendant. We have and recover of said plaintiff
its costs and charges, about ~~to~~ defended in this be-
half repealed and have execution therefor

State of Illinois
County of Cook } S. S.

I Walter Kimball Clerk of
the Superior Court of Chicago. in and for said County
do hereby certify that the above and foregoing is a
full true and correct Transcript of all the Readings
on file in my office, and the proceedings ^{& Judgment} entered of
Record in said Court in the case wherein Martin
Glynn is plaintiff and the City of Chicago is
defendant.



In testimony whereof I hereunto
subscribe my name, and affix
the Seal of said Court, at the City
of Chicago. in said County this 14th
day of March. AD 1860
Walter Kimball Clerk

The parties agree that the entry in the foregoing
verdict of Oct. 3. 1859 overruling the defendants
answer to the plaintiffs declaration is an
error and is to be regarded by the Supreme
Court as stricken out,

Hooker, Thomas & Roberts
attys for defd.

George F. [Signature]
Attorney for Defd.

State of Illinois. Supreme Court.
April Term 1860

Martin Clayburgh }
vs } Court to the Supreme Court
The City of Chicago } of Chicago.

The said Martin Clayburgh, by
Gorkins Thomas & Roberts his attorneys
comes and says that in the foregoing
record and proceedings manifest error
hath intervened, in this, to wit:

1 That the said Superior Court of Chicago
sustained the demurrer of the said de-
fendant to the declaration of the said
plaintiff, and rendered judgement
thereupon in favor of the said defendant
and against the said plaintiff when
by the law of the land the said demurrer
should have been overruled, and judge-
ment should have been given for the
plaintiff, which he is ready to verify

Wherefore the said plaintiff prays that
the said judgement may be reversed
Gorkins Thomas & Roberts.

And the said defendant, ^{in error} waiving the is-
suing and service of process herein comes
and says that in the said record and
judgement there is no error

George H. Crocker
Attorney for Deft.

³²
Martin Clyburgh

City of Chicago.

Transcript of Record
Asst. of Envs. for under
in error & office of
Defendant in error

Filed March 15, 1860
L. Leland
Clerk