

No. 12810

Supreme Court of Illinois

City of Chicago.

vs.

Hamilton, et al.

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Richard G. Hewitt

Librarian

23

The City of Chicago

12810

Richard I. Hammett
 Esther Twining
 George W. Twining
 Murray F. Tuley
 B. F. Blackburn
 George W. Turner
 Thomas J. Byrd
 Jane J. Byrd
 vs
 The City of Chicago

Appeal from Cook County
 Court of Common Pleas

And now on this day comes
 the said Appellants by Seated their
 Counsel and say that in the
 record & proceedings and in the
 rendition of judgement in this
 case manifest error hath inter-
 vened in this to wit: —

First The Court below had no jurisdiction
 because there was no valid assess-
 ment made in this case

Second The Court below had no jurisdiction
 for want of legal & sufficient notice
 by the Common Council & by the Commissioners
 in their proceedings to make an assessment
 and by the Collector of the application
 for a judgement against these lands

Third The Common Council had no jurisdiction to Confirm - and the Court below had no jurisdiction to render judgment for this assessment - because the Commissioners made no assessment of any sum of money against or upon either of said premises as appears by the Assessment Roll returned by them

Fourth The application was barred by the Statute of Limitations - pleaded against the same & this suit in the Court below - and the Court ought to have rendered a judgment against the City & for the ~~plain~~ ~~defendants~~ appellants.

Fifth The Court below should have rendered a judgment in favor of the appellants because it appeared by the pleadings and evidence that there had been a former adjudication & recovery between the parties upon the same identical causes of action

Sixth The Court rendered a judgment against

the said several premises for ten per cent
in addition to the several supposed a-
mounts assessed upon each respectively
in and under the amended charter of said
city of act 17 Feb 1837 - which said
provision appellants, aver is uncon-
stitutional - oppressive & void

Seventh The ^{Court} held that the city of Chicago was
not bound to produce proof of the making
and levying said supposed assessment
other than the warrant issued for the
collection of the same, to entitle said
City to a judgment against said prem-
ises - and rendered judgment for
the same without proof, other than
said warrant, by said city of Chicago

Eighth The Court below erred in rendering a
judgment against said premises
in favor of defendant for said sup-
posed assessments - for ten per
cent as costs in addition thereto &
for costs also.

Wherefore for these errors & others ap-
parent upon the record & proceedings a-
foresaid - Appellants pray that the judg-
ments aforesaid be in all things reversed

Annulled and for nothing esteemed
and that Appellants recover their
costs - & be restored to all their
rights

Scenes for Appellants

And now comes the said defendant in
error by Elliott Anthony its attorney and says
that there is no error, either in the record
and proceedings aforesaid or in the
recitation of the judgment aforesaid, and
pray that the said Supreme Court, now here
may proceed to examine as well the record
& proceedings aforesaid as the matters
aforesaid, in form aforesaid given may
be in all things affirmed.

Elliott Anthony
for Defendant in error.

United States of America
State of Illinois
County of Cook

Placed 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 said Cook
County Court of Common Pleas begun 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 nine; due notice of the time and place of holding
said term of Court having been printed and published in the
Chicago Daily Democrat the Corporation Newspaper of said
City of Chicago, said notice having been printed & published
twenty days previous to the first day of 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 fourth day of January Eighteen hundred and
fifty nine.

Present The Hon: John M. Wilson Judge
John Gray Sheriff
Attest
Walter Kimball, Clerk.

"Of the January Special Term of the Book
Bounty Court of Common Pleas in the year
of our Lord one thousand eight hundred
and fifty nine.

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

The Report of Joseph M. Henricks 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. 1858 - That forthwith after the delivery of the 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 such 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 person liable for the payment of such taxes and assessments, which said Notices were generally published for thirty days in the 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 respectively due thereon, before the first day of the January Special Term of this Court A. D. 1859, 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 costs respectively due thereon as set forth in the said Warrants, which remain unpaid and uncollected. Therefore your said Petitioner prays that judgment may be rendered as in such cases made and provided.

Geo. M. Shanks
City Collector

"State of Illinois
Cook County .. } p.

I, Joseph N. Henricks 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 1858 as herein set forth, that
said taxes and assessments now remain due and unpaid &
uncollected as above stated.

Subscribed and sworn to before me

this 27th day of January 1859

Walter Kimbale, Clerk

Cook Co. Ct-Com; Hear

Joseph N. Henricks "

'Special Warrant No 106.

"State of Illinois
City of Chicago }

The People of the State of Illinois to the Collector
of the City of Chicago.

Whereas the Common Council of the City of Chicago did
on the 24th day of November 1856, confer the Assessment
duly made and filed in the Clerks Office by the Commissioners
appointed by the said Common Council to assess the sum of
Twenty thousand four hundred and sixty eight ¹/₁₀₀ dollars
upon the Real Estate in the North division of said City deemed

benefitted by filling up and plankking North Clark Street from the River to Ontario Street, in proportion to the benefits resulting thereto in pursuance of an Order for said apportionment made by the said Common Council on the 22nd day of Sept^r 1856 after duly reviewing the same and did thereupon assess the said sum of money upon the Real Estate described in the role of said apportionment in the respective signatures thereof marked "Assessment," set opposite to each lot, part of lot and Real Estate described in said role, which role is in the words and figures following to wit,

"Assessment Role"

A description of the Real Estate in the North Division of the said City of Chicago deemed benefitted by filling up and replankking of North Clark Street from the Bridge to the North line of Ontario Street, with the Valuation thereof and the sum of money severally assessed thereon for benefits by the Commissioners to wit,

Original Town of Chicago

Name of Owner	Description	Lot	Part	Valuation	Assessment	
R. I. Hamilton		4		34000	560 93	
W. G. & G. W. Ewing		5	1	34000	573 97	
J. V. & J. Byrne		1	3	44000	560 93	
C. G. Nishish		5	1	38000	573 97	Paid
Wolcotts	Addition to Chicago					
G. F. Foster		8	2	10000	333 33	
L. C. P. Freer		9	1	10000	333 33	

Worcester's Addition to Chicago

Name of Owner	Description	Lot	Blk	Valuation	Assessment	
Conrad Gerke	N 20 ft	142	3	3400	66 75	Paid
C. Happel	30 ft. ady N 20 ft.	"	"	5000	99 90	Paid
M. Schaub	30 ft. St ady N 5 ft.	"	"	6000	99 90	Paid
Louis Warlich	S 20 ft.	"	"	11000	66 80	Paid
James, L. Howe	S 20 feet	13716	"	2000	66 75	Paid
D. C. Eddy	30 ft N ady S 20 ft.	"	"	4000	99 90	Paid
H. Fuller	N 1/2	"	"	7900	166 70	Paid
Bradley B. Byrle	S 1/2	142	6	7300	175 52	Paid
Winton & Walter	N 1/2	"	"	7700	175 52	Paid
James C. Donahue	S 30 ft	13	16	5700	102 14	Paid
Peter Trisbie	N 70 ft	"	"	8300	238 87	Paid
J. D. Maake		1	7	4300	81 38	Paid
Geo. Hoffman		2	"	3800	75 12	Paid
James Thompson		3	"	3800	75 12	Paid
John Clark		11	"	3800	75 12	Paid
Philip Conley		5	"	4000	75 12	Paid
H. Devine		6	"	4000	75 12	Paid
R. Richardson		7	"	4000	75 12	Paid
John King		8	"	4000	75 12	Paid
"		9	"	4000	75 12	Paid
C. F. Heurster		1	10	2000	77 75	Paid
"		2	10	2600	74 64	Paid
D. L. Brown		3	"	2700	74 64	Paid
"		11	"	2700	74 64	Paid
Charlotte Chase		5	"	2700	74 64	Paid

Wolcotts Addition to Chicago

Name of Owner	Description	S. Lot	Lot	Met	Valuation	Paid	Balance
Wm. Nichols			1	18	3700	74	64 Paid
A. Sullivan			7	"	3700	74	64 Paid
John Hales			8	"	3700	74	64 Paid
J. Papendick			9	"	3700	74	76 Paid
W. A. Gibbs	S 1/2		10	17	6200	169	33 Paid
L. C. Dodge	N 1/2		"	"	3700	169	33 Paid
M. Morgan Mosley			16	"	7000	333	47 Paid
Elisha Bailey	S 1/2		112	14	6400	169	32 "
William Shaffer	S 1/2 of N 1/2		"	"	3200	84	66 P
Thos. Haley	N 1/2		"	"	3000	84	66 P
Richd. Lappin			16	"	4600	338	64 P
J. P. Robb			8	15	8600	338	64 P
Chas. Meyer	S 16 feet		9	"	1600	54	08 P
J. Lorgan	16 ft N & adjg S 16 feet		"	"	1600	54	08 P
J. B. Bryan	15 ft N & adjg S 32 feet		"	"	1500	51	70 P
H. Myers	29 ft N & adjg S 47 ft		"	"	2900	68	02 P
Frederick Haff	N 24 feet		"	"	2400	81	76 P
C. J. G. Mueller			8	15	1600	320	32 P
D. Harper			9	"	"	168	80 P
Fred. Hoffmann			10	"	3300	168	80 P
Alb. Bull			11	"	3600	165	60 P
Geo. Hummelstein			1	19	4600	86	40 P
Chas. Krauer			2	"	3000	86	40 P
"	N 6 1/2 feet		3	"	800	20	80 P
Frank Bonan	Ex N 6 1/2 feet		"	"	2100	63	60 P

A. I. Schaub		4	10	3000	86	40	P
"		5	"	3000	86	40	P
J. A. Hoffman		6	"	2700	86	40	P
Conrad Winkler		7	"	2700	86	40	P
"		8	"	2700	86	40	P
City of Chicago	N. D. intersection of Streets				3446	22	
		Total			12468	11	

Now therefore you are hereby Commaneded 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 exercise this Writ in thirty days from the date hereof

Witness Thomas Dyer Mayor of the City of Chicago and the Corporate Seal thereof this 24th day of Dec. 1856.

(signed) Thomas Dyer, Mayor

Attest

H. W. Zimmerman, City Clerk

Collectors Return

State of Illinois

City Collectors Office

Cook County

December 26. 1856.

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 Assessment 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 several other Assessments not marked "Paid" in every one of the persons mentioned in said Warrant as liable to the payment thereof and he has not been able to find any ^{personal} property belonging to any of them subject to the payment thereof.

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

Patrick Conolly, City Collector
N. D. by James Duffy "

Corporation Notices

" City Collectors Office Chicago
January 4th 1859.

" Public Notice is hereby given that I shall apply to the Cook County Court of Common Pleas on the first day of the Special Term thereof to be holden at the Court House in the City of Chicago on the 27th day of January A. D. 1859 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.

"Warrant No 106 North dated November 24. 1856 filling & plankings North Clark Street from the River to Ontario Street."

"This Certifies that the Appended Notice has been published in the "Chicago Daily Democrat" a Newspaper printed & published in the City of Chicago, County of Cook and State of Illinois twenty one days consecutively, commencing with the 9th day of January 1859 and that I have received _____ dollars for publishing the same."

Jno. Wentworth, publisher
by Recd."

And thereafter to wit on the twenty seventh day of January A D Eighteen hundred and fifty nine the defendants filed in the Office of the Clerk of said Court, their Objections in the words and figures following to wit,

"City of Chicago <u>(70)</u>	{	January Special Term of
Richard J. Hamilton, George		Cook County Court of Common
W. Ewing, Esther Ewing, Geo.		Peas
<u>W. Turner & Lane, Jr. Byrd</u>		Application for judgment upon Warrant No 106 for filling up & plankings North Clark St. from the <u>Bridge to North line of Ontario St.</u>

The said Richard J. Hamilton, George W. Ewing, Esther Ewing, George W. Turner and Lane, Jr. Byrd by their Attorneys, Davis, Blackburn and Tuley come and object to the

said Court pronouncing judgment against the lots and pieces of
land mentioned in said Warrant No 106 and against the following
objections:

1st Because the said Warrant was never delivered to the City
Collector who makes this application.

2nd Because said Warrant was issued prior to the passage of
the Act of Feb'y 17th 1853, amending the Charter of the City
of Chicago.

3rd Because the Assessment upon which said Warrant was
issued was confirmed by the Common Council of said City
prior to the passage of said Act of Feb'y 17th 1853 from which
this Court derives its jurisdiction.

4th This Court has no jurisdiction or power to pronounce
judgment in this ^{cause} because the said Special Assessment
upon and for which this Warrant was issued was duly
confirmed by the Common Council of the said City of Chicago
more than two years previous to this application being made
to wit on the 21st day of November A. D. 1856.

5th Because more than two years have elapsed since the
corrected assessment rolls upon which this Warrant issued was
confirmed by the said Common Council.

6th Because an application was made by the proper City
authority at the County Court of Cook County (which Court
there had jurisdiction in such cases) for judgment against the
lots and real estate mentioned in said Warrant for the amount
of said Assessment upon the same at the term of said
Court for the year A. D. 1857 and that the said Court refused

said application and that the judgment of the said Court—
refusing the said application was a final decision as to the
right of the City authorities to have judgment in favour of
the City upon the said Warrant.

7th Because one of the parties appointed by the Common
Council to make the said Assessment to wit J. A. Bragg
was not at the time of his appointment a freeholder as
required by law.

8th Because the said assessment was not levied according
to law.

9th Because the several Orders and proceedings of the Common
Council for said improvement and in assessing & collecting
the monies for the same are illegal, improper and void.

10th Because no sufficient Notice of this application for
judgment has been given.

11th Because the prerequisites for the rendition of judgment
by this Court have not been complied with.

12th Because so much of said Act of Feb'y 11th 1857 giving
damages of ten per Cent as additional Costs upon the
application is illegal, unconstitutional and void.

W. Davis - Attorney for James & Bird

B. J. Blackburn for E. J. Bird

W. J. Tuley, Clerk for E. J. Bird

And thereafter to wit on the second day of February
A. D. Eighteen hundred and fifty nine the said defendants
filed in the Office of the Clerk of said Court their further

objection in the words and figures following to wit
Suit for Taxes

"City of Chicago

Cook County Court of Common Pleas
Of the January Special Term A.D. 1839.
Richard I. Hamilton, George W. Ewing, Esther Ewing, Geo. W. Turner & Jane, F. Bird
Application for judgment upon Warrant No 106 for selling of lot containing 1/2 block
Street from Chicago to North line
of Ontario Street?

The said Richard I. Hamilton owner of lot number four in Block No 2. George W. Ewing owner of lot No 5 in Block 2, except 116 feet of said lot - Esther Ewing owner of 116 feet of said lot and George W. Turner & Jane, F. Bird owners of lot number 1 in Block 3 of the Original Town now City of Chicago come and object to this Court pronouncing judgment against the said lots mentioned in said Warrant No 106.

1st Because there is no such Warrant in the hands of the City Collector for Collection, and that there was none such at the time of his making his report to this Court.

2nd The alleged Warrant in this case upon which the City Collector has made his Report is not signed by the Mayor and Clerk of the City of Chicago nor is the Corporate Seal of the City attached thereto as required by law.

3rd That the report of the City Collector is untrue in so far as it alleges that he has in his hands for Collection any such Warrant as is mentioned in his said Report as Warrant No 106.

1st Because said alleged Warrant was never delivered to the City Collector.

5th Because said alleged Warrant was issued prior to the passage of the act of Feb'y 17th 1857 and the assessment upon which said alleged Warrant is claimed to have been issued was confirmed by the Common Council, prior to the passage of said act from which this Court obtains its jurisdiction.

6th The Court has no jurisdiction because said Special Assessment upon and which this alleged Warrant was issued was confirmed by the Common Council of the City of Chicago more than two years previous to this application being made and to the filing of the Collectors Report.

7th Because more than two years have elapsed since the Common Assessment Roll upon which this alleged Warrant issued was confirmed by the Common Council of said City.

8th Because said Assessment was not fixed according to law.

9th Because the several orders and proceedings of the Common Council for said improvement and in assessing & collecting the money for the same are illegal and void.

10th Because the prerequisites for the rendition of judgment by this Court have not been complied with.

11th Because so much of said Act of February 17th 1857 as gives damages of ten per cent as additional costs upon the application is illegal, unconstitutional and void.

W. Davis. Attorney for Thomas & Bird
M. J. Tuley Attorney for G. W. Ewing
B. F. Blackburn, Attorney for E. Ewing.

And afterwards to wit on the third day of February (being one of the days of the said January Special term of said Court) A.D. Eighteen hundred and fifty nine, the following among other proceedings were had and entered of record in said Court, to wit.

Judgment Book for Special Assessments, Chicago, Illinois

Names	Description	S	L	Wk	Natural		Improvements		Total		Total	
					Dollars	Cts	Dollars	Cts	Dollars	Cts	Dollars	Cts
R. J. Hamilton			4	2	45.00	56	93					
W. J. & W. Ewing			5		39.00	57	97					
J. V. & J. Byrd			1	3	111.00	56	93					

And now on this third day of February A.D. Eighteen hundred and fifty nine comes the said City of Chicago by E. Anthony City Attorney, and due notice having been given of the time and place of making the intended application for judgment against the said several lands lots pieces and parcels of land in said Warrant set forth, and objections to taking judgment against said lots having been filed by Richard J. Hamilton and others owners of all the lots in said Warrant set forth, and counsel being heard upon said objections and mature deliberation thereupon had and the premises fully understood it appears to the Court that the said objections to taking of judgment against all of said lots are insufficient the objections are therefore overruled and on Motion of said Attorney.

It is considered by the Court that judgment be and

hereby is entered against the said lands lots pieces and parcels of land described in the aforesaid Warrant in favor of the City of Chicago for the sum annexed to each lot piece and parcel of land being the amount of assessments, and for costs of suit generally 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 pieces and parcels of land therein set forth as for her legal damages.

And it is further Ordered by the Court that the said several lands lots pieces 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.

And thereupon comes Richard J. Hamilton owner of lot No four in Block No 2, and George W. Ewing owner of lot No 5 in Block No 2, Arthur Ewing owner of 60 feet of said lot 5 in Block 2 & George W. Turner & Jane J. Byrd owners of lot No 1 in Block 3 of the Original Town near City of Chicago, and severally enter their exceptions herein & pray an Appeal therein to the Supreme Court of the State of Illinois for the lots belonging to them severally and mentioned in said Warrant, which is allowed on filing the appeal in two thousand dollars, with security to be approved by Judge of this Court in ten days with their Bill of Exceptions.

And thereafter to wit on the twelfth day of February A.D. Eighteen hundred and fifty nine the said several parties filed their Appeal Bond in the Office of the Clerk of said Court, Which said Bond is in the words and figures following, to wit.

Know all Men by these presents that we the said J. Hamilton Esther Ewing, George W. Ewing, George W. Turner and Jane J. Byrd, Brookridge J. Blackburn, Murray J. Hulcy are held and firmly bound unto the City of Chicago in the sum of two thousand dollars for the payment of which well and truly to be made to the said City of Chicago we bind ourselves our heirs executors and administrators firmly by these presents. Signed and sealed with our seals this 11th day of February A.D. 1859.

The Condition of the above obligation is such that whereas in a certain writ for apportionment in warrant No 116 dated November 26th A.D. 1856 for filling up and plankting North Clark Street from the River to Caterio Street, in the Cook County Court of Common Pleas in which the City of Chicago was Plaintiff and Richard J. Hamilton & others were defendants upon the application of the City Collector for judgment upon said lands lots pieces and parcels of land in said Warrant set forth upon the 11th day of February A.D. 1859 at the January special term of said Court a judgment was entered and rendered against the said lots pieces and parcels of land described in the aforesaid Warrant in favor of the City of Chicago for the sum annexed to each lot piece and parcel of land being the amount of apportionment and for Costs of suit severally therein and that the 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 and parcels of land herein set forth as and for her legal damages, and the said Richard I. Hamilton and George W. Turner, George W. Ewing, Esther Ewing and Jane Y. Byrd having filed objections to the said judgment against the said lots, pieces and parcels of land in said Warrant set forth and having prayed in Appeal to the Supreme Court of the State of Illinois, and the said Cook County Court of Common Pleas having granted said Appeal

Now if the said Richard I. Hamilton, George W. Turner, George W. Ewing, Esther Ewing and Jane Y. Byrd shall well and truly prosecute the said Appeal and in case the said judgment shall be affirmed shall pay the said judgment Costs interest and damages and shall well and truly abide by and perform any judgment or order of the said Supreme Court upon the said Appeal then this obligation to be null and void otherwise he and remain in full force and virtue

(signed) Richard I. Hamilton (Seal)

Esther Ewing by Morrist
Blackburn her Attorney (Seal)

George W. Ewing by Murray
J. Juley his Attorney in fact (Seal)

Murray J. Juley (Seal)

B. T. Blackburn (Seal)

George W. Turner
Jane Y. Byrd Attorney in fact (Seal)

Jane Y. Byrd by Mrs A
Byrd her Attorney in fact (Seal)

Approved

John M. Wilson,

Judge

And thereafter to wit on the _____ day of March A.D. Eighteen hundred and fifty nine came the said Defendants and filed in the Office of the Clerk of said Court their Bill of Exceptions: Which said exceptions are in the words and figures following to wit,

"The City of Chicago } Sent for Assessment Warrant No
_____ (no) _____ } 116 dated November 20th 1856 for
Richard I. Hamilton to have } filling up and blanking North Clark
Street from the River to Ontario Street

Afterwards to wit at the day and place within contained before the Honorable John M. Wilson presiding Judge of the Cook County Court of Common Pleas came as well the said City of Chicago by E. Anthony her Attorney as the said Richard I. Hamilton and also George W. Ewing, Eother Ewing, George W. Turner and James F. Byra by Jules, Davis & Blackburn their Attorneys, and the Attorney for said Plaintiff moved the Court that judgment be entered against the said lots pieces and parcels of land described in the aforesaid Warrant No 116 in favor of the said City of Chicago

And thereupon the said Defendants by their Attorneys did object and insist that it was necessary for the Plaintiff to and that said Plaintiff should produce and offer in evidence the Original Warrant described in the said City Collectors Report as No 116, before he could demand judgment against the said lots pieces and parcels of land

Whereupon the said Plaintiff by her Attorney did insist that the production of said Original Warrant was unnecessary & that Plaintiff was not bound to produce the same And the said Judge did then and there give his opinion and decide that the production of the said Original Warrant was unnecessary and that Plaintiff could demand judgment without the production of the same.

To which opinion and decision of the said Judge the said Defendants did then and there except.

And thereupon the said Defendants by their Attorney in support of their aforesaid objections by them filed did offer as a witness Gray who having sworn according to law did depose and say

"That he was then a Deputy City Collector and had been as such Deputy in the said Collectors Office ever since the said City Collector had been in Office, that the Warrant produced by the Witness was the only Warrant in the possession of the City Collector relating to the Assessment described in the Warrant No 116 of the City Collectors Report and that it was the Original of the Warrant described in the said Report as Warrant No 116 and that said Original was received by the present City Collector with a number of Warrants from the Special Collectors of said City who were in Office previous to the said City Collector

And the Defendants by their Attorneys did then offer in evidence the said Original Warrant, the return thereto

produced by said witness of which the following is a true Copy

"State of Illinois } Special Warrant No 106.
City of Chicago } 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 24th day of November 1856 confirm the Assessment duly
made and filed in the Clerk's Office by the Commissioners
appointed by the said Common Council to assess the sum of
Twelve thousand four hundred and sixty eight $\frac{1}{100}$ dollars
upon the Real Estate in the North Division of said City deemed
benefitted by filling up and plankning North Clark Street from
the River to Ontario Street in proportion to the benefits resulting
therein in pursuance of an order for said Assessment made by
the said Common Council on the 22nd day of September 1856
after duly revising the same and did hereby apess 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 roll is in the words and
figures following to wit:

"A description of the Real Estate in the North Division
of the City of Chicago deemed benefitted by filling up & plankning
of North Clark Street from the Bridge to the North line of Ontario
Street, with the Valuation thereof and the sums of money severally
apessed thereon for benefits by the Commissioners to wit

Original Town of Chicago

R. J. Hamilton		11	2	48000	560.93
W. G. H. W. Ewing		5	1	39000	573.97
Conrad J. Vt Fr. Byrne		1	3	44000	560.93
C. G. Uhlrich		8	1	38000	573.97 Paid

Molokto Addition to Chicago

G. F. Foster		8	2	10000	333.33 Paid
L. C. P. Freer		9	"	10000	333.33 Paid
Conrad Gerke	N 20 feet	11	2	3	3400 66.75 Paid
C. Happel	30 ft adgg N 20 ft	"	"	5000	99.90 Paid
M. Schaub	30 ft S 1 adgg N 5 ft	"	"	6000	99.90 Paid
Louis Warlick	S 20 feet	"	"	4000	66.80 Paid
James, L. Howes	S 20 feet	13	16	"	3400 66.75 Paid
D. C. Eddy	30 ft N 1 adgg S 20 ft	"	"	4900	99.90 Paid
W. Fuller	N 1/2	"	"	7900	166.70 Paid
Bradley B. Byrd	S 1/2	14	2	6	7500 175.52 Paid
Norton & Wallers	N 1/2	"	"	7700	175.54 Paid
James O'Donahue	S 30 ft	15	16	"	5700 102.14 Paid
Peter Fruebe	N 70 ft	"	"	8300	238.87 Paid
J. D. Hoake		1	1	4300	81.35 Paid
Geo: Hoffman		2	"	3800	75.13 Paid
James Thompson		3	"	3800	75.13 Paid
John Clark		4	"	3800	75.13 Paid
Philip Conley		5	"	4000	75.12 Paid
H. Devine		6	"	4000	75.12 Paid
R. Richardson		7	"	4000	75.12 Paid
John King		8	"	4100	75.12 Paid

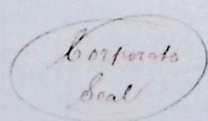
Wheeler's Addition to Chicago.

		Set	Lot	Blk	Valuation	Assessment
John King			9	7	4300	78.25 Paid
C. F. Heinsater			1	10	3700	77.75 Paid
"			2		2600	74.64 Paid
D. G. Brown			3		3700	74.64 Paid
"			4		3700	74.64 Paid
Charlotte Chase			5		3700	74.64 Paid
Wm. Mehler			6		3700	74.64 Paid
J. Sullivan			7		3700	74.64 Paid
John Healy			8		3700	74.64 Paid
P. Papendrick			9		5100	77.75 Paid
L. A. Gibbs	S 1/2	142	11		6200	169.23 Paid
L. C. Dodge	N 1/2	"	"		5700	169.23 Paid
M. Morgan & J. Marley		16	11		7000	338.47 Paid
Elisha Bailey	S 1/2	142	14		6400	169.32
Wm. Schaffer	S 1/2 of N 1/2	"	"		3200	81.66 P
Thos. Healey	N 1/2	"	"		3000	81.66 P
Richd. Laffin		16	"		7600	338.64 P
J. P. Robb		8	15		8600	338.64 P
Chas. Meyer	S 16 feet	9	"		1600	81.68 P
J. Loringan	16 ft N 1/2 of S 16 ft	"	"		1600	81.68 P
J. B. Bryan	15 ft N 1/2 of S 32 ft	"	"		1300	50.78 P
H. Myers	29 ft N 1/2 of S 47 ft	"	"		2900	98.02 P
Fred. Haff	N 24 ft	"	"		2400	81.76 P
C. J. J. Muller		8	18		10600	320.82 P
D. Harper		9	"		3300	108.80 P

Thos: Hoffman		10	18	3300	108,80 P
Ab Bull		11	"	3600	108,60 P
Geo: Humelshain		1	19	4600	86,40 P
Chas Kramer		2	"	3000	86,40 P
do	N 6 1/2 feet	3	"	800	21,30 P
Joan Boman	Ex N 6 1/2 ft	"	"	2100	63,60 P
J. J. Schaub		4	"	2100	86,40 P
do		5	"	3000	86,40 P
J. A. Hoffman		6	"	2400	86,40 P
Conrad Weinheim		7	"	2400	86,40 P
do		8	"	2400	86,40 P
City of Chicago	N.D. intersection of Streets				3446,22
		Total.			\$12468,11

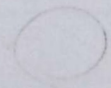
Now therefore you are hereby Commanded to levy, make & collect of the goods and chattels of the respective owners of the real Estate above described, the several sums of money assessed thereon for which each may be liable as aforesaid, and thereof make due return in what manner you shall execute this writ within thirty days from the date hereof.

Witness Thomas Dyer Mayor of the City of Chicago and the Corporate Seal thereof this 24th day of Nov: 1856.



(Signed) Thos Dyer Mayor

Attest H. W. Zimmerman
City Clerk.



"State of Illinois
Cook County } &c.

Collectors Return.

"City Collectors Office

December 26th 1866.

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 Assessment 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 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 said Warrant.

Patrick Conolly, City Collector

N.D. by James Duffy."

And the said Defendants by their Attorneys did further offer in evidence the Orders and proceedings of the said Common Council to the said Assessment, and the Assessment roll returned by the Commissioners of which said Orders proceedings and said assessment the following is a true Copy.

Assessment Roll
for
Planking North Clark Street.

" In Common Council

Sept the 22nd 1856.

Ordered, That the Old plank in North Clark Street from the Dock Line to the North Line of Ontario Street be taken up and said part of said North Clark Street be filled up to the established grade, that the same be planked twenty four feet in the Centre and curbed with new plank and the sides be planked with selected old plank, that both sides of said part of said Street be substantially curbed with new plank also to be done in accordance with Superintendents Estimate herewith submitted, said work to be commenced within 40 days from date.

Ordered. That the sum of \$17,468⁰⁰ be apportioned upon the real Estate in the North Division of the City of Chicago deemed benefitted by the said improvement and that the Common Council do now elect by ballot three reputable & disinterested freeholders of the City of Chicago to make said Assessment.

The Orders were passed and the Council proceeded to the election of Commissioners thereunder, on first ballot J. A. Bragg, James Duffy and Charles Obamas received each ten Votes and were declared Elected.

Attest H. H. Zimmerman
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 Twelve thousand four hundred and sixty eight dollars, upon the real Estate by us deemed benefitted by filling up and plankning North Clark Street from the River to Ontario Street in proportion to the benefits resulting thereto as nearly as may be do solemnly swear that we will faithfully & impartially execute our duty according to the best of our abilities

Sworn to and subscribed
before me the 25th day of
Sept 1856

H. H. Zimmerman
City Clerk

J. A. Bragg

James Duffy

Chas. Horner

} Commissioners

Assessment Roll.

" A description of the real Estate in the North Division of the City of Chicago deemed benefitted by filling up & replanking North Clark Street from the Bridge to the North line of Ontario Street with the Valuation thereof and the sums of money several assessed thereon for benefits by the Commissioners to wit,

Original Town of Chicago

Name of Owner	Part of Land	S. 1/2	Lot	Block	Natural	Acres &c
R. J. Hamilton			4	2	48000	560 93
W. H. & W. Ewing			5	"	39000	573 97
J. V. F. Rye			1	3	44000	560 93
C. H. Whelick			8	"	33000	573 97

Holcotts Addition to Chicago

G. J. Foster			8	2	10000	333 35
S. C. P. Freer			9	"	10000	333 35
Conrad Gehro	N 20 ft		112	3	31100	66 75
W. Appel	30 ft S & adjg N 20 ft		"	"	5000	99 90
M. Schaub	30 ft S & adjg N 50 "		"	"	6000	66 80
Louis Warlick	S 20 ft		"	"	4000	66 75
Geo. L. Howe	S 20 ft		154	16	3400	99 90
D. C. Eddy	30 ft N & adjg S 20 ft		"	"	4900	166 70
W. Fuler	N 1/2		"	"	7900	175 32
Bradley B. Begole	S 1/2		110	"	7500	175 30
Morton & Walters	N 1/2		"	"	7700	102 111
Geo. O'Donahue	S 30 ft		154	16	5700	258 87
Peter Fyristie	N 70 ft		"	"	8300	81 38
J. D. Haake			1	2	4300	75 12
Geo. Hoffmann			2	"	3800	75 12
James Thompson			3	"	3300	75 12
John Clark			4	"	3800	75 12
Philip Conley			5	"	4000	75 12
W. Devine			6	"	4000	75 12
R. Richardson			7	"	4000	75 12

Name of Owner	Part of Land	S. 1/2	S. 1/2	Rock	Valuation	Acres.
John King			8	1/2	4100	75 12
do			9	"	11300	78 23
C. J. Hackett			1	"	3700	77 75
do			2	"	3600	74 64
A. J. Brown			3	"	3700	74 64
do			4	"	3700	74 64
Chas Chace			5	"	3700	74 64
Wilem Mehler			6	"	3700	74 64
J. Sullivan			7	"	3700	74 64
John Healey			8	"	3700	74 64
A. Japundike			9	"	5100	77 75
L. A. Gibbs	S 1/2	112	11		6200	169 23
A. C. Dodge	N 1/2	"	"		5700	169 23
M. S. Morgan & J. Moreley			16	"	7000	338 47
Eliza Bailey	S 1/2	112	14		6400	169 32
Wm Schaffer	S 1/2 of N 1/2	"	"		3200	84 66
Thos Heley	N 1/2	"	"		3000	84 66
Rich ^d Lapsun			16	"	7600	338 64
J. P. Robb			8	15	5600	338 64
Chs Meyer	S 16 feet		9	"	1600	34 08
J. Longman	16 ft N 1/2 of S 16 feet		"	"	1600	34 08
J. B. Bryan	13 ft N 1/2 of S 32 feet		"	"	1300	30 70
H. Myers	29 ft N 1/2 of S 47 feet		"	"	2900	98 02
Fred. Hepp	N 24 feet		"	"	2400	81 76
C. J. A. Mutton			8	15	10600	320 52

Name of Owner	Part of Lot of Land	S Lot	Lot Block	Valuation	Assessmt
D. Harper			9 18	3300	108 80
Fred. Hoffmann			10 4	3300	108 60
Geo. Bule			11 4	3600	108 60
George Hummelshorn			1 19	4600	86 40
Chas Krauer			2 4	3000	86 40
"	N 6 1/2 feet		3 "	8000	20 80
Joan Bauman	Ecc N 6 1/2 feet		" "	2100	65 60
J. J. Schaub			4 "	3000	86 40
"			5 "	3000	86 40
J. A. Hoffmann			6 "	2700	86 40
Conrad Weinheimer			7 "	2700	86 40
"			8 "	2400	86 40
City of Chicago	N. D. intersection of Streets				3446 20
				Total	\$12468.11

Commissioners 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 Twelve thousand four hundred & sixty eight 00/100 dollars upon the Real Estate in the North division of said City lay no claim benefit thereon in proportion as nearly as may be to the benefits resulting thereto by reason of filling up and replanking Clark Street from the River to the North line of Ontario Street 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 Voth recorded herein - that they published a Notice of the time and place of their meeting for the purpose of making said Assessment in the Chicago Daily Times the Inspiration News paper, for the period of six consecutive days previous to said meeting - a certificate of which publication is hereto 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 heretofore set forth and described, as the only real Estate benefited by said improvements, and that the benefits resulting thereto is the proportion of said sum set opposite 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 properties assessed.

All of which is respectfully submitted.

J. A. Bragg

James Puffy } Commissioners

Chas. Connor

Chicago, October 24th 1856.

" 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 Twelve
Thousand four hundred and sixty eight $\frac{11}{16}$ dollars (\$12468 $\frac{11}{16}$)
upon the Real Estate in the North Division by them deemed
benefitted by filling up and plankking North Clark Street from
the river to Ontario Street, will meet at Room No 3 in the
Court House on the 27th day of October 1856 at the hour of 10
o'clock A.M. for the purpose of making said assessment.

J. A. Bragg

James Luff

Charles Cameron

Commissioners.

Chicago, September 26th 1856.

" This certifies that the Appended Notice relating
to filling and plankking North Clark Street has been published
in the Chicago Daily Times the Corporation Newspaper of the
City of Chicago, County of Cook and State of Illinois six
days consecutively commencing with September 26: 1856.

Chicago, October 27th 1856.

Charles Cameron

Publisher."

"State of Illinois }
City of Chicago } ss

I do hereby Certify that the foregoing
Assessment Roll was returned to me and is in my office
by the Commissioners this 27th day of Oct: 1856.

H. W. Zimmerman, City Clerk

In Marble."

"City Clerk's Office

Chicago, October 29th 1856.

Assessment Notice

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 Twelve thousand four hundred and sixty eight ¹⁰⁰/₁₀₀ dollars upon the real estate in the North Division of said City deemed benefitted by filling the well in North Clark Street from the River to Ontario Street have completed his 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 10th day of November 1856 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.

H. H. Zimmerman, City Clerk."

"This Certifies that the aforesaid Notice has been published in the Daily Times, the Corporation Newspaper of the City of Chicago County of Cook and State of Illinois ten days consecutively commencing with October 29th 1856."

Chicago

Published."

Order of Confirmation

"In Common Council November 21st 1856.

"Whereas due notice has been given by the City Clerk of the

34

return of the foregoing Assessment Roll and no objections thereto having been filed it is therefore Ordered that the said Assessment as revised 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.

It is further Ordered that upon the return of such Warrant if any part of said assessment shall not be collected the Supervisor of Special Assessments shall apply to the County Court of Cook County for judgment against the lots or real Estate upon which such Assessment remains unpaid, for the amount of such assessment and Costs after publishing a Notice of such intended application in the Corporation Newspaper for five days

Passed

City Clerk."

34-

It was admitted by the Defendants through their Attorney that the City Collector made application for and obtained judgment upon the said Warrant No 106 at the January Special Term 1858 of the said Court, and that said judgment was set aside upon Motion of Defendants, and the said Judge did then and there give his opinion and decide that said objections be overruled

To which said opinion and decision of said Judge the said Defendants, by their Attorneys, did then and there

Except^o.

And because none of said Exceptions so offered and made to the opinion and decision of the said Judge do appear upon the record of the said Court, therefore on the prayer of the said defendants, by their Attorneys, the said Judge of the Cook County Court of Common Pleas hath to this bill of Exceptions set his Seal according to the Statute in such case this twelfth day of February A. D. 1859.

John M. Wilson (Seal)

State of Illinois
Cook County. *Ex*

I Walter Kimball Clerk of the Cook County Court of Common Pleas within and for the County and State aforesaid Do hereby certify the foregoing to be a true and correct Transcript of the Collectors Report, Warrant, Assessment Roll, Return, Notice of Sale, Objections, Appeal Bond and Bill of Exceptions, together with the Order of judgment entered of Record in said Court, in certain proceedings therein, wherein the City of Chicago is Plaintiff and Richard J. Hamilton 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 twenty sixth day of March A. D. 1859. Walter Kimball Clerk

State of Illinois
Cook County
Court of Common Pleas

235-116

The City of Chicago

Richard D. Hamilton
and others

Record.

Filed Apr. 20. 1889
L. Leland
Clk.

See page 34 of Record

Printed by Beach & Barnard, 14 Clark St., Chicago.

SUPREME COURT,

Third Grand Division,
April Term, 1859.

RICHARD J. HAMILTON, ET AL.,
VS.
THE CITY OF CHICAGO. } APPEAL FROM COOK CO.
COURT OF COMMON
PLEAS.

This was a proceeding to levy a Special Assessment.

2 The Collector reported to a Special Term of the Common Pleas, that the war-
rants for the collection of these assessments were issued, as required by law, and
were delivered to him on or before the second Tuesday of October, 1858.

3 That he forthwith published a notice in the corporation newspaper, that such
warrants were in his hands for collection, describing the nature of the warrants and
requesting all persons forthwith to make payment, and that, in default, the assess-
ment would be collected at the cost and expense of plaintiff in error. That said
notice was published for thirty days.

That he had given ten days notice of his intended application to the Court, for a
judgment against the said lots, for the amount, interest and costs due; in which he
himself set forth the nature of said warrants, and in which he requested all persons
interested therein to attend at said term.

SPECIAL WARRANT, NO. 106.

The Warrant contains the Assessment Roll, as follows:

"ASSESSMENT ROLL."

Description of a portion of the Real Estate, deemed benefited by filling up and
planking North Clark Street from the River to Ontario Street, with valuation

Note - See page 34 of abstract - which
shows that a former judgment had been
set aside - E. Anthony -

thereof, and the sums of money, severally assessed thereon for benefits, by the Commissioners. To wit :

" ORIGINAL TOWN OF CHICAGO.

NAMES OF OWNERS.	DESCRIPTION.	LOTS.	BLOCKS.	VALUATION	ASSESSMENTS
R. J. Hamilton,		4	2	48,000	560,93
W. G. and G. W. Ewing, . .		5	2	39,000	573,97
J. V. and F. Byrd,		1	3	44,000	560,93

8 "The Collector is commanded to levy, make and collect of the owners of the real estate, described in the warrant, the money assessed thereon, for which each may be liable, and make due return in what manner he shall execute the writ, within thirty days from the date thereof.

9 " The Collector makes return on the warrant, that he has made demand of the assessment on all the parties, opposite whose names, in its appropriate column, the word 'paid' is not written. 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 warrants unsatisfied as to all assessments not marked 'paid' on the face of the warrant."

" CORPORATION NOTICE.

CITY COLLECTOR'S OFFICE, CHICAGO, }
January 7, 1859.

"Public notice is hereby given that I shall apply to the Cook County Court of Common Pleas, on the first day of the Special Term thereof, to be holden at the Court House, in the City of Chicago, on the 27th day of January, A. D. 1859, for judgment against all blocks, lots, sub-lots, 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."

10 "Warrant No. 106, north, dated Nov. 24, 1856, for filling and planking North Clark street, from the river to Ontario street."

"This certifies that the appended notice has been published in the Chicago Daily Democrat, a newspaper printed and published in the city of Chicago, county of Cook, and state of Illinois, twenty-one days consecutively, commencing with the ninth day of January, 1859, and that I have received - - - - - dollars for publishing the same.

JOHN WENTWORTH, *Publisher.*
By REED."

11 Defendants object to judgment being pronounced against said land mentioned in Warrant No. 106, and assign the following reasons :

1st. Because said warrant was never delivered to the City Collector, who makes this application.

2d. Because said warrant was issued prior to the passage of the Act of February 14, 1857, amending the Charter of the City of Chicago.

3d. Because the assessment upon which said warrant was issued was confirmed by the Common Council, of said City prior to the passage of said Act of February 14, 1857, from which this Court derives its jurisdiction.

4th. This Court has no jurisdiction or power to pronounce judgment in this cause, because the said special assessment upon and for which this warrant was issued, was duly confirmed by the Common Council of the said City of Chicago, more than two years previous to this application being made, to-wit :

On the 24th day of November, A. D. 1856.

5th. Because more than two years have elapsed since the corrected assessment roll, upon which this warrant issued, was confirmed by the said Common Council.

12 6th. Because an application was made by the proper City authority at the County Court of Cook County (which Court then had jurisdiction in such cases) for judgment against the lots and real estate, mentioned in said warrant, for the amount of said assessment upon the same at the — term of said Court, for the year A. D. 1857, and that the said Court refused said application, and that the judgment of said Court refusing said application was a final decision as to right of the City authorities to have judgment in favor of the City upon said warrant.

7th. Because one of the parties appointed by the Common Council to make the said assessment, to-wit: F. A. Bragg, was not at the time of the appointment a freeholder as required by law.

8th. Because the said assessment was not levied according to law.

9th. Because the several orders and proceedings of the Common Council, for said improvement and in assessing and collecting the monies for the same, are illegal, improper and void.

10th. Because no sufficient notice of the application for judgment has been given.

11th. Because the pre-requisites for the resolutions of judgment, by this Court, have not been complied with.

12th. Because so much of said Act of February 14th, 1857, giving damages of ten per cent. as additional costs upon the application, is illegal, unconstitutional and void."

13

FURTHER OBJECTIONS OF DEFENDANTS.

1st. Because there is no such warrants in the hands of the City Collector, for collection, and that there was none at the time of his making his report to said Court.

2d. The alleged warrant in this case, upon which the City Collector has made his report, is not signed by the Mayor and Clerk, of the City of Chicago, nor is the corporate seal of the city attached thereunto, as required by law.

3d. That the report of the City Collector is untrue, in so far as it alleges that he has in his hands for collection, any such warrant as is mentioned, in the said report, as warrant No. 106.

14

4th. Because said alleged warrant was never delivered to the City Collector.

5th. Because said alleged warrant was issued prior to the Act of February 14, 1857, and the assessment upon which said alleged warrant is claimed to have been issued, was confirmed by the Common Council, prior to the passage of said Act, from which this Court obtains its jurisdiction.

6th. The Court has no jurisdiction, because said special assessment, upon which this alleged warrant was issued, was confirmed by the Common Council of the City of Chicago, more than two years previous to this application being made, and to the filing of the collector's report.

7th. Because more than two years have elapsed since the corrected assessment roll, upon which this alleged warrant issued was confirmed, by the Common Council of said City.

8th. Because said assessment was not levied according to law.

9th. Because the several orders and proceedings of the Common Council for said improvements, and in assessing and collecting the monies for same, are illegal and void.

10th. Because the pre-requisites for the rendition of judgment, by this Court, have not been complied with.

11th. Because so much of the Act of February 14, A. D. 1857, as gives dama-

ges of ten per cent. as additional costs upon the application, is illegal, unconstitutional and void.

Judgment Book for Special Assessments, Chicago, Ill.

NAMES OF OWNERS.	DESCRIPTION.	LOTS.	BLOCKS.	VALUATION	ASSESSMENTS
R. J. Hamilton,		4	2	48,000	560,93
W. G. and G. W. Ewing, . .		5	2	39,000	573,97
J. V. and F. Byrd,		1	3	44,000	560,93

- 16 On the 3d of February, the Court rendered a judgment against said lands described in aforesaid warrant, for the sum annexed to each lot, piece or parcel of land, and for costs of suit severally thereon; and the further sum of ten per cent. upon the amount of assessments, respectively due and unpaid, upon each of the lots therein, and made an order for sale of said lots, for the payment of the amount of said judgment.

And thereupon Richard J. Hamilton, owner of Lot 4, Block 2, and G. W. Ewing, owner of Lot 5, Block 2, Esther Ewing owner of 60 feet of said lot 5, in block 2, and G. W. Turner and Jane F. Byrd owners of lot 1, in block 3, of Original Town of Chicago, severally enter their exceptions herein, and pray an appeal to the Supreme Court for the lots belonging to them severally, which is allowed on filing their bond in \$2000, with security, to be approved by the Court, in ten days, with Bill of Exceptions.

- 17 On the 12th of February, 1859, the said parties filed their appeal bond, in the penal sum of \$2000, in accordance with the requirements of the Court, on the - - - day of March, 1859, defendants filed their bill of exceptions, as follows, to-wit:

Afterwards, to-wit, at the day and place within contained, comes the said City, by E. Anthony, her attorney, and defendants, by their attorneys, and plaintiff's attorney moved that judgment be entered against the said lots and pieces of land, in said warrant number 106, described, in favor of said City of Chicago.

- 20 Thereupon, defendants, by their attorneys, object and insist that plaintiff should produce, and offer in evidence, the original warrant described in the said City Collector's report as number 106, before he could demand judgment against said land. Plaintiff insisted that it was unnecessary, and the Judge decided that it was unnecessary, and that plaintiff could demand payment without the production of the same.

ges of ten per cent. as additional costs upon the application, is illegal, unconstitutional and void.

Judgment Book for Special Assessments, Chicago, Ill.

NAMES OF OWNERS.	DESCRIPTION.	LOTS.	BLOCKS.	VALUATION	ASSESSMENTS
R. J. Hamilton,		4	2	48,000	560,93
W. G. and G. W. Ewing, . .		5	2	39,000	573,97
J. V. and F. Byrd,		1	3	44,000	560,93

- 16 On the 3d of February, the Court rendered a judgment against said lands described in aforesaid warrant, for the sum annexed to each lot, piece or parcel of land, and for costs of suit severally thereon; and the further sum of ten per cent. upon the amount of assessments, respectively due and unpaid, upon each of the lots therein, and made an order for sale of said lots, for the payment of the amount of said judgment.

And thereupon Richard J. Hamilton, owner of Lot 4, Block 2, and G. W. Ewing, owner of Lot 5, Block 2, Esther Ewing owner of 60 feet of said lot 5, in block 2, and G. W. Turner and Jane F. Byrd owners of lot 1, in block 3, of Original Town of Chicago, severally enter their exceptions herein, and pray an appeal to the Supreme Court for the lots belonging to them severally, which is allowed on filing their bond in \$2000, with security, to be approved by the Court, in ten days, with Bill of Exceptions.

- 17 On the 12th of February, 1859, the said parties filed their appeal bond, in the penal sum of \$2000, in accordance with the requirements of the Court, on the - - - day of March, 1859, defendants filed their bill of exceptions, as follows, to-wit:

Afterwards, to-wit, at the day and place within contained, comes the said City, by E. Anthony, her attorney, and defendants, by their attorneys, and plaintiff's attorney moved that judgment be entered against the said lots and pieces of land, in said warrant number 106, described, in favor of said City of Chicago.

- 20 Thereupon, defendants, by their attorneys, object and insist that plaintiff should produce, and offer in evidence, the original warrant described in the said City Collector's report as number 106, before he could demand judgment against said land. Plaintiff insisted that it was unnecessary, and the Judge decided that it was unnecessary, and that plaintiff could demand payment without the production of the same.

To which decision defendants did then and there except.

And thereupon, defendants, in support of their objections aforesaid, by them filed, offered as a witness Gray, who being sworn, deposes and says :

“ Was then a Deputy City Collector, and had been, as such deputy, in the said Collector's office, ever since the said Collector had been in office. That the warrant produced, by the witness, was the only warrant in the possession of the City Collector, relating to the assessments described in warrant number 106, of the City Collector's report, and that it was the original of the warrant, described in said report as warrant number 106, and that said original was received, by the present City Collector, with a number of warrants, from the Special Collectors of said City, who were in office previous to the said City Collector.”

21 Defendants then offered in evidence, the said original warrant and return thereto. Said warrant and return, as set out above. (Page 4 and following.)

25. Defendants further offered in evidence the orders and proceedings of said Common Council in reference to said assessment, and the assessment roll, returned by said Commissioners, as follows :

IN COMMON COUNCIL,

SEPTEMBER THE 26TH, 1856.

“ ORDERED, That the old plank, in North Clark Street, from the dock line to the North line of Ontario Street, be taken up, and said part of said North Clark Street be filled up to the established grade. That the same be planked twenty four feet, in the center, and curbed with new plank, and the sides be planked with selected old plank; that both sides of said part of said street, be substantially curbed with new plank. All to be done in accordance with Superintendent's estimate, herewith submitted. Said work to be commenced within seventy days from date.

“ ORDERED, That the sum of \$12,468 11, be assessed upon the real estate, in the North Division of the City of Chicago, deemed benefited 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 passed, and the Council proceeded to the election of Commissioners thereunder. On the first ballot, F. A. Bragg, James Duffy and Charles O'Conner, received each ten votes, and were declared elected.

ATTEST,

H. W. ZIMMERMAN, *City Clerk.*”

27 On the 25th September, 1856, Commissioners were sworn.

"ASSESSMENT ROLL."

Same as set out above, pages 5 and following.

30, 31.

COMMISSIONERS' RETURN.

That they were duly qualified; that they published a notice of the time and place of meeting, for the purpose of making said assessment, in "Chicago Daily Times," the Corporation Newspaper, for six consecutive days previous to such meeting, a certificate of which is hereunto attached; that they were present at the time and place designated, and did then and there make said assessment upon the real estate hereinbefore described:

That the assessment does not exceed three per centum on the property assessed.

"COMMISSIONERS' NOTICE.

32 "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 \$12,468 11 upon the real estate in the North Division by them deemed benefited by filling up and replanking North Clark street from the river to Ontario street, will meet at room number 3, in the court house, on the 7th day of October, 1856, at the hour of 10 o'clock A. M. for the purpose of making said assessment."

Certificate of publishers, that notice was published in "Chicago Daily Times," six days consecutively, commencing with September 26th, 1856.

33

"ASSESSMENT NOTICE.

CITY CLERK'S OFFICE, CHICAGO, }
October 27, 1856.

"Public notice is hereby given to all persons interested, that the Commissioners appointed as aforesaid, and for purpose aforesaid, have completed their assessment and made returns thereof.

"Any persons wishing to appeal from said assessment must file their objections, in writing, in my office, on or before the 10th day of November, 1856, at 7 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 amend the same."

“IN COMMON COUNCIL,

NOVEMBER 24, 1856.

34 “ WHEREAS, due notice has been given by the City Clerk of the return of the foregoing Assessment Roll, and no objections thereto having been filed — It is therefore ordered that the said Assessment, as revised 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.

“ It is further ordered that upon the return of the said Warrant, if any part of said Assessment shall not be collected, the Superintendent of Special Assessments shall apply to the County Court of Cook County for judgment upon the real estate upon which said Assessment remains unpaid, for the amount of such Assessment and costs, after publishing a notice of such intended application in the corporation newspaper for five days.”

It was admitted by defendants that the City Collector made application for and obtained judgment upon said Warrant No. 106, at the January Special Term, 1858, of said Court; that said judgment was set aside, on motion of defendants, and the said Judge did then and there give his opinion and decide that said objections be overruled.

To which decision defendants did then and there except.

235-116

Hamilton

vs

The City of Chicago

Abstract

See page 34 of

Record

E. A.

Filed April 26, 1857

L. Leland

Clerk

Repaired