No. 12992

Supreme Court of Illinois

City of Chicago

---

vs.

Walker

71641 

STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division.

No. 214.

1880

214-246-247
113-114-115

SUPREME COURT OF ILLINOIS, THIRD GRAND DIVISION.

APRIL TERM, 1860.

214.	MARTIN O. WALKER *ads.* THE CITY OF CHICAGO.	*Error to Superior Court of Chicago.*
247.	ROSENFELD & ROSENGERG *ads.* THE SAME.	*Same.*
246.	L. D. HURD *ads.* THE SAME.	*Same.*

DEFENDANTS' POINTS.

WALTER B. SCATES,

Of Counsel for Defendants.

Filed May 14, 1860
L. Leland
Clerk

SUPREME COURT OF ILLINOIS, THIRD GRAND DIVISION.

APRIL TERM, 1860.

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214. MARTIN O. WALKER *ads.* THE CITY OF CHICAGO. } *Error to Superior Court of Chicago.*

247. ROSENFELD & ROSENGERG *ads.* THE SAME. } *Same.*

246. L. D. HURD *ads.* THE SAME. } *Same.*

For the Defendants I submit the following points:

I.

The first point is fully set forth in the 6th point of the defendant's brief, in No. 273, *The City of Chicago* v. *P. T. Burtice et al.*, for want of jurisdiction in the Superior Court to hold a special term during the regular term of said Court.

No. 214.

I. The only point in this case is, as to the right to show by parol evidence, what the Commissioners meant by the figures in the tabular statements in the assessment roll.

The counsel for the City has strenuously contended, both at the former term of this Court and at this term, that the acts of the Commissioners are judicial, and conclusive upon property holders as to the facts, and actings of the Commissioners.

Yet in this case he very inconsistently claims that he may alter that judicial record by parol evidence. Whether these acts be judicial or ministerial, yet there can be no just pretence that parol evidence can be received to alter or explain them.

There is no question as to the defendant's right to show the unauthorized alteration.

Nos. 246, 247.

II.

The Charter makes the assessment a *lien* upon the real estate from the date of the confirmation, for two years, and also upon the personal property, and no sale shall defeat this lien.

Mun. Code, p. 43, Sec. 4.

These liens, when enforced by judgment and sales, convey paramount title against the owner and all claiming under him, whether by incumbrance before or after the assessment. For this is a burthen to which the fee is subjected, and under it title in fee will pass.

Such being the effect of making and enforcing an assessment, it becomes a matter of great importance, not only to the owner, but also to the incumbrancer, to see that an assessment can be made for the effect intended, that it has been legally made, and that a lien exists, with a right to enforce it.

For, otherwise the security of the mortgagee, or *cestui que trust*,

The counsel for the City has strenuously contended, both at the former term of this Court and at this term, that the acts of the Commissioners are judicial, and conclusive upon property holders as to the facts, and actings of the Commissioners.

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For, otherwise the security of the mortgagee, or *cestui que trust*,

may be destroyed to him wholly without fault or negligence on his part.

The incumbrancer falls within the letter and spirit of the charter allowing defences to be made.

Amendment, p. 15, Sec. 43.

"It shall be the duty of the Court, upon calling the docket of said term, if any defence be offered by any of the owners of said property, *or any person having a claim or interest therein*, to hear and determine the same in a summary way without pleadings."

Although the American authorities treat the mortgagor as the owner, for the purpose of paying his debts; yet, in law, the mortgagee not only holds the legal estate in fee, but has also the legal and equitable right to satisfaction of his debt. And, therefore, he has a "*claim or interest therein*," and is entitled to defend that claim and interest, as well against the acts and frauds of the mortgagor to his prejudice, as against the acts of the State and municipal governments.

The extent of that defence is held to be general in

Pease vs. *The City of Chicago*, 21 Ill. R. 500.

III.

Having established the right of making defensive objections in the mortgagee, we have only a word and one authority as to the defence itself.

There was no contract on the part of the City for this work; nor was the City in any way liable.

Peck vs. *The City of Chicago*, 22 Ill. R. 578.

No. 246.

IV.

The defendant in this case, by his agent, has shown that he was lulled into security, and prevented from making a defence by the false assurances of the owner, the morgagor, who had promised to make such a defence, and which his agent believed he was making until this default was taken.

I feel assured that the grounds set out in the affidavit are so full and satisfactory, for setting aside this default, that I shall not enlarge upon it; but leave the Court to the mere inspection of the affidavit.

WALTER B. SCATES,
Of Counsel for Defendants in Error.

Printed by Beach & Barnard, 14 South Clark Street.

IN THE SUPREME COURT,

Third Grand Division,

APRIL TERM, A. D. 1860.

THE CITY OF CHICAGO,
Plaintiff in Error.

VS.

MARTIN O. WALKER,
Defendant in Error.

I.

Pages 1 & 2

PLACITA.

Superior Court of Chicago. Special Term of said Court began and held on the 26th day of January, 1860.

3 & 4 *Collector's Report — certified copy of.*

5 & 6 Collector's notice of application for judgment and printer's certificate of publication.

6 Collector's warrant.

7 & 8 Assessment roll.

This was a special proceeding in the part of the City of Chicago to collect an assessment for piling River Shore & portion of South water Street in accordance with an order passed Jan 11. 1859.

9 Collector's return.

10 & 11 Record of the judgment on warrant, No. 263, S. Judgment in favor of defendant.

12 BILL OF EXCEPTIONS.

Shows that the case was called for trial, and the defendant filed the following objections to the rendition of a judgment against the lot of the defendant.

13 OBJECTIONS FILED BY DEFENDANT.

1. Defendant filled said street opposite his own premises. The contractor, DeGolyer, agreed to allow defendant two hudnred and fifty dollars for said filling, but afterwards refused to do so.

2. The contractor did not perform the work that was estimated and let. A large proportion of the work was abated and taken out of the job.

3. The paving was not extended to Water street, according to contract. The curbing opposite lot seven, in block three, was done with wood instead of stone, according to contract. The contractor, De Golyer, took and sold a large quantity of earth from street for his own benefit—for each of these reasons an abatement of the assessment is asked.

14 **4.** There has been no valid assessment.

5. There has been the sum of $97.00 included in said assessment for expense of superintending and engineering. The city superintendent and engineer are paid salaries; charge for their services should not be included in assessment.

6. Court has no power to call special term.

7. Commissioners were not free holders.

Defendant, in order to sustain said objections, offered in evidence the assessment roll, which sets out the proceedings of the Common Council for paving River street and a part of South Water street, and a copy of the plans and specifications for paving the same, to which is attached the oath of commissioners and a description of the real estate in the South Division of the City of Chicago, deemed benefitted by paving River street and a portion of South Water street, with the valuation thereof and the amount of assessment. The following is the description of defendant's property with valuation and amount of assessment:

FORT DEARBORN ADDITION TO CHICAGO.

NAME OF OWNER.	PART OF LOT OF LAND.	S. LOT.	LOT.	BLOCK.	VALUATION DOLLARS.	ASSESSMENT. DOLLS.	CTS.
M. O. Walker.			8	3	20,000	484	49

19 Commissioner's return.

20 Commissioner's notice.

21 Notice of assessment.

22 Order confirming assessment roll.

22 & 23 The defendants, in order to further sustain their said objections, called as a witness,

HERMANN KREISMANN, who testified as follows:

Am City Clerk. Have had the care and custody of assessment rolls.

Defendant then asked witness if this assessment roll had been altered. (Question objected to by plaintiff, objection overruled and exception taken.) The witness then stated that over the column of the assessment roll, marked valuation, the words dollars and cents had been placed by some one; that when the assessment roll was confirmed by the Common Council said words were not there, but had been added within the last six days or less.

On the cross-examination, by the plaintiff, the plaintiff offered to prove by said witness, that the figures in said column, over which the words dollars and cents had been written stood for and meant dollars and cents, and the form was an old form which had been long in use, and the figures meant that the property was valued at so many dollars and cents. Which was objected to by the defendant and objection sustained, and plaintiff excepted.

The plaintiff offered to prove by the commissioners, who levied the assessment, that the column marked valuation, meant that the property was valued at so many dollars and cents. Which was objected to by defendant and objection sustained by the Court, and plaintiff excepted.

23 Judgment in favor of defendant, to which plaintiff excepted.

24 Clerk's certificate that the foregoing is a true transcript of the proceedings, with seal of the Court.

THE PLAINTIFF ASSIGNS THE FOLLOWING ERRORS:

1. The Court erred in permitting the defendant to show that the original assessment roll had been altered, and the words "dollars" and "dolls. and cts." appearing at the top of certain columns of the assessment roll, had been added since the assessment had been confirmed.

2. The Court erred in refusing to permit the plaintiff to show what the columns marked valuation, over which the words "Dollars" and "Dolls and Cts" appearing at the top of said columns of the assessment roll, which was offered in evidence by the defendant, meant, as proposed by plaintiff.

3. The Court erred in refusing to permit the plaintiff to explain the meaning of the columns of figures in the assessment roll, which the defendant introduced in evidence and which the witness, Kreismann, testified had been altered.

Brown vs. City of Joliet, 22 Ills. 123.
Einstein vs. City of Joliet, 22 Ills. 126.

4. The Court erred in rendering a judgment for the defendant, whereas the judgment should have been for the plaintiff, and against the lot of the said Walker for the amount of said assessment and costs.

E. ANTHONY,

Attorney for Plaintiff in Error.

214

City of Chicago

vs

Walker

Abstract

1292

Filed Apr 21, 1860

L. Leonard

Clerk

Printed by Beach & Barnard, 14 South Clark Street.

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Third Grand Division,

APRIL TERM, A. D. 1860.

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2. The contractor did not perform the work that was estimated and let. A large proportion of the work was abated and taken out of the job.

3. The paving was not extended to Water street, according to contract. The curbing opposite lot seven, in block three, was done with wood instead of stone, according to contract. The contractor, De Golyer, took and sold a large quantity of earth from street for his own benefit—for each of these reasons an abatement of the assessment is asked.

14 **4.** There has been no valid assessment.

5. There has been the sum of $97.00 included in said assessment for expense of superintending and engineering. The city superintendent and engineer are paid salaries; charge for their services should not be included in assessment.

6. Court has no power to call special term.

7. Commissioners were not free holders.

Defendant, in order to sustain said objections, offered in evidence the assessment roll, which sets out the proceedings of the Common Council for paving River street and a part of South Water street, and a copy of the plans and specifications for paving the same, to which is attached the oath of commissioners and a description of the real estate in the South Division of the City of Chicago, deemed benefitted by paving River street and a portion of South Water street, with the valuation thereof and the amount of assessment. The following is the description of defendant's property with valuation and amount of assessment:

FORT DEARBORN ADDITION TO CHICAGO.

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E. ANTHONY,

Attorney for Plaintiff in Error.

214

City of Chicago

vs

Walker

Abstract

Filed Apr 21, 1860

L Leland

Clerk

1992

Printed by Beach & Barnard, 14 South Clark Street.

SUPREME COURT OF ILLINOIS.

Third Grand Division,

APRIL TERM, A. D. 1860.

CITY OF CHICAGO,

vs.

MATIN O. WALKER.

POINTS FOR PLAINTIFF IN ERROR.

The plaintiff insists, in this case, that it had a right to explain the meaning of the columns of figures in the assessment roll, after it had been introduced in evidence by the plaintiff—and to show that the figures, which were placed in the column opposite each lot, stood for and meant that each lot was valued at so many dollars and cents.

In the case of *Gibson vs. The City of Chicago*, 22 Ill. 572, the Court say, that we "are disposed to embrace anything which can, by any reasonable intendment, inform us of the meaning of the figures set down in the assessment;" that "there is no proof in this case showing what was the valuation placed upon any lot in this assessment," and "that it does not see any way to avoid a new assessment to compel the owners of the property benefited by this improvement, who have not paid their proportion of the expense, to do so, unless this defect can be cured by *further* proof." Now, the only proof that could be made in the case was, by call-

ing witnesses, and as the Court do not specify what kind of proof — I think it could be shown by parol evidence — and it is certainly, both fair and just that it should be so.

The Court will observe, in this case, that the *amount* which was *assessed* upon the property, was correctly set forth in *dollars and cents*, so that no doubt could arise in that respect—and *that* the difficulty which existed in the cases of *Brown vs. City of Joliet*, 22 Ill. 125 and *Einstein vs. City of Joliet*, 126, was entirely removed in this case.

Upon the authority of *Brown vs. City of Joliet*, 22 Ill. 125 and *Einstein, vs. same*, p. 126, the omission of the dollar marks, could, at most, be regarded only as a clerical error, and could be explained like that of process—and the offer having been made on the part of the plaintiff to explain the matter by the *very commissioners* who levied the assessment, and who had, probably, added the dollar marks over the column of figures themselves. The Court most clearly erred in excluding the testimony, and the judgment should be reversed

21 Rick 64

E. ANTHONY,

Attorney for Plaintiff in Error.

214-113

City of Chicago

35

v

Wheeler

Bluff. Points

Filed Apr 28. 1846

L Leland

Clerk

Printed by Beach & Barnard, 14 South Clark Street.

IN THE SUPREME COURT,

Third Grand Division,

APRIL TERM, A. D. 1860.

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E. ANTHONY,

Attorney for Plaintiff in Error.

214 — 113

City of Chicago vs Walker

Abstract

Filed Apr 21, 1869

L Leland

Clerk

(1)

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

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

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

Be it remembered that on this twenty fourth day of January A.D. Eighteen hundred and sixty Adolph F. G. Mueller City Collector of the City of Chicago reported and filed with the Clerk of this Court a list of Lands, Lots, and Parcels of Land and other Real Estate situated in the City of Chicago aforesaid on which taxes remained due and unpaid for the year therein set forth, and attached to said Report was a Certificate of the Press & Tribune Company signed by G. D. Wilcox of the due publication of Notice as required by Law of the making and delivering of the Warrant for the Collection of said taxes to the said A. F. G. Mueller City Collector as aforesaid And also attached to said Report was a Certificate signed as aforesaid of the publication in the Daily Edition of the Chicago Press and Tribune of the Notice of the intended application for a Judgment against said Lands and other Real Estate at this term of Court, as required by the Law of this State, approved February fourteenth A.D. Eighteen hundred and fifty seven (a Copy of which said Report, Notice, Certificate and Collectors Warrant is hereinafter set forth.

Ordered by the Court that all objections to Judgment on the General Warrant for Taxes and on Special Warrants for Assessments be made in writing and filed with the Clerk of this Court by Saturday morning next at Ten o'Clock.

(3)

(Cont'd)

Collectors Report hereinafter referred to.

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

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

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

That forthwith after the delivery of said Warrants to him, he published a Notice in the Corporation Newspaper of said City that such Warrants were in his hands for Collection, a briefly describing the Nature of each of said Warrants & requesting all persons forthwith to make payment thereof at his Office, and that in default of such payment the said taxes and assessments would be collected at the cost and expense of the persons liable for the payment of such taxes and assessments, which said Notices were severally published for Thirty days in said Corporation Newspaper

That he has given ten days Notice of his intended application to this Court for Judgment against the Lands, Lots 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. 1860, briefly specifying the Nature of the said Warrants upon which said application was to be made and requesting all persons interested therein to attend at such time, 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 & uncollected

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

(Signed) A. F. & Mueller
City Collector."

"State of Illinois }
Cook County. } ss

A. Adolph F. & Mueller City Collector in and for the City of Chicago do solemnly swear that the annexed Report by me made is to the best of my Knowledge and belief, true. and the annexed Schedule is a true and Correct list of the delinquent Lots, Lands and parcels of Land, upon which I have been unable to collect the taxes and assessments as required by law for the year 1859 as herein set forth.

5

that paid taxes and assessments remain due and unpaid and uncollected as above stated.

Subscribed and sworn to before me this Twenty sixth day of January 1860 . . .

M. F. C. Mueller.

Walter Kimball Clerk
Superior Court of Chicago."

(Copy Notice and Certificate)

"City of Chicago.
City Collectors Office, Dated Feb. 15th 1859.
January 6th 1860.

"Notice is hereby given that on Thursday the Twenty sixth day of January A. D. 1860 at a Special term of the Superior Court of Chicago to be begun and holden at the Court House in said City of Chicago on the last aforesaid day I shall report to said Superior Court of Chicago all the lots, lands and parcels of land on which the taxes and assessments charged in the Collection Warrants hereinafter more particularly described have not been collected or paid, for judgments against said Lands, lots and parcels of Land, for the amount of Taxes, assessments, interest and costs respectively due thereon to wit:

The Warrants for the collection of Taxes for general and special purposes assessed for the Municipal year 1859; said Warrants being dated the 15th day of September 1859.

"Warrant 29 South dated March 1st 1859
For paving River Street and South Water Street, in accordance with an order passed January 11th 1859"

All persons interested Herein are requested to attend at said term of said Court.

A. H. C. Mueller. Collector."

"We the undersigned Publishers of the Chicago Press & Tribune Do hereby Certify that a Notice of which the annexed is a true Copy was published Ten consecutive days next after the 4th day of January 1859 1860 in the Daily Edition of the Chicago Press and Tribune a Newspaper published in and of general Circulation throughout the County of Cook. State of Illinois.

Chicago, Illinois, Jany 25. 1860

Press and Tribune Co.

By G. D. Hilliston."

(Copy Collectors Warrant)

"Special Warrant No 293 S.

"State of Illinois } ss
City of Chicago }

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 14th day of February 1859 confirm the Assessment duly made and filed in the Clerks Office, by the Commissioners appointed by the said Common Council to assess the sum of Twenty four hundred dollars, upon the Real Estate in the South Division of said City deemed benefited by Paving Rush Street and South Water Street in accordance with an order passed January 11th 1859 in proportion to the benefits resulting thereto in pursuance of an order for said

Assessment made by the said Common Council on the Eleventh day of February 1859 after duly revising the same, and did thereby assess the said sums of money upon the Real Estate described in the Rolls of said Assessment - in the respective proportions thereof - marked "Assessment" set opposite to each lot, part of lot, and Real Estate described in said Rolls; which rolls is in the words and figures following, to wit:-

Assessment Roll

A description of the Real Estate in the South Division of the City of Chicago deemed benefitted by having River Street and a portion of South Water Street in accordance with an order passed in Common Council January 11th 1859, with the valuation thereof and the sums of money severally assessed thereon for benefits by the Commissioners, to wit:-

Fort Dearborn Addition to Chicago

Name of Owner	Description (Block)	Lot	Block	Valuation	Assessed		
Norton & Walker		1	3	21000	43	42	Paid 12 Aug
& M. Reed		4	3	9000	15	30	
Hayes & Hanes		5	"	6500	36	00	Paid 31 Aug
do		6	"	4500	40	00	Paid 31 Aug
do		7	"	17000	478	63	Paid 31 Aug
M. C. Walker		8	"	20000	1811	19	
Mary Kennedy	S/s	32	4	5400	185	96	
George Smith		33	"	18000	832	46	Pd 2 Aug
Mrs Powers		34	"	13600	30	00	Paid
Hasbrouck		35	"	24000	23	00	
do		36	"	24000	15	00	
John Ryan		37	"	14000	10	00	

Names of Owners	Description (8 Cor	Lot	Block	Valuation	Assessment		
Mr. Burns		28	4	14800	7	00	
Lake & Brown		29	"	26000	8	00	
C. R. Phillips	W 14 ft	30	"	18000	1	58	
M. Laflin		1	4	40000	70	00	Paid 11 Apl
"		2	"	30000	30	00	Paid 11 Apl
"		3	"	30000	23	00	Paid 11 Apl
"		4	"	30000	15	00	Paid 11 Apl
"		5	"	30000	10	00	Paid 11 Apl
A. M. Arnold		6	"	30000	7	00	
A. & J. Fuller & Co		7	"	30000	5	00	Paid 25 Apl
C. & W. Price	W 14 ft	8	"	20000	1	58	
Esq: James Carney	E ½	8	8	8000	1	58	
"		9	"	20000	5	00	
"		10	"	20000	7	00	
Mc. Doyle		11	"	18000	10	00	
Thos. Robinson		12	"	18000	15	00	Paid 27 May
A. Johnson		13	"	22000	23	00	Paid
Geo. C Walker		14	"	22400	30	00	Paid 12.
"		15	"	25600	34	80	Paid Apl 12
				Total	$344	00	

Now Therefore you are hereby commanded to levy make and collect of the Goods and Chattels of the respective owners of the real Estate above described the several sums of money assessed thereon, for which each may be liable as aforesaid and hereof make due return in what Manner you shall receive this Writ within Thirty days

Names of Owners	Description (8 Cor	Lot	Block	Valuation	Assessment		
Mr. Burns		28	4	14800	7	00	
Lake & Brown		29	"	26000	8	00	
C. R. Phillips	W 14 ft	30	"	18000	1	58	
M. Laflin		1	4	40000	70	00	Paid 11 Apl
"		2	"	30000	30	00	Paid 11 Apl
"		3	"	30000	23	00	Paid 11 Apl
"		4	"	30000	15	00	Paid 11 Apl
"		5	"	30000	10	00	Paid 11 Apl
A. M. Arnold		6	"	30000	7	00	
A. & J. Fuller & Co		7	"	30000	5	00	Paid 25 Apl
C. & W. Price	W 14 ft	8	"	20000	1	58	
Esq: James Carney	E ½	8	8	8000	1	58	
"		9	"	20000	5	00	
"		10	"	20000	7	00	
Mc. Doyle		11	"	18000	10	00	
Thos. Robinson		12	"	18000	15	00	Paid 27 May
A. Johnson		13	"	22000	23	00	Paid
Geo. C Walker		14	"	22400	30	00	Paid 12.
"		15	"	25600	34	80	Paid Apl 12
				Total	$344	00	

Now Therefore you are hereby commanded to levy make and collect of the Goods and Chattels of the respective owners of the real Estate above described the several sums of money assessed thereon, for which each may be liable as aforesaid and hereof make due return in what Manner you shall receive this Writ within Thirty days

from the date hereof

Witness Arthur G. Hawes, Mayor of the City of Chicago and the Corporate Seal thereof this 17th day of March 1859.

Corporate Seal

Arthur G. Hawes. Mayor

Attest-N. Kreismann City Clerk

Samuel D. Hara - Comptroller."

Collectors Return.

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

The undersigned Collector of the City of Chicago makes return to the Common Council of the within and foregoing Warrant, that he has collected the Assessments on 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 owners other Assessments not Marked "Paid" in every case of the persons mentioned in said Warrant as liable to the payments thereof, and that he has not been able to find any personal property belonging to any of them subject to the payment thereof.

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

City Collector."

And afterwards to wit on the second day of February (being one of the days of the said January Special term of said Court) A. D. Eighteen hundred and Sixty, the following proceedings were had in said cause and entered of Record in said Court, to wit:-

"City of Chicago } Suit for Assessment on Warrant No 2935.
vs } March 1st 1859. For laying River Street and
Wm. Rees et al } South Water St in accordance with an order
passed January 11th 1859.

For Dearborn Addition to Chicago.

Names	Description	Sub Lot	Lot	Blk	Valuation Dollars	Amt of Assess't Dolls	Cts	Int Cost Dolls	Cts	Costs Cts	Total amt due Dolls	Cts
M. O. Walker			8	3	20000	1884	49	48	44			

And now on this 2d day of February A. D. 1860 comes the said City of Chicago by George F. Crocker City Attorney and due Notice having been given of the time and place of making the intended application for Judgment against the Lots pieces and parcels of Real Estate in said Warrant set forth and objections to rendition of Judgment being filed by Martin O. Walker Owner of Lot 8 Block 3 in Fort Dearborn Addition to Chicago set forth in said objections and on this Warrant and Counsel being heard on said objections and due deliberation being thereupon had it appears to the Court that said objections to taking of Judgment as against said Lot pieces and parcels of Land are sufficient and valid, the objections are therefore sustained as to said Lot in said objections set forth & Judgment thereon refused at costs of said City - And no owner now appearing to make defence or show cause why Judgment should

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not be entered against the remaining Lots, pieces and parcels of Land in said Warrant - And on Motion of said Attorney.

It is therefore considered by the Court that Judgment be and hereby is entered against said remaining Lots, pieces and parcels of Land described in the aforesaid Warrant - to (excepting the Lot piece and parcel of Land to which objections are filed and sustained and Judgment thereon refused and to hereinbefore described) in favor of said City of Chicago for the sums annexed to each lot - piece and parcel of Land being the amount of Assessment and also the Costs of Suit severally thereon and that 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 remaining Lots, pieces and parcels of land therein set forth, as and for the additional Costs.

And it is further Ordered by the Court said to Sheriff remaining Lots, pieces and parcels of Land or so much thereof as shall be deemed sufficient of each of them to satisfy the amount of assessment and Costs annexed to them severally be sold as the law directs.

And afterwards to wit on the day of
A. D. Eighteen hundred and Sixty came the said Plaintiff, by
its Attorney, and filed in the Office of the Clerk of said Court,
its certain Bill of Exceptions in said suit; Which said Bill of
Exceptions is in words and figures following; to wit.

"City of Chicago
— vs —
Martin. C. Walker } Suit for Special Assessment
on Warrant No 293.

Be it remembered that on the trial of this
cause before Judges Arba M. Wilson, Grant Goodrich and Van
H. Higgins the Judges of the Superior Court of the City of Chicago
the defendant came and filed the following objections to the rendition
of Judgment against the said Defendant, which objections are in
the words and figures following, to wit.

"State of Illinois } In the January Term of the
Cook County. } ss Superior Court 1860.

Martin C. Walker
— ads —
The City of Chicago } Suit for Special Assessment
on Warrant No 293.

The defendant by. Scates Mc Allister & Lovett his
Attorneys come and say that he claims Lot 5 in Block 3 Fort
Dearborn Addition to the City of Chicago. That said appreciation
is based upon Warrant No 293 South, dated March 1. 1859
for paving River Street and South Water Street in accordance with
the Order of January 11. 1859 and defendant objects thereto upon
the following grounds viz:

First — Defendant states that he filled said Street opposite his own premises - and that of others now sought to be assessed to pay for same - and the Contractor for this work one De Goyer agreed to & with Defendant to allow him on of the amount to be assessed the sum of Two hundred and fifty dollars for defendants said filling aforesaid - and the said Defendant claims that that amount be deducted out of the Assessment in this case.

Second. — The said Contractor did not perform the work that was Estimated and let - but after the Estimate therefor was made and said Contract let - a large proportion of the work was abated & taken out of the job, by a change of the plan - and a large sum viz: the sum of $ should have been abated out of the Assessment and the Contract.

Third — The paving was not extended to Wales Street, according to the Contract with said De Goyer, and on that account a further sum of $ should be abated taken out of said Assessment and Contract, And for the further reason that by the plan and Estimate and Contract the Curbing was to be done with Stone - Whereas the Curbing opposite Lot 4 in Block 3 aforesaid was Curbed with Wood, of cheaper material and workmanship - for which a further abatement and deduction should be made of $ from said Assessment and Contract

Defendant further avers that said Contract De Goyer took carried away and Sold a large quantity of earth from the said Street & Sold and disposed of the same for a large sum for his own use, to wit, the sum of $ and that

Therefore a further abatement should be made from said Assessment and Contract.

Fourth — There is no such Assessment as is supposed in and by the said application and Warrant

Fifth — Respondent further objecting shows that the sum of $94.10 cts have been included in said Assessment for expenses of Superintending and Engineering in part, as well as assessing and collecting whereas the City Superintendent and Engineers are paid regular annual Salaries for their services out of the City Treasury and the performance of their duties in relation to making improvements which are paid for by Special Assessments does not increase or in any manner affect the expenses of the City with regard to such Officers

Sixth. — That this Court has no power to call a Special Term, or to hold said Term for any purpose whatever.

Seventh — That the Commissioners by whom said assessment was made were not freeholders.

Scales. McAlister & Jewett
Attys for Defts.

And the said Defendant in order to support and maintain his cause, produces and offers in evidence the Assessment Roll in this case, which Assessment Roll is in the words and figures following, to wit.

Assessment Roll

for

Paving River Street and part of S. Water Street

At Common Council January the 11th 1859.

Ordered that River Street from the Southern terminus of the pavement thereof to the North line of South Water Street; also, so much of South Water Street as lies west of the East line of Wabash Avenue and east of the west line (produced) of Lot 15 Block 8 Fort Dearborn Addition (exclusive of Sidewalks) be graded, curbed and paved, according to the Estimate and Specifications of City Superintendent hereto annexed

Ordered, that the sum of Twenty four hundred ($2400.00) dollars be assessed upon the real Estate in the South Division of the City of Chicago deemed benefitted by the said improvement and that the Common Council do now elect by ballot three reputable and disinterested freeholders to make said Assessment

The City Superintendent of Public works under a requisition from the Committee on Streets and Alleys of the South Division, submits the following as an Estimate of the Cost for grading, paving & curbing River Street from the present Southern terminus of the paving of River Street to the Southern line of said River Street; also so much of South Water Street as lies West of the East line of Wabash Avenue (produced) and the West line of lot 15 in Block 8 Fort Dearborn Addition (exclusive of Sidewalks): also, for curbing in front of said Lot 15, extending East to the East line of Wabash Avenue, thence South to the North line of South Water Street

The said parts of said Streets shall be graded so that the surface shall be 18 inches below the City grade, and to such shape as the Superintendent shall direct

Upon this surface shall be spread good Joliet Mound gravel to a depth sufficient to make the gravel and boulders measure full 18 inches.

To be paved with good sound boulder Stone not less than five nor more than ten inches their greatest diameter.

To be Set in the most skilful and workmanlike manner well rammed and finished to the entire satisfaction of the Superintendent

The curbing to be good solid Limestone not less than three feet square and five inches thick, sides to be hammer dressed as far as exposed above Sidewalk and pavement; the top to be chisel cut and joints close.

The whole to be done under the direction of the City Superintendent of Public Works.

1498 Square yards Pavement including gravel ~~62.8~~	at $1.30	$2240.00
62,8 Lineal feet curbing	" 84	52.80
Supt. Engineering, Advg. Access and Coll:		90.40
		$2400.00.

Dated Chicago. January 11. 1859.

M. S. Boulton. Supt.

The Orders were passed and the Council proceeded to the Election of Commissioners thereunder.

On the first ballot A. H. Kinzie. F. A. Bragg. and Thomas Hale received each 13 Votes and were declared elected.

Attest H. Kreismann

City Clerk."

Oath of Commissioners.

"State of Illinois
City of Chicago } ss.

We the undersigned Commissioners appointed by the Common Council of the City of Chicago to assess the sum of Twenty four hundred dollars upon the real Estate by us deemed benefited by Paving River Street in accordance with the foregoing order in proportion to the benefits resulting thereto as nearly as may be, do solemnly swear that we will faithfully and impartially execute our duty according to the best of our ability.

Sworn to and subscribed before me the 13th day of Dec 1859 . . . . . S. H. Kreismann

Jno. N. Kinzie
Thos. Hale
H. M Bragg
} Commissioners."

Assessment Roll.

A description of the Real Estate in the South Division of the City of Chicago deemed benefited by Paving River Street and a portion of South Water Street in accordance with an order passed in Common Council January 11th 1859 with the valuation thereof and the sum of money severally assessed thereon for benefits by the Commissioners, to wit.

Fort Dearborn Addition to Chicago.

Name of Owner	Part of Lot of Land	S. Ft	Lot	Block	Valuation Dollars	Assessment Dollars	Cts
Noton & Walker			1	2	21000	53	42
C. Dn. Reed			4	3	9000	13	50
Gage & Hanes			3	"	6500	26	00
"			6	"	4800	10	00

Fort Dearborn Addition to Chicago.

Name of Owner	Part of lot of Land	S Set	Lot	Block	Valuation Dollars	Assessment Dolls	Cts
Gage & Harris			4	3	17000	478	63
W.A. Walker			8	"	20000	1184	49
Mary Kennedy	S 1/2		22	4	5100	151	96
George Smith.			23	"	15000	332	46
Mrs Powers			24	"	13600	30	00
	Wadsworth		25	"	24000	23	00
	do		26	"	21000	15	00
John Ryan			27	"	14000	10	00
M.C. Burns			28	"	14800	4	00
Lake & Brown			29	"	26000	5	00
C.B. Phillips	N 14 ft.		30	"	18000	1	58
W. Safford			1	4	40000	40	00
	do		2	"	30000	30	00
	do		3	"	30000	23	00
	do		4	"	30000	15	00
	do		5	"	30000	10	00
J.M. Arnold			6	"	30000	4	00
J.E.S. Fuller & Co.			7	"	30000	5	00
C & M. Price	N 14 ft.		8	"	20000	1	58
Est. of James Carney	S 1/2		8	8	8000	1	38
	do		9	"	20000	5	00
	do		10	"	20000	4	00
W. Doyle			11	"	18000	10	00
Thos. Robinson			12	"	18000	15	00
A. Johnson			13	"	22000	23	00
G. C. Walker			14	"	22400	30	00
do			15	"	25600	274	80
				Total		$2400	00

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 Twenty four hundred dollars upon the Real Estate in the South Division of said City by us deemed benefited by improvement, as nearly as may be to the benefits resulting thereto by reason of Paving River Street and a portion of South Water 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 Oath recorded herein. That the published a Notice of the time and place of their Meeting for the purpose of making said Assessment in the Chicago Daily Democrat the Corporation Newspaper, for the period of Six consecutive days previous to such Meeting. a Certificate of which publication is hereunto 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 fourth 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 hereinbefore set forth and described as the only real Estate benefited by said improvement, 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 property so assessed.

All of which is respectively submitted

Jno: H. Kinzie
F. A. Bragg } Commissioners.
Thos Hale ..

Chicago. January the 21st 1859."

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 Twenty four hundred dollars ($2400) upon the real Estate in the South Division by them deemed benefitted by Lowering River Street and part of South Water Street in accordance with an Order passed in Common Council January 11th 1859 will meet at the Office of the Superintendent of Special Assessments on the 21st day of January 1859 at the hour of 10 o'clock A. M. for the purpose of making said assessment.

(signed) John H. Kinzie
Thos. Hall
F. A. Bragg.
Commissioners."

"This Certifies that the Annexed Notice relative to Lowering River Street &c &c has been published in the Chicago Daily Democrat, the Corporation Newspaper of the City of Chicago, County of Cook and State of Illinois, six days consecutively commencing with January 11th 1859.

Chicago, January 21st 1859

John Wentworth. Publishers
By H. H. Hixon."

"State of Illinois }
City of Chicago } ss

I do hereby Certify that the foregoing Assessment Roll was returned to me and filed in my Office by the Commissioners this 22d day of January 1859

H. Kreismann, City Clerk."

Assessment Notice

"City Clerks Office

Chicago, January 22d 1859.

Public Notice is hereby given to all persons interested that the Commissioners appointed by the Common Council of the City of Chicago to assess the sum of Twenty four hundred dollars upon the real Estate in the South Division of said City deemed benefitted by opening River Street from the terminus of the present opening thereof to the North line of South Water Street and so much of South Water Street as lies West of the East line of Wabash Avenue and east of the West line (produced) of lot 15 block 8 Fort Dearborn Addition, have completed their Assessment and made return thereof to my Office

Any persons wishing to appeal from said Assessments, must file their objections in writing in my office on or before Monday the 14th day of February 1859 at 4 Oclock P. M., as the Common Council will at that time in the Council Room hear all objections to said assessments, and revise and confirm or annul the same.

H. Kreismann

City Clerk."

"This Certifis that the appended Notice has been published in the Daily Democrat the Corporation Newspaper of the City of Chicago County of Cook and State of Illinois, ten days consecutively commencing with Janu 24. 1859

Chicago. March 1. 1859.

John Wentworth Publisher."

Order of Confirmation.

"In Common Council. Chicago the 11th 1859.

Whereas due Notice has been given by the City Clerk of the Return of the foregoing Assessment Role and no objections thereto having been filed, it is therefore Ordered that the said Assessment as revised by the Common Council be and the same is hereby Confirmed

It is further Ordered that a Warrant be issued for the Collection thereof returnable in thirty days after its date.

Passed.

H. Kreismann. City Clerk

Attest: Warrant issued March the 1st 1859."

The Defendant then called Herman Kreismann who being duly sworn testified that he was the City Clerk of the City of Chicago and had the care and custody of all Assessments Roles.

The Defendant then asked said witness if the Assessment Role had been altered

To which question the said Plaintiff then & there objected. but the objection was overruled and the Plaintiff excepted.

The witness then stated that over the Columns of the Assessment Role

marked valuation, the words dollars and cents had been placed by some one - and that when the Assessment Role was confirmed by the said Common Council of the City, that said words were not there but that they had been added recently within the last six day or less.

On the Cross Examination by the Plaintiff

The Plaintiff offered to prove by said witness - that the figures in said column over which the words 'dollars and cents' had been written stood for and meant dollars and cents - and the form was an old form which had been long in use and that the figures meant that the property was valued at so many dollars and cents

Which was objected to by the Defendant and the objection sustained and Plaintiff excepted.

The Plaintiff offered to prove by the Commissioners who levied the Assessment that the column marked valuation, meant that the property was valued at so many dollars and cents. which was objected to by defendant. and objections sustained by the Court to which ruling of the Court the plaintiff then and there excepted

This was all the Evidence which was given in the cause by either party

The Plaintiff then asked for judgment against the said Lots of the defendant - but judgment for the Plaintiff was refused by the Court and the Court entered up a judgment in favor of the Defendant

To the entering of which Judgment - the Plaintiff then and there excepted.

And because none of the said Matters and exceptions so offered and made to the Opinions and decisions of said Court do appear upon the record of the said trial therefore on the prayer of the Defendant by his said Counsel the said Court hath to this Bill of Exceptions set its Seal this day of 1860.)

Seal
Seal
Seal

Grant Goodrich, Judge
Van. H. Higgins. Judge &c."

State of Illinois }
Cook County .. } ss.

I Walter Kimball, Clerk of the Superior Court of Chicago, within and for the County of Cook in the State of Illinois Do hereby Certify the above and foregoing to be a full, true and perfect Transcript of the Collectors Report & Petition for Judgment, Collectors Notice and the Certificate of Publication thereof, Collectors Warrant and Return and Bill of Exceptions, now on file in my Office, together with the Order and Judgment entered of record in said Court, had in certain proceedings had and taken in a

certain Matter and suit therein, wherein the City of Chicago was Plaintiff and Martin O. Walker was Defendant



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

City of Chicago
vs
Martin O. Walker } In Error

Supreme Court. April Term
In the year of our Lord 1860
Third Grand Division

Afterwards to wit on the 17th Day of April AD 1860 at this same term of the Court before the Justices thereof, comes the said City of Chicago, by Elliott Anthony its attorney, and says that in the record and proceedings aforesaid, and also in the rendition of the judgment aforesaid, manifest error hath intervened in this to wit:

1st The Court erred in permitting the defendant to show that the original assessment roll had been altered — And the words "Dollars" and "Dolls & cts", appearing at the top of certain columns of the assessment Roll had been added since the assessment had been confirmed

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(2nd) The Court erred in refusing to permit the Plaintiff to show what the columns marked Valuation and over which the words "Dollars" and "Dolls / cts" appearing at the top of said Columns of the assessment roll, which was offered in evidence by the Defendant, really meant Dollars and cents —

3rd The Court erred in refusing to permit the Plaintiff to explain the meaning of the Columns of figures in the assessment roll, which the Defendant introduced in evidence and which the witness Kreissman testified had been altered — Brown v City of Joliet 22. Ills. 123 Einstein v City of Joliet 22. Ills. 126 — —

4 The Court erred in rendering a judgment for the Defendant whereas the judgment should have been for the Plaintiff and against the lot of the said Walker for the amount of the assessment and costs —

And the said City of Chicago prays that the judgment aforesaid, for the errors aforesaid, and for other errors apparent in the record and proceedings aforesaid, may be reversed, annulled and altogether held for nothing and that it may be restored to all things which it hath lost by occasion of the said judgment

E. Anthony
Atty for Plaintiff in Error

State of Illinois
Cook County 214

Superior Court of Chicago

The City of Chicago

—— @ ——

Martin, G. Walker

Record.

Filed April 18, 1860
L. Leland
Clerk

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