

12762

No. _____

Supreme Court of Illinois

Brown

vs.

City of Joliet

71641  7

257-130

Joseph Einstein
City of Joliet

859

12762

1 The People of the State of Illinois
By a grant of Gods free and Independent

To all to whom these presents shall come greeting:-
Know

Us that we having caused to be inspected the Records
and proceedings now remaining in the Office of our Clerk
of our Circuit Court in and for our County of Will;
do find there certain records in words and figures
following to wit

United States of America }
State of Illinois } ss.
Will County } 3

Please before the
Honorable Jesse A. Norton Judge of the Eleventh
Judicial Circuit of the State of Illinois, and
presiding at May Special Term of the Will County
Circuit Court in and for said County of Will at Court House
in the City of Joliet in said County of Will and
State aforesaid on the Second Monday (the same
being the Eleventh day) of May in the year of
our Lords, One thousand Eight hundred and
fifty Seven and of the Independence of the United
States the Eighty Second

2

Present the Hon. Jesse O. Norton Judge of the 11th Judicial Circuit
Fred A. Bartleson State Attorney
George R. Ayers Sheriff of Will County
Alexander M. Pulosz Clerk of the Circuit Court of Will Co.

In the Matter of
of
Readings

And now come the respective Plaintiffs
in Suits now pending upon the Docket in which pleas have not
been filed by their respective Attorneys and enter their Motion for
and to plead against the respective Defendants in the said Causes
respectively. Whereupon come the respective Defendants by their
Attorney in said respective Causes and enter their Cross Motion for
and to plead therein from Case Number One to Case Number
Seventy five successively until to-morrow morning at Eight o'clock
and also enter their further Cross Motion that still further time be
given therein to file pleas in the remainder of said Causes and
the Court being fully advised in the premises it is ordered
that pleas in all Cases pending on the Common Law Docket
from Case Number One to Case Number Seventy five successively
and not heretofore filed be filed respectively by to-morrow
morning at Eight o'clock and in all other Cases by next
Wednesday morning at Eight o'clock.

23
Be it remembered that Justice Term; Court.
Twentieth day of August in the year of our Lord One
Thousand Eight Hundred and Fifty Six Joseph Einstein
by his attorney his Agent John in the Office of the
Clerk of the Circuit Court in and for the County of Will
aforesaid a Transcript of the records of the County Court
of said County concerning a certain Judgement therein
rendered, which said Transcript is in words and
figures following. To wit;

" A Transcript from a judgement rendered in the County
" Court of Will County State of Illinois in favour of the City of
" Solon for Special Taxes or Assessments of said City of Solon
" Against Certain Real Estate hereinafter described owned by
" Joseph Einstein Esq from which judgement said Einstein has
" taken an Appeal to the Circuit Court of said Will County
Will County Court

September Term AD 1856

" A List of Real Estate reported by Philip Solon City Collector
" in and for the City of Solon Will County State of Illinois upon
" which he has been unable to collect Certain Special Taxes or
" Assessments due thereon and as herein after set forth and
" now on this Twenty Sixth Day of August AD 1856. files this
" his petition for a judgement and order of sale against
" said Real Estate at the Sept- Term AD 1856. of the County Court

of Will County.

Monday, Sept. 1st A.D. 1856.

Will County Court Sept - Term A.D. 1856.

State of Illinois }
 Will County }
 Do. Pleas before the Hon. Solomon Simmons
 County Judge in and for the County of Will
 and State of Illinois and presiding Judge of said Will
 County Court in and for the County of Will
 Term of said Will County Court began and held at the
 Court House in the City of Joliet in said Will County on
 Monday the first day of September in the year of our
 Lord one thousand eight hundred and fifty six there
 were Present
 Hon Solomon Simmons Co Judge
 Perry P. Scanitt Sheriff of Will County
 & C. L. Hawley Clerk of Will County Court

State of Illinois }
 County of Will }
 Do. Whereas Philip Filer City Collector of Taxes
 and Assessments in and for the City of Joliet Will County
 State of Illinois returned to the County Court of said Will
 County on the Twenty Sixth day of August A.D. 1856.
 the following Lots & Blocks upon which Assessments have
 been made by Special Ordinances passed by the Common
 Council of said City of Joliet for the purpose of grading
 Ottawa Street from Jefferson Street to Jackson Street in said
 City Also for the purpose of digging and making a sewer
 on the South side of said Ottawa Street extending from Chicago
 Street to Joliet Street in said City of Joliet And whereas Philip
 Filer City Collector aforesaid of said City of Joliet has
 made the following return

5

List of Real Estate Situated within the Corporate Limits of the City of Joliet and lying and being on the South side of Van Buren Street in said City of Joliet upon which a Special Tax or Assessment remaining due and unpaid hereof duly levied and assessed by the Corporate Authorities of said City of Joliet for the purpose of digging a sewer on the south side of said Street from Chicago to Joliet Street in said City of Joliet

Original Town of Joliet

To Whom Taxes	Lot	Block	Tax	Cents	Total
Joseph Einstein	1	22	153.75	3.83	157.58

State of Illinois }
 Will County } I Phillip Filer City Collector in and
 for the City of Joliet Will County State of Illinois do swear
 that the foregoing list by me returned is a true and correct
 Record of the Real Estate Situated within said City upon
 which he has been unable to collect the tax or assessments
 as required by law and Ordinances of said City of Joliet
 and levied as in the foregoing list set forth and that said
 Taxes or assessments assessed remain due and unpaid
 as set forth in said list at this date
 Sworn and Subscribed to before me } P. Filer Collector of the
 this 25th day of August A.D. 1886 } City of Joliet

W. H. Hawley, Clerk Will Co Court

And now at this time comes Joseph Einstein by his Council Men Osborn and presents and files with the Court the following Exceptions to this.

And Joseph Einstein Against whom Taxes have

6 been levied by the City of Soler on the following described Real Estate as appears from the delinquent list returned by the City Collector to him. (Old Soler Lot 1 Block 22). Comes and says that the City of Soler ought not to have judgment for the Taxes aforesaid levied against the said Lot of land or any part thereof and an order to sell the same because he says:

- 1st That no assessment or valuation of said Real Estate was made before said Taxes were levied for the purpose of said taxation
 - 2^{ndly} That said Taxes were levied on said Real Estate without regards to valuation
 - 3^{rdly} That said Taxes were levied on said Real Estate without regards to valuation
 - 4^{thly} That said Taxes are unequal (compared with other property) unjust and levied contrary to the Constitution and laws of the State of Illinois and contrary to the Constitution of the United States.
 - 5^{thly} That the City of Soler has no right or Authority to levy the said Taxes on said property in the manner said Taxes have been levied thereon, He therefore Excepts and prays that the proceedings and Application herein ^{be} dismissed
- Joseph Einstein

By and against his Attorney
And after the reading and filing of the foregoing Exceptions and after Examination of the testimony adduced to the Court it is therefore considered by the Court that the exceptions filed herein be overruled and that judgment be and is hereby entered against

7. the Aforesaid Lots and Blocks and parts of Lots and parts of Blocks in favour of the City of Solers for the sums Announced to Each Lot and Block and parts of Lots and parts of Blocks being the amount of Taxes or Assessments and Costs due lawfully thereon and it is Ordered by the Court that the said Lots and Blocks and parts of Lots and parts of Blocks or so much of each of them as shall be Sufficient to satisfy the amount of Taxes or Assessments and Costs Announced to them severally, be Sold as the Law directs

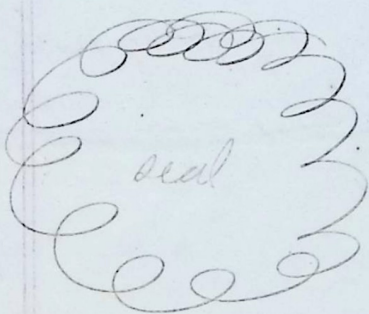
S. Simmons County Judge

Will County Court Sept 8th 1886

And thereupon the said Mr. Ogden as Attorney for Joseph Emotion enters his motion for an Appeal to the Circuit Court of said Will County from the Judgement of this Court in rendering Judgement against the said Lots of Land Aforesaid Decedent to which Exceptions was taken by the said Ogden as Attorney for Joseph Emotion for the Delinquent Taxes or Assessments and Costs Specified in the proceedings. Whereupon it is Ordered by the Court that an Appeal be granted, to be granted upon Condition that the said Emotion give an Appropriate Bonds with good and sufficient Security in the sum of Three Thousand and ten Dollars

which Bonds was filed and approved and is herewith transmitted

8 State of Illinois }
Will County } I Oscar L. Healey, Clerk of the County,
do Certify that the foregoing is a true and correct
transcript from the Records of the County, County of said
Will County, of a Judgment rendered in said Court in
favor of the City of Joliet against the aforesaid
described Real Estate owned by Joseph Emstein for the
Special Taxes or assessments and costs therein specified
in which matter said Emstein files Exceptions and costs
an Appeal from said Judgment to the Circuit Court
of said Will County which Exceptions and a proper
Bond is herewith transmitted to said Circuit Court



In testimony whereof I have hereunto
Subscribed my name and affixed
the Seal of our said County, County
of Will County at Joliet this 18th
day of November A.D. 1856

O. L. Healey, Clerk

And afterwards to wit;

On the day and year last
aforesaid, said Joseph Emstein by his said attorney
filed in the said Court his certain appeal Bond to
the Circuit Court of said County which said Bond
so filed as aforesaid, is in the following words and
figures to wit;

9 Know all men by these presents that We Joseph Einstein as principal & Levi Argood as Surety of Will County & State of Illinois are held & firmly bound unto the People of the State of Illinois for the use of the City of Solist in the sum of one Hundred & Ten Dollars lawful money of the United States for the payment of which well and truly to be made we bind ourselves Our heirs Executors & Administrators jointly, Severally, & firmly by these presents; Witness Our hands & seals the 8th day of September A.D. 1856

The Condition of the Above obligation is such that whereas the City of Solist Clerk on the first day of September A.D. 1856 before Samuel Simmons County Judge of Will County sitting as a County Court of said Will County at the September Term A.D. 1856 of the said Will County Court received a judgement for taxes & an order for sale against the following described Real Estate in said City of Solist assessed & returned as the property of said Joseph Einstein to wit: in old form & d. 1 in 2 vol. 22, which said judgement amounted to one hundred & fifty three Dollars & Seventy five cents with costs from which judgement & order the said Joseph Einstein has taken an Appeal to the Circuit Court of the County of Will aforesaid & State of Illinois. Now therefore if the said Joseph Einstein shall prosecute his Appeal with Effect & shall pay whatever judgement may be rendered by the Court upon dismissal

11

Answer Joseph Einstein Concerning his Appeal
 taken to our said Court from the judgement
 of the County Court of said County in a certain matter
 wherein said City was Applicant for judgement upon
 a certain Assessment against said Einstein
 Defendant. And we do hereby certify that this writ

Witness my hand and the seal of the
 Circuit Court in and for said Will
 County and the seal thereof at Solon
 in said Will County this 19th day of
 November in the year of our Lords
 one thousand Eight Hundred and
 fifty six

R E Barlow Clerk

The within named City accepted service
 by their Attorney H Snapp Dec 2. 1856 Fees

1 service .50

1 mile .08

Return 10

1.68

G R Snapp Atty

And afterward

On the 22^d day of May in the
 year of our Lord one thousand Eight Hundred and Fifty
 Eight in being one of the regular days of the May Term
 of said Court for the said year and the same being
 then duly organized, and the Honorable David Davis

13 defendant do file bond in that case, in double the amount of judgement, within ninety days from the Entry of this order. - And it is further ordered that said Defendant have leave to file his writ of exception in that case in vacation.

And afterwards to wit:

On the fourth day of June in the year last aforesaid it also being one of the regular days of the May Term of said Court for the said year, when the same being again duly organized and sitting for the transaction of business the following among other proceedings were had and entered of record by said Court to wit:

Present Hon. Isaac C. Martin, Judge as aforesaid.

The City of Duluth }
Joseph Gracien } Appd.

Now comes the said defendant by his Agent his attorney and friends to the Court for acceptance of a special bond with Joseph C. Gracien as surety in compliance with a previous order of this Court; which on motion is accepted and approved.

And afterwards to wit.

On the nineteenth day of August
in the year of our Lord one Thousand Eight Hundred and
fifty eight, the said Joseph Emerton by Will Begood his
attorney filed in the Office of the Clerk of the Circuit Court
in & for said County, a certain other appeal bond, which
said Bond is in words and figure following to wit;

Know All men by these presents that we Joseph Einstein and Merritt Okagwin of the County of Will and State of Illinois are held and firmly bound unto the City of Chicago in the County of Will and State of Illinois in the sum of one hundred and fifty one dollars and seventy six cents Current Money of the United States for the payment of which well and truly to be made we bind ourselves our heirs Executors and Administrators jointly severally and firmly by these presents

Witness our hands and seals this Nineteenth day of August AD 1888.

The Condition of the Above Obligation is such that whereas the said City of Chicago on the twenty second day of May AD 1888 in its Circuit Court in and for the County of Cook State of Illinois recovered a judgement against the above bounden Joseph Einstein for the sum of one hundred & fifty seven dollars and fifty eight cents debt and eighteen dollars and thirty cents costs from which said judgement of the said Circuit Court the said Joseph Einstein has prayed for and obtained an Appeal to the Supreme Court of said State - Now if the said Joseph Einstein shall duly prosecute his said Appeal with effect and shall moreover pay the amounts of the judgement costs interest and damages rendered and to be rendered against him in case the said judgement shall

16 be affirmed in the said Supreme Court that the above obligation to be void otherwise to remain in full force and virtue

Joseph Einstein Seal
M O Magwin Seal

Taken and Approved by
me this 19th day of August 1858.

Wm. T. Smith Clerk

By R. R. Trustees for Deputy

And afterwards to wit:

On the 19th day of December in the year last aforesaid the said Joseph Einstein by his agent his attorney filed in the Clerk's Office of the Will County Circuit Court, a certain Stipulation in words and figures to wit:

State of Illinois Will County

Will County Circuit Court

Leity of Colier

vs

3
3 Appeal

Joseph Einstein

This hereby Stipulated & Agreed by & between the parties in the above entitled suit that the time appointed for the filing of the Bill of Exceptions in said Case be extended until

the twentieth day of January, A.D. 1859 & that said
Bill of Exceptions if filed on or before said twentieth
day of January shall have the like force & effect as if
the same had been filed on or before the first day of
the December Term of said Court

Dated this second day of December, A.D. 1858

R. S. Bruce Atty. for Plff

Wm. Ogden, Atty for Defn

17 And Afterwards To Wit

On the Twelfth day of January in the Year of our Lords one thousand Eight Hundred and fifty three the said Exonator by his Attorney his Attorney files in the office of said Clerk his bill of Exceptions to the Judgement rendered in this Case which are as follows to Wit

The City of Solihull
vs
Joseph Exonator

Be it remembered that at the trial of this Cause at the May Term of said Will County Circuit the said Plaintiff to maintain the issue on their part by their Attorney gave in as Evidence the following

S. S. Buffum, being called and sworn testified substantially as follows. I am City Clerk of the City of Solihull. The Book here introduced contains the Record of the proceedings of the Common Council of Solihull

The following was then introduced from page 187 of City Records. Ald Hunter from Committee to which was referred the Petition for the Grading & Sewerage of Van Buren Street reported

18 favorable to such Petition & recommended the passage of
the following Ordinances Report Concurred in Ordinance passed
Be it Ordained by the Common Council
of the City of Solist. - That a drain or Sewer be Constructed
three feet north of the South side of Van Buren Street from
Chicago Street to Joliet Street Said drain or Sewer to be of
An Average Depth of four feet below the present surface
of the ground ~~between Chicago & Joliet Street~~ & of a Sufficient
Depth to carry off water therefrom
The whole length of said drain to be well walled up & covered
over with Stone in a good Substantial manner, the throat
or opening of said drain when so walled up shall not be
less than one foot in width at the bottom nor less than two
feet in height Passed Oct 27th 1855

From Same Page - 189. On Motion of Ald. Baywin. S. L. Killebaugh Sidney S
Morgan & Adin Jones be Appointed Commissioners to assess the
expense of Sewer on Van Buren Street

The following Commissioners Report was then introduced

To the Hon. the Mayor & Common Council of the
City of Solist

The undersigned Commissioners heretofore appointed
by your Honorable Body for the purpose of estimating &
assessing the cost & expenses of Constructing a Sewer on the
South side of Van Buren Street in said City from Chicago Street
to the West side of Joliet Street & with the dirt so excavated of
filling up & leveling said street - Respectfully report that
after having taken Oath before S O Simonds Esq. an Acting
Justice of the Peace in said City to truly & impartially assess

19 the Expense of the proposed improvement on the Real Estate benefited thereby & after having given Notice in the Police Signal for a Space of more than one week previous of the time & place for holding the said Commissioners met at the Store of M^r [unclear] of said City when & where they Estimated the Cost of said improvement as follows (viz) ^{as follows}
 hundred and fifteen (115) ^{sewerage} 510 cubic yards Rock & earth excavation at 75^{cts} per yards \$382⁵⁰ 00
 Laying Wall & Covering & filling above 108⁸⁰ 00
 765 lineal ft of flagging 80^{cts} per ft 61²⁰ 00
 Levelling of Rubbish into Street 00⁰⁰ 00
 Surveying 2⁵⁰ 00
 Total \$615⁰⁰ 00

And that they assessed & apportion the Cost of said improvement as above upon the following Real Estate benefited thereby as follows.

Name of Owner	S.	R.	Ac ft	Amount Paid
J A Middleton.	8	21	150	153 75
Carpenter & Watkins	1	"	58	59 45
Presbyterian Church	1	"	92	94 30
Uri Ozgood			150	153 75
Joseph Einstein			151	153 75
		Total		615 00

Respectfully Submitted
 Tolson May 3rd 1856.

William S Morgan
 Isaac S Millspaugh
 A S Jones

The following Notice & Certificate was then introduced
 Notice

20 The undersigned Commissioners Appointed by the Common Council to make the Assessments on the property benefitted for a drain or sewer on the South Side of Van Buren Street hereby give notice that they will meet at the Store of Aoolittle & Stone on Thursday the 13th day of Decr next at three o'clock P.M. for the purpose of making said assessment. All persons interested are requested to be present.

J. L. Millepant
J. L. Morgan
A. D. Jones

Solier December 3rd 1885

State of Illinois Will County

We the undersigned publishers of the Solier Signal a weekly newspaper published in Solier Will County do hereby certify that the aforesaid Notice was published in said paper for the term of two weeks successively

Wm. B. Gurley City P.

Said Buffum further certifies I have not seen the Petition on file in the City Clerks Office praying for the passage of an Ordinance to drain Van Buren Street

The following Warrant & Assessment was then introduced

Warrant

State of Illinois

City of Solier

Collector of

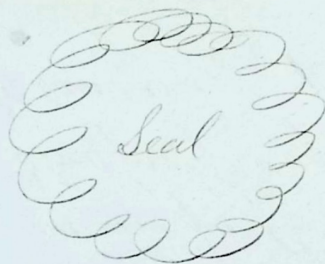
People of the State of Illinois

Greeting

Whereas the Common Council of the City of Solier did on the 11th day of May A.D. 1886. levy & apportion upon the Real Estate hereinafter described the several sums set opposite thereto in the appropriate Column for the

purpose of Constructing a Sewer on the South Side of Van Buren Street from Chicago Street to the West side of Joliet Street in Said City. And therefore you are hereby Commanded to make Levy & Collect the said Several Sums of Money set apposit to the said Sewer mentioned & make due return in accordance with the Ordinances of this City in relation to the Collection of Taxes

Witness A H Edwards Mayor
of the City of Joliet & the Corporat
Seal thereof this twenty first day
of May A D 1856



A H Edwards Mayor
Attest C Suroad City Clerk

Assessment for a Sewer on the South Side
of Van Buren Street from the West side of Chicago Street to the
West side of Joliet Street levied May 5th A D 1856.

Names of Owner	Description &c	L	B	Amount of Tax
J A Matteson	Original Town of Joliet	8	21	153 75
Carpenter & Watkins	" " " "	1	"	59 45
Presbyterian Church	" " " "	"	"	94 30
Van Buren	" " " "	8	22	153 75
Joseph Einstein	" " " "	1	"	153 75

S. S. Buffum on Cross Examination testified Substantially as follows. This Paper (taking up the Report) is the Report of the Commissioners. I am acquainted with the property on Van Buren Street. None of the property on the North Side of Van Buren Street was assessed. This was all the testimony given by S. S. Buffum ~

22 S^W Stone Walter Hawley & Philip Filer were next sworn
S^W Stone being called testified Substantially as follows I was City
Clerk during the months of November & October in A^d 1855
- I caused the notice to be published in the Corporation Paper
the Commissioners Report was filed in the City Clerks Office -
The following was then introduced from page 175. of City Records - Petition
of Rodney House & others to grade New Baren Street. between
Chicago Street & Solier Street - Request to open on Streets
Alley & Bridges

S^W Stone further testifying said I remember of Doctors Carpenter &
Watkins name & Rodney House's name being on the Petition
to drain New Baren Street.

The following was then introduced from page 215. of City Records
The Commissioners elected to propose an Assessment
of the Cost of Constructing a Sewer on the South Side of New
Baren Street from Chicago Street to the West side of Solier
Street made Report - when on Motion of Ald. Hunter it was
ordered by the Common Council of the City of Solier that
the Assessment proposed by the Commissioners for a
Sewer on the South Side of New Baren Street from Chicago
Street to the West side of Solier ^{Street} be and the same is hereby
Confirmed & Approved.

S^W Stone. On Cross Examination testified Substantially as follows.

I think for a fact that name was not signed to
the Petition nor did the Presbyterian Church appear on
said Petition I am acquainted with this portion of New
Baren Street - the drain was dug as far as Solier Street
It was as much improvement to the South side as to the

23 South side of Van Buren Street. This was all the testimony given by S.W. Stone.

J.T. Millsbaugh & William Garley were next sworn J.T. Millsbaugh being called testified Substantially as follows. I was Commissioner of said City of Joliet. I was sworn as Commissioner - Jones called as one of the Commissioners. This was all the testimony given by J.T. Millsbaugh.

Walter Hawley being called testified Substantially as follows. - This Book Contains the Collectors return.

The following Collectors return was then introduced.

List of Real Estate Situate within the Corporate Limits of the City of Joliet & lying & being on the South side of Van Buren Street in said City of Joliet upon which a Special Tax or Assessment remains due & unpaid here - before duly levied & assessed by the Corporate Authorities of said City for the purpose of digging a Sewer on the South side of said Street from Chicago St & Joliet St. - in said City to wit. -

Name of Owner	Description &c	S.	B.	Amount
J.A. Matteson	Original Town Lot	8	21	153 75
1 st Cong. Church	" "	1	"	94 30
Wm. Engard	" "	8	21	153 75
Jo. Einstein	" "	1	"	153 75

State of Illinois

Will Co. J.P. Phillip, Joliet City Collector.
in & for the City of Joliet Will County State aforesaid do
Solemnly Swear that the foregoing list & by me returned
are a true & correct Record of the Real Estate situated
over

within said City upon which he has been unable to collect the tax or assessment as required by law & ordinances of said City Council of said City aforesaid & listed as in the foregoing list Set forth & that said taxes or assessments aforesaid remain due & unpaid as set forth in said list at this date

Sworn & Subscribed before me } P. Filer Collector for the
this 25th day of August 1886 } City of Solist
W. H. Hawley Clerk Will Co. Court

This was all the testimony given by Walter Hawley Philip Filer, being called testified Substantially, as follows I was Collector at the time the warrant was issued I caused notice to be published in Corporation paper the date of notice was July 30th 1886. I did not return any proof of publication. I have no recollections of returning a published list of the Lots the True Democrat of July 31-1886. Contains a publication of the list of Lots together with notice of Application for judgment

A copy of the True Democrat published July 31-1886. Containing the following list of Lots & notice. List of Real Estate Situated within the Corporate limits of the City of Solist Will County & State of Illinois upon which a Special assessment remains due & unpaid heretofore Only assessed & levied for the purpose of making a loan on the South side of Main St from the West side of Chicago Street to the City of Solist St to wit

Names	Description	L	B	Amount	Year
J A Matteson	Original Town of Solist	8	21	1837	8

25

1st Cong. Society,
 Uni. Orgoids
 Joseph Einstein

do	do	Wm. J. J. J.	1	21	94	30
do	do		8	22	153	75
do	do		1	"	153	75

Is hereby given that in accordance with the provisions of An Act to Amend the charters of the several Towns & Cities in this State in force March 1st 1854, Application will be made to the County Court of Will County Illinois at its September term to be held on the first Monday of September A.D. 1856 for judgment against such Real Estate for said Assessment & Costs & for an Order to sell said Real Estate for the Satisfaction thereof & that Real Estate for the sale of which an Order shall be made will be exposed to public sale at the door of the Court House in said County in the City of Joliet Ill. on the Second Monday in September A.D. 1856 for the amount of taxes with Costs due thereon as provided by law
 Joliet July 30 1856 P. Filer City Clerk

It is admitted by the Attorney for the Plaintiff that the property of the 1st Congregational Church is used for religious purposes & belongs to a religious Society & that Rodney House was a Trustee of said church at the time of the filing of the petition this was all the evidence offered by Philip Filer Alexander M. Intosh being called & sworn testified substantially as follows. I was publisher of the Free Democrat in July 1856. & in July 31st 1856. It was the Corporation paper at that time. Notice was published in it & in all papers of that date
 over

26
to Garley

This was all the testimony offered by A. M. Intosh
being called & testified substantially as follows
A. Copy of the Follet Signal bearing date Oct 30th 1855
was introduced containing the following
Council Proceedings

City Clerks Office }
Filed Oct. 29th 1855.

Public notice is hereby given that the Common Council have
Ordered a Drain or Sewer to be Constructed on the South Side
of Van Buren Street from Chicago Street to Follet Street

Now unless the same shall be Constructed
in the manner required by the Ordinance on or before the 10th
day of November 1855. it will be built by the Street Commis-
sioner & the Cost assessed on the premises Chargable therewith

SW Stone City Clerk

City Ordinances

Be it Ordained by the Common Council of the City of
Follet that a Drain or Sewer be Constructed three feet north
of the South Side of Van Buren Street from Chicago to Follet
Street said Drain or Sewer to be of an average depth of
four feet below the present surface of the ground between
Chicago & Ottawa Street & of sufficient depth thence to
Follet Street to carry off all water therefrom; the whole
length of said Drain to be matted up & covered
with Stone in a good substantial manner the throat or opening
of said Drain when matted up shall not be less than one
foot in width at the bottom nor less than two feet in height

Passed Oct 27th 1855

27

I was published of the Police Signal published.

October 30-1885 & all the proceedings published in the paper of that date were inserted in all the papers.

This was all the testimony offered by G. Farley City, Charter, & Amendments were then introduced

William Towner being called & sworn testified substantially as follows
I am Clerk of the Will County Court. This book here introduced contains the records of the proceedings in the Will County Court - The records was then introduced corresponding with the transcript on file. This was all the testimony offered by William Towner

And the Attorney for the plaintiffs having offered no other or further evidence to the whole of which said evidence at the time & in the order in which the same was offered the said defendant by his Attorney objected which objections were then & there overruled by the Judge & the testimony admitted to which decision of the Court the said defendant by his Attorney then & there excepted & prayed that the Judge would set his hands & seal to this bill of exceptions which accordingly is done

M. Davis

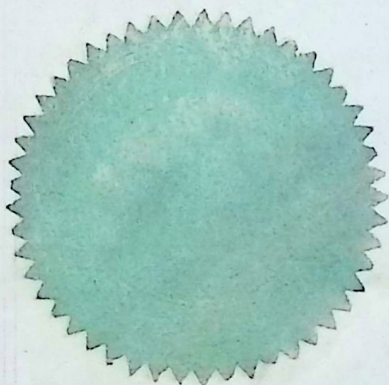
Judge &c

28.

State of Illinois 2
Will County 3

I Alexander McIntosh Clerk of
the Circuit Court in and for the County of Will
and State of Illinois do hereby Certify that the
 foregoing is a true and correct transcript of the
Records of proceedings in the above entitled Cause
and also of the Papers on file in said Cause
entitled Cause and now remaining in my
Office so far as required by Council.

In Witness Whereof I have hereunto
Subscribed my name and affixed
the Seal of said Court at my Office
in Joliet this twenty-first day
of April A.D. 1859.



A. M. McIntosh Ck

Chas fee for transcribing Records \$12.00

Supreme Court - State of Illinois - Third Grand Division -

Joseph Einstein appellant

April Term 1859

vs. Appeal from Will County Circuit Court

The City of Joliet appellee

And the said Joseph Einstein the appellant herein, comes & says that there is manifest error in the record & proceedings, & in the rendition of the judgment in the Will County Circuit Court in this case, & assigns the following errors -

- 1st. That the Court below allowed improper evidence to be given on the trial by Defendant in error.
- 2dly. That the evidence introduced in the case in the Court below was wholly insufficient to authorize the rendition of the judgment therein -
- 3dly. That the Transcript of the County Court of Will County & evidence in the case given in the Circuit Court on the trial of the case, showed conclusively that the County Court from which the appeal was taken to the Circuit Court, had no jurisdiction to enter judgment, & the suit should have been dismissed in the Circuit Court, & judgment entered against the appellee for costs.
- 4thly. That the return of Philip Kiler as City Collector, & his Collection warrant & delinquent list were entirely insufficient to authorize the rendition of any

judgment, against said appellant, or the property re-
turned, & no evidence was given or offered on the trial
supplying the defects therein, sufficient to authorize
the rendition of the judgment against the appellant
Einstein in said suit & the Circuit Court was not authorized
to take jurisdiction in the case

5thly - That no assessment or valuation of the property on which
a tax or assessment was purported to be levied, was
ever made, & the Collector's warrant & return made by
him, do not show that any amount of tax or as-
sessment was made or authorized to be collected by
him in Dollars & Cents, & no character used in the
same showing or denoting that any amount of taxes
or assessment had been made in Dollars & Cents

6thly - That the evidence in the case shows, that a tax or
assessment was only made on a part of the property
on the street where the improvement was made, &
to be benefitted or affected by such improvement

7thly - That the judgment was improperly & erroneously ren-
dered against the appellant Einstein, & directing execu-
tion to be issued against him - When the judgment should
have been rendered against the City of Joliet for costs

8thly - That the said judgment rendered, is contrary to the evi-
dence & the law & contrary to the Constitution of the State

of Illinois, & of the United States, & the Court had no jurisdiction to render such judgment -

and also that there are other errors apparent upon the record & proceedings & the rendition of said judgment - Therefore by reason of the errors aforesaid, & the many other errors contained in the records & proceedings in said Cause, the said appellant prays that the judgment rendered in said Cause, in the Circuit Court of said Will County be reversed, annulled & rendered void and

Wm. Ogden atty. & of
Counsel for appellant

257 - ~~72~~
130

Sup. Court - 3d Division

Joseph Austin
vs. App for Will

The City of Joliet

Transcript of Record &
Argument of Case

Rec'd April 27. 1839

L. Deland
Clerk.

SUPREME COURT—THIRD DIVISION,

APRIL TERM, 1859.

J. H. BROWN, APPELLANT,
vs.
THE CITY OF JOLIET, APPELLEE. } APPEAL FROM WILL CIRCUIT COURT.

ARGUMENT OF APPELLANT.

This was a proceeding originally had before the County Court of Will County, to obtain judgment against certain real estate on Jefferson street, in the city of Joliet, for an assessment or tax alleged to have been made or levied to pay the expense of an improvement on said street. The application for judgment was made under the act of March 1, 1854—Laws, Spec. Session, 1854, P. 22, Sec. 1.

The delinquent list, of which the real estate of appellant formed a part, was returned by Philip Filer, city collector, to the County Court, with his affidavit, that "the foregoing list by me returned, are a true and correct record of the real estate, situated within said city, upon which he has been unable to collect the tax or assessment, as required by law and ordinance of said City Council."

Application for judgment was made at the July Term, 1856, of the County Court.

Brown, the appellant, appeared and filed exceptions, in which he described his lots as set out in the delinquent list. His exceptions were overruled and judgment entered "against the aforesaid lots and blocks, and parts of lots and blocks, in favor of the city of Joliet, for the sum annexed to each lot and block, and parts of lots and parts of blocks, being the amount of taxes or assessments and costs due severally thereon;" and that the lots be sold as the law directs.

There was no return of the city collector, that he was unable to find property on which to levy and make the tax, and no published list of the real estate returned as delinquent to the County Court, and no notice of the application for judgment in said court, was furnished to the County Court.

This was absolutely necessary to give the County Court jurisdiction, and without such published list and notice of application for judgment the court could not legally take jurisdiction or enter judgment.

Brown appealed to the Circuit Court of Will County, and at the May Term, 1856, a jury was waived, and a trial had, by the court; (Judge Davis presiding) and judgment rendered against Brown for \$172.28, damages and costs, and execution awarded. No judgment was entered against the property. Exception were taken at the trial and all the evidence preserved in the bill of exceptions.

City Charter of Joliet, Article V, Sect. 1, Spl. L. 1852, P. 164. The original Charter of the city of Joliet, as passed and in force June 22, 1852, P. 161, (Laws, Spe. Sess'n, 1852,) contains the following provisions: Article V., Sect. 1.—"The city council shall have power and authority to levy and collect taxes upon all property, real and personal, within the limits of the city, not exceeding one per cent. per annum, upon the assessed value thereof, and may enforce the payment of the same, in any manner to be prescribed by ordinance, not repugnant to the constitution of the United States, or of this State."

Id. Sect. 2. "Sec. 2.—The city council shall have power to appoint a Clerk, Treasurer, Assessor, Marshal, Supervisors of streets and such officers as may be necessary."

Id. Sect. 9. "Sec. 9.—To open, alter, abolish, widen, extend, establish, grade, pave or otherwise improve and keep in repair streets, avenues, lanes, and alleys." Laws of 1853, Ps. 275-6, Sec. 3, division 4. "The city council shall have power to levy and collect taxes on property of any ward, or part of ward or wards, for the purpose of building and repairing bridges, school houses and other local improvements."

Id. Sect. 6. "Sec. 6.—The common council shall have power to levy and collect special taxes on owners of lots, according to their respective fronts owned by them, for the purpose of grading, paving, and planking streets, sidewalks, alleys, lanes, or avenues, constructing drains and sewers, digging wells, constructing pumps, and lighting streets, and to direct by ordinance the manner of assessing and collecting all city taxes. *Provided*, such ordinances shall not be inconsistent with the constitution of this State, or of the United States."

Const. Ills. 1848, Art. IX, Sec. 2. The tax or assessment made in this case was made under the foregoing provisions: In our constitution are to be found the following provisions: "The general assembly shall provide for levying a tax by valuation, so that every person and corporation, shall pay a tax in proportion to the value of his or her property; such value to be ascertained by some person or persons to be elected or appointed, in such manner as the general assembly shall direct, and not otherwise."

Id. Sec. 5. "The corporate authorities of counties, townships, school districts, cities, towns, and villages, may be vested with power to assess and collect taxes for corporate purposes; such taxes to be uniform in respect to persons and property, within the jurisdiction of the body imposing the same."

Id. Sec. 6. "The specifications of the objects and subjects of taxation shall not deprive the general assembly of the power to require other objects or subjects to be taxed, in such manner as may be consistent with the principles of taxation defined in this constitution."

The foregoing sections and provisions of the constitution and city charter are cited to show the basis on which the city of Joliet are authorized to levy and impose taxes and assessments. It is not contended that the city is not authorized to levy a tax or make an assessment on any given district or street in the city for the purpose of local improvement; but it is strenuously contended that under the Constitution and City Charter, when a tax or assessment is levied or imposed on any given district, for any purpose, it must be done on the basis of valuation, in compliance with the Charter and the Constitution, and that the people of Joliet under their charter are not to be subjected to the whims, or caprices, or prejudices of commissioners, in levying or imposing taxes or assessments on their property, for any purposes, without regard to valuation.

The tax or assessment in this case was made without regard to valuation, which is alone sufficient to render it invalid, and set aside the judgment.

Nor was their uniformity or equality in levying the same, taking the property fronting on the street, per lineal foot, as a basis. On the assessment, or what is designed as the assessment, at pages 32, 33, and 34, of the record, it will be seen that great inequality exists. Take for instance the second front of 21 feet and you find the amount carried out to be 53.18. Take the 22 feet, commencing 20 feet from west end of L. 4 in B. 22, and you find the amount carried out to be 73.54.—Take the 150 feet, being the fifth parcel from the bottom of the list, and you find the amount carried out to be 75.00. The next front preceeding that is 75 feet, and the amount carried out is 75.00.—Thus it will be seen that great inequality exists in the levying of the tax or assessment, upon this basis.

Again, there is no amount of tax or assessment made or carried out, on the property of appellant, or any of the property on the street. Numerals are used, but no words, letters, or characters are used to show what those numerals are intended to indicate; whether they are designed to represent dollars and cents, or whether they are intended to represent something else; and there was no evidence of any kind introduced to the court below showing, or tending to show what these figures represented, and the court could not legally render a judgment on such evidence. This alone is sufficient to reverse the judgment. See 20 Ill. Rep., 338, 340, *Lawrence vs. Fast*; see also 5, Gill. Rep., 405, 416-17, relative to uniformity and equality of taxation upon the value of property.

20, Ill's Rep. P 338-340
Lawrence vs. Fast.
5, Gill. Rep. 405, 416-17.

Again, neither the requirements of the constitution, the city charter, or the city ordinances were observed or followed in the levying of the tax or assessment on the property of the appellant in this case, or on any of the property taxed in connection with it; and it is a principal of law too well established, that corporate bodies can only exercise those powers that are specifically granted to them by the act of incorporation, or such as are necessary for the purpose of carrying into effect the powers expressly granted, and that such corporations can only act in the manner prescribed by law.—See 3 Scam. Rep., 187, *Kinzie vs. Trustees of Chicago*; 2, Cranch 167, *Head, et. al. vs. The Providence Ins. Co.*; 2, Selden's Rep., 92, *Thompson vs. Schermehorn*; 2, Kent's Com., 298-9.

2 Scam. Rep., 187.
2 Cranch Rep. 167.
2 Selden's Rep. 92.
2 Kent's Com. 297-9.

It has already been shown that the tax or assessment was levied contrary to the constitution and the city charter, and I will now proceed to show that the city ordinances have not been complied with.

On the 20th June, 1854, an ordinance was passed by the City Council, which was introduced in evidence on the trial, commencing on page 27, of the record, in which is contained the following provision:

"Sec. 1.—That whenever petition shall be presented for, and the Common Council shall deem it necessary and expedient, to grade, pave, or plank any street, sidewalk, or alley, lane, or avenue, or to construct any drain or sewer, within the limits of the city, they shall cause an order to be entered upon the record of their proceedings to that effect, which order shall particularly describe the location, character, and specifications of the proposed improvement. The publication of such order for one week in the corporation newspaper, shall be deemed sufficient notice to the holders or owners of lots and real estate benefitted by, or adjoining such improvement."

2 Seld. R. 92.

On the trial there was no evidence introduced or offered, of the character provided for in that ordinance, and the city was bound to pursue the course prescribed by their ordinance. See 2, Selden R., 92, *Thompson vs. Schermehorn*. The city clerk, Mr. Stone, testified that he published the ordinances in the corporation newspaper, but that would not be a compliance with said ordinance in this case. And evidence was given to show that the commissioners gave notice that they would meet on the 21st June, 1855, to make the estimate and levy the assessment for the improvement of the street; that they met at that time, and adjourned from time to time until the 4th of August of the same year, and that then they made an estimate of the expense of the improvement, and assessment, which assessment as given in evidence appears on pages 42-3 and 4 of the record. The assessment is given in numerals, but no words or characters are given to designate what is meant by the figures; and no evidence was given, that the commissioners ever gave any notice of their adjournments from time to time until the 4th of August.

Again in the ordinance introduced in evidence (on page 30 of record,) in which the commissioners are directed to proceed to estimate the amount of the expense of making the improvement on Jefferson street, and make an assessment, &c., they are directed by the ordinance to proceed in accordance with the provisions of an ordinance passed March 10, 1855, and report their proceedings in the premises at the next meeting of the Common Council. There was no evidence given that the commissioners made their report to the next meeting of the council, nor was there any ordinance of March 10, 1855, given in evidence, but the report of the commissioners shows upon its face that they acted under an ordinance of March 9, 1855, and no ordinance of March 9, 1855, was given in evidence.

The city records introduced in evidence show that the commissioners made their report to the common council, that their report was concurred in, and the city Clerk ordered to levy the tax in accordance with the report. But there is no evidence that any tax was levied, and there is an entire failure to show that there was ever a tax or assessment levied or made in accordance with the ordi-

nances of the city, or the city charter, or in accordance with any law, and upon the plaintiff's own showing the case should have been dismissed in the Circuit Court.

Relative to the collection of taxes, the city ordinance introduced in evidence required that if any special tax should not be collected within twenty days after the warrant should come into his hands, it should be his duty to apply to the County Court for an order to sell, &c, in pursuance of the act of March 1, 1854. The warrant introduced in evidence, was issued August 15, 1855, and was received by Filer, as testified by him, from the former collector, after his (Filer's) election in April 1856. Filer says he called on Brown for payment of taxes on the warrant previous to May 15, 1856, and advertised the delinquent list, under it July 31, 1856, nearly one year after it was issued. He had no right to proceed under that warrant, it having expired, long before it came to his hands.

The County Court having no jurisdiction to render judgment, as herein before shown, the Circuit Court had none. The fact of taking an appeal to the Circuit Court, did not authorize that court to take jurisdiction. It is in no respect like an appeal from a justice court. Where an appeal is taken from a justice court to the circuit court, even though the justice might not have acquired jurisdiction, it becomes the duty of the circuit court, under a statute of the State, to try the case upon its merits, provided, the subject matter of the suit was within the jurisdiction of a justice court. There was no consent that the circuit court might take jurisdiction, all the evidence being objected to.

Again this was a proceeding *in rem*, and the court rendered judgment in personem. But it seems to me that I have already said much more than is necessary, and I will submit the case, believing that the court can do no otherwise than to reverse the judgment.

JOSEF EINSTEIN, APPELLANT,
vs.
THE CITY OF JOLIET, APPELLEE. } APPEAL FROM WILL CIRCUIT COURT.

This was also a proceeding originally had before the County Court of Will County, to obtain judgment against certain real estate on Van Buren street, in the city of Joliet, for an assessment or tax alleged to have been made to pay the expense of a sewer on the south side of said street.

The application for judgment in this case was also made under the act of March 1, 1854, and all the proceedings in levying the tax or assessment, were had under the same city charter and amendments as in the case of Brown against the city.

Philip Filer was city collector, and the delinquent list was returned by him in the same form and with the same kind of return as in the case of Brown. Application for judgment was made at the September Term, 1856, of said County Court. The appellant Einstein, filed exceptions, and the exceptions were overruled, and judgment rendered in the same form as in Brown's case, and an appeal taken to the Will Circuit Court.

October 27, 1855, an ordinance was passed to construct a sewer on the south side of Van Buren street, and I. T. Millspaugh, Sidney S. Morgan, and Adiah Jones appointed commissioners to assess the expense of such sewer. A notice was published, bearing date December 3, 1855, stating that the commissioners would meet at Doolittle & Stone's store, on the 13th December, at 3 o'clock, P. M., for the purpose of making said assessment, which notice was signed

I. T. MILLSAUGH,
S. S. MORGAN,
A. D. JONES.

May 3d, 1856, a report was made to the Common Council, signed

SIDNEY S. MORGAN,
ISAAC T. MILLSAUGH,
A. S. JONES,

Stating that "after having given notice in the Joliet Signal for the space of more than one week previous, of the time and place of meeting, the said commissioners met at the store of Doolittle & Stone, of said city, when and where they estimated the cost of said improvement at (\$615) six hundred and fifteen dollars, as follows"—giving the different items constituting the amount, and "that they assessed and apportion the cost of said improvement as above, upon the following real estate benefitted thereby, as follows," giving names of owners and carrying out the numbers of the lots and blocks, number of feet, and amount of tax or assessment in figures opposite each owners name, without any explanations in words or characters, of the meaning of the figures, excepting the amount opposite the name of J. A. Matteson, where this character (\$) was used. There were five pieces or lots on which they reported as having assessed and apportioned the cost of said improvement. This report does not state the time that the commissioners met, and the certificate of publication introduced in evidence has no date, and merely states that the annexed notice was published in said paper " (Joliet Signal) for the space of two weeks, successively."

No evidence was given, that any notice was ever published or given, of the improvement to be made, or that the owners could appear and make objections to the report. The assessment in this case was made *without reference to the valuation of the property* in any manner, no valuation thereof being made, and the property on one side of the street only (south side) being assessed.

The testimony of S. S. Buffum shows that the property on the north side of the street was not assessed at all, and S. W. Stone testified that the sewer was as much improvement to the north side as to the south side of Van Buren street.

The list of real estate accompanying the collector's warrant, and the delinquent list returned to the County Court, and given in evidence in the Circuit Court, had amount carried out in figures, opposite to each lot, but no words or characters were used showing what the figures meant. The transcript sent to the Circuit Court, from the County Court, does not show that any notice, by publication, or otherwise, was given of the application for judgment against said lots. The evidence

given by Philip Filer, city collector, shows, aside from the transcript, that he did not return any published list or notice of application for judgment.

At the May Term, 1858, of Will Circuit Court, a jury was waived, and the case tried by the court, and judgment rendered against Einstein, appellant here, for the sum of \$153.75, damages and costs of suit and execution awarded; no judgment was rendered against the property. Einstein appealed to this court and preserved all the evidence given, in a bill of exceptions which appears in the record. It seems to me that the record and proceedings clearly show,

1st. That there never was any legal or valid tax or assessment levied or imposed on the property of appellant.

2d. That a portion of the property on the street improved, equally affected by the improvement, with that assessed, was not assessed at all.

3d. That the County Court never had jurisdiction to render judgment, and the County Court not having jurisdiction, the Circuit Court could not take jurisdiction.

4th. That even if the Circuit Court had jurisdiction, the evidence introduced was entirely insufficient to authorize the rendition of any judgment, either against appellant or against the property.

5th. This being a proceeding *in rem*, no judgment could be legally rendered against the party. The appellant, therefore, asks that the judgment be reversed.

URI OSGOOD, Attorney
and of Counsel for Appellant.

L. S. Folio

256-257-129-130

Supreme Court

J. H. Brown appellant
256 vs.

The City of Joliet appellee
and

Joseph Einstein appellant
257 vs.

The City of Joliet appellee

Arguments on the part
of appellants

Wm Ogden atty -
for appellants

Filed May 12, 1859

Leland
clerk

State of Illinois - Supreme Court -
The City of Joliet
a vs
Joseph A. Christino

Appeal from Nico

And the said
City of Joliet by J.E. Stutter its
attorney. Comes & says that there
is no error either in the record
and proceedings aforesaid
or in the rendition ^{of the judgment} aforesaid
& prays that the justices of
the said Supreme Court
now here may proceed to exam-
ine as well the record and
proceedings aforesaid as the
matters aforesaid above assigned
for error & that the judgment
aforesaid in form aforesaid
may be in all things affirmed
&c.

J.E. Stutter
Atty for Appellor.

257

Supreme Court
The City of New York
and
Josephine
Smith in error -

Filed April 28. 1857
L. Leland
Clerk

Court of Illinois Supreme Court for
Joseph Gusten Appellante
vs Appellee from
City of Joliet Appellee

E
W
B

It is hereby stipulated & agreed
by & between the parties to this suit that the time for filing
the Record in the above entitled suit in the office of the
Clerk of the Supreme Court be extended until the thirteenth
day of May A.D. 1859

Joliet April 14th 1859.

Wm Osgood
Atty pro Appellant

J. E. Steuter
Atty for Appellee

257.

Supreme Court

Joseph Guistein Appellant

vs
City of Joliet Appellees

Filed April 21, 1889
L. Leland
Clerk

SUPERME COURT—THIRD DIVISION,

APRIL TERM, 1859.

J. H. BROWN, APPELLANT,
vs.
THE CITY OF JOLIET, APPELLEE. } APPEAL FROM WILL CIRCUIT COURT.

ARGUMENT OF APPELLANT.

This was a proceeding originally had before the County Court of Will County, to obtain judgment against certain real estate on Jefferson street, in the city of Joliet, for an assessment or tax alleged to have been made or levied to pay the expense of an improvement on said street.

The application for judgment was made under the act of March 1, 1854—Laws, Spec. Session, 1854, P. 22, Sec. 1.

The delinquent list, of which the real estate of appellant formed a part, was returned by Philip Filer, city collector, to the County Court, with his affidavit, that "the foregoing list by me returned, are a true and correct record of the real estate, situated within said city, upon which he has been unable to collect the tax or assessment, as required by law and ordinance of said City Council."

Application for judgment was made at the July Term, 1856, of the County Court.

Brown, the appellant, appeared and filed exceptions, in which he described his lots as set out in the delinquent list. His exceptions were overruled and judgment entered "against the aforesaid lots and blocks, and parts of lots and blocks, in favor of the city of Joliet, for the sum annexed to each lot and block, and parts of lots and parts of blocks, being the amount of taxes or assessments and costs due severally thereon;" and that the lots be sold as the law directs.

There was no return of the city collector, that he was unable to find property on which to levy and make the tax, and no published list of the real estate returned as delinquent to the County Court, and no notice of the application for judgment in said court, was furnished to the County Court.

This was absolutely necessary to give the County Court jurisdiction, and without such published list and notice of application for judgment the court could not legally take jurisdiction or enter judgment.

Brown appealed to the Circuit Court of Will County, and at the May Term, 1856, a jury was waived, and a trial had, by the court, (Judge Davis presiding) and judgment rendered against Brown for \$172.28, damages and costs, and execution awarded. No judgment was entered against the property. Exception were taken at the trial and all the evidence preserved in the bill of exceptions.

City Charter of Joliet, Article V., Sect. 1, Fpl. L. 1852, P. 164.
The original Charter of the city of Joliet, as passed and in force June 22, 1852, P. 161, (Laws, Spe. Sess'n, 1852.) contains the following provisions: Article V., Sect. 1.—"The city council shall have power and authority to levy and collect taxes upon all property, real and personal, within the limits of the city, not exceeding one per cent. per annum, upon the assessed value thereof, and may enforce the payment of the same, in any manner to be prescribed by ordinance, not repugnant to the constitution of the United States, or of this State."

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Laws of 1853, Ps. 275-6
Sec. 3, division 4. Laws of 1853, Ps. 275-6, sec. 3, division 4.—"The city council shall have power to levy and collect taxes on property of any ward, or part of ward or wards, for the purpose of building and repairing bridges, school houses and other local improvements."

Id. Sec. 6. "Sec. 6.—The common council shall have power to levy and collect special taxes on owners of lots, according to their respective fronts owned by them, for the purpose of grading, paving, and planking streets, sidewalks, alleys, lanes, or avenues, constructing drains and sewers, digging wells, constructing pumps, and lighting streets, and to direct by ordinance the manner of assessing and collecting all city taxes. *Provided*, such ordinances shall not be inconsistent with the constitution of this State, or of the United States."

The tax or assessment made in this case was made under the foregoing provisions:

In our constitution are to be found the following provisions:

Const. Ills. 1848, Art. IX, Sec. 2. "The general assembly shall provide for levying a tax by valuation, so that every person and corporation, shall pay a tax in proportion to the value of his or her property; such value to be ascertained by some person or persons to be elected or appointed, in such manner as the general assembly shall direct, and not otherwise."

Id. Sec. 5. "The corporate authorities of counties, townships, school districts, cities, towns, and villages, may be vested with power to assess and collect taxes for corporate purposes; such taxes to be uniform in respect to persons and property, within the jurisdiction of the body imposing the same."

Id. Sec. 6. "The specifications of the objects and subjects of taxation shall not deprive the general assembly of the power to require other objects or subjects to be taxed, in such manner as may be consistent with the principles of taxation defined in this constitution."

The foregoing sections and provisions of the constitution and city charter are cited to show the basis on which the city of Joliet are authorized to levy and impose taxes and assessments. It is not contended that the city is not authorized to levy a tax or make an assessment on any given district or street in the city for the purpose of local improvement; but it is strenuously contended that under the Constitution and City Charter, when a tax or assessment is levied or imposed on any given district, for any purpose, it must be done on the basis of valuation, in compliance with the Charter and the Constitution, and that the people of Joliet under their charter are not to be subjected to the whims, or caprices, or prejudices of commissioners, in levying or imposing taxes or assessments on their property, for any purposes, without regard to valuation.

The tax or assessment in this case was made without regard to valuation, which is alone sufficient to render it invalid, and set aside the judgment.

Nor was their uniformity or equality in levying the same, taking the property fronting on the street, per lineal foot, as a basis. On the assessment, or what is designed as the assessment, at pages 32, 33, and 34, of the record, it will be seen that great inequality exists. Take for instance the second front of 21 feet and you find the amount carried out to be 53.18. Take the 22 feet, commencing 20 feet from west end of L. 4 in B. 22, and you find the amount carried out to be 73.54.—Take the 150 feet, being the fifth parcel from the bottom of the list, and you find the amount carried out to be 75.00. The next front preceeding that is 75 feet, and the amount carried out is 75.00.—Thus it will be seen that great inequality exists in the levying of the tax or assessment, upon this basis.

Again, there is no amount of tax or assessment made or carried out, on the property of appellant, or any of the property on the street. Numerals are used, but no words, letters, or characters are used to show what those numerals are intended to indicate; whether they are designed to represent dollars and cents, or whether they are intended to represent something else; and there was no evidence of any kind introduced to the court below showing, or tending to show what these figures represented, and the court could not legally render a judgment on such evidence. This alone is sufficient to reverse the judgment. See 20 Ill. Rep., 338, 340, *Lawrence vs. Fast*; see also 5, Gill. Rep., 405, 416-17, relative to uniformity and equality of taxation upon the value of property.

20. Ill's Rep. P 338-340
Lawrence vs. Fast,
5, Gill. Rep. 405, 416-17.

Again, neither the requirements of the constitution, the city charter, or the city ordinances were observed or followed in the levying of the tax or assessment on the property of the appellant in this case, or on any of the property taxed in connection with it; and it is a principal of law too well established, that corporate bodies can only exercise those powers that are specifically granted to them by the act of incorporation, or such as are necessary for the purpose of carrying into effect the powers expressly granted, and that such corporations can only act in the manner prescribed by law.—See 3 Scam. Rep., 187, *Kinzie vs. Trustees of Chicago*; 2, Cranch 167, *Head, et. al. vs. The Providence Ins. Co.*; 2, Selden's Rep., 92, *Thompson vs. Schermehorn*; 2, Kent's Com., 298-9.

2 Scam. Rep., 187.
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It has already been shown that the tax or assessment was levied contrary to the constitution and the city charter, and I will now proceed to show that the city ordinances have not been complied with.

On the 20th June, 1854, an ordinance was passed by the City Council, which was introduced in evidence on the trial, commencing on page 27, of the record, in which is contained the following provision:

"Sec. 1.—That whenever petition shall be presented for, and the Common Council shall deem it necessary and expedient, to grade, pave, or plank any street, sidewalk, or alley, lane, or avenue, or to construct any drain or sewer, within the limits of the city, they shall cause an order to be entered upon the record of their proceedings to that effect, which order shall particularly describe the location, character, and specifications of the proposed improvement. The publication of such order for one week in the corporation newspaper, shall be deemed sufficient notice to the holders or owners of lots and real estate benefitted by, or adjoining such improvement."

On the trial there was no evidence introduced or offered, of the character provided for in that ordinance, and the city was bound to pursue the course prescribed by their ordinance. See 2, Selden R., 92, *Thompson vs. Schermehorn*. The city clerk, Mr. Stone, testified that he published the ordinances in the corporation newspaper, but that would not be a compliance with said ordinance in this case. And evidence was given to show that the commissioners gave notice that they would meet on the 21st June, 1855, to make the estimate and levy the assessment for the improvement of the street; that they met at that time, and adjourned from time to time until the 4th of August of the same year, and that then they made an estimate of the expense of the improvement, and assessment, which assessment as given in evidence appears on pages 42-3 and 4 of the record. The assessment is given in numerals, but no words or characters are given to designate what is meant by the figures; and no evidence was given, that the commissioners ever gave any notice of their adjournments from time to time until the 4th of August.

2 Seld. R. 92.

Again in the ordinance introduced in evidence (on page 30 of record,) in which the commissioners are directed to proceed to estimate the amount of the expense of making the improvement on Jefferson street, and make an assessment, &c., they are directed by the ordinance to proceed in accordance with the provisions of an ordinance passed March 10, 1855, and report their proceedings in the premises at the next meeting of the Common Council. There was no evidence given that the commissioners made their report to the next meeting of the council, nor was there any ordinance of March 10, 1855, given in evidence, but the report of the commissioners shows upon its face that they acted under an ordinance of March 9, 1855, and no ordinance of March 9, 1855, was given in evidence.

The city records introduced in evidence show that the commissioners made their report to the common council, that their report was concurred in, and the city Clerk ordered to levy the tax in accordance with the report. But there is no evidence that any tax was levied, and there is an entire failure to show that there was ever a tax or assessment levied or made in accordance with the ordi-

nances of the city, or the city charter, or in accordance with any law, and upon the plaintiff's own showing the case should have been dismissed in the Circuit Court.

Relative to the collection of taxes, the city ordinance introduced in evidence required that if any special tax should not be collected within twenty days after the warrant should come into his hands, it should be his duty to apply to the County Court for an order to sell, &c., in pursuance of the act of March 1, 1854. The warrant introduced in evidence, was issued August 15, 1855, and was received by Filer, as testified by him, from the former collector, after his (Filer's) election in April 1856. Filer says he called on Brown for payment of taxes on the warrant previous to May 15, 1856, and advertised the delinquent list, under it July 31, 1856, nearly one year after it was issued. He had no right to proceed under that warrant, it having expired, long before it came to his hands.

The County Court having no jurisdiction to render judgment, as herein before shown, the Circuit Court had none. The fact of taking an appeal to the Circuit Court, did not authorize that court to take jurisdiction. It is in no respect like an appeal from a justice court. Where an appeal is taken from a justice court to the circuit court, even though the justice might not have acquired jurisdiction, it becomes the duty of the circuit court, under a statute of the State, to try the case upon its merits, provided, the subject matter of the suit was within the jurisdiction of a justice court. There was no consent that the circuit court might take jurisdiction, all the evidence being objected to.

Again this was a proceeding *in rem*, and the court rendered judgment in personem. But it seems to me that I have already said much more than is necessary, and I will submit the case, believing that the court can do no otherwise than to reverse the judgment.

JOSEF EINSTEIN, APPELLANT,
vs.
THE CITY OF JOLIET, APPELLEE. } APPEAL FROM WILL CIRCUIT COURT.

This was also a proceeding originally had before the County Court of Will County, to obtain judgment against certain real estate on Van Buren street, in the city of Joliet, for an assessment or tax alleged to have been made to pay the expense of a sewer on the south side of said street.

The application for judgment in this case was also made under the act of March 1, 1854, and all the proceedings in levying the tax or assessment, were had under the same city charter and amendments as in the case of Brown against the city.

Philip Filer was city collector, and the delinquent list was returned by him in the same form and with the same kind of return as in the case of Brown. Application for judgment was made at the September Term, 1856, of said County Court. The appellant Einstein, filed exceptions, and the exceptions were overruled, and judgment rendered in the same form as in Brown's case, and an appeal taken to the Will Circuit Court.

October 27, 1855, an ordinance was passed to construct a sewer on the south side of Van Buren street, and I. T. Millspaugh, Sidney S. Morgan, and Adiah Jones appointed commissioners to assess the expense of such sewer. A notice was published, bearing date December 3, 1855, stating that the commissioners would meet at Doolittle & Stone's store, on the 13th December, at 3 o'clock, P. M., for the purpose of making said assessment, which notice was signed

I. T. MILLSPAUGH,
S. S. MORGAN,
A. D. JONES.

May 3d, 1856, a report was made to the Common Council, signed

SIDNEY S. MORGAN,
ISAAC T. MILLSPAUGH,
A. S. JONES,

Stating that "after having given notice in the Joliet Signal for the space of more than one week previous, of the time and place of meeting, the said commissioners met at the store of Doolittle & Stone, of said city, when and where they estimated the cost of said improvement at (\$615) six hundred and fifteen dollars, as follows"—giving the different items constituting the amount, and "that they assessed and apportion the cost of said improvement as above, upon the following real estate benefitted thereby, as follows," giving names of owners and carrying out the numbers of the lots and blocks, number of feet, and amount of tax or assessment in figures opposite each owners name, without any explanations in words or characters, of the meaning of the figures, excepting the amount opposite the name of J. A. Matteson, where this character (\$) was used. There were five pieces or lots on which they reported as having assessed and apportioned the cost of said improvement. This report does not state the time that the commissioners met, and the certificate of publication introduced in evidence has no date, and merely states that the annexed notice was published in said paper " (Joliet Signal) for the space of two weeks, successively."

No evidence was given, that any notice was ever published or given, of the improvement to be made, or that the owners could appear and make objections to the report. The assessment in this case was made *without reference to the valuation of the property* in any manner, no valuation thereof being made, and the property on one side of the street only (south side) being assessed.

The testimony of S. S. Buffum shows that the property on the north side of the street was not assessed at all, and S. W. Stone testified that the sewer was as much improvement to the north side as to the south side of Van Buren street.

The list of real estate accompanying the collector's warrant, and the delinquent list returned to the County Court, and given in evidence in the Circuit Court, had amount carried out in figures, opposite to each lot, but no words or characters were used showing what the figures meant. The transcript sent to the Circuit Court, from the County Court, does not show that any notice, by publication, or otherwise, was given of the application for judgment against said lots. The evidence

given by Philip Filer, city collector, shows, aside from the transcript, that he did not return any published list or notice of application for judgment.

At the May Term, 1858, of Will Circuit Court, a jury was waived, and the case tried by the court, and judgment rendered against Einstein, appellant here, for the sum of \$153.75, damages and costs of suit and execution awarded; no judgment was rendered against the property. Einstein appealed to this court and preserved all the evidence given, in a bill of exceptions which appears in the record. It seems to me that the record and proceedings clearly show,

1st. That there never was any legal or valid tax or assessment levied or imposed on the property of appellant.

2d. That a portion of the property on the street improved, equally affected by the improvement, with that assessed, was not assessed at all.

3d. That the County Court never had jurisdiction to render judgment, and the County Court not having jurisdiction, the Circuit Court could not take jurisdiction.

4th. That even if the Circuit Court had jurisdiction, the evidence introduced was entirely insufficient to authorize the rendition of any judgment, either against appellant or against the property.

5th. This being a proceeding *in rem*, no judgment could be legally rendered against the party. The appellant, therefore, asks that the judgment be reversed.

URI OSGOOD, Attorney
and of Counsel for Appellant.

415 folio

256-257-128-130

Supreme Court

J. H. Brown appellant

256 vs.

The City of Joliet appellee

and

Joseph Einstein appellant

257 vs.

The City of Joliet appellee

Arguments on the part
of appellants

Wm Osgood atty
for appellants

Filed May 12. 1859

Edwards

Clerk

Prepared

Supreme Court - Third Division.

J. H. Brown, Appellant
as
The City of Chicago, Appellee

Appeal from
Will Circuit Court.

Argument of Appellee.

- 1st. An assessment for the improvement of a street is not a tax within the meaning of the Constitution of this State, and a valuation of the property benefitted is not necessary or required.

Canal Trustees vs City of Chicago 12 Ill. R. 403.

- 2^d In reply to the second point made by appellant, the evidence as set out in the bill of exceptions shows a substantial compliance with the Charter of the City and the ordinance passed under it. It is deemed unnecessary to recapitulate the proceedings. They are set out at length in the record pages 33 to 32 inclusive. The ordinance for the improvement of the street was passed on the 10th day of March 1855. The Commissioners in their report describe

The ordinance under which they acted, as having passed on the 9th day of March 1855. The whole proceedings as set out in the bill of Exceptions show that they intended to refer, and did refer, to the ordinance of March 10th 1855 - that the misdescription was a mere clerical error and work, no one any harm.

It is contended by a full ass't the assessment is unequal - some of the fronts on the street of the same width having a greater assessment against them than others. We insist that the assessment is equal and just. It will be perceived by reference to the ordinance above referred to and the assessment as set out at pages 32, 33 & 34, of the record that the owners of the several fronts had the privilege of making the improvements or a part of them themselves. It appears that owners did make a portion of the improvements and the City the balance. The Commissioners in making their assessment gave the owners who had built a portion of the improvements credit

for the value of the work they had done and assessed the lots for the portion owned by the City -

3^o The report of the City Collector to the Village Council and his application for judgment we insist are in conformity with the Statute - Session Laws 1854 (Special Session) pag 22 -

We contend that this case does not come within the principle decided in the case of Lawrence vs Frost, 20 Ill. R 338. - In that case there was no mark, sign or abbreviation of any kind by which the Court could determine what was meant by the figures "248". In this case the Commissioners assessed the total cost of improving the street at \$3,800.64. (See record pages 32, 33 & 34) and by adding up the column of figures under the head of "total" opposite the several tracts therein described we find the amount is \$3,800.64. The dollar mark being prefixed to the total cost of the improvement and the figures under the head of "total", thus, "43. 20" &c so clearly indicate that

dollars and cents were intended, that it seems unnecessary to devote further time to that branch of the case. And furthermore, this point was not raised in the Court below, and it is too late to take advantage of it in this Court.

5th

It is contended that this judgment was properly rendered against the owners of the lots instead of against the lots themselves. - In the act amendatory of the City Charter, Session Laws of 1854, p. 276 § 6, the following provision occurs:

"Sec. 6. The Common Council shall have power to levy and collect special taxes on owners of lots, according to their respective fronts owned by them, for the purpose of grading, paving and plank ing streets" &c

The above provision clearly indicates that the Legislature intended that the proceedings should be in personam, but, if the Court should be of opinion that the proceedings should be in rem. then we insist that this Court

has the power to reform the judgment, unless there should appear to be other errors requiring its reversal.

5th The 5th point made by appellant is covered by the preceding points and need not be further noticed.

Joseph Einstein, Appellant
vs
The City of Joliet, Appellee

This case is substantially like the case of Brown vs The City of Joliet and the argument in that case answers all the points made by appellant in this case.

J. C. Stricker
Attorney for Appellee

Nos. 256-257

Supremo Court. 3 Division

J. H. Brown - Joseph K. Martin

vs

The City of Joliet City of Joliet

"

Argument of Appellants.

Filed May 13. 1859

A. Delamer

Clerk

SUPREME COURT—STATE OF ILLINOIS,

THIRD DIVISION.

JOSEPH EINSTEIN, APPELLANT, }
 vs. } APPEAL FROM WILL CIRCUIT COURT.
 THE CITY OF JOLIET, APPELLEE. }

A B S T R A C T O F C A S E .

RECORD.

1. Caption of Record and Title of Court.
2. General Rule relative to Pleadings.
- 3 to 9. Transcript of record and judgment rendered in Will County Court at its September, Term 1856, in favor of the City of Joliet, for special taxes or assessments against certain Real Estate, &c., owned by Joseph Einstein.
- Philip Filer, as City Collector, files his return of delinquent list, (August 26, 1856), in County Court, (with the Clerk), with petition for judgment against the Lots, &c., and order of sale.
5. Description of property of Einstein in this case from County Court with the taxes, &c., as returned by City Collector:

ORIGINAL TOWN OF JOLIET.					
To whom Taxed.	Lot.	Block.	Tax.	Costs.	Total.
Joseph Einstein,	1	22	153 75	3 83	157 58
6. Exceptions by Einstein in County Court.
7. Exceptions overruled and judgment rendered "against the aforesaid Lots and Blocks, and parts of Lots and Blocks in favor of the City of Joliet, for the sums annexed to each Lot and Block, and order of sale.
- Appeal prayed and granted from County Court, to Will Circuit Court.
8. Certificate of Clerk of County Court, certifying transcript to Circuit Court.
9. Appeal bond from county court to circuit court.
- 10-11. Summons on appeal, from Circuit Court, to the City of Joliet, and Sheriff's return on same.
- May 22, 1858.—At May Term 1858, of Will Circuit Court, Hon. David Davis, Judge of the 8th Circuit, presiding—suit tried by Court, (jury waived), and judgment rendered *against Einstein for \$153.75 and costs*, and that execution issue therefor; [no judgment against the property]. Appeal prayed by Einstein to Supreme Court and granted, and leave to file appeal bond in 90 days, and file bill of exceptions by first day of next term—[December Term, 1858].
- June 4, 1858.—(Same May Term.) Appeal bond, with Merritt O. Cagwin security, approved by Court.
15. Appeal bond set out.
16. December 6, 1858.—1st day of December Term of Will Circuit Court—stipulation filed to extend time to file bill of exceptions to January 20, 1859.
17. Bill of exceptions filed, January 12, 1859.
- 17-27. Bill of exceptions, containing the following:
 17. S. S. Buffum, a witness called by the City Attorney, testified as follows:—"I am City Clerk of the City of Joliet; the book here introduced contains the record of the proceedings of the Common Council of Joliet.
 - The following from page 187, City Records introduced:—"Ald. Hunter, from committee to which was referred the petition for the grading and sewerage of Van Buren Street, reported favorable to such petition and recommended the passage of the following ordinance. Report concurred in and ordinance passed.
 - Said ordinance passed October 27, 1855, and provides that "a drain or sewer be constructed 3 feet North of the South side of Van Buren Street, from Chicago Street to Joliet Street, giving dimensions and manner of construction, and I. T. Millsbaugh, Sidney S. Morgan and Adiah Jones appointed commissioners to assess the expense of sewer.
 - Commissioners report of date May 3, 1856, then introduced, stating that after having taken an oath, &c., to truly and impartially assess the expenses, &c., on the Real Estate benefitted, and after having given notice in the Joliet Signal for more than one week previous, of the time and place of meeting, they met at the Store of Doolittle & Stone of said city, when and where they estimated the cost of said improvements, &c., giving the different items in numerals.
19. NOTICE.
 "The undersigned Commissioners, appointed by the Common Council, to make the assessment on the property benefitted for a drain or sewer on the South side of Van Buren Street, hereby give
- 20.

"notice that they will meet at the store of Doolittle & Stone, on Thursday the 13th day of Dec. inst..
"at three o'clock P. M., for the purpose of making said assessment. All persons interested are
"requested to be present.
"Joliet, December 3d, 1855.

"I. S. MILLSPAUGH }
"S. S. MORGAN, } Commissioners.
"A. D. JONES. }

PUBLISHERS' CERTIFICATE.

"STATE OF ILLINOIS, } ss.
WILL COUNTY, } We, the undersigned, Publishers of the Joliet Signal, a weekly
"newspaper published in Joliet, Will County, do hereby certify that the annexed notice was pub-
"lished in said paper, for the term of two weeks successively,

"C. & C. ZARLEY, City Printers.

Buffum further testified:—"I have not seen the petition on file in the City Clerk's Office, pray-
"ing for the passage of an ordinance to drain Van Buren Street"

21. Collector's warrant, to City Collector, bearing date, May 6, 1856, introduced, asserting that the
Common Council did on the 5th May, 1856, levy and assess upon the Real Estate hereinafter describ-
ed, the several sums set opposite thereto in the appropriate columns, commanding the Collector to
collect and make return, in accordance with the ordinances of the city in relation to the collection
of taxes.

Description of property taxed and the taxes accompanying warrant:

Names of Owners.	Description, &c.	L.	B.	Am't of Tax.
J. A. Matteson,	Original Town of Joliet,	8	21	153 75
Carpenter & Watkins,	" " "	1	"	59 45
Presbyterian Church,	" " "	"	"	94 30
Uri Osgood,	" " "	8	22	153 75
Joseph Einstein,	" " "	1	"	153 75

Buffum on cross examination testified—"This paper (taking up the report) is the report of the
Commissioners; I am acquainted with the property on Van Buren Street; none of the property
"on the North side of Van Buren Street was assessed."

22. S. W. Stone, called for the City, testified:—"I was City Clerk during the months of November
"and October, 1855; I caused the notice to be published in the corporation paper; the Commission-
"ers' report was filed in the City Clerk's Office."

City Records at page 175:—"Petition of Rodney House, and others, to grade Van Buren
"Street, between Chicago Street and Joliet Street. Referred to com. on streets, alleys and bridges."

S. W. Stone further testified:—"I remember of Doctors Carpenter & Watkins' name and
"Rodney House's name being on the petition to drain Van Buren Street."—[City Records, page 215.

Commissioners, make report, and thereupon it is ordered by the Common Council &c., that the
assessment proposed, be and the same is hereby confirmed and approved.

S. W. Stone on cross-examination testified:—"I think Joseph Einstein's name was not signed to
"the petition, nor did the Presbyterian Church appear on said petition. I am acquainted with this
"portion of Van Buren Street. The drain was dug as far as Joliet Street. It was as much im-
"provement to the North side as to the South side of Van Buren Street."

23. I. T. Millspaugh, a witness for the city, testified:—"I was commissioner on Van Buren street.
"I was sworn as commissioner. A. S. Jones acted as one of the commissioners."

Walter Hawley, a witness for the city testified:—"This book contains the collector's return."—
Collectors return introduced as follows:

"List of real estate situate within the corporate limits of the City of Joliet, and lying and being
"on the South side of Van Buren street in said City of Joliet, upon which a special tax or assess-
"ment remains due and unpaid, heretofore duly levied and assessed, by the Corporate authorities of
"said City, for the purpose of digging a sewer, on the South side of said street, from Chicago St. in
"said City, to-wit:

"Names of owner.	Description &c.	L.	B.	Am't Tax.
"J. A. Matteson	Original Town of Joliet	8	21	153 75
"1st Cong. Church	" " "	1	"	94 30
"Uri Osgood	" " "	8	22	153 75
"Jo Einstein	" " "	1	"	153 75

24. "State of Illinois, Will Co. ss:—I, Philip Filer, City Collector in and for the City of Joliet, Will
"County, State aforesaid, do solemnly swear that the foregoing list, and by me returned, are a true
"and correct record of the real estate situated within said City, upon which he has been unable to
"collect the tax or assessment, as required by law and ordinances of said City Council, of said City
"aforesaid and levied as in the foregoing list set forth, and that said taxes or assessment aforesaid,
"remain due and unpaid as set forth in said list at this date.

"Sworn and subscribed to before me this }
"25th day of August, A. D. 1856. } P. FILER
O. L. HAWLEY, Clerk Will Co. Court. Collector for the City of Joliet.

Philip Filer, a witness for the City testified:—"I was collector at the time the warrant was issued
"—I caused notice to be published in the corporation paper—the date of notice was July 30th, 1856
"—I did not return any proof of publication—I have no recollection of returning a published list or
"the lots—The 'True Democrat' of July 31st, 1856, contained a publication of the list of lots to-
"gether with notice of application for judgment.

Copy of the True Democrat published July 31, 1856, containing the following list and notice
introduced. [The list is in every respect like the delinquent list of the City collector returned to
County Court.]

25 Notice—That in pursuance of the act in form March 1, 1854, to amend the charters of the several Towns and Cities &c., application would be made to the County Court of Will County at the September Term, on the 1st Monday of September 1856, for judgment against the real estate, and an order to sell the same on the 2d Monday of September 1856. Signed,
Dated, July 30, 1856. P. FILER, City Collector.

Alexander McIntosh, a witness for the city testified:—"I was publisher of the 'True Democrat' in July 1856, July 31, 1856—It was the corporation paper at that time—Notice was published in it and in all papers of that date.

26 C. Zarley, a witness for the city testified:—"A copy of the Joliet Signal bearing date October 30 1855, contained the following *Council Proceedings*:—"City Clerk's Office, Joliet, Oct. 29, 1855 — "Public Notice is hereby given that the Common Council have ordered a drain or sewer to be constructed on the South side of Van Buren street from Chicago street to Joliet street. Now unless the same shall be constructed in the manner required by the ordinances, on or before the 10th day of November 1855, it will be built by the Street Commissioner and the cost assessed on the premises chargeable therewith." S. W. STONE, City Clerk.

Ordinance of Oct. 27, 1855, [herein before copied] introduced.

27 "I was publisher of the Joliet Signal published October 30th, 1855, and all the proceedings published in the paper of that date were inserted in all the papers.

William Tonner, a witness called for the city testified:—"I am Clerk of the Will County Court, this book here introduced contains the record of the proceedings in the Will County Court.

The record was introduced corresponding in all respects with the transcript on file. The foregoing is all the testimony introduced as shown by the Bill of Exceptions.

To the whole of which evidence, at the time and in the order in which the same was offered the said Defendant (appellant here) by his attorney objected, which objections were then and there overruled by the Judge, and the testimony admitted, to which &c., the Defendant excepted &c., and prayed that his exceptions be allowed which was done &c.

The errors assigned are

20 1st. That the Court below allowed improper evidence to be given on the trial by Defendant in error.

2d. That the evidence introduced in the case, in the Court below was wholly insufficient to authorize the rendition of the judgment therein.

3d. That the transcript of the County Court of Will County and evidence in the case, given in the Circuit Court on the trial in the case, showed conclusively, that the County Court, from which the appeal was taken to the Circuit Court, had no jurisdiction to enter judgment, and the suit should have been dismissed in the Circuit court, and judgment entered against the appellee for costs.

4th. That the return of Philip Filer as city collector, and his collection warrant, and delinquent list, were entirely insufficient to authorize the rendition of any judgment against said appellant, or the property returned, and no evidence was given or offered on the trial, supplying the defects therein, sufficient to authorize the rendition of the judgment against the appellant Einstein in said suit, and the Circuit Court was not authorized to take jurisdiction in the case.

5th. That no assessment or valuation of the property, on which a tax or assessment was purported to be levied, was ever made, and the collector's warrant and return, made by him, do not show that any amount of tax or assessment, was made or authorized to be collected by him in dollars and cents, and no characters used in the same showing or denoting that any amount of taxes or assessment had been made in dollars and cents.

6th. That the evidence in the case shows that a tax or assessment was only made on a part of the property on the street where the improvement was made, and to be benefitted or affected by such improvement.

7th. That the judgment was improperly and erroneously rendered rendered the appellant Einstein and directing execution to be issued against him, when the judgment should have been rendered against the City of Joliet for costs.

8th. That the said judgment rendered is contrary to the evidence and the law, and contrary to the constitution of the State of Illinois, and of the United States, and the court had no jurisdiction to render such judgement. And also other errors apparent upon the record and proceedings in the rendition of said judgment.

URI OSGOOD. Atty. and of Counsel for Appellant..

POINTS AND BRIEF OF APPELLANT.

1st. The tax or assessment levied on appellant's property was illegal and void; no valuation of the property having been made, on which such tax or assessment was levied. No tax or assessment was levied or imposed on any of the property, on the opposite side of the st., said to have been improved, and the property on the opposite side of the street was equally affected by the improvement. See the evidence in the case; City charter of Joliet, Article V. Sects 1-2-9, Laws of 1852, (special session,) Page 164, and amendments to Charter—Session Laws 1853, Pages 275-6, Sec. 3, Division 4, and Sec. 6, 3 Scam. Rep. 227-130—Sawyer vs. The City of Alton.

5. Gill. Rep. 405-416-17—Shaw vs. Dennis.

2. Seldens. Rep. 92—Thompson vs. Schermerhon.

1. Dutchers Rep. 309—State vs. Jersey City.

2d. The proceedings of the City Council and of the Commissioners appointed by them, in the levying of the tax or assessment in this case were illegal, and not in accordance with the ordinances of the city, and the same were contrary to the constitution and are of no validity or effect. See City Charter and amendments, and the evidence as above. Constitution Ills., 1848, Art. IX, Sects 2-5-6.

2. Scam. Rep. 187-188—Kinzie vs. Chicago. 2. Cranch Rep. 167—Head et. al. vs. The Providence Insurance Company. 2. Kents Com. 298-299.

3d. The report of the City Collector to the Will County Court, and his application for judgment and the evidence introduced, were insufficient to authorize said court to take jurisdiction and render judgment; and the evidence introduced in the Circuit Court, showed that said County Court had no jurisdiction to render judgment, and the said report and application and evidence introduced in the Circuit Court were wholly insufficient to authorize that court to render judgment in favor of the City, even if said court were authorized to take jurisdiction at all. See City Charter of Joliet and amendments and evidence and authorities above. See also 20, Ills. Rep. 338—Lawrence vs. East.

4th. This is a proceeding *in rem*, and the Circuit Court rendered judgment in damages against the party and awarded execution on same, which is erroneous.

5th. No judgment could be legally rendered against the appellant, on the return and petition of the City Collector, and the evidence produced on the trial by the Plaintiff in the Court below, (the appellee here,) nor could any judgment be legally rendered against the property of appellant. See City Charter and amendments and evidence, and authorities as above.

URI OSGOOD, Atty. and
of Counsel for Appellant.

No. Folio 59. Cost Amount	.	Received Payment from App. Atty.
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257-130

Supreme Court
Joseph Einstein appellant
vs.

The City of Joliet appellee

Abstract & Brief

Wm Osgood Attorney
for appellant

Filed May 18, 1859
L. Leland
Clerk