No. 12999 ½

Supreme Court of Illinois

People, ex. rel.

---

vs.

Crow

71641

Psopis za vil

Vl. Jovkar

ov,

Ivo A. Gross

Rukopisna ostavina

Sveučilišna knjižnica

214-246-247
113-114-115

SUPREME COURT OF ILLINOIS, THIRD GRAND DIVISION.

APRIL TERM, 1860.

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

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

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

DEFENDANTS' POINTS.

WALTER B. SCATES,

Of Counsel for Defendants.

Filed May 14, 1860
L. Leland
Clerk

SUPREME COURT OF ILLINOIS, THIRD GRAND DIVISION.

APRIL TERM, 1860.

---

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

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

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

For the Defendants I submit the following points:

I.

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

No. 214.

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

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

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

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

Nos. 246, 247.

II.

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

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

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

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

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

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

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

Amendment, p. 15, Sec. 43.

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

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

The extent of that defence is held to be general in

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

III.

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

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

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

No. 246.

IV.

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

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

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

~~State of Illinois ss~~ ~~In the Supreme Court of the State of Illinois First Grand Division November Term 1857~~

~~The people of the State of Illinois to~~ ~~John A. Grow Attorney and Counsellor at Law~~

~~Whereas it is represented to the Supreme Court of the First Grand Division of the State of Illinois now in session at Mount Vernon in said State~~

This day came William H. Foster by M. J. Schuyler his attorney and by the petition of William H. Foster (setting forth and shewing filed to the court that he was plaintiff in two suits commenced and prosecuted to judgment in the Circuit Court for Cook County, William H. Foster vs Samuel Stone and Jonathan R. Anderson and William H. Foster vs David H. Davis and Jonathan R. Anderson and that John A. Grow acted as the attorney for your petitioner the said plaintiff, and as such attorney has collected and received the money on both judgments amounting to one hundred and eighty dollars or thereabouts as your petitioner verily believes and will appear by the record of said Court, and that the said John A. Grow has refused and refused to pay over to your said petitioner the said money or any part thereof although often requested so to do by your petitioner who at the same time offered to allow him his reasonable fee and expenses

~~You are therefore hereby~~ commanded to appear before the said Supreme Court now in session at Mt. Vernon in said State on ~~the~~ Monday ~~day~~ the ~~day~~ day of this present month of November, then and there to shew cause why your name should not be stricken from the roll of attorneys and Counsellors of said Court and hereof fail not Whereupon it is ordered by the Court that the

Said John A. Grow be required ~~to~~ to appear before this Court on Monday the 21st day of this present Month of November, to show Cause, if any he have, why his name should not be stricken from the Roll of Attorneys and Counsellors of this Court and that the Clerk of this Court, cause a certified copy of this order to be served upon the said John A. Grow at least two days before the day aforesaid.