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Annual Rept  
of the Law Dept.

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# The City of Seattle

LAW DEPARTMENT

Seattle, Washington,

January 27th, 1896.

To the Honorable Byron Phelps,  
Mayor of The City of Seattle.

Dear sir,--

In accordance with your request I beg leave to submit a report showing the business of this department to date!

In making this report it will serve no good purpose to do more than call attention to the principle cases and to summarize the work of the department.

There have been no less than fifty cases commenced within the last year in which the city is a party plaintiff or defendant, numbers of them requiring great labor in preparing for trial. It has become the custom of attorneys who commence actions to foreclose mortgages to make the city a party defendant where it has liens on the real estate by virtue of local assessment. This necessitates the filing of answers and cross-complaints in order to protect its interests. To do this requires as much labor and research as it would if the city were compelled to commence actions to foreclose its liens for such assessments.

Since the commencement of the present administration there have been eight hundred and ninety-five ordinances passed by the city council, at least seven hundred of which have been drawn by this department; and while many of these are of minor importance, incident to the ordinary business of the municipality, yet a great majority are of sufficient importance to require care in their preparation, and many of those drawn elsewhere have been subjected to such scrutiny as to their legality as the necessity demanded. To perform this duty has required much time and in many instances patient research. In addition to this the work of the office, aside from the preparation and trial of cases, is onerous, and claims so much of the time during ordinary business hours that little attention can be given to the investigation of authorities; hence most of such work is done after office hours.

Chief Among the ordinances prepared were those providing for the improvement of streets under the installment plan, as provided by the act of the legislature of 1893. It was deemed necessary to prepare a general ordinance to carry into effect the provisions of said act, which included all things necessary to vest jurisdiction in the city

95  
20

# The City of Seattle

LAW DEPARTMENT

(2)

*Seattle, Washington.*

council to order the improvements. The ordinances ordering such improvements and levying assessments required and received careful attention, so that no legal objections could be made to the bonds issued in payment thereof. All steps in such matters have been examined by eminent lawyers and no one has yet found any objection to the legality of the proceedings thus taken. *Quote*

There have in times past been many assessments declared invalid by the courts, even where the improvements have been made and the property benefited thereby, by reason of some irregularity, and in many instances for lack of some jurisdictional step, and the warrants issued against the local improvement districts have not been paid because the city was unable to enforce collection on the original assessments. For this reason, notwithstanding the fact that the city was not primarily liable, its credit has been seriously injured in consequence thereof. To remedy this an act was passed by the legislature in 1893- providing for re-assessments in all such cases, and the Supreme Court has recently, in the case of Frederick against the City, held such act valid in all respects. The importance of this decision cannot be too highly appreciated, as it enables the city to save its credit and the warrant holders to get their money. The Supreme Court has also held the re-assessment made under the charter provision valid. So that the way is clear to re-assess in all cases within the purview of the statute or the city charter.

Including the number of cases pending when my term began and those since commenced fifty have been disposed of and there are now pending sixty-seven cases in which the city is either a plaintiff or defendant, as before stated. In a great majority of these cases the city is a party defendant. This, however, does not include ~~xxxxxx~~ actions brought to foreclose street grade assessments. There are now seven cases pending in the Supreme Court of the United States which involve the validity of taxes against the national banks of this city, for the years 1891 and 1892, amounting to about \$25,000.00. The banks appealed these cases from the Supreme Court of the state. In the ordinary course of business in the United States Supreme Court these cases cannot probably be reached in less than a year from this date. In my report of last year I called attention to these cases, to which reference is made.

The case of John M. Klien is now pending on appeal to the United States Circuit Court of Appeals. This is an important case, it being an action against the city for the infringement of an alleged patent. The city was successful in the Circuit Court. I direct at-

*The City of Seattle*

LAW DEPARTMENT

(3)

*Seattle, Washington.*

tention to my report of last <sup>Year</sup> for further information in regard to this case.

There is also an important case now pending in the United States Circuit Court by James McNamara against the city to recover damages for the infringement of a patent invented by him, as he alleges, it being an improvement in centering for tunnels. He claims \$15,000.00 damages. This case is set for trial January 30, 1896.

During the year 1895 judgments were obtained on account of Krug deficiency as follows:

Against D. T. Denny, foreclosing a mortgage on certain real estate in Denny-Fuhrman Addition to the City of Seattle. The decree in said cause was for the amount of two notes, in favor of Jacob Furth, and by him assigned to the city; one note being for \$7400 and one for \$5000. On the 26th day of March 1895 the property was sold and bid in by the city for the sum of \$15,396.80, the amount of the decree. The time for redemption will expire on the 26th day of March, 1896.

Against D. H. Gilman on bank check given by him to Adolph Krug, City Treasurer, amounting to \$2470.00. This is not secured.

The note signed by Fred E. Sander and wife, on which action was commenced, has been collected and paid into the city treasury, amounting to \$5,894.99.

There is an action now pending against The L. H. Griffith Realty & Banking Co. and others on a note for \$15,000.00, given on account of Krug deficiency, to foreclose mortgage given to secure said note, and also to foreclose a lien which the city has upon certain stock of the Fremont Milling Co., Seattle National Bank Building Co., and the Blaine Electric Light and Power Co. The mortgage on the real estate is subsequent to other liens thereon.

The Ames deficiency was settled by the sureties, after suit was brought against them. This deficiency arose out of collections made by him on street assessments, and the settlement I think was in all respects a satisfactory one for the city.

The case against Isaac Parker and his sureties has, within a few days last past, been decided by the Supreme Court. The judgment below was modified. The remittitur from the Supreme Court has not yet been sent down, but I think the amount of the city's recovery will be about \$2400.00, which includes interest. I have stipulated with Parker's attorneys that the remittitur may be sent down forthwith; hence the money will be paid within the next few days.

There are still three cases undecided by the Supreme Court in

*The City of Seattle*

LAW DEPARTMENT

*Seattle, Washington.*

(4)

which ~~which~~ opinions may be handed down soon. These are: Coggins against the City, a suit to recover the sum of \$225.00 for hauling water pipe. This case involves the construction of a written contract, which the **city** claims was modified, so that according to its contention it owed Coggins nothing. The city was successful in the Superior Court and the plaintiff appealed to the Supreme Court. Also Pearson against the City, who seeks to recover the unearned portion of the amount paid for an amusement license. This case involves the construction of sections 41 and 42 of article IX of the charter. Also the case of McQuillan against the City, it being an action to recover damages for a personal injury. The plaintiff obtained a judgment against the City for a \$1000.00, and the city appealed.

There are a number of cases now pending in the Superior Court to recover damages for personal injuries on account of defective sidewalks. The recent case of Elster against the City, in which the plaintiff recovered damages in now pending on the city's motion for a new trial.

The case of Taake vs. the City was, on the 24th day of January, decided in favor of the city upon the city's motion. The court held that the city was not liable for injuries received on the portion of Railroad Avenue where the accident happened to the plaintiff.

None of these cases for personal injury involve less than \$5000.00.

Several cases have been commenced against the City for the alleged negligence of the city in failing to provide funds for the payment of street warrants issued while the charter of 1886 was in force. One case has been argued twice on demurrer of the city to the plaintiff's complaint. I am very earnest in the conviction that the city is not liable on account of delinquencies, and believe that it will succeed in all these cases.

The municipal court work has been carefully looked after and satisfactory results have been obtained, which may be confirmed by the number of convictions for the violation of city ordinances.

I take pleasure in saying that I am well satisfied with the assistance of City Attorney Frank A. Steele, whose work has been of great value to me in discharging the duties of this office. ~~office~~

Respectfully submitted,

  
 Cooperation Counsel.