NEW JERSEY COURT OF ERRORS AND APPEALS.

JOHN MILTON, Plaintiff in Error, vs. CHARLES STELL, Defendant in Error.	On Error to Supreme Court.

Brief for Plaintiff in Error, by John Milton and Black & Drayton.

This case was tried by Judge Erwin in the Second District Court of Jersey City, who found for the plaintiff, and on appeal to the Supreme Court the defendant obtained a reversal of the District Court's judgment.

It is to review the decision by the Supreme Court that this writ of error has been issued from this Court.

The plaintiff in error complains of error committed by the learned Justice in his view of the case as expressed by his opinion filed, where he construes the words "*assessments*" and "*assessment*" used in the order of the Supreme Court of June 16th, 1904, to mean the same thing, viz: The *act of apportioning the burden* to be borne by the persons or property chargeable.

Had the word "*assessment*" been used inboth places in said order we could well agree with the construction placed upon it by the learned Justice, but there was clearly in the mind of the Court

the distinction between the concrete *results* of the act of apportionment by the public authorities which were the *liens or burdens or apportionments* placed upon the lands of the defendant in error, and the others who joined in the agreement with Black & Drayton, and hence the setting aside of the "*assessments*" being such *liens or burdens or apportionments*, and the direction to perform a new *act of apportionment or "assessment"* by said public authorities

The case before this Court is to construe the agreement made by Stell (the defendant in error) and others with Black and Drayton.

In this agreement Black and Drayton were authorized and employed to do two things: (1) *To attack the assessment* (meaning to criticize and annul the proceedings of the Commissioners of Assessment, of the Board of Street and Water Commissioners acting with said Commissioners of Assessments, and the maps prepared and filed by the Assessment Commissioners), and (2) to

(*a*) *Set aside the lien or apportionment* placed by the public authorities upon the property of said Stell, the other party to said agreement, or

(*b*) *Obtain a reduction in the amount of said lien or apportionment* upon the property of said Stell.

The said Stell agreed to pay to said Black and Drayton, as compensation for their services, fifteen per cent. of the amount of the *lien or apportionment* on his property to set aside, if the same were set aside, or fifteen per cent. of the *reduction in said amount of the lien or apportionment* on his property, if not entirely set aside.

The employment under said agreement was accepted by Black and Drayton to do the two things mentioned above, and suits were brought attacking he *proceedings and the amount of lien or apportionment* levied upon the property of said Stell, and the Supreme Court, by its order entered June 16, 1904, ordered the "*assessments*" set aside, and directed the

Commissioners to make a new "*assessment*" according to law, which order cancelled and annulled *both the acts of the public authorities of levying the burdens* upon the land of said Stell and the *lien or burden itself*, and at this day there is no lien or burden for the opening, extension and improvement of Baldwin avenue in Jersey City upon the lands of said Stell which were chargeable and burdened with the lien for said improvements before the said order of the Supreme Court above mentioned.

~~extension and improvement of Baldwin avenue in Jersey City upon the lands of said Stell which were chargeable and burdened with the lien for said improvements before the said order of the Supreme Court above mentioned.~~

The liability of the defendant in error to pay Black and Drayton their compensation in said agreement provided (or to the plaintiff in error, assignee of Black and Drayton) is plain, for the land of the defendant in error has been *relieved of the burden of the assessment levied and resting upon it before the said order of the Supreme Court was made, because that order set aside the act of apportionment of that burden and the burden itself;* and it is not disputed that the said order was the result of the legal attack brought by Black and Drayton against the assessment in question.

Black and Drayton, therefore, fully executed on their part the agreement entered into between said Stell and them, and, as was the view taken by the Trial Judge in the District Court, the defendant in error should be adjudged liable to pay fifteen per cent. of the amount of the lien imposed upon his property to Black and Drayton, or their assignee, the plaintiff in error.

The meaning of the agreement is clearly this, for what else could Black and Drayton perform under said agreement? They cannot dictate the proceedings of the public authorities to assess lands for street improvements; they could not accept employment to

regulate the method of such assessments, nor could they reasonably undertake a legal service of such indefinite issue as is implied in the decision of the learned Justice in his reversal of the recovery of the judgment in the District Court, where he maintains that the act of assessment being unfinished, the employment is incomplete.

The public authorities have taken no steps to levy a new assessment and never will re-assess the property of said Stell for the improvements for which said assessment was levied, (the decision affecting about one-third of the total amount of the assessment, and the Collector of Taxes now collecting the remaining two-thirds), and it is not reasonable to suppose that an attorney would undertake the service of attacking an assessment and attempting to set aside the same, should he expect the compensation to be withheld until the public authorities, after the lien was removed by the efforts of such attorney, should reconsider or re-levy such assessment years after the original assessment and lien were annulled and set aside.

Furthermore, the agreement could not be construed to comprehend a service impossible of execution, such as attacking the mere act of assessment, what it did comprehend most clearly was to take up and examine the final result shown by the confirmed assessment maps where the lien against the land of said Stell was shown at one hundred and forty-three dollars, and to attempt to remove such lien from the said land on the ground that the city had no right to levy such an assessment.

The work was properly and thoroughly performed by Black & Drayton for said Stell, and they or their assignee should be adjudged entitled to their just compensation, according to the terms of such employment.

JOHN MILTON,
BLACK & DRAYTON.

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NEW JERSEY—ss.:

STATE OF NEW JERSEY.

(Seal.) To our Justices of our Supreme Court.
GREETING.

Because in the proceedings, and also in a plaint which was in our Supreme Court before you, between John Milton, plaintiff, and Charles Stell, defendant, on a plea of contract, manifest error doth intervene, to the great damage of the said plaintiff, as by his complaint we are informed, we being willing that justice should be done to the parties aforesaid in this behalf, do command you distinctly and openly to send under your seal the record and proceedings aforesaid, with all things touching and concerning the same, to our Court of Errors and Appeals to the Judges thereof, on the sixth day of April next, together with this writ, that the record and proceedings aforesaid being inspected we may cause to be further done thereupon what of right and according to law ought to be done.

Witness, WILLIAM J. MAGIE, our Chancellor and President Judge of our Court of Errors and Appeals, at Trenton aforesaid, this seventeenth day of March, nineteen hundred and six.

S. D. DICKINSON,
Clerk.

JOHN MILTON,
Attorney Pro Se.

NEW JERSEY SUPREME COURT ON APPEAL FROM SECOND DISTRICT COURT OF JERSEY CITY.

JOHN MILTON, Plaintiff,	On Contract. On Appeal.
vs.	State of Case
CHARLES STELL, Defendant.	Settled by Court.

John Milton (Pro Se), Attorney for Plaintiff, of Counsel on Appeal. August Ziegener, Attorney for Defendant. J. Merritt Lane, of Counsel on Appeal.

The parties, or their attorneys, having been unable to agree upon a state of the case, and having applied to me, Judge of said Court, I do hereby settle the case as follows:—

The case was tried by the court without a jury.

The action was to recover twenty-one dollars and forty-five cents, being fifteen per cent. on one hundred and forty-three dollars, the amount of a certain assessment on the property of defendant for the opening and improvement of Baldwin avenue, Jersey City, N. J., and claimed to be due plaintiff, as the assignee of Charles C. Black and Albert Drayton, partners as Black & Drayton, attorneys-at-law, for legal services rendered by said Black & Drayton, in

the Supreme Court of this State in proceedings on certiorari in relation to said assessment.

The court found the following facts proved by the evidence:—

(1) At a meeting of property owners affected by the assessment in question an agreement was presented by George R. Beach, agent for Black & Drayton, as to compensation for their services in relation to contemplated proceedings attacking the assessment. Objection was made as to the wording of the agreement, then presented, as not containing a provision that no compensation was to be paid Black & Drayton in case the assessment was not set aside, or reduced. At a subsequent meeting of the property owners, the agreement in question was produced by Mr. Beach, and the desires of the property owners thereupon incorporated therein, and same was then approved and signed by defendant, among others of the property owners.

(2) Defendant on or about April 17th, 1903, signed the agreement, in evidence, as follows:—

"We, the undersigned, owners of the property alleged to be liable for an assessment for the opening and improvement of Baldwin avenue, Jersey City, N. J., hereby authorize Messrs. Black & Drayton, counsel, to attack said assessment and to set the same aside, and we agree to pay said counsel fifteen per cent. of the amount of any assessment on our respective properties, which may be set aside by the Courts or fifteen per cent. of any reduction thereof, if not entirely set aside. And in event of the Courts not setting aside or reducing the assessment, the said counsel, Black & Drayton, shall receive no compensation whatsoever.

"CHAS. STELL,
"12 Baldwin avenue.

"Amount of assm't, $143.00."

(3) Proceedings were begun under the agreement above set forth by Black & Drayton in the New Jersey Supreme Court, as attorneys in behalf of defendant and others by way of certiorari and resulting in said assessment being set aside by order of said court, as follows:—

"The Court, having heard the argument of counsel and inspected the final report and map of assessment and the proceedings removed by the writs in this cause, and duly considered the reasons filed—

"It is ordered that the assessments for the opening, extension and improvement of Baldwin avenue in Jersey City, brought up by these writs should be set aside and the Commissioners directed to make a new assessment according to law with costs to the prosecutors in said writs."

"Entered June 16th, 1904."

(4) An assignment of the claim of Black & Drayton to the plaintiff in this suit.

(5) The city authorities are about to take steps toward a reassessment of the property of the defendant for the assessment and improvement mentioned in the above contract and proceedings in the Supreme Court, and that the said proceedings were not so advanced as to render it possible to know what the new assessment on the property will be, or the difference, if any, between the first and second assessments.

(6) On the foregoing facts found, the Court gave judgment for the plaintiff against the defendant for the sum of twenty-one dollars and forty-five cents, damages, being the amount claimed by the plaintiff with costs to be taxed.

IN WITNESS WHEREOF I have hereunto set my hand this twelfth day of October, A. D. 1905.

JAMES S. ERWIN,
Judge of the Second District Court of Jersey City.

Attest:

JOHN J. ERWIN,
Clerk.

Notice of appeal and bond duly filed by defendant.

Due Notice of argument for November Term, 1905.

NEW JERSEY SUPREME COURT.

FEBRUARY TERM, 1906.

JOHN MILTON,	)	
	)	Appeal from
vs.	)	
	)	District Court.
CHARLES STELL,	)	

1. An order of this court, setting aside a certain assessment brought before it by certiorari and directing a new assessment to be made, vacates only the particular apportionment under review and does not determine that the amount of the assessment on any individual's property should be set aside or reduced.

Argued November Term, 1905, before Justices

GARRISON, SWAYZE and DIXON.

JOHN MILTON, pro se.

J. MERRITT LANE for defendant.

The opinion of the Court was delivered by

DIXON, J.:

On April 17th, 1903, the defendant and several other persons entered into a written agreement with Messrs. Black & Drayton, attorneys of this court, in the following terms:

"We, the undersigned, owners of the property alleged to be liable for an assessment for the opening and improvement of Baldwin avenue, Jersey City, N. J., hereby authorize Messrs. Black & Drayton, counsel, to attack said assessment and to set the same aside, and we agree to pay said counsel fifteen per cent. of the amount of any assessment on our respective properties, which may be set aside by the Courts or fifteen per cent. of any reduction thereof, if not entirely set aside. And in event of the Courts not setting aside or reducing the assessment, the said counsel, Black & Drayton, shall receive no compensation whatsoever."

Thereupon the attorneys procured a certiorari to review the assessment mentioned in the agreement and on June 16, 1904, a judgment was entered upon that writ as follows:—

"It is ordered that the assessments for the opening, extension and improvement of Baldwin avenue in Jersey City, brought up by these writs should be set aside, and the Commissioners directed to make a new assessment according to law, with costs to the prosecutors in said writs."

The question now before us is whether by force of these proceedings Messrs. Black & Drayton, who have assigned their claim to the plaintiff, became en-

titled to the fifteen per cent. provided for in the agreement.

We think they did not.

The word "assessment" is equivocal. It may mean either the act of apportioning the burden to be borne by the persons or property chargeable, or the particular burden assigned to each.

It is evident that in the agreement the word was used in the latter sense. This appears in the expressions "the amount of any assessment on our respective properties," and "any reduction thereof." The act of apportioning the burden was not an amount and was not capable of reduction. These terms could apply only to each owner's burden. But in the judgment above recited the word "assessment" was used in the sense first mentioned. The court decided that the particular apportionment under review should be set aside, but that a new apportionment should be made.. Whether the burden imposed on the several owners was too large or too small was a matter not determined by the judgment and would not be determined until the new apportionment appeared.

We think the attorneys' right to compensation under this agreement will not accrue until an adjudication is made either that there should be no charge upon the defendant's property or that the charge should be less than the original assessment indicated.

The judgment for the plaintiff must be set aside and the defendant may enter final judgment in his favor with costs under the act of April 3, 1902, regulating District Court appeals.

NEW JERSEY COURT OF ERRORS AND APPEALS.

JOHN MILTON, Plaintiff in Error, vs. CHARLES STELL, Defendant in Error.	On Error to Supreme Court. Assignment of Errors.

Afterwards, to wit, on the sixth day of April, nineteen hundred and six, before the Judges of the said Court of Errors and Appeals, in the last resort in all cases, at Trenton, comes the said John Milton in his proper person, and says, that in the record and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest error in this, to wit, that by the record aforesaid it appears that judgment in form aforesaid was given for the said Charles Stell against the said John Milton, whereas, by the law of the land, judgment ought to have been given for the said John Milton against the said Charles Stell.

Therefore the said John Milton prays that the judgment aforesaid may be reversed, annulled and altogether held for nothing, and that he may be restored to all things which he hath lost by occasion of the said judgment, etc.

JOHN MILTON,
Attorney Pro Se.

Joinder in Error.