

11928


No. _____

Supreme Court of Illinois

People

vs.

Long

71641  7

Supreme Court of the State of Illinois
Third Grand Division, June Term 1852

The People &c }
vs }
James Long }
}

A disagreement having arisen between Thomas H. Campbell, Auditor of Public Accounts of the State of Illinois and the said James Long who was Treasurer of Cook County and Collector of the Taxes thereof for the year 1850, in relation to the settlement of the accounts of said Long as such Treasurer, the said parties agree (the issue and service of process being waived) to submit the points in controversy between them to the decision of the Supreme Court, upon the following statement of facts as respectively admitted by the said parties.

1. The whole amount of State tax collected by said Long collector as aforesaid - including amount received from Town Collectors, and on non-resident delinquent list - was \$44,127,46, on which he has been allowed a commission of two per cent (\$882.55) in accordance with Art 17. Sec 9. of an act entitled "an act to provide for Township Organization" approved Feb. 17. 1851. (pub. acts 1851, p 54)

He has also been allowed for printers fees on sales of delinquent lands, to the State, the sum of \$33.72, and for mileage \$23.10. The account of the said Long (in which said allowances are credited,) is hereto appended,

(marked "A") and made a part of this agreement.

2. The said Long, in addition to the two per cent commissions as allowed, claims a commission of three per cent, on the tax on non-resident delinquent property collected by him, amounting to the sum of \$9,940.62, as appears by his returns to the Auditor's Office - making the additional commissions thus claimed, equal to \$298.21.

This claim is made under Art 17. Sec 5, of the act aforesaid. Pub. Acts 1851 p 53. and the Laws of the state in regard to Revised. L fees.

3. The said Long also claims a credit of \$136.68, instead of \$33.72 as allowed by the Auditor under the 18th Section of the act entitled "an act to amend the several acts concerning the public revenue," approved Nov. 6. 1849. Acts Special Sep. 1849 p 49.

This claim of \$136.68, for printers fees is based on the following facts:

in accordance with directions of the Auditor of State, ^{The said Long} Treasurer & Collector as aforesaid, advertised the delinquent list of Cook County for judgment at the July term of the County Court AD 1851, and paid the amount of printers fees, being \$136.68. The Court however, ^{in consequence of adjournment being made for July Term, and a new adjournment} refused to give judgment at that term, and the said Long re-advertised the list for the following September Term, for which he paid \$108.70 printers fees.

The former amount (\$136.68) the said Long contends, is properly chargeable to the state and that it should be allowed by the Auditor in the settlement of his accounts. Because

2. A. D. 1851.

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the first advertisement, although made according to
instructions of an order of State contained in said
Circular dated April 2^d 1851 - was held by
the County Court of Cook County to be
insufficient, & therefore another was made

4. Upon the foregoing statement the following points are submitted to the court for decision:

1. Whether the said Long is entitled by law, to any further or different credit than such as are allowed by the Auditor in the the Annexed statement marked "A". & if so, how much. ^{Under the laws of the State? How much of his account contained in exhibit "B" is entitled to?}

2. If so, whether the said Long is entitled to a commission of five per cent, as claimed by him, on the State's proportion of the first \$1000, and three per cent on the balance of the amount of tax on delinquent property as herein stated, (being \$9,940.62) under Art 17. Sec 5 of "An Act to provide for township organization", approved Feb 17, 1851, and Sec. 108 Chap. 89, of the Revised Statutes (p 452)

3. Also whether the said Long is entitled by law to a credit of \$136.68, being the amount paid by him for advertising as aforesaid.

In case the Court shall determine that the said Long is not entitled to ^{any of the} said credits as claimed by him, then it is agreed on the part of said Long that a judgement for \$221.84 (being the balance due the state, as shown by the annexed statement marked "A") shall be rendered against him, but if the said credits, or either of them, or any part thereof shall be allowed as just legal cred.

Contained in Exhibit B. & next contains in Exhibit A.

its to the said Song, then such judgment shall be entered, as may seem to the court right and proper in the premises.

In testimony whereof the said Auditor of Public Accounts in behalf of the people of the State of Illinois, and the said James Long in his own behalf, have hereunto respectively subscribed their names this ~~day~~ day of June A.D. 1852.

Wm Campbell Auditor
by B. C. Cook state atty

James Long

James Long, Treas. Clark County "A"
 In accordance with the Act of Assembly of

To State Tax for 1850. \$47,121 64

C

By Amalgamated, 1 Memorial Ho	\$1,322 21	
" Error in Non Resident list	234 87	
" Com's allowed Town Collectors	1,055 84	
" State Tax on Sales to the State	381 26	2,994 18
		\$44,127 46
" Com's allowed Treas on \$44,127.46 @ 3%	\$882 55	
" Printer's Person Sales to the State	33 72	
" Mesage 531 miles @ 10¢	23 10	939 37
		\$43,188 09

1857 Jan 27	"	The Quarterm Receipt	\$272 00	
" March 27	"	"	816 00	
" April 7	"	"	24,000 00	
" " 11	"	"	262 50	
" May 24	"	"	3,541 95	
" " 28	"	"	13 60	
" June 2	"	"	13 16	
" Sept 20	"	"	125 00	
" Oct 11	"	"	697 00	
" Nov 24	"	"	13,263 04	42,966 25
		Bal due		\$221 84

Exhibit 15

attached to case
at New Cotes bath

James Long, Treas. Cook County

In ac with State of Illinois, Jr.

To State Tax, A.G. 1850.

47.121 64

Cr.

By Insolencies, Removals &c.

1322 21 ✓

" Errors in Non Resident list

234 87 ✓

" Tax on property forfeited to State

381 26 ✓

" Printer's fees, in consequence of Adv. twice

136 68

" Commissions paid Town Collectors

1055 84 ✓

" Treas. Com. 2 pr. ct. on amt. collected \$45,183.30

903 66

" Mileage 340 miles @ 10

34 00

" 3 pr. ct. Com. for Collecting Delinquent list \$9940.62

298 21

" Repts. from Jno. Moore, Treas.

42.966 25

47.332 98

Balance due Treas. of Cook Co.

211 34

Book
The People & c
of
James Long

Manuscript

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Fish July 19. 1852
Belmont Ct.

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This is an original writ brought in this Court, in the name of the People of the State of Illinois against James Long. It is submitted to the Court in an agreed State of facts in substance as follows. The defendant was treasurer of Cook County and *ex officio* collector of the taxes thereof for the year 1850, the township law being in force in that County; the whole amount of the State tax collected by him, including the amount received from town collectors, and on the delinquent real estate, was \$44,127.46, on which the Auditor has allowed him a commission of two per cent. (\$882.25); the Auditor has also allowed him the sum of \$33.72, the amount of printer's fees on sales of delinquent lands to the State; the defendant, in pursuance of instructions contained in a circular of the Auditor of the 2nd of April, 1851, advertised the list of delinquent real estate for judgment at the July term, 1851, of the Cook County Court, but the Court refused to enter judgment against the lands, because, in its opinion, the advertisement was not made for the proper term; the defendant then re-advertised the list for the September term, and paid printer's fees therefor \$103.70; the defendant, in addition to the two per cent. commissions allowed him by the Auditor, claims a commission of three per cent. on the amount of the taxes on the delinquent lands, \$9,940.62, making the additional compensation there claimed \$298.21; he also claims a credit for \$133.68, the amount of printer's fees for the first advertisement of the delinquent list; if he is not entitled to either of the credits claimed, a judgment is to be entered against him for \$221.84, the balance due the State as shown by the books of the Auditor; if he is entitled to the credits claimed, or either of them, then such judgment is to be entered as the Court shall deem proper.

First. The act of the 17th of February, 1851, "to provide for township organization", requires the collector of each town to collect all taxes levied on property within its limits, and pay over the State and County taxes to the County treasurer, after retaining three per cent. for his compensation. He is also required to return

a list of the delinquent real estate to the County Treasurer; and it is made the duty of the latter to collect the taxes charged against such real estate, and, for that purpose, he is vested with the same powers that collectors possess in Counties which have not adopted the township system. The act further provides, that "The County Treasurer shall be allowed two per cent. on the amount of State tax received and paid over into the State Treasury." Thus far, there can be no doubt as to the compensation of the Treasurer, for receiving and paying over the State's portion of the revenue. He is allowed a commission of two per cent. on all sums received and paid into the State Treasury. He equally receives the tax, whether it is paid to him by the town collector, the owner of the property, or the purchaser at a tax sale. But it is insisted that the Treasurer is entitled to an additional compensation for collecting the taxes on the delinquent real estate, under another provision of the township law in these words: "Said Treasurer shall be ~~allowed~~ entitled to little fees for delinquent real estate, and for travelling to the seat of government, as County Collectors are entitled to under the Revenue Laws." This clause has reference to sec. 108, Ch. 89, N. S., and to Sec. 15 of an amendatory act passed on the 27th of February, 1847. The former section provides, that "The following fees and compensation shall be hereafter allowed to the following officers and persons herein named, for services rendered under the provisions of this Chapter. To each collector, for collecting and paying over taxes, five per cent. on the first thousand dollars, and three per cent. on all additional sums paid ^{over} that amount. For each collector's deed, twenty five cents; and when more than one tract or lot is included therein, five cents for each additional tract or lot, to be paid to the collector by the person receiving such deed." The latter section provides, that "the collector shall be allowed ten cents for each tract of land and three cents for each town lot sold, and for mailing the delinquent list for publication, two cents for each tract of land

and one cent for each town lot, to be collected as other taxes." The term fees as used in the township law must be understood as referring only to the costs allowed the collector, for preparing the delinquent list for publication, for selling the lands under the order of the court, and for mailing envelopes thereof to the purchasers; and not as referring to the compensation of the collector for collecting and paying over the taxes. The township law allows the county treasurer a commission on all taxes received by him and paid into the state treasury; and that commission is in full of the compensation he is to receive from the state for the performance of his duties. The clause in question was inserted in the township law, in order to secure him the fees which collectors are allowed on the sale of delinquent real estate. The term fees is used in reference to the costs allowed the collector, and which are paid by the owners of the property, or the purchasers; while the term compensation applies to the commissions of the collector, which are paid by the state. In our judgment, the treasurer is not entitled to the additional commissions claimed.

Second. The 15th Sec. of the act of the 27th of February, 1847, gives the printer for publishing the delinquent list, ten cents for each tract of land, and three cents for each town lot, to be taxed as costs against the property. The 16th Sec. of the act of the 6th of November, 1849, requires the collector to pay the fees of the printer; and the 18th Sec. directs the Auditor to credit the collector with the amount of the printers fees on the real estate sold to the state. The fees for publication are charged as costs against the property, and collected as such. The collector pays them in the first instance, and he is re-imbursed by the sale of the lands. He has no legal claim against the state for the costs thus advanced, except the portion charged on the lands forfeited to the state; and to that extent the treasurer has been credited in this case. We do not deem it material to inquire whether the circular of the Auditor was correct, or whether the court

erred in refusing to enter judgment on the first account
isessment. Be that as it may, neither the Auditor nor this
Court has any authority to allow the Treasurer a credit,
for more than the amount of the printer's fees on the books
purchased by the State. If he has any cause for compl
aint in this matter, he must seek relief from the
legislature. Judgment must be entered against
the defendant for \$221.84.

The People v. Long.

Opinion.

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Received &
Prepared by Reporter