City of St. Louis vs. Wyman, Edward 1852 St. Louis 309/5

560/27

Scott

Reversed and Dismissed

Gamble dissents

State of Missouri
County of St Louis } SS Be it Remembered that heretofore to wit on the twenty seventh day of November A.D. Eighteen hundred and fifty there was filed in the office of the Clerk of the Circuit Court within & for the County aforesaid a Petition in words & figures following to wit:

Edward Wyman Plaintiff
against
The City of St Louis Defendant } State of Missouri
County of St Louis } In the St Louis Circuit Court April Term 1851

Petition

To the Honorable Alexander Hamilton Judge of the St Louis Circuit Court Your Petitioner respectfully states, that he is the Lessee of the following described lot to wit – A lot fronting Northwardly on Market Street forty feet, in Block No 113 of the City of St Louis by a depth of 156 feet or thereabouts, Bounded North by Market Street, East by land formerly of Wm Chambers south by ___ Harney & West by ___ Blow, which lot he leased of Almyra & Frederick S. Giddings, for the period of twenty years from the first day of April 1848 as will appear by lease attached hereto & filed herewith.

By said Lease your Petitioner is bound to pay all legal taxes, on said lot, as by said lease will appear

Your Petitioner leased the said lot for the purpose of erecting thereon a Building for the purposes of a School, and he has, at great expense, Erected thereon such a building to be used, and which is now used by him as a School Building as follows to wit, the 3rd & 4th Stories of said Building is used by your Petitioner exclusively for School purposes and the back yard of said lot being about 40 by 56 feet, is also used exclusiv

2) for school purposes — The Hall of said Building, being the 2nd floor of the same, is used partly for purposes connected with Petitioners School, and at other times is rented, by your Petitioner for other purposes, as occasion offers — the 1st floor of said Building is rented for & used as stores, with the exception of the central Entrance through the same, which is used, as a common passage to the Hall and the School rooms above. The said Building since its completion has been & is now used in the manner above stated.

Your Petitioner further states, that the City of St Louis by her officers & agents have assessed a tax on the said lot & Building for the year 1850, valuing the said lot at Seven thousand dollars, and the said building at sixteen thousand dollars making a total valuation, on said lot & Building of Twenty three thousand dollars their full value, on which sum, on said lot & Building, the said City of St Louis has assessed a tax of two hundred & sixty $\frac{50}{100}$ dollars, according to the rates fixed by ordinance. Other Taxes assessed, on other property of your Petitioner, for the present year, added to the above Tax on said lot & Building, make the sum of Two hundred Seventy five $\frac{35}{100}$ dollars, taxes assessed by the said City of St Louis against your Petitioner for the year 1850 — Of this amount of Tax your Petitioner, on or about the 8th October 1850 paid to the Collector of the 3rd Ward of the City of St Louis, in which said property is situated, the sum of one hundred & forty Three $\frac{10}{100}$ dollars which sum so paid, the said Collector receipted on the back of the original Tax Bill, now in the possession of the City of St Louis, or in the hands of its officers or agents of which amount the sum of 132\frac{25}{100}$ was paid by Petitioner in discharge of the Tax assessed on that portion of said lot & building, not

3 used for scool purposes & was paid as the whole, that Petitioner was legally liable to pay. Your Petitioner further states, that not withstanding he has paid the sum of one hundred & forty three $\frac{10}{100}$ dollars, on account of said Tax, which is indorsed, as above stated, upon the original tax Bill, the said City of St Louis, by George R. Budd the Comptroller & agent of said City is now proceeding to sell at public sale, the said lot & Building the same being now advertised to be sold for the whole amount of said tax of Two hundred & seventy five $\frac{35}{100}$ dollars, Of this Tax only Two hundred & sixty four $\frac{50}{100}$ dollars was assessed against the said lot and Building, and of this amount only one hundred & thirty two $\frac{25}{100}$ dollars now remain unpaid.
Petitioner also states that, now, and, at all times since the assessment of said Tax against the said Lot & Building, he has been possessed of and owned & had, in the City of St Louis, a Large amount of personal property, visible, palpable & accessible out of which the said tax could at all times have been made & collected by the officers of the said City if they had obeyed the ordinances of the said City, in that behalf.
Your Petitioner claims that, also the one hundred & forty three $\frac{10}{100}$ dollars, heretofore paid as above stated the action of the City of St Louis, in proceeding to sell said lot & Building, is clearly unjust illegal and a trespass upon the rights of your Petitioner: and as to the one hundred & thirty Two $\frac{25}{100}$ dollars, part of said Tax, now remaining unpaid, he claims that said Tax is illegal, as having been assessed against property exempt from taxation, by the laws of the State of Missouri and the Charter & Ordinances of the City of St Louis. Your Petitioner avers, that at least, one

4 half of said lot & Building is and always, has, since the erection of said Building, been used Exclusively for the purposes of a School, & that said lot was leased & said Building erected for a School, and claims, that the like proportionate part of the tax assessed against said lot & Building, - being at least one half - the part now remaining unpaid, is illegal & unjust; and inasmuch as the City of St Louis, is now proceeding to sell said property, as herein above stated, and as your Petitioner has no adequate remedy at law, he asks, this Honorable Court to interfere its Equitable powers, & restrain & enjoin the said City of St Louis & all her agents & officers and Especially George K. Budd, Comptroller thereof, from selling, or in any wise disposing of the said lot & Building, for said tax, or any part thereof; and he also asks, that, this Court will release & relieve him & said property from the payment of the one hundred and Thirty Two $\frac{25}{100}$ dollars, the part of said tax now remaining unpaid, and that the Court will also grant & decree such other & further relief, in the premises, as may be according to equity and good conscience. Your Petitioner asks that the City of St Louis may be made defendant herein & held to answer hereto.

M. L. Gray
Atty for Plff

State of Missouri
County of St Louis } ss Edward Wyman makes oath & says that the above Petition & the matters as therein stated, he believes to be true -

Edward Wyman

Sworn to & subscribed this
19th Nov 1850

M. J. Cerré Clk

Bond Know all men by these presents, That we Edward Wyman as principal and William D. Skillman as

5 surety are held and firmly bound unto The City of St Louis in the sum of Five hundred Dollars for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents, sealed with our seals, and dated at St Louis this 27th day of November A. D. 1850 The condition of the above obligation is such, that, whereas the said Edward Wyman on the 27th day of November A. D. 1850 obtained a restraining order or injunction against said City of St Louis Now, if the said Edward Wyman shall pay all damages that may be occasioned by said restraining order or injunction, and abide the decision which shall be made therein and pay all sums of money, damages and costs that shall be adjudged against him if the injunction or restraining order be dissolved, then the above obligation to be void, otherwise to be and remain in full force and virtue

Edward Wyman {seal}
W. D. Skillman {seal}

Appd Nov. 27th 1850
A. H.

County of St Louis SS:

The State of Missouri
To the Sheriff of St Louis County Greeting:

Summons

We command you to Summon The City of St Louis to appear before the Judge of our Circuit Court, on the first day of the next term thereof, to be held in the City of St Louis within and for the County of St Louis, on the third Monday of April next, then and there to answer the Complaint of Edward Wyman asset forth in the annexed petition And have you then there this Writ.

L. S. Witness, Michael S. Cerré, Clerk of said Court

6 with the seal thereof hereto affixed, at office, in the city of St Louis, this 27th day of November in the year of our Lord eighteen hundred and fifty

M. J. Ferré Clerk

Sheriffs Return

Executed this writ in the County of St Louis this 3d day of December 1850 by delivering to Luther M. Kennett Mayor of the City of St Louis, a true Copy of the Petition and writ & also of the order

Henry B. Belt Sheriff
By Robt Peyinghaus Dpty

Edward Wyman
vs
The City of St Louis her agents & officers &c.

In the St Louis Circuit Court
November Term 1850

Order

And Now comes the said plaintiff and files his petition herein, duly verified by Affidavit and the Court having heard said petition and having fully considered the matters therein set forth and being fully advised of and concerning the same doth order that upon filing a bond by said plaintiff in the sum of Five hundred Dollars that the prayer of the said plaintiff be granted, and the Court doth further order thereby restrain and enjoin the said City of St Louis and all her agents and officers, and especially George R. Budd Comptroller thereof, from selling or in any wise disposing of the following described lot to wit A lot fronting Northwardly on Market Street forty feet in Block No 113 of the City of St Louis by a depth of 156 feet or thereabouts Bounded North by Market Street East by land formerly of Wm Chambers South by Harney & West by Blow or of the School building erected thereon for a Tax of Two hundred and Seventy five $\frac{35}{100}$ dollars in said petition mentioned or any part thereof; lent of and from all further pro=

7 ceedings toward the sale of said premises, the said City her agents and Officers are hereby restrained and enjoined until the further order of this Court plaintiff files a Bond which is approved

State of Missouri
County of St Louis } ss I Michael S. Cerré Clerk of the Circuit Court within and for the County aforesaid certify the foregoing to be a true Copy of the order of Injunction in the above cause.

L. S. In Testimony Whereof I hereto set my hand and affix the seal of said Court at office in the City of St Louis this 27th day of November 1850

M. S. Cerré Clerk

Sheriffs Return — Executed this order by delivering a true Copy thereof to Luther M. Kennett Mayor of the City of St Louis on the 3rd day of December 1850

Henry B. Belt Shff

Answer — And afterwards to wit on the 28th day of May Eighteen hundred and fifty one, An Answer was filed herein, and is in words & figures as follows to wit:

Edward Wyman plaintiff against The City of Saint Louis Defendant } In the Circuit Court for the County of Saint Louis

The Defendant admits that plaintiff is the lessee of the lot in plaintiffs petition designated & that petitioner is bound to pay the legal taxes on said lot and improvements. Defendant admits also that plaintiff may have taken the lease of said lot for the purpose of erecting thereon a building intended in part for the purposes of a school, but only in part as defendant alledges that by far the most costly, important & productive part of the building & improvements erected on said lot is devoted to other & different

8 purposes wholly unconnected with plaintiffs school, and defendant insists, that because some of the apartments in said building may have been intended & was used for the purposeses of a School, it does not follow under any proper construction that said lot and improvements thereon are exempted from taxation, nor as defendants insists that the eighth clause of the second Section of the revenue act of the 27th March 1845 intended to effect such cases as that of plaintiff as set out in the petition herein. Defendant also admits that the City assesed & levied on said lot & buildings for the year 1850 valueing the same at the sum of twenty three thousand dollars taxes amounting to the sum of two hundred sixty five $\frac{50}{100}$ dollars of which sum said plaintiff did pay to the proper collector the sum of one hundred & forty three $\frac{10}{100}$ dollars, which appears as a receipt endorsed on the original tax bill but defendant denies & controverts the fact that said sum paid was the whole sum that petitioner was legally bound to pay & insists that the whole sum of two hundred & sixty four $\frac{10}{100}$ dollars so levied on the lot & buildings aforesaid was rightfully & legally assesed thereon & rightfully collectable by the said City defendant saith that it has no sufficient knowledge whereon to found a belief whether plaintiff had in said City at all or any time since the said assessment a large amount of personal property out which the said tax could have been made, but if he had it was not shown or tendered to the proper officer to enable him to make said taxes out of it & such ownership or possession of said personal pro-

9 perty cannot be set up to sustain plaintiffs petition

S. Kirtley
City Counseller

Luther M. Kennett Mayor makes oath & saith that he believes the above answer and the matters therein as stated are true

Sworn to & subscribed this 28th May 1852 — Luther M. Kennett

M. J. Cerré Clk

Decision

And afterwards to wit on the twenty fourth day of June Eighteen hundred and fifty two the following & further proceedings were had in our said Court in the cause aforesaid & is in words & figures as follows to wit:

Edward Wyman vs The City of St Louis — And now on this day, come the parties aforesaid by their respective attorneys, and neither party requiring a Jury, the cause is tried by the Court, and it appearing from the pleadings and proofs that the plaintiff is the owner and professor, under the unexpired term of a lease for twenty years, of the lot and premises in the petition described, that the building on the said lot was erected by the plaintiff for the purposes of a school, and that the one half in value and extent of the said lot and building, was, and is accordingly used exclusively for school purposes as in the plaintiffs petition is stated and set forth, the remaining half being actually employed for other purposes, but as a source, more or less of revenue and in subserviency to the original design of the plaintiff in keeping a school on the said premises though for several years past the school has supported itself and it further appearing that the plaintiff, on the eighth

day of October Eighteen hundred and fifty, paid to the City authorities the just and full sum for which the said premises were liable for and on account of taxes, leaving unpaid of the sum demanded by the defendant for taxes one hundred and thirty two dollars and twenty five Cents, the collection of which last mentioned sum the defendant is about to enforce against the said property by a sale thereof, and the Court being of opinion that the injunction granted in this cause should, under the circumstances, be made perpetual, It is therefore ordered, adjudged and decreed that the defendant, its agents and servants be perpetually enjoined and restrained from selling the said property or any part thereof for the taxes so claimed and remaining unpaid, and that the Plaintiff do recover his costs of suit, and have execution therefor.

Defendant files a motion for a review of the law and evidence in this cause

And afterwards to wit on the 26th day of June Eighteen hundred and fifty two, the following proceedings were had in said Court herein & in words & figures as follows to wit:

Motion for a Review overruled

Edward Wyman vs The City of St Louis } The Court having duly heard said defendants motion for a review herein, doth order that said motion be overruled

And on the same day & year last aforesaid a Bill of Exceptions was filed herein bis in words & figures as follows to wit:

Bill of Exceptions

Edward Wyman vs The City of St Louis } In the St Louis Circuit Court Be it remembered that on the trial of the above named cause neither party requiring a Jury the same was submitted to the

11 court for trial and the following was all the evidence offered on either side

Testimony Edward Wyman Plaintiff. In the St Louis Circuit Court
against April Term 1852
The City of St Louis Be it Remembered that on the
Trial of the above named cause the plaintiff introduced as a witness E. Avery who stated that he was acquainted with the building in question the 3rd & 4th stories used exclusively by the plaintiff as school rooms - and frequently the Hall in the 2nd Story called Wymans Hall used in connection with the school but none of the first story used except the main passage which affords access to the upper Stories during the summer the Hall in the 2nd Story is used for the singing and declaiming exercises of the school and occasionally for reading exercises - and for the school exhibitions - the Hall is relied upon for singing and declaiming exercises In a part of the summer the Hall in the 2nd story, is used for an hour or two every day, for such exercises. but used more frequently for singing - the only room in the house adapted to that purpose, it is fitted up with platform and seats and a gallery in reference to other objects than for school purposes. The office in the rear of the building between the 2nd & 3rd floor and above the office at the end of the Hall used all the time as a recitation room In the rear of the hall in the 2nd floor there is a passage way for an entrance to the 3rd & 4th stories and a ticket office
There is a yard in the rear of the building. of the width of the house and Extending back 50 or 60 feet the yard is used by the schollars at recesses.

and the only place the boys can go to without going in the Street The 3rd & 4th stories fitted up more expensively than the 2nd floor and more than half of the house in quantity and more than half in value are used exclusively for school purposes the building about 100 feet deep and the Hall 83 or 84 feet deep

X examination we have singing and declaiming exercises on the 3rd floor but the Hall on in 2nd Story is used at times because it is better adapted to such purpose. the 3rd Story not used much for singing though it is better adapted to such use than ordinary school rooms. being a high story – The Hall on 2nd floor not used much in winter – the Hall on 3rd floor very good room for singing and declamation. and we could get along very well without the 2nd floor

The Hall on the 2nd floor used most generally for singing. Knows that the lot was leased and the building erected for School purposes the Hall on the 2nd floor erected for public exhibitions and for the singing and declaiming exercises of the school Some times the whole school unites in singing exercises. othertimes the whole school does not unite in singing and then it would be inconvenient to use the Hall in 3rd story for singing – The ordinary & usual singing exercises are in the Hall on the 2nd floor & the grand object in erecting the Hall was to have a place to train the voice

The defendant then called as a witness the plaintiff who stated that the stores of the building on the first floor rent for $750 each per year. The Hall in the 2nd Story netts him per year by renting it

13 for concerts exhibitions &c about $1500 – The 3rd & 4th floors ought to rent for $3000 per annum – they are more expensively finished than the 2nd story
The tenants of the Stores have no right to use building in the back yard, though he has never excluded them from it. He could rent the 3rd Story for $1500 a year, and believes the 4th could be made to yeild as much – the 3rd & 4th floor could be rented for as much as the 2 lower stories –
X Examination one half of the house used exclusively for the School, also a room over the office in the 2nd Story – the Hall in the 2nd Story used about half of the year a number of days for singing &c. He leased the ground only for a building for the school, and when he commenced the building only expected to use it for School without the aid derived from the Stores and Hall in 2nd Story – he could not have conducted the School as he had done, but for some time the Scool was sustained itself. when the Hall in 2nd Story was built expected to use it exclusively for the school, Could not get along without the Hall, without serious inconvenience
The 3rd floor very well adapted for singing exercises, but other departments would be disturbed by it Singing one of the branches taught in the School At least one half of the premises in quantity & value used exclusively for school purposes

M. L. Gray
for Plff
Richardson for Deft

And this was all the evidence offered by either party – upon the finding of the facts by the Court the

defendant excepted and asked the Court to give the following instructions

Instructions overruled

Refused 1 That if the plaintiff rents or derives profitts for the building used for purposes unconnected with the School, then he is bound to pay the tax assessed upon the whole building—

Refused 2 That if any part of the building is subject to be taxed — then the whole of the building is subject to taxation

Refused 3 The Court is further requested to declare the law to be that no building can be Exempt in whole or in part, from taxation because used for Educational purposes, unless used solely for such purposes

Refused 4 The court is further requested to declare the law to be that the Statute is not intended to recognize as Exempt from taxation private property which may be used for Educational purposes, but only property so used which is owned by incorporated or other public institutions which are recognized by law

Refused 5 The Court is requested to declare the law to be, on the facts of this case, that the property in question must, for the purposes of taxation be regarded in reference to its nature and not with reference to the casual or incidental uses to which a part of it may have been put; and that being in its nature taxable property, it must be taken as a whole, and cannot be exempted in part from taxation because a part of the property may have been used for educational purposes. —— all of which were overruled to which opinion of the Court in overruling said

15 instructions the defendant excepted. The plaintiff asked the following instruction.

Instruction given

A given

The Pltff asks the Court to declare the law to be, that so much of the lot and Building mentioned in the Petition in quantity & value, as is used by Pltff, for school purposes, is exempt by law from taxation, while so used for school purposes

Which was given by the court to which opinion of the Court in giving said instruction the Defendant also excepted. The defendant in due time filed a motion for review of the law and evidence and for a new trial which motion is in the following words & figures

Motion for a Review

Wyman vs City of St Louis } In the St Louis Circuit Court Now at this day the defendant comes and moves the Court for a review of the law and evidence in this Cause and for a new trial upon a case stated, and upon the following points —

1st That upon the law and evidence in the cause the judgment ought to have been for the defendant and the injunction ought to have been dissolved.

2nd That the instructions asked by the defendant ought to have been given

3rd That the instruction asked by the plaintiff ought to have been refused

4th That the Court ought to have found that the plaintiff realized as much as three thousand dollars from a portion of the building used for purposes wholly independant of his school — 5th That the plaintiff realizes an in=

come of three thousand dollars for said building besides the proceeds of the school by renting a portion of the building for purposes having no connection with his School and that such income is not necessary for the maintainance of his school. Wherefore the Defendant excepting to the decision of the Court in this cause and in overruling the instructions asked by the Defendant and in giving the instruction asked by the plaintiff. Asks the Court for a review of the law and evidence and for a new trial

Richardson p d.

The following is all the evidence on either side see Evidence or Testimony (**Page 11 to 13.**) which said motion was overruled by the Court. to which the defendant excepted and asks the Court here to sign seal and make a part of the record of the said several exceptions - and the same is accordingly done signed & sealed

A. Hamilton (Seal)
Judge C C

And afterwards to wit on the thirtieth day of June Eighteen hundred & fifty two the following proceedings were had in our said Court in the Cause aforesaid viz in words & figures as follows to wit:

Edward Wyman vs The City of St Louis } Now at this day comes the said defendant by its attorney, and on his motion an appeal to the Supreme Court, is granted him from the decision herein rendered, thereupon he files a bond which is approved by the Court

Bond Know all men by these presents that the City of St Louis as principal and John C. Richardson as secu-

17 rity are held and firmly bound unto Edward Wyman in the penal sum of one hundred dollars.

The Condition of the obligation is such that whereas the said City of St Louis has appealed from the Judgment, of the Circuit Court of St Louis County in the State of Missouri to the Supreme Court of said State in the case of said Wyman against said City. Now if said appeallant will pay all costs and damages, which may be awarded against said City occasioned by such appeal and will prosecute the said appeal and perform such Judgment as the Supreme Court may direct the Circuit Court to give. and if the Judgment or any part thereof be affirmed that the said City will comply with and perform the same so far as it may be affirmed and will pay all damages that may be awarded against the appellant by the Supreme Court. then the above bond to be void otherwise to remain in full force and effect.

In Witness Whereof the said City of St Louis by her Mayor has signed this bond and affixed the Corporate Seal of said City. and the said Richardson has signed his name and affixed his seal this 29th June 1852

L.S.

attest
S. V. Papin
City Register

L. M. Kennett
Jno. C Richardson (Seal)

State of Missouri
County of St Louis § SS I Michael S Cerré Clerk of the Circuit Court within & for the County aforesaid, Certify the foregoing to be a true, full, & Correct Transcript from the Record & proceedings in the

18 case of Edward Wyman vs The City of St Louis as fully as the same Remains of Record in my office

In Testimony Whereof, I hereto set my hand, and affix the seal of said Court, at office, in the City of St Louis this 22d day of September A.D. 1852

M. L. Cerré Clk

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(27) 71

Oct. T. 1852

Edward Wyman

vs

The City of St Louis

Transcript

Filed 6th October 1852.
Wm. S. Glanville,
Clerk.

Paid by City St Louis $5

In the Supreme Court
Oct Term 1852

Edward Wyman Plff. & Respondent
vs
The City of Ottawa, Deft. & Appellant

And now at this day the said appellant comes and says that there is manifest error in the record and proceedings in the above named cause in this Court

1st. The circuit court erred in not giving the instructions and each of them asked by the defendant

2nd. That the court erred in giving the instructions asked by the plaintiff

3rd. That the court ought to have rendered judgment for the defendant

4th. That the court erred in overruling the defendant's motion for a review and for a new trial

5th. The court ought to have found that the plaintiff realized three thousand dollars a year from the building mentioned in the petition used for purposes wholly unconnected with his school,

Wherefore for the errors aforesaid and for the reason that by the law the judgment should have been for the defendant, the defendant prays that the said judgment may be reversed annulled and held for naught

J. C. Richardson
Attorney for Defendant

No. 71

Edward Wyman
appellee —
vs
The City of Athens
appellant

Appeal
from

Filed 18th October 1852.
Wm. S. Glanville, Clerk.

Edward Wyman Appellee
vs
The City of St Louis Appellant

In the Supreme Court
October Term 1852

And now comes the said Appellee by attorney and says that in the said Record & proceedings there is no error as is alleged by the said Appellee, and prays that said judgment may stand.

M. L. Gray for
Appellee

No 71
In Supreme Court
October Term 1852

Edward Wyman
vs
The city of St Louis

Joinder in Errors

M. L. Gray
for appellant

Filed 28th Oct. 1852
M. L. Glanville, Clerk

In the Supreme Court
October Term 1852

Edward Wyman Plaintiff & respondent
v
The City of St Louis Defendant and appellant

Statement of the case

The petition states that he is the lessee for the term of 20 years from the 1st of April 1848 of a lot on Market Street on which he was bound to pay all legal taxes - that he leased the lot for the purpose of erecting thereon a building to be used as a School house, that pursuant to such purpose. he ~~and~~ erected on the lot a building, the 3rd & 4th stories of which were used by him exclusively for school purposes. as also the yard in the rear of the building - that the hall on the 2nd floor was used partly for purposes connected with his school. and at times rented for other purposes. that the first floor was rented and used for stores, except the entrance to the upper stories, and the back yard.

That the city assessed a tax on said lot and building of $264.50. of which he had paid one half and refusing to pay the balance the Comptroller had advertised that he would sell said property for the remainder of said tax and was about to sell the same although the plaintiff had personal property in the city visible and ample to satisfy said tax. - that at least one half of the lot and building thereon was then and had been

used exclusively for school purposes, and that by law one half thereof was exempt from taxation, and one half of the tax having been paid, the balance was not due and could not be collected. Therefore he prayed an injunction, which was granted by the court.

The answer insisted that the most costly and valuable part of the property was used for purposes having no connection with the plaintiffs school, and that the tax on the property was not divisible because a part of the house was used for school purposes.

It appeared by the testimony that the plaintiff leased the ground for the purpose of erecting a school house upon it. That the stores on the first floor rented for $1520 and the room on the 2nd floor known as Wyman Hall ~~rented~~ netted the plaintiff an annual income of at least $1500 by renting it for concerts &c. That the 3rd & 4th stories were used exclusively for school purposes, also the back yard, and frequently the Hall on 2nd floor ~~and~~ was used for school purposes. The plaintiff being called as a witness by the defendant stated that the 3rd & 4th stories would rent for as much as the 1st & 2nd floors. That the income derived from portions of the house not used for the school, was ~~less of~~ materially

aided him in conducting the school but that for some time the school had supported itself

At the instance of the plaintiff the Court declared the law to be ~~that~~ that so much of the lot and building mentioned in the petition in quantity and value as is used by plaintiff for school purposes is exempt by law from taxation while so used for school.

To the giving of which instruction the defendant excepted

The defendants asked the court to declare the law as follows

1st That if the plaintiff derives profit from the building by renting a portion of it for purposes unconnected with his school then he is bound to pay the tax assessed upon the whole building

2nd That if any part of the building is subject to be taxed then the whole building is subject to taxation

3rd That no building can be exempt in whole or in part from taxation because used for educational purposes unless solely used for such purpose

4th. That the Statute is not intended to exempt from taxation private property which may be used for educational purposes, but only property so used which is owned by incorporations or public institutions

5th. That the property in question must for the purposes of taxation be regarded in reference to its nature, and not with reference to the casual or incidental uses to which a part of it may have been put, and that being in its nature taxable it must be taken as a whole and cannot be exempted in part from taxation because a part of it may have been used for educational purposes

All of which instructions the court refused to give, to which opinion of the Court the defendants excepted

The injunction was made perpetual by the court, and the cause brought here by appeal

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Edward Wyman

vs

The City of St Louis

Statement of the Case

Filed 10th November 1852
Wm. S. Glanville
Clerk

Edward Wyman Plff
vs
City of St Louis Dft

In the Supreme Court
October Term 1852

Statement of the case

The Petition states, that the Plff is lessee for 20 years from 1st April 1848 of a lot of 40 feet front by 144 feet deep, on the South side of Market St, between 4th & 5th streets, in St Louis, on which he was bound to pay all legal Taxes. That Plff leased the lot for the purpose of Erecting a School-House thereon & had at great Expense erected a building thereon, of which the 3rd & 4th stories, together with the back yard, were used exclusively for School-purposes. That the hall on the 2nd floor was used partly for school purposes & was at times rented for other purposes. That the first floor was rented for & used as stores, except the entrance to the upper stories, & the back yard. That the city for the year 1850 had assessed a tax on said lot & building, at its full value, valuing it $7,000 on the lot, & $16,000 on the Building which tax was $264 50/100 & that other city taxes on other property of Plff, included in the same tax bill, made a tax of $275 35/100. And Plff further alleged that at least one half of said lot & Building, in quantity & value, was used exclusively for School purposes, & that before the commencement of suit, Plff had paid $143 10/100 of said tax, which was receipted on the back of the Tax bill, & that this sum of $143 10/100 paid the tax assessed on other property of Plff, & $132 25/100 the one half of the tax assessed on said lot & building. That this $132 25/100 was paid on the one half of said lot & building, not used for School purposes, & was all that Plff was legally bound to pay. The Petition further stated, that Dft by the Comptroller was proceeding to sell & had advertised said lot & Building for sale, for the whole

of said Tax of $275 $\frac{35}{100}$, of which only $264 $\frac{50}{}$ was assessed on said lot & Building, & only $132 $\frac{25}{100}$ remained unpaid. The Petition further stated that Plff. owned & possessed in said City, personal property, that was visible and accessible, out of which, the officers of the City, could, if they had obeyed the Ordinances of the City, have collected said tax, if legal. Plff. claimed, that the course of the city, in advertising said lot & Building, for the $143 $\frac{10}{100}$ previously paid, was clearly illegal, & also, that the City had no right, to collect the $132 $\frac{25}{100}$ remaining unpaid, as that was assessed on the lot & Building, used for School purposes, which by law were exempt from taxation,

An Injunction was prayed for & granted by the Court.

The answer of the Defendant admitted that Plff may have taken the lease of said lot with a view of building a house thereon, intended in part for a School House, but only in part, & alleges that the most costly part of said building is used for other than School purposes, & insisted that the tax was not divisible, because a part of said lot & building was used for School purposes. The answer also admits, that the city had levied the tax, stated in the Petition & that Plff had paid $143 $\frac{10}{100}$ & its indorsement on the back of the tax Bill & does not deny that the city had advertised, said lot & Building for sale for the whole of said tax of $275 $\frac{35}{100}$, but insists that Plff was bound to pay the $132 $\frac{25}{100}$ remaining unpaid.

It appeared by the testimony that the Plff. leased the ground for the purpose of Erecting a School House upon it & that he did erect such a house — that the first floor, except the entrance through to the rooms above, was rented as stores at $1500 per annum — that the ~~2nd floor~~ room on the 2nd floor known as Wyman's Hall, was used for the ~~greater part~~ about half of the year, daily or nearly every day, for School purposes, but that it netted Plff an annual income of at least $1,500 by renting it at night for concerts Lectures &c — that the 3rd & 4th stories were used exclusively for School purposes & also the back ~~ground~~ yard, in quantity & value of lot & Building, in all at least 1/2. The Plff having been called on as a witness by Deft. stated, that the 3rd & 4th stories in the manner fitted up would rent for as much as the 1st & 2nd stories, — that at least one half of the lot & building in quantity & value, was used for School purposes — that the income derived from portions of the house not used for School purposes, had materially aided him in Establishing & conducting his School, & that without such income he could not have placed his School on its present liberal footing, but that for some time the School had supported itself.

At the instance of Plff. the court declared the Law to be. That so much of the lot and Building mentioned in the Petition in quantity & value as is used by Plaintiff for School purposes is exempt by law from taxation while so used for School purposes.

To the giving of which instruction the Deft Excepted.

The Deft. asked the Ct to declare the law as follows

1st That if the Plff derives profit from the Building by renting a portion of it, for purposes unconnected with his School, then he is bound to pay the tax assessed upon the whole Building.

2nd That if any part of the Building is subject to be taxed, then the whole building is subject to taxation.

3rd That no Building can be exempt in whole or in part from taxation because used for Educational purposes, unless solely used for such purpose.

4th That the Statute is not intended to exempt from taxation private property, which may be used for Educational purposes, but only property so used which is owned by incorporated or public institutions.

5th That the property in question must for the purposes of taxation be regarded in reference to its nature, & not with reference to the casual or incidental uses to which a part of it may have been put, and that being in its nature taxable, it must be taken as a whole, & cannot be exempted in part from taxation because a part of it may have been used for Educational purposes.

All of which instructions the Court refused to give, to which opinion of the Court, the Defendant excepted.

The injunction was made perpetual by the Court, & the cause brought here by appeal.

The finding of the Court was, from the pleadings & proofs, that the Plaintiff is the owner & possessor, under the unexpired Term of a

Lease of 20 years of the lot & premises in the Petition described - that the building on the said lot was erected by the Pltff. for the purposes of a School. & that the one half in value & extent of the said lot & building was & is accordingly used exclusively for School purposes as in the Pltff's Petition is stated & set forth - the remaining half being actually employed for other purposes but as a source, more or less of revenue & in subserviency to the original design of the Pltff. in keeping a School on said premises, though for several years past, the School has supported itself: & it further appearing ~~& the~~ that Pltff on the 8th of Oct 1850 paid to the City authorities the just & full sum, for which the said premises were liable for. & on account of taxes, leaving unpaid of the sum demanded by the Deft for taxes $132 25/100, the collection of which last mentioned sum. the Deft is about to enforce against the said property by a sale thereof &c.

The injunction was made perpetual -

Deft brings the case here by appeal.

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Edward Wyman

vs

City of St Louis

Statement of case

Filed 10th November 1852
Wm. S. Glanville
Clerk

Edward Wyman Respondent } Appeal from the
vs. } St. Louis Circuit
City of St. Louis Appellant } Court.

This was a proceeding in the nature of an injunction, to restrain the collection of a tax imposed by the City of St. St. Louis on a building belonging to the respondent called Wyman's Hall.

Wymans Hall contained four stories the third & fourth of these were occupied ~~for~~ school ~~house~~ purposes. The 2nd floor was occasionally used for purposes connected with the School. At other times it was rented for various purposes. The ~~first~~ first floor was rented for stores with the exception of a passage to the stores above. There was a backyard connected with the building which was used ~~in~~ by the inmates of the school. Wyman received $1500 rent for the first floor & supposed as much was rec'd for the second floor rented for concerts &c. The ~~second~~ third & fourth stories would rent for as much as was rec'd for the ~~first~~ & second. The tax imposed on the entire property was $264.50. Wyman after paying half this amount, applied for an injunction to restrain the collection of the other half: The City was enjoined as to the remaining half & she appealed.

The second section of the act, concerning the revenue ~~provides~~ enacts, that school houses and other buildings for the purpose of education with their furniture and equipments with the land appurtenant thereto, & used therewith, so long as the same shall be used for that purpose are exempted from taxation. The same section exempts from taxes, churches, chapels and other public buildings for religious purposes.

It would be a matter of regret, if the General assembly of the State, should suppose, that the exemption of Scoolhouses from taxation, would be a part performance of the duty imposed by the

constitution of encouraging schools and the means of education. The aid that would be afforded by such means would be so insignificant, that we would be scarcely justified in attributing, such an exemption, to any influence produced by the provision of the constitution to which reference has been made. We cannot say, that the enactment in question, has any connection with the encouragement of the means of education enjoined by the constitution. It should rather be attributed to that sense in every man of the propriety and fitness in forbearing the exercise of the power of taxation on places set apart and devoted to the worship of God and the diffusion of light and knowledge among men. Being retreats, quiet and undisturbed, dedicated to noble purposes, the law should never manifest itself within their walls, but in acts of kindness and beneficence. But when religion and learning are mingled with trading and trafficking with fiddling and singing, they are presented in an attitude which lessens the respect, with which they are regarded in their appropriate places.

Equality is equity and when one claims an exemption from a burden to which all others are subject, and whose freedom will increase their load, he must clearly show himself in the situation which entitles him to the exemption claimed. This is not a case, in which apparent owners are possessed of different floors of the same house. There is but one owner for the entire building and it is in his power, to control the uses to which it shall be subject. If the use of a part of a building as a school house, will exempt it from taxation, then it being a school house, it should not be sold for the non payment of taxes: Indeed it cannot be. But if the part occupied for other purposes, should be in arrears

for taxes, would not the school house exempt it too from sale? If this is so, then the construction of the act contended for, would enable property holders to place it beyond the power of the law to enforce the collection of the taxes due upon it.

School houses are the buildings exempted from taxation. Is Wyman's Hall a school house? How many of the people of St. Louis know that a school is kept within it? Yet most of them are aware that it is used for other purposes. The intent of the owner in building the house cannot determine its character. It is admitted that the house is subject to taxation, can the officer assess it but according to its value. There is no mode pointed out by which part of a house can be assessed and not the remainder Such a proceeding is no where contemplated by the Statute. It must produce difficulty and embarrassment.

Judge Leland ~~The other judges~~ concurring the judgment is reversed & the bill dismissed

Wm Scott

Judge Ewing

dissents

Weyman
vs
City of St. Louis

Opinion

Filed 18th December 1852
Wm. F. Glanville, Clerk.

In the Supreme Court
Octo. Term 1852

Edward Wyman Plaintiff & respondent
vs
The City of St Louis Deft and appellant

Brief for Appellant by
Jno. C Richardson City
Counsellor, for Appellant

1st The exemption in this case is claimed by the plaintiff by virtue of the 8th clause of the 2nd section Revenue Act of 1845. which exempts from taxation "School houses and other buildings for the purposes of education. with their furniture and equipments and the lands appurtenant thereto and used therewith so long as the same shall be used for that purpose".

It is obviously the object and policy of the Legislature to encourage the cause of education. but it is well settled that whenever a special exemption from certain general duties is contained in a statute, it is not expounded according
19. Ohio 115 to the rule of liberal Construction.

The building in question is costly and imposing, in the heart of the city and upon one of the most populous streets, it cost about $16.000 and is erected upon ground subject to an annual rent of $20. per foot; the first and second stories nett the plaintiff $3000 in uses having no connection with his School. and though the 3rd & 4th stories are used exclusively for School purposes. the building cannot with

any propriety he called a 'School house'

The plaintiff states that the 3rd & 4th stories would rent for $3000 per annum: if this statement is true the whole house is worth $6000 a year, and his school must be very profitable if he can afford to keep it in rooms that would rent for $3000, and this is certainly not a case that appeals to the charity of the law for he can prosper without taxation or protection. The distinctive character of the building is not that of a 'School house' and the fact that the plaintiff derives a large revenue by renting the most valuable portion of the house for purposes having no connection with his school, does not give him the privilege of claiming any portion of it exempt from taxation. If a person desiring a single room for an office should purchase a lot on Main Street and erect a costly house upon it, the lower stories of which should be fitted up and rented for stores, the occupancy of a single room in it for an office would not justify the propriety of calling the house an office

It was insisted in the answer and the instructions asked by the defendant, that the property was not divisible for the purpose of assessment and taxation, and to tolerate the position taken by the plaintiff would produce great inconvenience and confusion in the administration of the Revenue act. In the first place the assessor and owner would

dispute about what proportion of the house should be assessed. and next how much the portion taxable should be assessed; they would rarely agree, and oftentimes it would be impracticable to approximate to accuracy in the opinion of any two men consequently such questions by the facile operation of injunctions would be forced upon the courts for adjustment. Endless confusion and litigation would follow from the admission that part of a house is taxable and the other part exempt. The occupancy of a basement or garret room for a school would put the assessor to ciphering to ascertain what proportion of the house should be deducted for the use so made and if he is so unfortunate as not to please the school master more skilful in figures. the controversy would be obtruded upon the courts The inconvenience that would result from such a practice is an argument against the construction contended for by the plaintiff. and ought to justify the position that the whole or no part of the house should be taxable

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Edward Wyman

v.

The City of Toledo

appellant

Brief for appellant

19. Ohio. Rep. 115.

Richardson

Edward Norman
vs Appellee
The City of St Louis
Appellant

In Supreme Court
Oct Term 1852

Appellee's Brief

The finding of the Court below on the facts was in accordance with the testimony Consequently there was no Error in over-ruling the Appellant's motion for a Review on the ground of an improper finding of facts.

The Appellee asserts.

1st. That the Constitution of the State requires of the Legislature, the Courts, and the officers, in all the other Branches and departments of the State Governments, to forever encourage in their respective spheres Schools and the means of Education. SEE 1st Section of the 6th Article of the State Constitution.

2nd That it was the intention of the Legislature, in passing the 8th Clause of the 2nd Section of the 1st Article of the Revenue Act of 1845, to encourage Schools and lead to their establishment, and to the erection of School-Houses & other Buildings for the purposes of Education

3rd That it is the <u>use</u> of a structure, as a "School-House," or as a "Building for the purposes of Education" which exempts it from taxation The statute has nothing to do with the title to the property, and it is entirely immaterial.

as to the question of exemption whether it belongs to a private individual, to the Public, to a Corporation or a collection of individuals.
The only question is, to what use is the property applied? Is it used for the purposes of Education? then it is exempt, so long & so far as it is so used. The Statute itself makes this the Criterion, and the only Criterion.

4th. The lot & Building of the Appellee, so far as the proof shows them to be used for school purposes, which the City of St Louis was proceeding to sell for taxes, constitute a School-House, or Building for the purposes of Education, within the meaning, the letter and spirit, of the Statute, which declares that — "School-Houses & other Buildings for the purposes "of Education, with their furniture & Equipments", "and the lands appurtenant thereto & used therewith", "so long as the same shall be used for that purpose". are exempt from taxation.

The fact that portions of the Building in question are used for other purposes has no other or greater effect, than to make such portions taxable. This does not take out of the Statute of Exemption, other & distinct portions of the lot & Building, which have an identity & value of their own, and which are used exclusively for School purposes.

The instruction given by the Court below at the request of the Appellee, embodies the spirit & meaning of the Statute, and was correctly given and the instructions of Defendant, being the converse of the one given, were rightly refused.
The Court rightly overruled the Deft's motion for a Review.

M. L. Gray

See 11. Conn R p 257. & 6 Ib p 223.

Edward Wyman Appellee
vs
The City of St Louis Appellant

In Supreme Ct
Oct Term 1852

Appellee's Brief

The finding of the Court below, on the facts of the case, was in accordance with the testimony — Consequently there was no error in overruling the Appellant's motion for a Review, on the ground of an improper finding of facts.

Section 1st of the 8th Article of the State Constitution declares that "Schools and the means of Education shall forever be encouraged in this State"

From this clause in our State Constitution we are warranted in saying that the encouragement of Schools & the means of Education, is a part of the Organic Law of the State, and one of the prominent and leading objects of State Policy. So important was it considered by the framers of the State Constitution, that they would not leave it to the judgment of after times, whether to encourage or not, Schools & the means of Education, but to secure it, & make it certain against the fluctuations & the whims & caprices of after times, they have solemnly declared, in advance, that under all circumstances, & at all times, Schools &c. shall forever be encouraged in this State.

The constitution makes it obligatory upon the Legislature, the Courts, and all the

various branches & departments of the Government, in all proper ways, to advance this laudable object of encouraging Education, & multiplying the means & facilities of diffusing intelligence, morality & virtue among the people.

This provision of the Constitution is based upon the idea, that our form of Government is to subsist & be sustained by the intelligence and enlightened patriotism & virtue of its subjects, and hence it becomes a matter of vital importance, to encourage Schools & all the means of Education

Keeping this provision of the Constitution in view, we are prepared to construe, according to its intention and spirit, the 8th Clause of the 2nd Section of the first Article of the Revenue Act. of 1840.

~~Without further argument~~. I assume that the object of the Legislature, in Exempting School Houses. &c. from taxation, ~~of the~~ was, to encourage Schools & the means of Education; If this was the object & intention of the law, then clearly it is the duty of the Court so to construe the law, as to accomplish the object both of the Constitution & the Act of the Legislature, and not put such a construction upon the Act as will defeat the very thing that the paramount law of the State declares shall be forever encouraged.

If there can be any doubt, after referring to the above named Clause of the Constitution, that the Legislature intended, by the Exemption Clause of the Revenue Act, to cheer and en

courage the noble cause of instruction and intelligence, I might refer to the other similar acts of the Legislature, which place the matter beyond all ~~that~~ doubt. An Act for the diffusion of useful Knowledge, on page 117. of the Acts of the General Assembly for 1847.

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Edward Wyman

vs

City of St Louis

Appellee's Brief

M. L. Gray