City of St. Louis vs St. Louis Hospital Assoc. 1851 St. Louis Co 314/5

561/3

Scott/affirmed

Hospital sought $3 to $3.50 per wk for each patient committed by the city
got $4345

See Patient register for the insane admissions
July 1 47 to Nov 30 48

"The insane could not be turned loose."

1) State of Missouri }
County of St. Louis } ss. Be it remembered that heretofore to wit on the 11th day of January 1850 there was filed in the Office of the Clerk of the St. Louis Court of Common Pleas in and for the County aforesaid a petition in the words and figures following to wit:

St. Louis Hospital Asfosiation } In the St. Louis
vs } Court of Common
Petition The City of St. Louis } Pleas. February Term
1850. St. Louis County

Plaintiff states that defendant owes them three thousand six hundred and thirty eight 31/100 dollars for board, clothing, lodging, attendance &c of sundry insane patients, being at the rate of 42½ cents per patient per day, from the first day of July 1847 to the 30th day of November 1848 inclusive. Plaintiffs state that the charge as aforsaid of said patients was undertaken by Plaintiffs at the special instance and request of defendant.

The particulars of all which as also the credits thereon will appear by an account herewith filed. The items of which exceed twenty in number. Plaintiff ask judgment for the said sum together with interest from Nov. 30th 1848. A. P. & P. B. Gareschè
Atty for Plff.

P. B. Gareschè makes oath and says that he believes the above petition and matters therein as stated are true. P. Baudry Gareschè

Sworn to & subscribed this
11th Janry 1850. P. Tippett Clk.

Summons The State of Missouri: To the Sheriff of St. Louis County: greeting. We command you to summon The City of St. Louis to appear before the Judge of our St. Louis Court of Common Pleas on the first

2.) day of the next term thereof, to be held at the City of St. Louis on the first Monday of February next then and there to answer the complaint of St. Louis Hospital Assosiation as set forth in the annexed petition: and have you then there this writ.

(Seal) Witness Philip Tippett, Clerk of our said Court, with the seal thereof hereto affixed at Office in the City of St. Louis this 11th day of January in the year of our Lord one thousand eight hundred and fifty P. Tippett Clerk

Sheriffs return. Executed this writ in the County of St. Louis on this 12th day of January 1850 by delivering to James. G. Barry Mayor of the City of St. Louis a true copy of the within petition and writ of summons Louis T. Labeaume Shff

By Ew Schands Dpt.

The following Demurer was filed February 9. 1850.

Demurer St. Louis Hopital Association vs The City of St. Louis } In the St. Louis Court of Common Pleas Feb: Term 1850.

The defendant demurs to the Petition of the said Plaintiff and says that the same is not sufficient in Law in this. That the Character of the Plaintiff does not sufficiently appear from said Petition nor does it sufficiently appear that the Plff. has the right to sue the deft. by the name & style of the St. Louis Hospital Association wherefore the Deft. prays that said Petition may be dismissed with costs R. S. Blennerhassett atty for Deft.

Afterwards the following proceedings were had to wit:

February Term 1850. May 13. 1850.

Demurer overruled St. Louis Hospital Association vs The City of St. Louis } The demurer of the defendant to the

3) Plaintiffs Petition being heard, and the court being fully advised of and concerning the premises it is ordered that the said demurrer be overruled.

The following Answer was filed May 14th 1850

Answer

Saint Louis Hospital Association plaintiff
against
The City of St. Louis } Saint Louis Court of Common Pleas

The said defendant saith that she does not owe the said plaintiff the said sum of three thousand six hundred & thirty Eight 3/100 dollars in plaintiffs petition mentioned & set out, nor does she admit any portion or part of said claim but controverts the same & requires said plaintiff to establish said demand by full & sufficient proof. Said Defendant also controverts the allegation in said petition that the consideration of said alleged claim against this defendant was at the instance & request of this defendant & said defendant denies specifically that there is any sole or aggregate person or corporation having any sufficient legal authority to institute & maintain the action herein against this defendant. Kirby
City Counsellor

David H. Armstrong Comptroller of the city of St. Louis, makes oath and says that he believes the above answer and the matters therein, as stated, are true. D. H. Armstrong

Sworn to & subscribed before me this 14th May 1850. P. Yippett Clk

Supplemental Petition.

The following supplemental petition was filed Oct. 26/50

St. Louis Hospital Association plaintiff
vs
The City of St. Louis, defendant } In the St. Louis Court of Common Pleas - September Term 1850. St. Louis County.

Plaintiff for a further petition in this cause

4.) States that the contract between plaintiff & defendant was that defendant should pay plaintiff at the rate of fifty cents per diem, for the support, clothing & maintenance of the patients ~~als~~ spoken of in plaintiffs first petition = that there was also an understanding between plaintiff & defendant that in case the plaintiff paid the bills as they were returned, there was to be a deduction of one seventh = that therefore the bills in the anticipation that they were to be so paid, were made out at the rate of forty two & one seventh cents or one seventh less = and at this rate rendered to defendant. Plaintiffs further state that defendants did not pay said bills nor any portion thereof, contrary to the anticipation of plaintiff, although often requested so to do, wherefor plaintiff is entitled to be paid at the rate of fifty cents per diem. Plaintiff states that the defendant owes plaintiff the sum of four thousand one hundred & eighty four $\frac{28}{100}$ Dollars for board, clothing, lodging attendance &c of sundry insane patients under above specified agreement from 1st July 1847 to the 30th Nov. 1848. inclusive at the particular instance and request of defendant. The particulars of all of which as also the credits thereon will appear by an account already filed by Plaintiff in this suit (the items of which exceed twenty in number) the said Account being so amended as to charge fifty cents per day per patient, so that the bill for each month be encreased one seventh. Plaintiff therefore asks Judgment for the said sum of four thousand one hundred and eighty four $\frac{28}{100}$ Dollars with interest to be calculated on, at the rate of six per cent, upon the bills as monthly rendered to defendant from the date they were rendered to defendant

N. P. & P. B. Jareschè Attys for plaintiff

5.) I Sr. M Alexis Kayhice on oath says that she believes the above supplemental petition & matters therein a stated to be true
Sworn to & Subcribed to before me this 12th. day of October A.D. 1850
John Byrne jr. Notary public for St. Louis County & City Missouri

Sister M. Alexis Superior of the St. Louis Hospital Asociation.

Answer to amended petition

And then the following amended answer was filed October 26. 1850. —

St. Louis Hospital Association plaintiff
vs
City of Saint Louis Defendant

In the St. Louis Court of Common Pleas.

The said defendant in answer to plaintiffs amended petition says that there was no contract by the said defendant that it should pay the plaintiff at the rate of fifty cents per diem for the support, clothing maintainance of the patients specified in plaintiffs original petition as is alleged, nor was there any such understanding in relation to the deduction alleged for prompt payment nor does said defendant owe said plaintiff said sum of Four thousand one hundred & eighty four 28/100 dlls any part thereof as is alleged in plaintiffs amended petition. S. Kirtley City Counsellor
Affidavit required by Statute hereby waived
A.J. & P.B. Garesche
Attys for Pltffs.

Cause continued.

And afterwards the following proceedings were had to wit: February Term 1850. May 17th. 1850.
St. Louis Hospital Association
vs
The City of St. Louis

On motion of the plaintiff by its attorney it is ordered that this cause be continued until the next term of this court at its costs.

6.) St. Louis Hospital Association
vs.
The City of St. Louis

On motion of said plaintiff by its attorney it is ordered that this cause be referred to Messrs. R. S. Blennerhassett, Charles B. Lord and Thomas B. Hudson, and that they make report of their proceedings without delay.

Reference

And afterwards the following proceedings were had to wit. February Term 1851. February, 24th 1851.

Reference set aside

St. Louis Hospital Association
vs.
City of St. Louis

By consent of parties it is ordered that the order of reference heretofore made herein, be and the same is set aside.

And afterwards the following proceedings were had to wit: February term 1851. April 14th 1851.

Jury and trial

St. Louis Hospital Association
vs.
The City of St. Louis

Petition

Now at this day come the parties by their attorneys and thereupon came also a jury to wit: Samuel Johnson, William Kulenthel, John Ludwig, Charles Bobb, Thornton D. Murphy, Jacob Miller, M. Kraft, T. S. Brown, A. M. Ochs, A. H. Smith Thomas H. McVicker, and Paul Degamais twelve good and lawful men who being elected tried and sworn well and fairly to try the issue joined between the parties aforesaid the trial progressed and not being finished the same is laid over until to-morrow.

And afterwards the following proceedings were had to wit. February Term 1851. April 15th 1851.

Petition: Now at this day came again the parties by their attorneys and the Jury empannelled and Sworn herein also come and the trial progressed but

7.) not being finished the same is laid over until to morrow.

And afterwards the following proceedings were had to wit February Term 1851. April 16th. 1851.

Judgement

St. Louis Hospital Association } Petition
vs
The City of St. Louis } Now at this day come again the parties by their attorneys and the Jury empannelled and sworn herein also come and the trial of the cause progressed and being finished the Jurors aforesaid upon their oath aforesaid find for the plaintiff and assess its damages sustained by reason of the premises in its petition mentioned at the sum of four thousand three hundred and forty five dollars and forty six cent. It is therefore considered by the Court that the plaintiff recover of the defendant the damages aforesaid in form aforesaid by the Jury assessed and also its costs and charges herein expended and have thereof execution.

Motion for new trial overruled

And afterwards the following proceeding were had, to wit: February Term 1851. May 3d. 1851.

The defendants motion for a new trial herein being heard and the Court being fully advised of and concerning the premises it is ordered that said motion be overruled.

Bill of Exceptions

The following Bill of Exceptions was filed. June 26th. 1851.

The St. Louis Hospital Association plaintiff } In the St. Louis Court of Common Pleas St. Louis County
vs
The city of St. Louis Defendant

Be it remembered that at the hearing of this cause plaintiff introduced, as witnesses

Witness Sr Mary Alexis

1st. Sister Mary Alexis who testified in substance - That she was Superior of the St. Louis Hospital - the corporate name of which was the St. Louis Hospital Association Recognized Account Sued on ~~account sued on~~ as correct

8.) having been made out by herself = that up to the 20th August 1846 the City had sent both its sick & insane patients to the Hospital, but that in consequence of the City Hospital being completed at that period an order was made for the removal thither of the patients then in the St. Louis Hospital at the Citys expense = That accordingly on that day she caused to be brought up all the patients both sick & insane = that Mr Parker the then City Register refused to receive the insane patients as there was no place provided for their confinement in the City Hospital = That he then asked witness at what rate she would keep them = that witness replied she would keep them at $3.00. a week per patient if paid in Cash & $3.50 a week if paid in City Scrip or bonds. That Mr Parker replied he would see the City officers & give them an answer & in meantime the insane patients were retransfered to the quarters they had occupied that Mr Parker returned next day & said that the City officers had agreed to pay in Cash at the rate mentioned three Dollars per week The witness further testifies that it had always been the custom to return the bills at end of every month to the Register & that the money was paid to them = That after the 20th August 1846 they continued to send in the bills on the first of every month for the insane patients & that these bills were regularly audited & paid until the month of July 1847 = that then the bills were not paid = that not finding them paid she sent in her petition to the City Council but what became of it Witness did not know = that the accounts were always sent for payment by persons in the service of the Hospital who usually brought back the money, that on cross examination stated that James Noland then in the City of St. Louis

9.) had been one of those entrusted to receive the money = that she had never received any notice that the city would not be any longer responsible for the support of the insane any further than that she had heard that the city refused to appropriate fund for the purpose except on one occasion where Mr Lemon the successor of Mr Parker in the office of City Register asked witness to receive an insane patient, & that he would pay for its support out of his private purse, as he had no longer the authority to send patients to the Hospital at the expence of the city that this patient received but made no charge to Mr Lemon for it, nor is the name of the patient nor any charge for its support any part of the item in the account sued on = Cannot recollect when this occurred but thinks it was in February or March 1848 =

That the account sued on is for the support of those patients who were sent in previously, but who remained in the Hospital until taken away by the City authorities, that at period of making the contract with Mr Parker, no time was mentioned or spoken of for the duration of the contract = that during all the period for which she had been Superior the contracts had been made as this one was, verbally with the City Register & these bills would always be paid, until the bill mentioned that no city patient either sick or insane was ever admitted without a written permit from the City Register = except in one instance where the then Deputy Register Mr Mc Kellops brought an insane patient to the city Hospital said that he would send a permit the next day (Monday) which he did = that when the bills were rendered, the permits for those admitted during the month were always sent in with them to the City

that the bills would then be made out monthly at the rate agreed upon with the Register

10.) Register = that witness by the rules & regulations of the St. Louis Hospital Association was authorized to make all contracts.

Witness Mary Alicia

Plaintiff also introduced a sister Mary Alicia who in substance testified = that she was one of the sisters at the Hospital = had been for 14 years = that during all that period the sick and insane patients sent in by the City had been received by them = That all contracts for their support had always been made verbally with the City Register a permit from the city register was always sent in with each patient = that monthly the accounts for the support of the patients was sent into the City Register & had always been paid by the different accounting officers of the City up to the period. Was not present when the contract was made between Mr. Parker & the sister Superior = That by the rules & regulations of the St. Louis Hospital Association the sister Superior had the power to make all contracts to which the institution was a party.

Witness Sister Olympia

Witness then introduced Sister Olympia who testified in substance that she entered the hospital in July 1842, I remained there until the Spring of 1843. Then left & does not now reside at the Hospital = That at the time she entered there were then City patients = that she was from August 42 to May 43 the book keeper of the Institution in virtue of the office held the papers of the institution = Never knew of any written contract to be made between the City and the Hospital was not present when the contract for insane was made with Mr. Parker by sister Alexes, every patient was admitted under a permit issued by the Register = the bills were sent in monthly

11.) to the Register & also the permits for the patients received during the month = these bills had always been paid, while she remained in the Institution, mostly in City warrants =

Witness Dr. McKellops

Dr. McKellops another witness for plaintiff testified that he was Deputy Register under Mr. Parker = that while in his situation, he knew the accounts to be sent in by the Hospital, regularly examined audited & paid up to May 1846 when witness left = Each patient received a permit signed by the Register, it being he who under the ordinance issued such permits that these permits were at the end of each month returned by the Hospital with their accounts =

Witness James B. Walsh

James B Walsh another Witness for plaintiff testified that he was a clerk in the auditors office in the years 1847. 8 & 9. that the accounts for the support of the insane were sent in monthly by the sisters of the Hospital - that he had himself sometimes taken to them the money, but did not recollect when these payments stopped that the cessation of payment was because of the refusal of the council to appropriate funds for the purpose the bills that were paid were paid out of funds in the City Treasury = the accounts were certified to the Auditor by the City Register = & the Auditor drew his warrants on the Treasurer.

Plaintiff then offered in evidence resolution No 1205 approved 24 July 1843.

Ordinance No 1205.

No 1205.

Resolved by the City Counsil of the City of St. Louis that from and after the first day of July 1843. the city will allow the Hospital twenty five cents per day for the Keeping of each invalide sent there by the city except insane persons for which they shall be allowed fifty cents per day, and also three Dollars for the laying

12) out each patient who may die there.

Geo. A. Hyde
Chairman of the Board
of Delegates
Wilson Primm
President of Board of Alderman

Approved July 24th 1843.
Jno. M. Wimer Mayor

I, Sylvester D. Papin Register of the City of St. Louis, do hereby certify that the above is a true copy of a Resolution of the City Council of the city of St. Louis, numbered Twelve hundred and five, as may be seen by reference to said Resolution on file in my office (Seal) In testimony whereof, I have hereunto set my hand and affixed the Corporate Seal of the City of St. Louis at office, in the city of St. Louis, this Second day of July, Eighteen hundred and fifty

S. D. Papin
Register

Objection made by defendants counsel, the same was overruled, whereupon defendant excepted to it. Plaintiff also offered in evidence ordinance No 1239 approved Sept. 2nd 1843 & ordinance No 1778 approved Decr 3. 1846.

Ordinance 1778

St. Louis Hospital

Compensation paid Hospital

Sec. 1. There shall be paid to the Superior of the St. Louis Hospital the sum of thirty one and one-fourth cents per day for each person sent there by the City, which sum shall be in full for medicines, board and washing, and all necessary attendance, except the attendance, of the health officer; and in case any person dies at the Hospital, while there at the expence of the city, the sum of four dollars shall be allowed the Superior for preparing the deceased for burial;

13.) and further, the Register be and he is hereby authorized to contract with some person or persons to furnish coffins and conveyances for all persons who die at the Hospital at the expence of the City

Persons applying for admission

Sec 2. Persons applying for admission to the St. Louis Hospital, at the expence of the city shall show to the satisfaction of the City Register, that he has resided in the City six months next preceeding the time of his appication, that he has no means of support, and that his friends and relations are unable or unwilling to pay Hospital dues.

Extreme cases.

Sec: 3. In case of extreme sickness or necessity, the City Register may admit persons to the St. Louis Hospital, who have not resided in the city six month, provided they are otherwise destitute of the means of support, as in the preceeding Section mentioned.

Regr. to keep Rec'd of persons admitted

Sec: 4. The City Register shall keep a record of the name, age birth place, and place of residence of all persons admitted to the hospital noting the time when the permit was granted and entering in opposite columns the time of the discharge or disease of the applicant and the expense thereof, noting such as were not residents of the city for six months.

To report to Mayor persons admitted

Sec. 5. The city Register shall report to the Mayor on the last Saturday in each month the whole number admitted to the Hospital since his last report, giving the names, age, and sex the time when admitted and the number dead or discharged, with the expence of the city in each case, and extinguishing the extreme cases from the residents.

14) Reports. Sec. 6. The mayor shall lay the above reports before the City Council on the first day of each Stated session.

Hospital acct. Sec: 7. The City Register shall examine and certify (on the last Saturday of each month) to the City Auditor the expence incurred in each case of persons sent to the hospital, and of persons interred at the expence of the city, and the Auditor shall draw his warrant upon the Treasurer for the Amount thereof.

Ordinance No 1778.

Ordinance No 1778. An Ordinance enjoining on the Health Officers to visit the Insane at the St. Louis Hospital and to report on their condition.

Be it ordained by the City council of the City of St. Louis, Section First; that in addition to the duties now prescribed by ordinance it shall be the further duty of the Health officer to visit at least three times a week (and oftener if necessary) the Insane patients confined in the St. Louis Hospital under charge of the sisters of charity and who are there at the Cities expence, and when any improve in health, and can be discharged in his opinion, he shall discharge them; reporting the same to the City register with the date of discharge. Section second: It shall be his further duty to report quarterly commencing on the first of January 1847. to the Board of Managers of the City Hospital on the State and condition of these patients, whether in his opinion they are well taken care of and any other matter in reference to them and to this end it shall be his duty to examine at least once a week each of these patients personally.

Approved Dec. 3. 1846 } C. Hequembourg, Chairman
P. G. Camden Mayor } of the Board of Delagates

13)

John B. Higdon, Pres.t pro tem
B.d of Aldermen

I Sylvester V. Papin, Register of the City of St. Louis, do hereby certify that the above is a full and true copy of ordinance No 1778. entitled "an ordinance enjoining on the health officer to visit the insane at the St. Louis Hospital and to report on their condition," Approved December 3.d 1846 and now on file in my office.

(Seal) In Testimony whereof, I have hereunto signed my name and affixed the common seal of the City of St. Louis, at Office, this 21.st day of August Eighteen hundred and fifty

S. V. Papin
Register

Plaintiff also read in evidence the act of incorporation of the St. Louis Hospital Association "Approved 25.th Jan. 1843. An act to incorporate the St. Louis Hospital.

Act incorporate St Louis Hospital Association.

Be it enacted by the General Assembly of the State of Missouri, as follows:

§1. That S. E. Rebecca Dillon, S. Dominice Boone, S. Mary Olympia M.c Taggert, shall be and are hereby constituted, a body corporate in fact and in name, by the name and style of the St. Louis Hospital Association and by that name and style shall have succession, and be in law capable of suing and being sued, defending and being defended in all courts and places, and in all manner of actions and causes whatsoever, and may have a common seal and change it at pleasure, and by that

16) name and style be capable in law of purchasing, holding and enjoying to them and their successors any real estate in fee simple or otherwise and any goods, chattels and personal estate and of selling and otherwise disposing of the said real and personal Estate, or any part thereof at their will and pleasure.

§ 2. Said corporation shall have power to make such constitution, by laws, ordinances rules and regulations for the Government and the management of the property of the same of the same, as to they may deem proper. Provided the same is not inconsistent with the laws and constitution of the State or of the United States

§ 3. And be it further enacted that nothing in this act contained, shall be construed to prevent the Legislature from altering, amending or repealing the same, at any time hereafter.

This Act to be in force from the passage thereof

Sterling Price
Speaker of the House of Rep.
Owen Rawlins
President of the Senate protem

Approved Janry 25th 1843.
M. Reynolds.

Office of the Secretary of State Mo City of Jefferson. —

I James L Minor Secretary of State of the State of Missouri do hereby certify that the foregoing is a true and correct copy of an Act Entitled "An act to incorporate the St Louis Hospital" approved January 25th 1843 as the same appears from the rolls now on file in my office

(Seal) Testimony whereof I have hereunto set my hand and affixed the seal of said Office this 25th day of January A.D. 1843 James L. Minor

Plaintiff then rested. Sec. of State Mo.

17)

Witness
D. H. Armstrong

Defendants introduced D. H. Armstrong who testified that he became comptroller of the city of Saint Louis on the 1st. Monday of June 1847, that at that time James Lemow was city register & so continued until sometime in February 1849 when he died after an illness of some weeks, that after the period witness became Comptroller none of the accounts of the Saint Louis Hospital for the support of insane patients though sent in regularly every month were audited & paid except perhaps one & for what month that was he did not recollect with distinctness but believes it was for May or June 1847. that the subsequent monthly accounts of the Hospital were not paid, the City council having refused to make the usual appropriation for that purpose, on the ground as witness understood at the time from report that the city was not by law bound to make provision for the insane poor, that this became very notorious & generally known throughout the city, that the Mayor had called a public meeting on the subject of the refusal of the city Council to make these appropriations for the support of the insane at which meeting there was much discussion & a large audience of 300 or 400 persons that the discussion of these matters found their way into the city newspapers two of which witness took & read, the St. Louis Union & the Republican that the St. Louis Hospital was situated in the city some 4 or 5 squares from the City Hall. Dont know that any Agent or other person connected with or representing the St. Louis Hospital was present or took any part in these meetings = The refusal to pay was never so far as he heard based on any default or omission in the fulfilment of the contract by the Sisters of the Hospital = John H. Lightner for Defendant testified that he became a delegate of the city in the Spring of 1847 & was a member of the committee of ways

Witness
John H. Lightner

18.) & means to whom the subject of the appropriation for the payment of the accounts for the support of the insane was refered, that he continued in Office until April of 1848 & that the refusal of the council to make or pass these appropriations continued during the time of his services as a delegate, that this matter became very notorious as the topic of discussion among the officers of the city & public generally.

Never had any other reason assigned for the non payment of the Accounts than that the City should not bear the burthen of such an expence which by Law was imposed upon the county=

Witness Judge Mullanphy

Judge Mullanphy a witness for the defendant testified that the mode of arresting the monthly payments for the insane at the Hospital was by the council leaving out of the bill of appriations that for the Hospital & that by a communication made by him to the council for information for their failure to pass the appropriations for the Hospital & for the dispensatory he had received for an answer that the omission to pass the usual appropriation for the dispensatory was by accident.

That the discussion on this subject became extremely warm & that as Mayor he had called a public meeting on the subject that there were two meetings held that at the first meeting called for two objects, the subject of the insane was not discussed at the 2nd the Hospital subject alone was discussed & that the discussion became notorious & general throughout the City on the Streets & in the public newspapers, that by virtue of his office Mr Lemon acted as the Mayors secretary & on the refusal of the Council to make the appropriation for the Hospital he as Mayor had notified the Hospital

19) of that fact through Mr Lennon the register & that he had also in person at the Hospital given notice to the ladies then of the refusal to appropriate revenues for this object and that the City would not pay the lady superior with whom he generally conversed on that subject was well informed of these proceedings, that after the refusal of the Council to pass the appropriation the registrar had never sent, insane patients to the Hospital in the name of the City or given permits for that purpose, that after said refusal of the Council he (said witness) had sent insane patients to the Hospital under an admitted privilege he possessed by reason of his Father having made the donation of the lot on which the Hospital is built but never exceeded the number which has the extent of his privilege such patients to the Hospital, that when the monthly accounts were sent in after the 1st of July & their payment refused he had not ordered their payment as by his Office he held he had a right to do, in consequence of the notice so given to Hospital of which he had Spoken, witness also said that after the refusal of the Council to pass the appropriation for them the insane patients the City had never removed those she had sent from the Hospital = that no charge was ever to his knowledge made by the Sisters for the insane patients he had sent under his privilege & that they were not included in the account sued on the patients sent in by the city were so far as he knew well treated and he never heard any defaut or negligence imputed to the sisters as a reason for non payment = but the sole ground of refusal was that by law the county was made responsible for the sum and that the city Council refused to make an appropriation for the purpose.

20. Ordinance No 1239.

Defendant also read to the Jury §1 of Ordinance No. 1239. offered in evidence by plaintiff in these words:

S. Louis Hospital

Compensation of Hospital. There shall be paid to the Superior of the St. Louis Hopital the sum of thirty one and one fourth cents per day for each person sent there by the City, which sum shall be in full for medicines, board, and washing, and all necessary attendance, except the attendance of the health officer; and in case any person dies at the Hospital, while there at the expence of the city, the sum of four dollars shall be allowed the Superior for preparing the deceased for burial; and further the Register be and he is hereby authorized to contract with some person or persons to furnish coffins and conveyances for all persons who die at the Hospital at the expence of the City. —

Defence rested. Plaintiff then introduces

Witness J.G. Shelton

J.G. Shelton who testified that in the years 1847 & 1848. was Member of the Board of Aldermen = Chairman of a Committee = Questioned as to why appropriations were not made = Objected to by counsel of Defendant = objections sustained & plaintiff excepted = Also

Witness R.S. Blennerhassett

Richard S. Blennerhassett = was City Counsellor when this suit was instituted Questioned as to the fact that the Executive Officers of the City recognized the justice of the claim sued on & he as their legal counsellor was directed to interpose a demurrer merely to gain time that Councils might appropriate money to pay it, defendant objected = objection sustained & plaintiff excepted

21.) Plaintiff thereupon offered to read the official proceedings of the Board of Delegates during the years 1849 & 1850 = to show that the claimed was recognized as just & correct by the Committee of those boards & so reported on that atone time an ordinance for its payment passed the Board of Aldermen unanimously but fell through in the Board of Delegates because the City had not the means, though the debt by the Committee of the Board was recognised as just.

To all of which defendant excepted as irrelevant & the Court sustained the objection on the ground that the court would instruct that the evidence to which it was offered in rebuttal was itself irrelevant & therefore plaintiff did not except - it being for the same reason that plaintiff did not except And this was all the evidence offered or given in evidence by the defendant to the jury.

At the close of the testimoney the defendant by her counsellor move the court to instruct the Instructions for Defendant jury as follows. Defendant asks the following instructions 1st. That if the plaintiff took charge of the insane for defendant under a verbal contract with the Register and no time was fixed for the termination of the contract then it could be dissolved at the pleasure of either party — and if the plaintiffs agents were notified that the City Council refused to make further appropriation for the support of the insane in the hospital - then after notice the plaintiff cannot recover of the City for the keeping any patient, and the jury are bound to find for the defendant — as to every item in the account subsequent to the time of said notice.

refused

2. That if the Mayor or Register or other officer sent any patients to the hospital after the plaintiff

Refused

22.) agents were informed that the city council refused to make appropriations for the support further of the insane in the Hospital then for any patients thus sent after such notice the plaintiff cannot recover

Refused

3.) That if in the month of June 1847 the City council refused to make appropriation for the further support of the insane in the Hospital and this fact was communicated to the agents of the plaintiff, then the contract previously made with the register was dissolved and the City is not liable for any charges of the plaintiff for taking care of the insane after that time.

Refused

The notice spoken of by Judge Mullanphy to the effect that he as mayor of the City and the register of the City notified the Hospital that the City council refused to appropriate funds for the payment of monies claimed by the Hospital under their contract with the city was not a sufficient or legal notice of the dissolution of the contract on the part of the city.

Refused

The statement of Judge Mullanphy as to the acts of Mr Lemon as register of the city is not legal evidence in this cause.

To the giving which Plaintiff objected which objections the court sustained & refused to give all & each of said instructions to which refusal defendant excepted.

Instructions for Plaintiff

The court then instructed the jury for plaintiff as follows If the jury believe from the evidence that the City register, within the scope of his duties as such, contracted for the Defendant with the Plaintiff for the support and care of the insane patients mentioned in the account filed in

23) This case, and that said contract was not ~~rescinded~~ rescinded or dissolved when the said account accrued, they will find for the plaintiff and assess the damages at the Amount due under said contract with interest from the time when payment was to have been made. A parol contract to be executed in future when no time is mentioned for the termination of the same or a contract of the character named in the Plaintiffs petition, can be rescinded by the mutual agreement of the parties thereto; or the Defendant could rescind the same by putting the plaintiff in the same position as said Plaintiff was before said contract was made. If the jury believe therefore from the evidence that the insane persons named in the account were sent by the City to the St. Louis Hospital before notice of refusal to pay was given them the mere refusal to pay for the care of the same is no discharge or rescinding of the contract which the Defendant could relieve itself of its liability, even though the Plaintiff was informed that the Defendant would no longer pay therefor or abide by its contract, unless the Defendant removed the insane from Plaintiffs premises. a party to a contract of the kind named, cannot dissolve or rescind the same without the consent of the other party thereto unless the other party is put in the same position as he was before said contract was entered into.

If the jury believe from the evidence that the Defendant by any of its officers or agents informed the Plaintiff that the Defendant would send no other patients to Plaintiffs Hospital on the Defendants account. then the Plaintiff can recover nothing for any patients sent to the said Hospital after such notice was given; but for the patients

24) previously there by direction of the Defendant, which Defendant failed or refused to remove, the Plaintiff can recover according to the terms of the contract.

The dispute between the Mayor and City Council, or between the two branches of the City Council or any acts of the members of the Council in the course of their legislation which acts did not ripen into ordinances, and the controversy in public meetings and newspapers about this subject, so far as the same have been spoken of, by the witnesses, are not testimony to be considered by the Jury in this case

Refused by the Court

The failure or refusal of the City Council to make appropriations for the support of the insane patients did not, of itself repeal the ordinance concerning the Registers duties. A failure to pay or to make arrangements to pay what may become due under a continuing contract does not dissolve a contract.

If the jury believed from the evidence, that the contract was to pay 42 6/7 cents per day for each patient, in Cash and that the bills were to be rendered and paid monthly; then the Jury are authorized, if they find for the Plaintiff, to allow interest on each monthly account from its date to the present time, and they will find at the rate of 42 6/7 cents per day, or $3.00. per week. - to the giving of which each of them Defendant objected the objection was overruled & the instructions given, & the defendant excepted. By consent the Account is not to be made part of the Bill. The jury found their verdict for plaintiff & assessed the damages at $43.

Thereupon the defendant filed a motion

25)

to set aside the verdict & asked for a new trial in the words & figures following

Motions & reasons for a new trial

The Saint Louis Hospital Association against The City of St. Louis } Court of Common Pleas St. Louis

The defendant by its counsellor moves the court to set aside the verdict of the jury & grant a new trial herein for the reasons.

1st. The verdict is against the law & the evidence

2no. The court admitted improper evidence to be given to the jury on the part of the Plaintiff objected to by defendant.

3d. The court refused to give to the jury legal & proper instruction asked by the defendant

4th. The court misdirected the jury in the instructions given.

5th. The damages & verdict of the jury are excessive.

S. Kirtley City Counsellor

Which motion was overruled by the court & the defendant excepted to that decision & now here presents its said Bill of Exceptions & prays the court to sign seal & make the same a part of the record herein which is done accordingly

Sam. T. Cate, Judge &. (Seal)

And afterwards the following proceedings were had to wit: February term 1851 July 14th 1851.

Appeal allowed.

St. Louis Hospital Association v. The City of St. Louis } On motion of Defendant by Attorney

an appeal is granted it to the Supreme Court, and the Court directs that she file a bond according to law in the sum of Five thousand Dollars which bond is filed, and acknowledged by the obligors & approved by the Court

appeal Bond.

Know all men by these presents, that we, Luther M. Kennett (Mayor of St. Louis) as principal and Joshua H. Alexander Comptroller of St. Louis as surety are held and firmly bound unto the Saint Louis Hospital Association in the sum of Five thousand dollars, for the payment of which, well and truly to be made, we bind ourselves, our heirs executors and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated at St. Louis, this 27th day of June A. D. 1851. The Condition of the above obligation is such that whereas The City of St. Louis has appealed from the judgment rendered against it and in favor of the Saint Louis Hospital Association in the Saint Louis Court of Common Pleas for the sum of Forty three hundred & forty five Dollars and forty six cents together with costs.

Now if the said appellant will pay all costs and damages that may be awarded against it occasioned by such appeal, and shall prosecute its appeal and shall perform such judgment as shall be given by the Supreme Court, and such as the Supreme Court may direct the Saint Louis Court of Common Pleas to give, and if the judgment or any part thereof be affirmed that it will comply with and perform the same so far as it may be affirmed, and will pay all damages and costs which may be awarded against it by the Supreme Court then this obligation to be void, otherwise to remain in full force and effect.

Acknowledged in Open Court
July 14th 1851.
Attest P. Tippett Clk

Luther M. Kennett
Mayor etc
Joshua H. Alexander
Comptroller

27)

State of Missouri
County St Louis } ss. I Philip Tippett Clerk of the St. Louis Court of Common Pleas within and for the County aforesaid certify the above and foregoing to be a full and perfect transcript of the record and proceedings in the case of the St. Louis Hospital Association against the City of St. Louis as the same remain 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 23d day of September A.D. 1851.

Philip Tippett Clk

St Louis Mo 13. M. 6th October A.D. 1851 = We hereby consent that the Account on which this suit was founded & referred to in ~~made part of~~ the original petition in the cause, but not included in above transcript in order to avoid expense may upon the argument of the cause in the Supreme Court be read in the same manner as if included in the above transcript & made part of the bill of exceptions = A. S. & S. B. Garesché
Pltffs Attys
S. Kortly City Counsellor

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(3) 43

March Term 1852

St Louis Hospital Association

vs

City of St Louis

Transcript

Filed Oct. 9th 1851
Wm. B. Slaske by Wm. S. Glanville

Ord

$10.00 paid by C. S. Kirtley

(30)

St Louis Hospital Association plaintiff } In Supreme Court sitting
vs
City of St Louis Defendant } at St Louis.

Plaintiff moves the Court that because there is no error in the proceedings of the Court of Common Pleas & because the defence relied upon by the defendant is not only illegal but against the good faith & honesty which should exist in the intercourse ~~of corporate bodies between~~ between corporate bodies as well as between individuals & because of the great expense to which plaintiff has been subjected by reason of these legal proceedings & for which there exists no Law to indemnify = the Court allow to her ~~the ten~~ as just the ten per cent damages allowed in the discretion of the Court by Section 34 of an act to regulate practice in the Supreme Court, approved Feby 21st 1845 =

A P & P B Garesché
Pltff's Attys.

[72]

Indians Hospital Association

vs

City of St Louis

Motion by plaintiff for damages

Filed 22d Oct 1851.
W. B. Starke clk

St Louis Hospital Association plaintiff } In the Supreme Court
vs
City of St Louis Defendant } State of Missouri

Plaintiff there is no error or illegality in the proceedings of the St Louis Court of Common Pleas in this cause & prays therefore the judgment of this Court in regard to the same

A P & P B Garesché
P Aff & Attys

(36)

124

St Louis Hospital Association
vs
City of St Louis

Condemnation

Filed 27th October 1851
Wm. S. Glanville
Clerk

The Saint Louis Hospital Association Appellee
against
The City of Saint Louis Appellant
} In the Supreme Court

The appellee filed a petition in the Saint Louis court of common pleas charging that appellant owed appellee
pap 1- $3638 34/100 for board clothing, lodging & attendance of sundry insane patients, being at the rate of 42½ cents per patient per day, from the 1st day of July 1847 to the 30th day of November 1848 inclusive; that the charge of said patient was undertaken at the special instance & request of the appellant & presenting an account current of the claim with & as part of the petition. Appellant filed an answer denying
3- the allegations of this petition or any such indebtedness to appellant.

At the succeeding term of the court of common pleas appellant filed an
4. amendment to the original petition charging that the contract between the two institutions or parties was that appellant should pay at the rate of fifty cents per day for the support &c of the patients & that there was also an understanding between them that in case the bills were paid as they were returned by appellee there was to be a deduction of one seventh — that therefore the bills in anticipation that they were to be so paid were made out at the rate of 42 & one seventh cents — or one seventh less. and at the rate rendered to appellant & that appellants did

not pay the bills, or any part of them contrary to the anticipation of appellee although often requested to do so, wherefore appellee was entitled to be paid at the rate of fifty cents per day, that appellant owed appellee $4184 28/100 for board &c of the insane patients under the agreement from the 1st of July 1867 to the 30th of November 1868, the particulars of which were in the said account filed with the original petition, the said account being so amended as to charge fifty cents per day per patient, so that the bill for each month be increased one seventh; appellee asked in said amended petition judgment for $4184 28/100 with interest to be calculated on at the rate of six per cent upon the bills as monthly rendered to appellant from the date of their rendition.

To this amendment appellant answered that there was no such contract as alledged to pay at the rate of fifty cents per day for the support &c of the insane patients, nor was there any such understanding in relation to the pretended deduction for prompt payment nor that appellant owed appellee $4184 28/100 or any part thereof as alledged in the amended petition.

On the trial, the jury rendered a verdict for the appellee for $4345 46/100 which appellants counsel moved the court to set aside for the alledged reasons;

1st. The verdict is against the law & the evidence

2nd. The court admitted improper evidence to be given to the jury on the part of the plaintiff objected to by defendant.

3rd. The Court refused to give to the jury legal & proper instructions asked by the defendant.

4th. The Court misdirected the jury in the instructions given

5th. The damages & verdict of the jury are excessive.

This motion was overruled by the Court, a Bill of exceptions taken & the case is brought here by an appeal taken by the City of Saint Louis the defendant below.

Pltff proved by Sister Mary Elen in substance that she was the superor of the St Louis Hospital, said the acct rendered was correct, she having made oath that up to 20th Aug. 1846 had sent sick insane patients to Hospital, at which time the Hospital being finished the cases was made for the removal thither of the patients then in the St Louis Hospital at the expense of the City, that on that day they brought up all the patients both insane & sick - that Mr Parker the then City Register refused to receive the insane patients as there was no place provided for their confinement in the City Hospital.
She then asked witness at what rate she would keep them - that she replied she would keep them at $3,00 a week p/per patient if paid in cash or $3,50 a week if paid in City scrip. That Mr Parker replied he would see the City officers, give them an answer & in the meantime the insane patients were transpered to the quarters they occupied that Mr Parker returned next day & said that the City officers had agreed to pay in cash at the rate mentioned $3 per week.
Witness said it had always been the custom to return the Bills at the end of every month to the register that the money was paid to them. That after 20th August 1846 they continued to send in the Bills on the 1st day of every month to the register that the money paid to them for the insane patients & that these Bills on the 1st were regularly paid & conducted until the month of July 1847 that then the Bills were not paid. that not finding them

paid she sent in her petition to the City Council but what became of it witness did not know that the accounts were always sent for payment by persons in the service of the Hospital who usually brought back the money that on ~~a~~ ~~occasion~~ cross examination she stated that James Noland then in the City of St Louis had been one of those instructed to receive the money - that she had never received any notice that the City would not be any longer responsible for the support of the insane any further than that she had heard that the City had refused to appropriate funds for the purpose at certain one occasion when Mr Lemon the successor of Mr Parker in the office of City Register asked witness to receive an insane patient & that he would pay for its support out of his private purse, as he had no longer the authority to send patients to the Hospital at the expense of the City, that this patient was received but made no charge to Mr Lemon for it nor is the name of the patient nor any charge for its support any part of the item in the account sued on - cannot recollect when this was but thinks it was in the May or March 1848. That the account sued on is for the support of those patients who were sent in previously, but who remained in the Hospital until taken away by the City authorities, that at the period of making the contract with Mr Parker

no time was mentioned as spoken of for the duration of the Contract – that during all the period for which she had been superior the Contracts had been made as this one was verbally with the City Register that no city patient was ever admitted without a written permit from the City Register, that when the bills were rendered the permits for those admitted during the month were always sent in with them to the City Register

Another Sister ~~witness for plaintiff~~ Mary Alexis a witness for Plaintiff testified in substance that she was a Sister of the institution for 14 years, that during that time the sick insane patients sent by the City had been received by them. That Contracts for their support had always been verbally made with the City Register, that monthly accounts for the support of the patients had always been paid by the City accounting officers up to the period. Witness was not present when the Contract spoken of was made between Mr. Parker & the Sister superior. That by the rules of the institution the superior had power to make all contracts to which the institution was a party. Plaintiff then introduced Sister Olimpia a witness who testified that she entered the Hospital in July 1842 remained there until the Spring of 1843. Then left & does not now reside at the Hospital – That at the time she entered there were then City patients

That she was from August 1842 to May 43 the Book Keeper of the institution never knew of any written contract made between the City & the Hospital, was not present when the contract for the insane was made with Mr. Parker by Sister Alexis, every patient was admitted under a permit issued by the Register - the bills were sent in monthly to the register & also the permits for the patients received during the month. These bills had always been paid while she remained mostly in City warrants.

Dr. McKellops testified for plaintiff that he was deputy Register under Mr. Parker that while in this situation he knew the accounts to be sent in regularly, examined, audited & paid up to May 1846 when witness left - each patient received a permit signed by the register & it being he who under the ordinance issued such permits, that these permits were at the end of each month returned by the Hospital with the accounts.

James Walsh testified for plaintiff that he was a clerk in the auditors office in the year 1848/9 that the accounts for the support of the insane was sent in monthly by the sisters of the Hospital - that he had himself sometimes taken the money, but did

not recollect when the payments stopped that the cessation of payment was because of the refusal of the Council to appropriate funds for the purpose, the bills that were paid were paid out of funds in the City treasury. The accounts were certified to the auditor by the City register & the auditor drew his warrant on the treasurer.

Plaintiff offered in evidence resolution No. 1205 approved 24 July 1843 in these words Resolved by the City Council of the City of St Louis that from & after the 1st day of July 1843 the City will allow the Hospital twenty five cents per day for each invalid sent there by the City except insane persons for which they will allow fifty cents per day, and also three Dollars for the laying out each patient who may die

Approved July 24th 1843
Rd. M. Winer Mayor.

George A. Hyde
Chairman of Board of Delegates
Wilson Primm Pres-
ident of Board of Aldermen

To the introduction & giving of this in evidence defendant objected, the objection was overruled & the the resolution was read & defendant excepted.

Plaintiff also offered in evidence ordinance No. 1239 approved Septr. 2nd 1843 & ordinance No. 1778 approved Decr. 3rd 1846 -

Defendant introduced David A. Armstrong who testified that he became Comptroller of Saint Louis the 1st Monday of June 1847, that at that time James Lemon was city register & so continued ~~until some time~~ until sometime in February 1849 when he died after an illness of some weeks. That after the period witness became Comptroller none of the accounts of the Saint Louis Hospital for the support of the insane patients though sent in regularly every month were audited & that except perhaps one for what month that was he did not recollect with distinctness but believes it was for May or June 1849, that the subsequent monthly accounts of the Hospital were not paid the City Council having refused to make the usual appropriation for that purpose, on the ground as witness understood at the time from report that the city was not by law bound to make provision for the insane poor that this became by notorious & generally known throughout the City that the Mayor had called a public meeting on the subject of the refusal of the City Council to make these appropriations for the support of the insane at which meeting thereby much discussion & a large audience of 300 & 400 persons, that the discussion

of these matters found their way in the City newspapers & two of which witness took & read, the St Louis Union & the republican - that the St Louis Hospital was situated in the City some 4 or 5 squares from the City Hall. Dont Know that any agent or other person connected with or representing the St Louis Hospital was present or took any part in these meetings - The refusal to pay was never so far as he heard based on any default or omission in the fulfilment of the Contract by the sisters - John Lightner for the defendant testified that he became a delegate of the City in the spring of 1847 & was a member of the Committee of ways & means to whom the subject was refered, that he continued in office until April of 1848 & that the refusal of the counsel to make or pass these appropriations continued during the time of his services as a delegate that this matter very notorious as the topic of conversation of discussion among the officers of the public & City generally Never had any other reason assigned for the non payment of the demands than that the City should not bear the burden of such an expense which by law was imposed on the county.

Judge Mulamphy a witness for defendant testified that the mode of arresting the monthly payments for

the insane at the Hospital was by the council leaving out of the bills of appropriations that for the Hospital & that by a communication made by him to the council for information for their failure to pass the appropriation for the Hospital & for the dispensatory he had received for an answer that the omission to pass the usual appropriation for the dispensatory was by accident— That the discussion on this subject became extremly warm & that as Mayor he had called a public meeting on the subject, that there were two meetings held, that at the first meeting called for two objects, the subject of the insane was not discussed, at the 2nd the Hospital subject alone was discussed & that the discussion became notorious & general throughout the streets & in the public newspapers, that by virtue of his office Mr Parker acted as the Mayors secretary for the purpose of the council to make the appropriations for the Hospital, that Mayor had ~~not~~ notified the Hospital of that fact through Mr Lemon the register & that he had also in person at the Hospital given notice to the ladies there of the refusal to appropriate revenues for the object & the City would not pay the lady superior with whom the

generally conversed on that subject
was well informed of the proceedings
that after the refusal of the Council
to pass the appropriation, the Register
had never sent insane patients to
the Hospital in the name of the City
or given permits for that purpose,
that after said refusal of said Council
he (said witness) had sent insane
patients to the Hospital under an
admitted privilege he possessed by
reason of his father having made the
donation of the lot on which the
Hospital is built, but never exceeded
the number which had the extent
of his privilege of such patients to
the Hospital, that when the month-
ly accounts were sent in after the 1st
of July & their payment refused he
had not ordered their payment as
by his office he held he had a
right to do, in consequence of the
notice so given to the Hospital of
which he had spoken, that after
the refusal of the Council to pass
the appropriation for them the in-
sane patients, the City had never
removed those she had sent from
the Hospital, that no charge was ever
to his knowledge made by the Sisters
for the insane patients he had sent
under his privilege & that they were
not included in the account for
the patients sent in by the City was

as far as he knew well treated the never heard any default or negligence imputed to the sisters as a reason for non payment - but the sole ground of refusal was that by law the County was made responsible for the sum & that the City Council refused to make any appropriation for the purpose
Defendant also read to the jury Section 1st of Ordinance No. 1239 offered in evidence by plaintiff & closed its case.
At the close of the evidence the defendant asked the Court to instruct the jury:
1st That if plaintiff took charge of the insane for defendant under a verbal Contract with the Register & no time was fixed for the termination of the Contract, then it could be dissolved at the pleasure of either party - & if the plaintiffs agents were notified that the City Council refused to make further appropriations for the support of the insane in the Hospital thereafter notice the plaintiff cannot recover of the City for the keeping any patient & the jury are bound to find for the defendant as to every item in the account subsequent to the time of said notice.
2nd That if the Mayor or register or other officer sent any patients to the Hospital after plaintiffs agents were informed that the City Council

refused to make appropriations for the support further of the insane in the Hospital, then for any patient thus sent after such notice the plaintiff cannot recover.

3rd That if in the month of June 184[illegible] the City Council refused to make appropriations for the further support of the insane in the Hospital this fact was communicated to the agents of the plaintiff, then the contract previously made with the Register was dissolved & the City is not liable for any charges of the plaintiff for taking care of the insane after that time

To the giving these instructions Plaintiff objected, the objections were sustained & Defendant excepted

The court then instructed the jury for the Plaintiff as follows.

If the jury believe from the evidence that the City Register within the scope of his duties as such, contracted for the Defendants with the Plaintiff for the support and care of the insane patients mentioned in the account filed in this case and that said Contract was not rescinded or dissolved when the said account accrued they will find for the Plaintiff and assess the damages at the amount due under said Contract with interest from the time when payment was to have been made. A parol Contract to be executed in future when no time is mentioned for the termination of the same or a contract of the character named in the plaintiffs petition can be rescinded by mutual consent of the parties thereto, & the Defendant could rescind the same by putting the Plaintiff in the same position as said Plaintiff was before said Contract was made. If the jury believe therefore from the evidence that the insane persons named in the account were sent by the City to the St Louis Hospital before notice of refusal to pay was given, then the mere refusal to pay for the care of the same is no discharge or rescinding of the contract which the defendant could

relieve itself from its liability, even though the plaintiff was informed that defendant would no longer pay therefor or abide by its contract, unless the defendant removed the insane from plaintiffs premises, a party to a contract of the kind named cannot absolve or rescind the same without the consent of the other party thereto unless the other party is put in the same position as it was before said contract was entered into.

If the jury believe from the evidence that the defendant by any of its officers or agents informed the plaintiff that the defendant would send no other patients to plaintiffs Hospital on the defendants account then the plaintiff can recover nothing for any patients sent to the said Hospital after such notice was given, but for the patients previously there by direction of the defendant which defendant failed or refused to remove the plaintiff can recover according to the terms of the contract.

The dispute between the Mayor and City Council, or between the two boards of the City Council or any of its members in the course of ~~this~~ their legislation which acts did not ripen into ordinances, and the controversy

in public meetings & newspapers about this subject, so far as the same have been spoken of by the witnesses are not testimony to be considered by the jury in this case.

The failure or refusal of the City Council to make appropriations for the support of the insane patients did not of itself repeal the ordinance concerning the registers duties. A failure to pay or make arrangements to pay what may became due under a contract contemning does not dissolve the contract.

If the jury believe from the evidence that the contract was to pay 42½ cents per day per each patient in cash & that the bills were to be rendered monthly the jury are authorized if they find for the plaintiff to allow interest on each monthly account from its date to the present time & they will find at that rate per day or $3,00 per week.

To the giving of which charge the Defendant objected, the objections were overruled & Defendant excepted

It is mutually agreed by the parties herein that the account filed in the Court of Common Pleas, Jany 11th 1850 is to be used in the Supreme Court as if incorporated & made a part of the Bill of exceptions, being the account sued on

(58)

This statement shown to & inspected by us & is satisfactory. A. B. & B. Garesche
Cliffs Attys

S. Kortley Defendants
Attd.

124

Saint Louis Hospital
Association Appr.
against
The City of St Louis
Appellant.

Statement of
the case Appel-
lant. Kortley.

Filed ([redacted]) November 20th 1857
[illegible] Clerk.

The City of St Louis Mo

To The St Louis Hospital Association Dr.

To Board. Clothing. Lodging. Attendance etc. The following Patients. Commencing July 1st 1847. and Ending Nov 30th 1848.

Names of Patients, Insane,	Commenced	Disch.a	Deaths	Remarks.	Age.	Country,	No of Days
Gertrude Black.	July 1	July 31					31
Maria Bardea.	" 1	" "					31
Frederick Browning	" 4	" 8	Died	Sent in this Month	40.	Germany.	5
Frances Cannon.	" 1	" 31					31
Louisa Collier.	" 1	" "					31
Rozanna Colligan	" 7	" "		" " "			25
Mary Davenport	" 1	" "					31
Patrick Daly.	" 1	" "					31
Abner Ellis.	" 1	" "					31
Peter Frazer	" 1	" 25					25
Bridget Feely.	" 1	" 31					31
Jane Grace.	" 1	" "					31
Peter Harvey.	" 1	" "					31
Christian Hoffman.	" 1	" "					31.
Mary A. Hunty.	" 7	" 21		" " "	48	Ireland.	15
Jackson Hobes.	" 18	" 31		" " "	31.	Indiana	14.
James Kelsay	" 1	" "					31
Samuel Lipton	" "	" 3	Died				3
Harriet Meyers	" "	" 31					31
Ellen McElroy	" 4	" 11					11
John McCarty	" "	" 31					31
Fred Prensel.	" "	" "					31
							563.

Continuation, of act. July. /47.

Names of Patients	Commen.d	Dis.d	Died	Remarks	Age	Country	Days.
							563.
Lavinia Phillipson	July 1	July 31.					31.
John Respetto.	" "	" "					31.
Catharine Ryan.	" 8	" "		admitt.d this Month	24.	Ireland.	24
William Richards	" 15	" "		" " "	11.	Ohio,	17
Maria Stocker	" 1	" "					31
Thomas Shea.	" 1	" "					31
John Silver	" "	" "					31
Maria Swartz.	" "	" "					31
Henry Streper	" "	" "					31
Mary Smith.	" 6	" "		" " "			26
Catharine Tanner.	" "	" "					31
Man-Name Unknown	" "	" "					31
Boy-Name Unknown.	" 12	" "		" " "	8	Germany.	20.
							929
J. Pondu.	" 15	" 16	Died	Extreme Case.			2

929. at. 42 6/7 cts per day J Pondu. 2 days at 31 1/4 cts per day
42 6/7 62 1/2.

796 2/7
1858
3716
$. 398.14 2/7
Arranging 3. Corpse, 12. 62 1/2
$. 410. 76 1/2 Amt due. July. 31st /47.

(48)

Patients remaining in the Hospital, July 31st and others admitted in August.

Names.	Commenc.d	Discharg.d	Died	Remarks.	Age.	Country.	No. of Days.
Gertrude Black.	Aug 1	Aug 31.					31.
Maria Bardea.	" "	" "					31.
Elizabeth Batesman	" 21	" "		Admitted this month.	47.	England.	11.
Frances Cannon.	" 1	" "					31.
Louisa Collier.	" 1	" 6					6
Rozanna Colligan.	" "	" 31					31
Mary Davenport.	" "	" "					31
Patrick Daley.	" "	" 7			32.	Ireland	7
Abner Edes.	" "	" 31					31
Johnson Erracks.	" 9		10.	" " "	—	—	2
Bridget Feely.	" 1	" 31					31
Jane Grace.	" "	" "					31
Peter Harey.	" "	" "					31
Christian Hoffman.	" "	" "					31
Jackson Hobes.	" "	" "					31
Henry Hosketh.	" 14	" "		" " "		Germany.	18
James Kelsey.	" 1	" "					31.
Margaretta Kraemer.	" 19	" "		" " "	20.	" "	13.
Harriet Myers.	" 1	" "					31.
John Mc Carty.	" "	" "					31.
James Mc Conarty.	" 20	" "		" " "	19.	Ireland.	12.
Winefrid O'Brien.	" 21	" 25		" " "	35	" "	5
Fred Prensel.	" 1	" 31					31
Lavinia Phillipsen	" "	" "					31
John Respetto.	" "	" "					31
							601.

Names	Commenced	Dischd	Died	Remarkes	Age.	Country	No of Days
Catharine Ryan.	Aug 1	Aug 5					5
William Richards	" "	" 31					31
Maria Stocker.	" "	" "					31
Thomas Shea.	" "	" "					31
John Silver	" "	" 7					7
Maria Swartz.	" "	" 28					28.
Henry Striper.	" "	" 31					31.
Mary Smith.	" "	" "					31.
Holsey Smith	" 6	" "		Sent in this Month.	27.	U.S.	26.
Catharine Tanner.	" 1	" "					31
Man Name Unknown	" "	" "					31
Boy " " "	" "	" "					31
Werhahn Hannah.	" "	" "		Name passed over in last Bill,			31
Prisco Smith.	" 24	" "					946

days. 8. at 14 2/7. cts per day.
$ 1. 14 2/7.
friends to pay the balance

946. days. at 42 6/7. cts per day

42 6/7.

810 6/7

1892

3784

$ 405. 42 6/7

1. 14 2/7.

4. 00. arranging Corpse.

" 410. 57 1/7

20. 00. Deduction. Interment of 4. Marines

$ 390. 57 1/7. and dues per Aug 31. 47.

(28)

For the Month of Sep. 67. Remaining, on Aug 31st etc.

Names of Patients (Insane)	Commenced	Discharged	Died	Remarks.	Age.	Country	No. of Days.
Gertrude Black.	Sep 1	Sep 30					30
Maria Bardea.	" "	" "					30
Elizabeth Batesman.	" "	" "					30
Francis Cannon.	" "	" "					30
Rosanna Colligan	" "	" "					30
Mary Davenport	" "	" "					30
Ann M. Daisy	14	"	20.	Sent in this Month.	28.	Ireland	7
Bridget Feely.	1	"					30
Jane Grace.	" "	" "					30
Peter Harvey.	" "	" "					30
Christian Hoffman	" "	" "					30
Jackson Hobes.	" "	" "					30
Henry Hosketh.	" "	" "					30
James Hilsey.	" "	" "					30
Margaretta Kraemer.	" "	" "					30
Harriet Myers.	" "	" "					30
John Mc Carty.	" "	" "					30
James Mc Conarty.	" "	" "					30
Fred Prensel.	" "	" "					30
Lavinia Phillipson	" "	" "					30
John Respetto.	" "	" "					30
Wm Richards	" "	" "	1				1
Maria Stocker	" "	" "	30				30
Thomas Shea.	" "	" "					30
Henry Kreiser.	" "	" "					30
							698

Continuation of Act. Sep.

Names of Patients: Insane:	Commenc.d	Disch.d	Died	Remarks.	Age.	Country	No. of Days
Mary Smith.	Sep .1	Sep .6					.6
Holsey Smith	" "	" 30					30
Catharine Tanner	" "	" "					30
Man-Name Unknown	" "	" "					30
Boy. - Leopold	" "	" "					30
Hannah Werhahn.	" "	" "					30
							.854
Prisco Smith.	" "	" 22					22.

22 days. at 14 2/7. cts per day. 854. at 42.6/7. cts. per day.

14 2/7. 42 6/7

$. 3.14 2/7. 732

1708

3416

$. 366.00

3.14 2/7.

4.00.

$. 373.14 2/7.

25.00. Deduction. Interment of 5. Marine Patients.

$. 348.14 2/7. Amt. due pr Sep. /47.

(88)

For the Month of Oct. 1847.

Names of Patients' Insane!	Commenc.d	Desch.d	Died	Remarks.	Age.	Country.	no. of Days.
Gertrude Black.	Oct 1	31					31
Maria Bardea.	" "	"					31
Elizabeth Bateman.	" "	30					30
Francis Cannon.	" "	31					31
Rosanna Colligan	" "	5					5
Mary Davenport	" "	31					31
Bridget Feely	" "	"					31
Jane Space.	" "	"					31
Peter Harey	" "	"					31
Christian Hoffman.	" "	"					31
Jackson Hobes.	" "	"					31
Henry Hoskeith.	" "	"					31
James Kelsey	" "	16					16
Margaretta Kraemer.	" "	31					31
Harriet Myers.	" "	"					31
John Mc Carty.	" "	"					31
James Mc Conarty.	" "	"					31
Samuel Miles	" 30	"		Went in this Month.	60.	Ohio.	2
Fred Poensel	" 1	"					31
Lavinia Phillipson	" "	"					31
John Prospetto.	" "	"	20.				20
Maria Hacker.	" "	"					31
Thomas Shea.	" "	"					31
Henry Streper.	" "	"					31
Kelsey Smith.	" "	"					31
							693

Continuation of Act.

Names of Patients, Insane,	Commenc.ᵃ	Disch.ᵃ	Died.	Remarks.	Age.	Country.	No. of Days.
Catharine Tanner.	" 1	" 31					31
Man-Name Unknown.	" 1	" "					31
Boy- - Leopold.	" 1	" "					31
Hannah Wirhahn.	" 1	" "					31
							817

817. Days. at 42. 6/7. cts per day

42 6/7

700 2/7.

1634

3268

$. 350.14 2/7

4. 00. Arranging Corpse

" 354. 14 2/7

20. 00. Deduction. Interment of 4. Marines

$. 334. 14 2/7. Balance. due. per Oct. /47.

x

(8)

For the Month of Nov. 47. Remaing in, Oct 31st. 47.

Names of Patients.	Commenc.d	Disch.d	Died.	Remarks	Age.	Country.	No. of Days.
Gertrude Black.	Nov 1	" 30					30
Maria Bardea.	" "	" "					30
Francis Cannon	" "	" "					30
Mary Davenport	" "	" "					30
Bridget Feely.	" "	" "					30
Jane Grace.	" "	"	24.				24.
Peter Havey.	" "	" "					30
Christian Hoffman	" "	" "					30
Jackson Hobes.	" "	" "	26				26
Henry Hoketh.	" "	" "					30
Margaretta Kraemer.	" "	" "					30
Harriet Myers.	" "	" "					30
John Mc Carty.	" "	" "					30
James Mc Conarty.	" "	" "					30
Samuel Miles.	" "	"	22				22
Fred Prensel.	" "	" "					30
Lavinia Phillipson	" "	" 19					19
Maria Stoeker.	" "	" 30					30
Thomas Shea.	" "	" "					30
Henry Streper.	" "	" "					30
Holsey Smith	" "	" "					30
Catharine Tanner.	" "	" "					30
Man-Name Unknown.	" "	" "					30
Boy- Leopold.	" "	" "					30
Hannah Werhahn	" "	" "					30
							781

721. Days at 42½ cts per day

42½	
618.	
1442	
2884	
$ 306. 00	
12. 00.	Arranging 3 Corpses,
$. 321. 00	
20. 00	Deduction. Interment of 4 Marines,
" 301. 00	
13. 45.	Paid on acct. of 2 Piles,
† $. 287. 55	Balance due pr Nov pay.

(72)

For the Months of Dec/47. Remaining in Nov 30th 1847.

Names of Patients	Commenced.	Discharged	Died	Remarks	Age	Country	No of Days
Gertrude Black	Dec 1	" 31					31
Maria Barelea	" "	" "					31
Frances Connon	" "	" "					31
Mary Davenport	" "	" "					31
Bridget Feely	" "	" "					31
Peter Havey	" "	" "					20
Christian Hoffman	" "	" 20					31
Henry Hoketh	" "	" 31					31
Margaretta Kraemer	" "	" "					31
Harriet Myers	" "	" "					31
John Mc Carty	" "	" "					31
James Mc Conarty	" "	" "					31
Fred Prenoel	" "	" "					31
Maria Stocker	" "	" "					31
Thomas Shea	" "	" "					31
Henry Streper	" "	" "					31
Holsey Smith	" "	" "					31
Catharine Tanner	" "	" "					31
Man - Name Unknown	" "	" "					31
Boy - Leopold	" "	" "					31
Hannah Werhahn	" "	" "					31
							640

640 Days. at 42.½ cts per day.

42½

548 ½

1280

2560

$. 274.28 ½

5. 00 Deduction. Interment of 1 Marine.

$. 269. 28½ Balance due per Dec. /47.

(48)

For the Month of ~~January~~ 48. Remaining in Dec, 31st 47

Names of Patients, Insane,	Commenced.	Discharged.	Died	Remarks.	Age.	Country	Nos of Days.
Gertrude Black.	January 1	" 31					31
Maria Bardea.	" "	" "					31
Francis Cannon.	" "	" "					31
Mary Davenport	" "	" "					31
Bridget Feely	" "	" "					31
Peter Havey	" "	" "					31
Henry Hesketh	" "	" "					31
Margaretta Kraemer.	" "	" "					31
Harriet Myers.	" "	" "					31
John Mc Carty	" "	" "					31
James Mc Conarty	" "	" "					31
James Mc Connell.	" 15	" 28		Sent in this Month	43.	Ireland,	14
Fred Prensel.	" 1	" 31					31
Maria Roeker.	" "	" "					31
Thomas Shea.	" "	" "					31
Henry Strefser.	" "	" "					31
Holdey Smith.	" "	" "					31
Catharine Tanner	" "	" "					31
Man- Name Unknown.	" "	" "					31
Boy- Leopold.	" "	" "					31
Hannah Werhahn.	" "	" "					31
							634

634. Days. at 42 6/7. cts per day

42 6/7.

543 3/7.

1268

.2536

x $ 271..71 3/7 Amt due. January/48 ~~49~~

(95)

For the Month of Feb/48. Remaining in January 31st/48.

	Commenced	Discharged	Died	Remarks	Age	Country	Nos Days
Gertrude Black.	Feb 1	" 29					29
Maria Bardea.	"	"					29
Francis Cannon.	"	"					29
Mary Davenport	"	"					29
Bridget Feely	"	"					29
Peter Havey.	"	"					29
Henry Hoketh.	"	"					29
Margaretta Kraemer	"	"					29
Harriet Myers.	"	"					29
John McCarty.	"	"					29
James McConarty.	"	"					29
Fred Pensel.	"	"					29
Maria Stocker	"	"					29
Thomas Shea.	"	"					29
Henry Stresser	"	"					29
Helsey Smith	"	"					29
Catharine Tanner	"	"					29
Man Name Unknown	"	"					29
Boy - Leopold.	"	"					29.
Hannah Werhahn.	"	"					
							580.

580 Days. at 42 6/7 cts per day

42 6/7

497 1/7

1160

2320

$ 248.57 1/7 Amt due pr Feb /48.

+

(86)

For the Month of March. /48. Remaining in. Feb 29th /48.

Names of Patients. Insane.	Commenced.	Discharged.	Died	Remarks.	Age.	Country.	Nos of Days.
Gertrude Black.	March 1	" 31					31
Maria Bardea.	" "	" "					31
Frances Cannon.	" "	" "					31
Mary Davenport	" "	" "					31
Bridget Feely.	" "	" "					31
Peter Havey.	" "	" "					31
Henry Hesketh.	" "	" "					31
Margaretta Kraemer.	" "	" "					31
Harried Myers.	" "	" "					31
John Mc Carty.	" "	" "					31
James Mc Conarty.	" "	" "					31
Fred Prensel.	" "	" "					31
Maria Stocker.	" "	" "					31
Thomas Shea.	" "	" "					31
Henry Streper.	" "	" "					31
Holsey Smith	" "	" "					31
Catharine Tanner.	" "	" "					31
Man Name Unknown.	" "	" "					31
Boy Leopold.	" "	" "					31
Hannah Werhahn.	" "	" "					31
							620

620. Days. at 42½. per day

42½

531 ½.

1240

2480

$265.71 ½. Amount due pr March /48.

X

For the Month of April. — Remaining in, March 31st/48.

Names of Patients, Insane.	Commenced	Discharged	died	Remarks.	age.	country	Nos. of Days.
Gertrude Black.	April 1	" 30					30
Maria Bardea.	"	" "	"				30
Frances Cannon.	"	" "	"				30
Mary Davenport	"	" "	"				30
Bridget Feely.	"	" "	"				30
Peter Harvey.	"	" "	"				30
Henry Horkeith.	"	" "	"				30
Margaretta Kraemer.	"	" "	"				30
Harriet Myers.	"	" "	"				30
John Mc Carty	"	" "	"				30
James Mc Conarty	"	" "	29				29
Fred. Poensel.	"	" "	30				30
Maria Stocker.	"	" "	"				30
Thomas Shea.	"	" "	"				30
Henry Striper	"	" "	"				30
Holsey Smith.	"	" "	"				30
Catharine Tanner.	"	" "	"				30
Man — Names Unknown	"	" "	"				30
Boy — Leopold.	"	" "	"				30
Hannah Verhahn.	"	" "	"				30
							599

599 Days at 42½ cts per day.

42½

513 3/4

1198

2396

$255,71 3/4 Amt due pr April 30th/48.

[901]

For the Months of May. Remaining in April 30 1/2 ps

Names of Patients, Insane.	Commenced	Discharged	Died	Remarks.	Age.	Country	No of Days.
Gertrude Black.	May 1	"	31				31
Maria Bardea.	"	"	"				31
Francis Cannon.	"	"	"				31
Mary Davenport	"	"	"				31
Bridget Feely.	"	"	"				31
Peter Havey	"	"	"				31
Henry Hosketh.	"	"	"				31
Margaretta Kraemer.	"	"	"				31
Harriet Myers.	"	"	"				31
John Mc Carty.	"	"	"				31
Fred Prensel.	"	"	"				31
Maria Stocker.	"	"	"				31
Thomas Shea.	"	"	"				31
Henry Stresser	"	"	"				31
Colby Smith.	"	"	4	Discharged.			4
Catharine Tanner.	"	"	31				31
Man Name Unknown.	"	"	"				31
Boy — Leopold.	"	"	"				31
Hannah Werhahn	"	"	"				31
							562

562 Days. at 42 1/2 cts per day

42 1/2

481 5/7

1124

2248

$240.85 5/7 Amt due pr May 31st ps.

For the Month of June. Remaining in May 31st /48

Names of Patients. Insane,	Commenced	Discharged	Died	Remarks.	Age.	Country	No. of Days.
Gertrude Black.	June 1	9		Sent to County Farm.			9
Mary Bardea	" "	"		" " "			9
Francis Cannon	" "	"		" " "			9
Mary Davenport	" "	"		" " "			9
Bridget Feely	" "	30					30
Peter Havey	" "	9					9
Henry Hesketh	" "	3					3
Margaret Kraemer.	" "	30					30
Harriet Myers.	" "	9		Taken by friends,			9
John McCarty	" "	"		Sent to County farm.			9
Fred Prensel.	" "	"		" " "			9
Maria Stocker	" "	"		Taken by friends			9
Thomas Shea.	" "	"		Sent to County farm.			9
Henry Stresser.	" "	30					30
Catharine Tanner.	" "	9		" " "			9
Man Name Unknown	" "	9		" " "			9
Borg Leopold	" "	30					30
Hannah Werhahn	" "	"					30
							261

261 Days. at 42 ½ cts per day

42 ½

223 ½

522

1044

$111.85 ½ Amt due June 30th /48.

(201)

For the Month of July. /48. Remaining in. June 30th /48.

Names of Patients. Insane.	Commenced.	Discharged.	Died	Remarks	Age.	Country	No. of Days.
Bridget Feely	July 1	" 31					31
Margaret Kraemer	" "	" "					31
Henry Stresser.	" "	" "					31
Boy - Leopold.	" "	" "					31
Hannah Werhahn.	" "	" "					31
							155

155 Days. at 42 6/7. cts per day

42 6/7

132 6/7

310

620

$66.42 6/7

5.00 Deduction per Interment of 1. Marine.

$61.42 6/7 Balance due pr July 31st /48.

For the Month of August. Remaining in July 31st /48

Names of Patients. Insane	Commenced.	Discharged	Died	Remarks.	Age.	Country	No. of Days
Bridget Feely	Aug 1	" 31					31
Margaret Kraemer.	" "	" 23					23
Henry Stesser	" "	" 31					31
Boy Leopold.	" "	" "					31
Hannah Werhahn.	" "	" "					31
							147

147. Days. at 42 6/7. cts per day - $63.00. Amt due pr Aug 31st /48.

For the Month of Sep. Remaining in Reg 31st /48

Names of Patients Insane.	Commenced.	Discharged.	Died	Remarks	Age	Country	No of Days.
Bridget Feely	Sep 1	" 30					30
Henry Stresser	" "	" "					30
Borg - Leopold	" "	" "					30
Hannah Werhahn	" "	" "					30
							120

120 Days. at 42.½ cts per day. $51.42½ Amt.

15.00 Deduction. Interment of 3. Marines.

$36.42½ Balance due Sep 30th /48

For the Month of Oct. Remaining in. Sep 30th /48.

Bridget Feely	Oct 1	" 31					31
Henry Stresser	" "	" "					31
Borg - Leopold	" "	" "					31
Hannah Werhahn	" "	" "					31
							124

124. Days. at 42½ cts per day $53.14½.

30.00. Deduction. Interment. 6. Marines

$23.14½ Balance due pr Oct 31. /48.

(307)

For the Month of Nov. Remaining on Oct 31st /48

Names of Patients Insane	Commenced	Discharged	Died	Remarks,	Age.	Country.	No of Days.
Bridget Feely	Nov 1	" 30					30
Henry Stresser	" "	" 4					30
Berg - Leopold.	" 1	" 1					30
Hannah Berhahn.	" "	"	12				2
							92

92 Days. at 42 c/p. cts per day. $ 39. 42 c/p.

4. 00 Arranging Corpse.

$ 43. 42 c/p Amt

25. 00 Deduction. Interment of 5. Marines

$ 18. 42 c/p. Balance due Nov 30th /48.

$3.638.31

124

Saint Louis Hospital association
vs
the city of Saint Louis

Filed Jany 11th 1850
R Tippett Clk

180 F 1850

Filed November 20th 1851
Wm F. Glanville
Clerk

(901)

In the Supreme
Court
Saint Louis Hospital Association Appellee
against
The City of Saint Louis Appellant

The said appellant by its Counseller comes & says there is manifest error in the record & proceedings aforesaid as also in the judgment aforesaid in this to wit.

1st That it appears by the record and proceedings aforesaid that illegal & incompetent evidence offered by the plaintiff & objected to by the defendant was permitted by the Saint Louis Court of Common Pleas to be given to the jury. and in this there is error.

2nd It appears by the record & proceedings aforesaid proper legal instructions asked by defendant were overruled by the Saint Louis County Common Pleas & refused to be given to the jury.

3rd The Court gave to the jury for the plaintiff illegal & improper instructions which were objected to by defendant.

4th The Court of Common Pleas overruled the defendants motion to set aside the verdict of the jury & grant a new trial of the case when by law the Court ought to have sustained said motion

647

wherefore for the errors aforsaid & for other errors appearing in the judgment aforsaid & in the record & proceedings aforsaid defendant prays the Court that said judgment may be set aside annulled & for nought held & that defendant may be restored to all things which it has lost thereby.

S. Kirtley
City Councellor

124

St Louis Hospital association
vs Assignment of error
The City of St. Louis.

Filed 23rd 1851
Wm G. Lawrie
Clerk.

State of Missouri } Appeal from the
County of St. Louis } ss St. Louis Circuit Court.

Margaret B. Lane et al. plff. in Error

vs

Benjamin A. Soulard Defendant in Error

Statement of Case by Leslie & Barrets

In 1846 Benj. A. Soulard was the owner of certain lots in South St. Louis, upon which he was ~~engaged~~ building a Residence for himself, had entered into contracts, for the Completion of the buildings then in progress of erection, & had ~~as~~ his plans matured for all the Contemplated improvements — In April of that year he agreed to sell to Margaret B. Lane, the ground together with all the Contemplated improvements for the Sum of Nine Thousand, Dollars. This offer was accepted on the part of Margaret B. Lane upon the Condition that the buildings & improvements were to be Completed, on or before the 15th oct. 1846, & in accordance with certain plans & specifications - made out between the parties.

Accordingly Soulard, by deed of 1st of April 1846 Conveyed said property to Merewether M. L. Clark, J. R. Barret, Samuel Churchill Dee Bouffay Frémon, & Samuel Reber - as Trustees, who were directed to sell the same, provided Mrs. Lane failed to make the payments therein specified, but if said payments were made, then the said ~~M. L. Clark, Samuel~~ Trustees were to hold said property for the sole & separate use of the said Margaret B. Lane, & for the use of her heirs.

On the same day Soulard entered into a certain Article of agreement with the said M. L. Clark, Samuel Churchill & J. R. Barret, as trustees of the

the said M. B. Lane, by which he bound himself (50)
to complete the improvements, on or before the 15th
day of October 1846, & according to the plans & speci-
fications, therein referred to. & further agreeing that
Joseph Foster should superintend the work to be
done according to said Article of agreement.

By the Terms ~~agreement~~ ~~before~~ the contract between the parties
the first instalment (of purchase money) was to be
paid on the 15th oct. when the work was complet-
-ted. Benj. A. Soulard failed to comply with his
contract - The House ~~was~~ other improvements were
not finished by the time, - were never completed -
The workmen did not stop work until the
summer or fall of 1847 = The work done was not
of such materials nor in the manner called for
by the contract - The whole was defective - ~~the~~
Margaret B. Lane was a married woman when
the contract was made & remained so until summer of 1847 - Sometime in September
1846, James S. Lane, moved his family into the house
where they have remained ever since.

At the Nov. Term, of St. Louis Court A. D. 1849
Benj. A. Soulard filed his petition, stating that
the purchase money had not been paid by
Mrs. Lane, & asking a judgement for the $9000
& interest from 15th of oct. 1846 & that the equity
of redemption might be foreclosed, & the property
sold to satisfy said debt interest & cost.

In support of said petition, the said B. A. Soulard
exhibited the above described, deed, executed by
him to the Trustees aforesaid - & which was sought
to be foreclosed - & ~~with~~ that closed his case -

M. B. Lane then offered in evidence the article
of agreement between Soulard & her Trustees &
produced the following witnesses

C. A. McPhetridge - Said he had examined the House - The walls were considerably cracked - Plastering was broken in nearly every room - One of the Gutters was too high at the end, & this caused the water to run over - The fire walls had sprung from the roof - The cracking of walls & plastering seemed to be caused by settling of the walls - The settling of walls may have been caused by the water - House in its present condition worth only $3 000 - Ground, House, & all worth about $7 000 - To build such a house well would cost $6 000 - Julia Lane said She was present when Contract was made - That Sanford estimated the ground at 12 Dolls. per foot - No stones were placed under the gutters of the house, to Conduct water off - The Basement & attick rooms - unfinished Still - One window in Dining Room, & one in West Gallery - & one in North end of 2d Story - Still unfinished - there being no guards.

C. C. Carroll - Said he heard B. A. Sanford swear - That the house was not built in a workmanlike Manner - That it was not built according to his Contract with Mrs. Lane -

D. H. Donovan - Said That he bought ground in the neighbourhood same year, at 12½ - pr. foot - That Mr. Lane went into the house in Sept. 1846 That he said, he wished to guard against fire, was the reason of his going in so soon - He thought House & ground worth $11 000 - Supposing house well Constructed. Thought ground worth 50 Dolls pr. foot - averaging it - The lot being 40 feet wider in rear, than in front.

Jos. Foster said he had been a builder & architect for 25 years. That by the Contract between Mrs. Lam & B. A. Soulard, he was to be the Superintendant of the work done — He had seen all the plans & specifications between the parties, & had examined the work as it progressed in reference thereto That he had written certain letters to Mr. Soulard, as the work was progressing, which contained his true opinion of the work — Letter of apl. 23d 1846 by Foster to Soulard = Exhibited in evidence — it informs Mr. Soulard, that the boards are so inferior, that it is impossible to make of them a floor which would answer the contract. — That neither the materials or manner of the work would answer the Contract — He also said that on May 19th 1847, he wrote Soulard in substance — as follows —

"I hear that Mr. Selleck says that he has "now completed the Carpenters & joiners work "according to the his Contract with Peck & Barnett — "Such work & materials cannot be received as the "work & materials called for by your Contract with "Mrs. Lam. In truth there is scarcely a good job in "any branch of mechanics in whole building."

Letter of February 10th 1847 = says in substance "I have just visited the house you are building for "Mrs. Lam, & now advise you that the work now "in progress in Parlours &c. will not answer the "contract. The materials are so inferior that first "of work cannot be made out of it. — I hope "you will see the gentlemen at work & advise "them that the work cannot be received by me — "as the work & materials required by your Contract "with Mrs. Lam. The whole is miserably defective"

According to the plans, the parlour mantel was to be ornamented; He objected, to cornice on the

west side of the House, because the water got in between it & wall, & must have injured the wall before this time. He thought he once complained to Soulard that water was getting in under the walls. He did not consider a House worth much, built in such a manner as that was - Heard Mr. Soulard say he was sorry the building was no better -

Evidence by way of rebuttal

Chas. H. Peck - Of the firm of Peck & Barnett, who had the Contract, for the Carpenters & joiners work - He was at the house once or twice - Saw some of the materials, & they were such as complied with the Contract, saw floors, thought he saw the stuff before it was put in, & it was the best. Could be had in the market - Sellick's job was satisfactory to Peck & Barnett - The lumber seen by him was clear stuff - was not there enough to know all the lumber was clear stuff - Did not remember as to shutters nor as to flooring in particular, did not remark the hardware, did not notice nails, did not see all the work, could not say anything about painting & glazing, did not recollect the mantles, did not notice the Antics stairs &c. Did not see basement & attick rooms. did not know whether stair railing was up then or not: did not notice doors; did not remember as to sash in the windows.

Geo. I. Barnett. Of the firm Peck & Barnett - He was induced, by Mr Foster's letter to go down to see the house - He considered Foster's letters vexatious & invious. He thought the materials & work fulfilled the Contract - So far as the work had progressed - When the Sale was made Mr. Soulard was very par-

-ticular as he intended to reside there: In large houses cracks in ceilings are not owing to settling of walls, but to Shrinking of Timbers &c. They - consid -ered Porter no body - Soulard was dissatisfied with us - First Specification was made a few weeks before the Contract (Contract shown by - Soulard) It is the Contract of Peck & Barnett with Soulard - Dated Mch. 1846 - Witness must to house only twice. (Specifica -tion Shown Witness by Soulard) Executed by Peck & Barnett, & dated May 5th 1846. Signature of firm was signed to Contract by Peck = (Peck recalled said it was his signature, whole instrument in his hand writing) (Recalled Satisfying witness, called, said it was not his signature, he never saw that paper before) (Peck recalled said he never saw the instrument before it was not his signature) Barnett Continued, said it was his own signature to the Specifications (Examined the various drawings) Said they were the original - Did not know whether the Contract Shown him was complied with —

Sands E. Sellick. Said, Peck & Barnett made contract with Soulard to do all the Carpenters work, furnish lumber materials &c. That he took the Contract off of their hands - He worked by the plans & Specifications here in Court - Same work by Specifications between B. A. Soulard & M. B. Lamb = but by that between Soulard & Peck & Barnett - When the Contract was made Somethings in the plans were left out - for instance the portico or verandah on the South Side. Specification No 2 handed witness, Said it was not the one he worked by - Witness repeated Several Conversations between himself & James S. Lamb. Witness said he complied with his contract

with Peck & Barnett-

Many of the workmen were called on by Sanford, & each one testified that he did good work- The Plasterer said the plastering was well done - The Carpenter with said the Gutters were good. The Stone mason said he did a good job - Brick layer, said his work was good - The Blacksmith said the hardware was good - That the windows in Second Story opened to the floor - That by his contract with Sanford he agreed to put guard into those windows Mr. Lane would not let him put guards in the Southern windows - Saying that Mr. Sanford must put in those railings. - Another witness on the part of Sanford said that lot was sloping to the Eastward, & the water ~~could~~ ran from Spouts to Alley -

Instructions asked by Plff. below & given

1 Plff. is entitled to recover in this action the Amt. set forth in the Decl and on the with interest, deducting therefrom any damages, if the jury find from the evidence that Defts. are entitled to any, for any failure in Completing the work According to Contract; but no damages can be allowed by any such failure as to time of finishing or as to the kind or quality of the work, if the Defts; Lane or his Agents Caused such failure

3d That no allowance or deduction from the Plffs. demand is to be made by the jury, for any defects in the house or improvements, if the same were owing so far as the same were owing, to the acts or instructions, or agreements of Defendant Lane or his husband, or to the presence of Defts family, & occupation of said house, by them, Defts. Lane by moving into said house with her family & occupying it with the Lot & other improvements thereon, & by their keeping it & using it from before the time limited for

for its completion down to the present time, if the jury find such possession & occupation, Defts. is precluded from now rescinding the Contract.

7th That the taking possession of the house & property in question, & occupying & using it from Sept. 1846 by Defts. Mrs. Lam[illegible] to the present time, if such be the fact, puts it out of her power to decline paying to Plff. for said property, & in that view of the case the Amt. to be paid, & for which Plff. is entitled to have a judgment, is the whole principal & interest of the sums stated in Deed of Trust said on: if the work has been completed according to the Contract: But if the work has not been completed according to Contract, then the jury will consider how much such default has diminished the value of S. property to Mrs. Lam; & they will deduct such diminution from the Amt. called for by the Deed; if such diminution is owing to the fault or neglect of Plff. or his agts. or Workmen; but any defect in the work or failure to do it according to the Contract & diminution of value, arising from the orders or interference, or acts of Mrs. Lam, or her agents or family is not to be charged to Plff. nor deducted from the Amt. to be paid by her.

Instructions asked by Defts. below, & given with modifications on part of the Court

If the jury believe from the evidence that Mrs. Lam went into the house before the same was finished, & that whilst the work was in progress, Plff. was informed by her or the Superintendant, that the work was not done according to contract & could not be rec., the act of removing into the house was not such an acceptance of the work on the part of Defts, as to prevent them from showing that the same was of less value, or inferior to what was Contracted for.

If the jury believe from the evidence that Mrs. Lam agreed to pay Plff. 9000$ for the property in question upon condition that Plff. should complete & make the buildings & im-

provements contained in his contract, & in the manner therein stated, & that plff. undertook & agreed to Comply with said Contract but failed to do so, & such failure arose from the negligence or fault of plff. the measure of Damages must be the sum agreed upon by the parties, minus the amt. of money it would take to complete the buildings according to Contract.

The plff. is not entitled to a judgment in this Case against defts, unless he prove that he has complied with the Con-tract on his part or was prevented from so doing by the defendants or agents, or unless he prove there was an accept-ance of the work.

The following instructions asked by defts were refused by Court

1 If the jury believe from the evidence that the plff. has not complied with his Contract entered into on 13th April 1846, for the Completion of the buildings therein named they will find for the defts.-

2 If the jury believe from the evidence that M. B. Lane was at the time the Contract was made for purchase of ground & buildings of Soulard, a married woman they will find for defts-

3 If the jury are satisfied from the testimony that M. B. Lane was a married woman - on 13th Apl. 1846, & find no evidence showing that she possessed separate property - at that time they will find for defts -

4 The deed executed by plff. & wife (Soulard & wife) conveying lots of ground in Soulard's addition to Samuel Riker & others is no evidence of any indebtedness on the part of defts. M. B Lane -

5 If the jury believe from the evidence that Jas. S. Lane was the husband of M. B. Lane, & that he lost his life in Con-sequence of the failure of plff. to Comply with his contract, the defts. is entitled to damages occasioned by the loss of her husband, if the jury believe from the evidence that any damages were thereby sustained -

6 The Defts. is entitled to the benefit of the rise in the value of Lots since the Contract of purchase, & in arriving at the value of the whole property, the ground must be estimated at the price agreed on or at its value at the time purchase was made

7 If the jury believe from the evidence the M. B. Lamb never entered into any written Contract for the purchase of the Lots of Plff. they will find for Defts -

8 If it appear from the evidence that M. B. Lamb was a feme Covert when Contract of purchase was made, they will find for Defts, unless they believe from the evidence that her husband was a party to said Contract & executed the same with her.

9 The Contract existing between Plff. & the Trustees of M. B Lamb Cannot be changed or varied by any act of James S. Lamb, or by any parol agreement between Plff. & Defendant M. B. Lamb.

10 The Contract existing between Plff. & Defts is in no wise affected by any act of Jas. S. Lamb. unless it was proved that he was her agent, & anything said by James S. Lamb is not competent evidence in this Case

11 If the jury believe from the evidence that Plff sold the Ground in question, & agreed to erect thereon certain buildings, according to specifications, & to complete the Same by a certain time for $ - & - That he failed to Comply with his Contract either in time or in the manner in which the work was to be done, they will find for Defts. unless they believe there was an acceptance by Defendants -

12 If the jury believe from evidence, that Plff. agreed to make & complete certain improvements & buildings on the Lots named in petition before the amt. or any part thereof as agreed on Should be paid, for the Same, & that Plff. failed to Comply with the covenants in Sd agreement, they will find for Defts. unless they believe from evidence that he was prevented from Compliance by the act of Defts or their agts.

The case being submitted on this evidence & instructions the jury rendered the following verdict = We of the jury find for Plff - principal & interest in the sum of 11385 — & assess the damages in favour of deft. at 616.66

Balance due plff. $10768.34

The deft then moved for a new trial for the following reasons

1 Verdict was not in accordance with law

2 Verdict is against law & evidence

3d The Court permitted improper evidence to go to the jury on the part of plff

4th The Court erred in excluding evidence offered on the part of Defendant

5 The court gave improper instructions to the Jury

6 The Court erred in refusing instructions asked by Defts.

Motion overruled - Hence this appeal -

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Margaret B. Lane
Appellant
vs
Benj A Sanford
Appellee

Statement of
the Case
for Appellant

Filed 20 March 52
Wm G Lamville
C

(62)

The Hospital association Appellee
vs.
City of St. Louis Appellant

Appeal from the St. Louis Court of Common Pleas.

The Hospital association sued the city for the management & support of the insane committed by the city to the care of the association. On the completion of the city Hospital, the sick and insane in the Hospital association at the expense of the city, in pursuance to an order of the city authorities, were ordered to be delivered up to the city Register on the 20th August 1846. The Register refused to receive the insane, alleging as a reason that no accommodations were prepared for them at the city Hospital, and contracted with the Hospital association to continue its care of them at $3.00 or $3.50 a patient per week accordingly as the pay should be cash or scrip. Under this agreement the accounts of the association for the support of the insane were made out monthly and the money paid until July 1847 when the city council refused to make appropriations any longer for the support of the insane on the ground, that it was a duty incumbent on the County Court to provide for their care and maintenance: The insane remained with the association, after this from the 1st July 1847 until the 30th Nov. 1848. None were received by the association at the expense of the city, after it was known that appropriations for their support had been refused by the City authorities. The register was the properly authorized officer of the city to grant permits to enter the association at her expense: Ordinance No. 1205 passed in 1843 regulating the compensation to the Hospital for keeping the sick and insane was read in evidence, to the reading of which an exception was taken: The plaintiff recovered $4345.46, for which judgment was rendered from which the City appealed. The instructions will not be noticed as none were given of which the defendant

can complain, and as the only question was as to the liability of the City under the foregoing state of facts.

Although the City may not have been under any obligation to provide for or maintain the insane, within her limits, yet if she employed others to do this service, she was on every principle of law and justice obliged to make good her undertaking with them. The contract made with the Hospital association by the City Register was recognized by the city authorities, as appropriations were frequently made in compliance with it. The subsequent withholding of appropriations was not sufficient to discharge the City from liability under her contract. The insane could not be turned loose. Such an act may have been dangerous to the community and cruel to the patients: The City had no right to impose the odium and responsibility of such an act on the Hospital association. When it was determined that the insane, should be maintained no longer at the expense of the City, they should have been removed from the Hospital by the corporate authority. It matters not how the refusal to provide for them was communicated to the Hospital whether by Ordenance or by the Mayor. Of itself it was not sufficient to discharge the City from her undertaking:

We cannot perceive in what manner the reading of the ordenance respecting the allowance to be made for the support of the sick & insane could affect the verdict. It did not provide a greater allowance to the Hospital than was contracted for.

The other judges concurring the judgment will be affirmed

Wm Scott

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City of St. Louis

vs.

Hospital Association

Opinion

Filed 3 May 1852

Wm. G. Glanville

clerk

City of St Louis Appellant
vs
St Louis Hospital Association Appellee

In the Supreme Court at St Louis

Brief of appellee

The errors assigned are

1st Illegal evidence given for the plaintiff to which defendant excepted = But the only instance of this is ~~in the~~ when Ordinance No 1205 was read = The record has not preserved the reason of the objection = ~~Wh~~ While therefore as a matter of truth, we will admit that it was on the score of irrelevancy, we will also state that at the time of offering it, we mentioned that we did not offer ~~as~~ the ordinance to prove the terms of our contract but as an instance in support of the declarations of Sister Mary Alexis = Sister Mary Alicia & of Sister Olympia that it was the custom for the Hospital to contract with the City Register & that the ~~Cont~~ Contract would subsequently be recognised ~~b~~ either by the passage of an ordinance ~~embd~~ embodying the provisions of the contract = or appropriating money for it = In other words we offered it as cumulative not as original evidence & with this explanation it was admitted by the Court = It certainly did not affect the verdict as we shall take occasion to show in the argument about the damages & hence even if the Court erred, it would not be a ground for reversal. The 2nd 3d & 4th errors assigned turn upon the one question whether an executory contract can be dissolved by one without the consent of the other party, unless ~~both parties~~ the party seeking to annul the contract place the other party in the same position he occupied before the contract was made. The Court below held that he could not = The ~~evidence was that the insane~~ There was no evidence that the City when its officers gave the alleged notice, offered to take back the patients. Indeed they did not = It is true that under the provisions of ordinance No 1778 see page 14 of Bill of Exns the patients were subsequently ~~from time~~ taken away by the City ~~all~~ authorities, but the

charge ~~as~~ is for the support of insane patients until taken away by the City authorities see testimony on page 9 of Bill of Exceptions 2nd paragraph = That the Court did not err in its construction of the Law see Comyn on Con p 38-39 = Kent's Com Vol 2nd p 480 Chitty on Con p 574-575 = Borum vs Garland 9 Ala Rep 452 Burnett vs Stanton 2nd Ibid p 181 = Griffith vs Frederic County Bank 6 Gill & Johnson p 424 = Perly vs Bach 23 Pickering Rep p 283 = Finally Conner vs Henderson 15 Mass. Rep p 304 (Sect p 319) cases cited in Note of Hunt vs Silk 5 East Rep p 449 =

Again the Notice such as it was, was given only after the City had for some time ceased to pay & was therefore in default. That only the party not in default can rescind a contract see Chitty on Con p 741 =

It is submitted that whether the notice was or was not sufficient = whether the opinions & proceedings of individual members or officers of a corporation are or are not evidence are questions not involved in this suit in its present situation but the question is if any notice be ~~not~~ sufficient under such circumstances =

The 4th error assigned is the question of damages

The evidence shows that the agreement was to be paid monthly that the Accts were rendered monthly = Interest therefore ran from the rendition of each Account = The damages are therefore not excessive for the Court will find that the difference between the sum claimed viz as stated in the original not amended petition to wit $3638.31 & the Amount of the verdict $4345.66 is but the interest which thus accrued = Filed among the papers of the cause is the calculation made by the Jury themselves & to which therefore the Court may refer = Deduction being made for one patient & not on the sum charged for him which patient it was doubtful if not received subsequent to the notice & plaintiff therefore consented to the deduction =

Finally it is respectfully submitted that in a case like the present which embodies as much justice on the part

of the plaintiff = wherein it was never contended that the plaintiff its officers or Agents were guilty of any default default or neglect = when the sole motive of opposition is to compel the Hospital to resort to the doubtful alternative of suing the County, if is should the Supreme Court affirm the decision of the Court below, a very proper one for the Court to exercise the discretion given it by Art 34 of the Act regulating Practice in the Supreme Court = For such damages would after all but barely pay the plaintiff for costs & expenses (e.g. counsel fees) which she has been compelled to sustain in the prosecution of her claim & which nevertheless she cannot otherwise recover because the Law does not permit them to be taxed as costs =

S & S B Foresche
Attys of Appellee

City of St Louis Appellant
vs
St Louis Hospital Association Appellee

Brief of appellee

(97)

In the Sup. Court
March Term 1852

The St Louis Hospital Association } Appellee
against

The City of St Louis. Appellant

1st. The city was under no legal or moral obligation to provide for the insane, it was the exercise of a mere charity. and not in the performance of any duty. that the appellant placed the insane patients and paid for their board at the Hospital. when therefore the plaintiff had notice that the Council refused to make an appropriation for the further maintainance of the insane - the contract was terminated. and the plaintiff had no right after such notice to expect or demand compensation of the city -

Judge Mullanphy who was Mayor in 1847. stated that after the 1st July he refused to audit the monthly account for keeping the insane by the plaintiff. because he had notified the Hospital association of the refusal of the city to make further appropriations or to pay for the maintainance of the insane in the Hospital

2nd The Court erred in allowing the plaintiff to read to the jury the ordinance No 1205 mentioned in Statement. and passed in 1843; There was no pretence that the contract under which the plaintiff sought to recover. was predicated on said ordinance or resolution and it was therefore wholly irrelevant and calculated to mislead -

3rd If the city could be bound by a verbal agreement made by a subordinate officer. it is difficult to reconcile the position taken by the Court below, that in giving the notice that the city would not longer pay for the board of the insane - such notice could not be given by the mayor but only by an ordinance

None of the negotiations was conducted in writing, and it is not right to apply a rule for the benefit of the plaintiff. and deny its application for the defendant

St Louis Hospital
Association
vs
City of St Louis

Appellants
Brief

Kirtley for
Appellant

Years Months

~~Days~~ 6%

$ 410.76½	31 July	47 – 15	Apr. 51 –	3.8½	$ 91.46
390.57½	31 Aug	" – 15	" "	3.7½	" 84.98
348.14⅔	30 Sep	" – 15	" "	3.6½	" 73.98
334.14⅔	31 Oct	" – 15	" "	3.5½	" 69.30
287.55	30 Nov	" – 15	" "	3.4½	" 58.18
269.28⅔	31 Dec	" – 15	" "	3.3½	" 53.18
271.71⅔	31 Jan	48 – 15	" "	3.2½	" 52.30
248.57⅔	29 Feb	48 – 15	" "	3.1½	" 46.59
265.71⅔	31 Mar	48 – 15	" "	3. ½	" 48.49
256.71⅔	30 Apr	" – 15	" "	2.11½	" 45.52
240.85⅔	31 May	" – 15	" "	2.10½	" 41.50
111.85⅔	30 June	" – 15	" "	2.9½	" 18.74
61.42⅔	31 July	" – 15	" "	2.8½	" 9.91
63.—	31 Aug	" – 15	" "	2.7½	" 9.88
36.42⅔	30 Sept	" – 15	" "	2.6½	" 5.54
23.14⅔	31 Oct	" – 15	" "	2.5½	" 3.39
18.42⅔	30 Nov	" – 15	" "	2.4½	" 2.60
$3638.34					$715.50

" 715.50 Interest

$4353.84

" 8.34 deducted for the last patient

$4345.50