Huth's Administrator v. City of Carondelet 1858 St. Louis 403/2

593/3

571 M58

Du Bouffay Fremon (administrator) proceeding to set aside a forfeiture of a lease

Charles Huth dies - owes rent - Fremon says he was supposed to be warned & wasn't

city

Rich - reversed - man was only an agent

duty to pay rent still fell on Fremon

Supreme Court
March Term 1857

Du Buoffay Freemon
Admr of Charles Huth ~~Defendant is~~
v
City of Carondelet

Now comes the said plaintiff in the court below, and moves the court to dismiss the writ of error in this case filed because.

1. The same does not show in what cause the said writ issued, and no parties plaintiff or defendant are named therein

2. The said writ is defective, informal, and insufficient

D.B. Freemon
by his Atty
Whittelsey

~~90~~ 69

D. B. Freeman
Pub. Adm^r of Charles
Huth Plaintiff below

v

City of Carondelet

motion to dismiss the
writ

Whittelsey
atty for Freeman

~~Filed 2 April 1857~~
Wm S Glanville
Clk

Page 1 State of Missouri }
County of St Louis } Sct.

Be it Remembered that on the Seventeenth day of September in the year of our Lord One thousand Eight hundred and fifty three there was filed in the Office of the Clerk of the St. Louis Land Court, a petition in the words and figures following, to wit,

Petition

Du Bouffay Frémon, Public Administraton of the County of St Louis, who has charge of and administers on the Estate of Charles Huth deceased, Plaintiff

against

The City of Carondelet, Defendant

} In the St Louis Land Court within & for the County of St Louis

St Louis County Sct,

Plaintiff states that the Board of trustees of the Town of Carondelet, (to whose powers, rights and duties the defendant has succeeded) by their indenture of Lease Executed and delivered the 22d of April 1846, in due form of law, granted demised and to farm let unto Charles Huth now deceased, his Executors administrators and assigns all that tract piece or parcel of ground, lying and being in that portion of the Common of the then Town now City of Carondelet lying North of the River des Peres and containing thirteen Arpents and thirty two hundredths of an

2 arpents. being Lot No Eighty Six (86) in Survey No three (3) as laid down and designated on the plat of the subdivision of said portion of the said Common made under the direction of said Board of Trustees, by Geo Mackay, and to be found on file among the records in the Office of the Recorder of St Louis County.- To have and to hold the said track of land to him the said Huth and to his Executors administra—s and assigns for the term of Ninety nine years Commencing from and after the fourth day of April A. D. 1845. Subject however to the conditions and Stipulations contained in the said Indenture, rendering unto the said Board of trustees and to their Successors in office the yearly rent of Two Dollars and Sixty six cents. payable at the End of each and every year, during the continuance of the said term.

Plaintiff further States that it was covenanted and agreed in & by the said Indenture of lease, among other things, that if at any time the rent aforesaid for Six Whole Months should be in arrear and unpaid, the said Board of trustees or their Successors in office, might terminate the said lease by order or resolution, to be entered on record among the Acts and proceedings of the said Board and might enter and take possession of the said demised premises, free from any claim of the delinquent lessee, his Executors, administrators or assigns. The said Lease is herewith filed marked Exhibit "A" and reference is thereto made for all the terms and

3 conditions therein contained. —

By means of the premises the said Huth became entitled to the said premises and the possession thereof subject to the payment of the said rent and upon the conditions in said lease contained, during the said term.

And the said Huth from time to time paid the said rent as the same became due and payable to the said Board of trustees or to their servants and agents and performed all the covenants & conditions therein contained to be observed or performed by him, until some time in the year 1849. When he died intestate and without having disposed of the said leased premises,

And after the death of the said Huth the plaintiff, who was and ever since has been and now is Public Administrator of the County of St Louis, to wit on the 22d day of June 1850, by virtue of his authority and duty as such public Administrator, took into his charge and custody the Estate of the said Huth for the purpose of administering the same, and also took charge and custody of the said leased premises as part of the said Estate,

Plaintiff further states that the rent reserved in the said lease up to and including the year ending April 4th 1849, was, as plaintiff is informed and believes and so he avers the fact to have been, fully

4 paid to the said Board of trustees or to their authorized agent and Collector the rent for the year ending April 4th 1850. which last mentioned rent was received and accepted by the said Board of trustees.

By means of the premises above recited the plaintiff became the tenant of the said Board of trustees in respect to the said demised premises, and as such entitled to hold and enjoy the same subject to the payment of the said rent, and also subject to the covenants provisos & stipulations contained in said lease.

Plaintiff states that on the 10th day of July A.D. 1852 the City Council of the said City of Carondelet, passed an order or resolution and entered the same on record among their acts and proceedings in which order or resolution after reciting that whereas the sums of money reserved in the form of rent upon the said lease & other leases granted by the said Board of trustees and mentioned in said resolution are in arrear and have been unpaid for more than six months after the same became due & payable, it was resolved by the said City Council that the said lease to the said Kuth & the other leases in said resolution mentioned be and the same are hereby annulled, a certified copy of which Order or Resolution is filed in this Court in the case of John B. Taylor vs the said Defendants No 37 of the October returns to this Court for the year 1853.

Plaintiff further states that the rent which has accrued on the said lease to said Huth since the 4th day of April A. D. 1850. has not been paid – nor has any part of it been paid. –

Plaintiff further states that on the 5th day of Februay 1851. Thomas Chartrand then being the duly authorized agent of the said Board of trustees for the collection of rents due upon the leases granted by the said Board agreed with this plaintiff that when the said rent reserved on the said lease for the year ending April 4th 1851. should become due & payable, that he said Chartrand would call upon plaintiff and receive the same.

And that although plaintiff, after the said rent became due and while the said Chartrand was still Collector as aforesaid and before the said forfeiture was one or more times in the said City of Carondelet & saw and conversed with the said Chartrand yet he made no demand of the said rent, because he the said Chartrand as he has informed this plaintiff supposed and believed the said rent had been paid by plaintiff.

Plaintiff states that after the passage of the order or resolution of forfeiture by the said City Council, to wit in the latter part of the year 1852, he petitioned the City Council of said City, offering to pay up all the rents due on the said lease and

6 interest thereon and all incidental expenses. And pray the said City Council to accept the same, and rescind the said Resolution or order of forfeiture as to the said lease, and restore this plaintiff to his rights as tenant of the said premises. but the said City Council finally in the Spring of the year 1853 declined to do so, and said defendant refused & still refuses to acknowledge plaintiff as tenant of said premises.

Plaintiff further states that on the 8th day of September 1853, he by his agents, tendered severally to the Mayor Treasurer and Collector of the said City the whole Amount of rent due the said City according to the terms of said lease with interest thereon from the times the same respectively became due, to wit the sum of nine dollars, which was not accepted by either of the said persons.

Plaintiff is ready and hereby offers to pay to the defendant all the said rent & interest, any other Costs and Charges if any which may be equitably due the said City on account of the said leased premises whenever and as this Court may order, or to bring the same into this Court and make it subject to its order,

Plaintiff further states that there has been no actual possession or occupation of the said leased premises from the time of granting said lease until the present time, that the same are now unoccupied

7 And that the said City has not in any way entered into or upon the same or any part thereof.

Plaintiff therefore prays this Court to decree that upon the payment of the said rent and the interest thereon and any other equitable charges if any, or upon the payment of the same into this Court, that the said order or resolution of forfeiture passed by the said City Council as aforesaid so far as the same affects the said lease to the said Huth or the Estate thereby granted may be set aside and annulled, and that plaintiff may be fully restored to and reinstated in his rights as tenant of the said leased premises. & plaintiff further prays for such other and further relief as in equity he may be entitled to.

Frémon & Reber
Attys for Pltff

Du Bouffay Frémon plaintiff being duly sworn on his oath says he believes the aforegoing petition and the matters therein as stated are true.

Du Bouffay Frémon

Sworn to & subscribed
before me this 17th day of
August 1853
Chas A. Mantz Clerk

The Lease "filed" and refered to in the aforegoing petition "marked Exhibit "A" " is in the words and figures fol-

-lowing. to wit;

"Exhibit "A". This Indenture, made and Executed at the Town of Carondelet, in the County of St. Louis, in the State of Missouri. this Twenty second day of April in the year of our Lord One thousand eight hundred and forty six by and between "The Board of Trustees of the Town of Carondelet." aforesaid, parties of the first part, and Charles Huth party of the second part, Witnesseth;

That under and by virtue of the ordina-nces passed by the said Board of Trustees of the town of Carondelet, and providing for the leasing of that portion of the Common of said Town of Carondelet, lying north of the Riviere des Peres, the said parties of the first part, for and in consideration of the rents reserved, and the covenants and agreements hereina-fter set forth, on the part of the said party of the sec-ond part, do hereby grant, demise, and to farm let unto the party of the second part, his executors, admini-strators and assigns, all that certain track, piece and parcel of land, lying and being in that portion of the Common of said Town of Carondelet, above mentioned, lying North of the Riviere des Peres, and containing Thirteen Arpents and Thirty two hundredths of an Arpent being Lot number Eighty Six (86) in Survey No (3) three as Laid down and designated on the plat of the sub-division of said portion of the Common of the Town of

9 Carondelet, made under the direction of said Board of Trustees, by Geno Mackay, and to be found on file among the records, in the Office of the Recorder of the County aforesaid, to which said plat, reference is made for a more full and minute description of the tract of land aforesaid.

To Have And To Hold the said tract of land unto the said party of the second part, his executors, administrators and assigns, for and during the full end and term of Ninety-nine years, commencing from and after the Fourth day of April in the year of our Lord one thousand eight hundred and forty five and fully to be completed and ended; subject, however, to the conditions and stipulations hereinafter mentioned, he the said party of the second part his executors, administrators and assigns, rendering to the said parties of the first part, and to their successors in office, the yearly rent of Two dollars and Sixty Six cents $2.66 payable at the end of each and every year, during the continuance of the said term.

And it is covenanted and agreed, by and between the parties aforesaid, that at the end of said term, this Lease shall be renewable at the option of the said part of the second part, executors, administrators or assigns, upon giving to the parties of the first part, or their successors in office, in every instance a notice in writing, of the wish to

10 renew the same three months at least before the end of the term. And every renewed lease shall contain all the covenants, agreements and stipulations herein contained with this exception only, that the annual rents to be reserved upon every renewal, shall be double the amount of the above mentioned yearly rent.

And it is further covenanted and agreed, by and between the parties aforesaid, that if at any time the rent aforesaid for six whole months shall be in arrear and unpaid, the said parties of the first part or their successors in office, may terminate this lease by order or resolution, to be entered on record among the acts and proceedings of the said Board, and may enter and take possession of the demised premises, free from any claim of the delinquent lessee, his executors, administrators or assigns.

And the said party of the second part, for himself his executors, administrators and assigns, do hereby covenant with the parties of the first part, and their successors in office, that he or they will pay the rents reserved as aforesaid, yearly, and at the end of each and every year, during the continuance of the said term, and also, shall and will well and truly pay, or cause to be paid, all the taxes, rates, charges and assessments whatsoever, which now are, shall or may, at any time hereafter, during the continuance of the said term hereby demised, be rated, taxed, charged or assessed on the said demised premises, or any part thereof,

11

And it is further Covenanted and agreed, by and between the parties aforesaid, their successors in office or legal representatives, that nothing herein contained shall be construed to imply a covenant of quiet enjoyment on the part of the said parties of the first part, and their successors, to and with the said party of the second part, and his legal representatives.

In Testimony Whereof, the parties aforesaid have executed this deed in duplicate, the Chairman of said Board signing his name, and the Register of said Corporation, under the corporate seal, attesting both parts, and the said party of the second part signing his name, and affixing his seal to both parts of this Indenture, on the day and year, and at the place in this behalf first above written.

Joseph LeBland Chairman
Charles Huth Seal
Seal
Seal

Seal

Attest
Hamilton Michau Register

State of Missouri }
County of St Louis } SS.

Be it Remembered, That on this Twenty second day of April in the year of our Lord One Thousand Eight hundred and forty six before the undersigned a Justice of the Peace within and for the County aforesaid, came Joseph LeBlond & Charles Huth who are

12 personally known to me to be the same persons whose names are subscribed to the foregoing instruments of writing. as having executed the same, and severally acknowledged the same to be their act and deed, for the purposes therein mentioned Taken and certified the day and year aforesaid

Hamilton Michau Justice

State of Missouri
County of St Louis } Ss.

I hereby certify that the foregoing instrument of writing was on the thirteenth day of May A. D. 1846. filed for Record in my Office and is truly Recorded in Book "S" No 3 Page 495 & Foll.

Witness my hand and seal of Office in St Louis the date aforesaid

Seal

S. D. Barlow;
Recorder of St Louis Co'lty

Upon the filing of the above petition a Summon was then issued to the Sheriff of the County of St Louis in the words and figures following, to wit;

Summon

The State of Missouri

To the Sheriff of Saint Louis County, — Greeting

We Command you to Summon the City of Carondelet to appear before the Judge of our St Louis Sand Court, on the first day of the next term thereof, to be held at the City of St Louis, within and for the County of St Louis, on the First

13 Monday of October next. then and there to answer the complaint of Du Bouffay Fremon, Public Administrator of the County of St Louis who has charge of and administers on the Estate of Charles Huth deceased as set forth in the annexed petition; and have you then and there this Writ.

Witness, Charles A Mantz, Clerk of our said Court, with the Seal thereof hereto affixed at Office, in the City of Saint Louis this Seventeenth day of September in the year of our Lord One thousand eight hundred and fifty three

Seal

Chas A. Mantz Clerk

Upon Which Summon the Sheriff made his Return in words and figures as follows. to wit;

Sh'ffs Return Executed this Writ in St Louis County September 17th 1853 by delivering a copy of the within Writ and petition as furnished by the Clerk to William Tausic the Mayor of the City of Carondelet.

Jno M Wimer Sh'ff
By Wm H Sparks Dep't

Fee $1.—

And afterwards the following proceedings were had in this cause. to wit;

14

October Term 1853

Friday October 7th 1853

Leave to Ans & &c

Du Bouffay Fremon admr of Charles Huth &c
vs
The City of Carondelet

Leave granted to Defendant to answer on or before the first day of January next under order of Court that defendant serve plaintiff with copy of answer

And afterwards the following further proceedings were had in this cause, to wit:

Saturday October 15th 1853

Continued

Du B. Fremon Admr &c
vs
City of Carondelet

Continued

And afterwards the following further proceedings were had in this cause, to wit,

March Term 1854

Monday March 6th

Ans filed

D. B Fremon Admr of C Huth
vs
The City of Carondelet

Answer filed

15 Which Answer is in the words and figures following, to wit;

Answer

In St Louis Land Court;—

Du Bouffay Fremon, Adm.r of Charles Keith, plaintiff

vs

The City of Carondelet. Defendant

The Defendant states that the inhabitants of the Spanish town or village of Carondelet were well entitled to a certain large tract of land, consisting of many thousand acres lying adjacent to said town or village & known as "the Common of Carondelet;"—

The title of said inhabitants was confirmed by act of Congress of 13th June 1812;— in the year 1832 said inhabitants were duly incorporated & became a body politick by the name & style of "The inhabitants of the Town of Carondelet."— the corporate authorities of said town, wishing to invite the settlement & improvement of said track of land on terms easy & favourable to purchasers, afterwards, in the year 1837, caused all that portion of said track of land lying South of the River Des Peres to be subdivided into small & convenient lots, & offered the same for sale by auction on the terms of the several purchasers paying two per cent on the amount by them respectively bid, every year for ninety nine years & four per cent on the same amount every year thereafter;—

and under the express agreement on the part of the pur-

=chaser that if such purchaser should neglect to pay said two per cent per annum for the space of six months after the same was payable for any year, said corporate authorities might put an end to the agreement of sale, and the rights of the purchaser under such agreement should thereupon cease & be determined.

The Defendant files herewith a certified copy of town ordinance No 48 as evidence of the manner in which said land was sold and disposed of.

Afterwards, from time to time, the corporate authorities of said town caused that part of said Common lying north of the River Des Peres to be in like manner subdivided & sold on the same terms herein before set forth;

And as evidence thereof the defendant files herewith duly certified copies of town ordinances numbered 51, 71 & 78.

In pursuance of the provisions of said last mentioned ordinance No 78 a sale was had & Charles Huth became the purchaser of lot No 86 in Survey 3, and the instrument of writing mentioned in the petition & therein called a lease was executed.

The defendant insists that said instrument of writing, tho' in form a lease, was in fact & truth a sale of the lot therein mentioned on the terms therein contained.

No actual possession of said lot No 86 was ever taken by

17 said Huth or by the plaintiff. & the said lot. ever since said sale, has remained, and now is, wholly unimproved & uninclosed,

An amount of the two per cent instalment on the purchase money payable under said instrument of writing on the 4th day of April 1851 was in the early part of the year 1851 put into the hands of the defendants collector for collection.

Notice by publick advertisement was soon thereafter given by said collector & as early as 1851 that each account was in his hands for collection.

No payment of said two per cent instalment was made to said collector nor has it ever been made to the defendant.

The defendant insists that by force of the agreement in said instrument of writing contained & under the circumstances herein before set forth, the resolution of defendants corporate authorities terminating the agreement of sale in said instrument of writing as is stated in the petition of the plaintiff & the exhibits therein referred to, was effectual to terminate said agreement of sale and all right of the plaintiff under said instrument of writing.

Field. for defendant.

William Taussig makes oath & says that he is Mayor of the City of Carondelet acting as such & he believes the foregoing Answer & the matters therein contained to be true.

Sworn to and subscribed before me. this 21st day of February A.D. 1854

Wm. Taussig

Bernard Popping. Justice of the Peace

The "Certified copies of town ordinances Numbered 48. 51. 71878." filed with the above answer. are in the words and figures following. to wit;

Ordinance No. 48

No. 48. An ordinance to lease the Carondelet Commons. South of the River des Peres. on the following conditions.

Sec. 1. On the 14th. day of March. and the following days. on the premises. the Carondelet Commons South of River des Peres. will be leased by ouctery to the highest bidder. to the inhabitants of the town of Carondelet & Common fields. who are otherwise qualified.

Sec. 2. Shall be considered as inhabitants all those born & residing in the town of Carondelet. or those married to a native of said town. qualified as aforesaid.

Sec. 3. Shall be considered as commoners. all those who reside on the Commons without any legal right; that is to say. without any Concession from the French or Spanish Government confirmed previous to the year 1812.

Sec. 4. All lessees shall pay two per centum upon the amount at which the same shall be leased for. which shall be payable yearly. at the end of each and every year.

19 Sec 5. Should the said rent or any part or portion thereof remain unpaid six months after the time at which the same shall become due, the Board of Trustees may annul the lease and re-enter upon the property leased, without molestation or hinderance on the part of the lessee.

Sec, 6. The leases shall be made for the term of 99 years & renewable forever, upon the same condition, except that at the end of 99 years from the beginning of the lease, and every 99 years thereafter, the lessee shall pay 4 per % upon the value of the demised premises (to be ascertained by the public assessor) as a yearly rent to be paid for the 99 years then following.

Sec, 7. None of the said leases is to contain a covenant of quiet enjoyment.

Sec. 8. Duplicate leases shall be made out and shall be signed by the Chairman of the Board, attested by the Register under the seal of the Corporation; signed and executed by the lessee or lessees under their seal or seals and acknowledged. The leases shall contain all the conditions and provisions which the Board of Trustees may establish to secure the payment and collection of the annual rent.

Sec, 9. The settlers mentioned in the 3d Section, shall have the privilege of obtaining a lease, on the same terms as the inhabitants; for the lot on which they are dwelling;

(and no more) provided they pay the highest price bid for the leases. If by the division of the Commons, any buildings, fence &c. should fall on the next lot of ground, the owner of the same shall have the right to remove them as soon as required by the owner of such next lot of ground.

Sec. 10. All lessees shall pay, (at the delivery of the lease) 15 cts per arpent for the expenses of the survey &c. and $2.00 for the execution of the duplicate leases.

Sec. 11. None shall have a right to a lease for more than one lot.

Sec. 12. All those who may not wish to attend on the days of the sale, may empower some one to act in their place, by a written authorization, signed before two competents witnesses, and handed to the Register previous to the day of sale. All orphans must be represented by their guardian only.

Sec. 13. All unmarried men of 21 years old, born in the town of Carondelet, or who have resided therein ten years previous to this ordinance, are entitled to a share in the Commons in proving by oath, before a Justice of the Peace, that they are of said age & obtaining a certificate for the same.

Sec 14. No bid shall be received under $1.25 per Arpent for the 1st bid.

Sec. 15. Should they remain any lots after the lease of the Commons, all those who may be absent now from the town

21 on voyage, and that are entitled to a share in said Commons, may obtain the same at their return; (if within one year from the date of this ordinance) by applying to the Board of Trustees.

Sec. 16. All lessees shall be obliged to put corner Stone immediately on their respective lots, and if by neglect, the Stakes planted by the Surveyor, are pulled out, the expense to establish them again shall be at their own cost.

Passed by the Board of Trustees March 2d. 1838.
Approved March the third. 1838.

Nas Paupe. Chairman.

State of Missouri }
County of St Louis } ss.

I, Bernard Popping, Register of the City of Carondelet, do hereby certify, that the within and foregoing is a true and correct copy of "An Ordinance to lease the Carondelet Commons South of the River des Peres on the following conditions" passed by the Board of Trustees of the Town of Carondelet March 2d and approved March 3d 1838, as fully as the same remains of record in my Office

In testimony Whereof, I have hereto set my hand and affixed the seal of said City, this Eleventh day of February, Eighteen hundred and fifty four.

Seal

Bernard Popping, Register.

Ordinance Nº 51

Nº 51. An Ordinance to lease the Carondelet Commons. North of River des Peres.

Be it ordained by the Board of Trustees of the Town of Carondelet, that on the fifteenth day of July, eighteen hundred and thirty nine, and following days, all that portion of Carondelet Commons, lying north of River des Peres, shall be leased at public out-cry, to the highest and best bidder, for the term of ninety-nine years, and renewable-forever, reserving rents to be paid annually to the said Trustees or their Successors, agreably to the following terms, to wit:

1st " Upon any sale, the purchaser is not to pay the amount bid, but an interest of two per cent a year on the purchase money as a yearly rent.

2d " At the end of ninety-nine years from the day of sale, and every ninety-nine years thereafter, the purchaser shall pay four per centum on the purchase money as a yearly rent.

3d " — Should the interest remain unpaid for six months after due, the Board of Trustees may annul the sale and proceed to sell again without molestation or hinderance on the part of the delinquent lessee.

4th " — Upon all such sales, deeds are to be executed in duplicate by the Board of Trustees & signed and acknowledged by the purchasers containing all the conditions and provisions, which the Board of Trustees may establish to secure the payment and collection of the annual rents.

23 5th " — If a purchaser neglect or refuse to execute such deed, the lot purchased may be re-sold, and if it should not bring the sum first bid, the difference may be recovered from the first purchaser before a Justice of the Race,

6th " — The purchasers shall pay for the execution of each duplicate lease, two dollars & a half, and also for the expenses of the survey as follows, to wit;
for all lots or blocks of three arpents or under,
$3.50; for all lots containing over three arpents, thirty cents per arpent.

Passed by the Board of Trustees June 17th 1839.
Approved Chas. Taupe, Chairman.

State of Missouri }
County of St Louis } S.

I, Bernard Poepping, Register of the City of Carondelet, do hereby certify that the foregoing is a true and correct copy of an Ordinance passed by the Board of Trustees June 17th 1839, and entitled "An Ordinance to lease the Carondelet Commons, North of River des Peres", as fully as the same remains of Record in my office

In Testimony whereof, I have hereto set my hand and affixed the seal of said City, this Eleventh day of February, Eighteen hundred and fifty four

Seal

Bernard Poepping, Register

24

Ordinance No 71

No 71 An Ordinance to lease lots on the Common of the Town of Carondelet.

Sec. 1. Be it Ordained by the Board of Trustees of the Town of Carondelet, as follows;

That on the seventh day of December in the year of our Lord One thousand eight hundred and forty three, there shall be leased at public outcry to the best bidder for the term of ninety-nine years and renewable forever, a number of lots and blocks and fractions thereof on the Common of the Town of Carondelet, and such leasing shall continue from day to day until concluded.

Sec. 2. The purchaser shall bid per arpent or foot as the case may be, and as if it were the sale of the fee, and on the total amount bid as aforesaid, the purchaser shall pay an interest of two per centum per annum as a yearly rent.

Sec 3. The purchaser shall pay the sum of five dollars at the time that any lot or block shall be bid off to him, and which sum of five dollars is to be in addition to the rent specified and reserved in this ordinance; and if any person fail or refuse to pay the said sum of five dollars, as above specified, the same property may be again exposed to sale.

Sec. 4. - At the end of ninety-nine years from the day of sale, and every ninety nine years thereafter, the purchaser shall pay four per cent per year on the purchase money as a yearly rent.

Sec 5. The leases shall contain a provision to the following effect, viz; that, should the rent reserved as aforesaid, or any part thereof, on any lease, remain unpaid for six months after the same will be due, the Board of Trustees may, by resolution, declare such lease terminated and void, and the same shall expire and be determined from that day.

Sec 6. The leases provided for in this ordinance are to contain all the conditions and provisions which the Board of Trustees may think necessary to secure the rent reserved as aforesaid.

Sec, 7. All persons becoming purchasers of any lot or lots, block or blocks or fractions thereof, shall, within fifteen days after the close of said sale, call upon the Chairman of said Board of Trustees for deed or deeds for the same, or otherwise they shall forfeit all right to the same and lose all monies paid.

Sec, 8. This Ordinance shall be published for three weeks before the day of sale in two newspapers published in the City of Saint Louis.

Passed by the Board of Trustees of the Town of Carondelet this fifteenth day of November 1843. and approved the same day

Joseph LeBlond, Chairman.

Attest: James C. Evans, Register.

State of Missouri
County of St Louis } ss.

I, Bernard Poepping, Register of the City of Carondelet, do certify, that the foregoing is a true and correct copy of an Ordinance passed by the Board of Trustees of the Town of Carondelet Nov. 15th, 1843, and entitled "An Ordinance to lease lots on the Common of the Town of Carondelet", as fully as the same appears of record in my Office,

In Testimony Whereof, I have hereto set my hand and affixed the City Seal, this Eleventh day of February, A.D. 1854,

Seal

Bernard Poepping Register

Ordinance No. 78

No. 78. An Ordinance to lease lots on the Common of the Town of Carondelet.

Be it ordained by the Board of Trustees of the Town of Carondelet, as follows,

Sec. 1. That on the Fourth day of April, in the year of our Lord one thousand eight hundred and forty five, there shall be leased, at public outcry, to the best bidder, for the term of ninety nine years, and renewable forever, a number of blocks and lots, and fractions thereof, on the Common of the Town of Carondelet; and such leasing shall continue from day to day, until concluded.

Sec. 2. The purchaser shall bid per arpent, or foot, as the case may be, and as if it were the sale of the fee, and on the total amount bid, as aforesaid,

aforesaid, the purchaser shall pay an interest of two per centum per annum as a yearly rent.

Sec. 3. The purchaser shall pay the sum of five dollars at the time that any improved lot or block shall be bid off to him; Ten dollars at the time that any improved lot or block South of the River des Peres shall be bid off to him; Fifteen dollars at the time that any improved lot or block North of the River des Peres shall be bid off to him; which said several sums are to be in addition to the rent specified and reserved in this Ordinance.

And if any person fail or refuse to pay said sums respectively, as above specified, the same property may be again exposed for sale.

Sec. 4. At the end of ninety nine years from the day of sale, and every ninety nine years, the purchaser shall pay Four per cent. per year, on the purchase money, as a yearly rent.

Sec. 5. The leases shall contain a provision to the following effect, viz; That should the rent reserved as aforesaid, or any part thereof on any lease, remain unpaid for six months after the same shall become due, the Board of Trustees may, by resolution, declare such lease terminated and void, and the same shall expire and be determined from that day.

Sec. 6. The leases provided for in this ordinance are to contain all the conditions and provisions which

the Board of Trustees may think necessary to secure the rent reserved as aforesaid.

Sec 7. This Ordinance shall be published for three weeks before the day of sale in two newspapers published in the City of St Louis.

Passed by the Board of Trustees of the Town of Carondelet, this thirteenth day of March in the year of our Lord Eighteen hundred and forty five, and approved the same day

Joseph LeBlond, Chairman

Patrick Tieman, Regr

State of Missouri }
County of St Louis } ss

I, Bernard Poepping, Register of the City of Carondelet, do certify, that the foregoing is a true and perfect copy of Ordinance No 78 of the Board of Trustees of the late Town of Carondelet, approved March 15th 1845, and entitled "An Ordinance to lease lots on the Common of the Town of Carondelet", as fully as the same appears of record in my Office.

In Testimony Whereof, I have here to set my hand and affixed the Seal of said City, this Eleventh day of February, A. D. Eighteen hundred and fifty four,

Seal

Bernard Poepping Register

And afterwards the following further proceedings were

29 had in this cause. to wit;

Monday March 27th 1854.

Cont'd by Consent D. B Fremon Adm'r of C Huth
vs.
The City of Carondelet } Continued by Consent

And afterwards the following feurther proceedings were had in this cause. to wit;

October Term. 1854

Tuesday October 10th. 1854.

Cont'd by Consent D. B. Adm'r. of C. Huth
vs
The City of Carondelet } Continued by Consent

And afterwards the following feurther proceedings were had in this cause. to wit;

March Term. 1855

Monday March 12th. 1855

Continued Charles Huth's Administraton
vs
The City of Carondelet } Continued

30 And afterwards the following further proceedings were had in this cause, to wit

October Term. 1855.

Tuesday October 9th 1855.

Cont'd by Consent &c, C. Huth's Administrator vs The City of Carondelet } Continued by consent to await case of Taylor vs Carondelet in Supreme Court.

And afterwards the following further proceedings were had in this cause, to wit;

March Term. 1856.

Monday April 21st 1856.

Resign'n of D.B. Fremon &c, Sub'd to the Court. Charles Huth's Administrator vs The City of Carondelet } Now at this day come said parties by their attorneys & suggest to the Court the resignation of Du Bouffay Fremon Public Administrator of St Louis County in charge of the estate of Charles Huth deceased and by consent of said parties and leave of Court Peter Baudey Garesche Public Administrator of St Louis Co in charge of said Huths estate, is substituted, no jury being required, they submit this cause to the Court upon the pleadings and proofs and arguments of Counsel,

31 and the Court not being fully advised of and concerning the premises takes time to consider thereon.

And afterwards the following further proceedings were had in this cause, to wit:

Friday April 25th 1856.

Find's of Board

Huth's, Administrator
vs
The City of Carondelet

Judgment
Now at this day, this cause coming up for final judgment, on the issues heretofore submitted to the Court, and the Court being fully advised of and concerning the premises, doth ascertain the following facts; That before the commencement of this suit the defendant as a corporation had succeeded to all the powers, rights, and duties of the Board of Trustees of the Town of Carondelet that on the 15th day of March 1845, the said Board of Trustees passed an Ordinance (No 78) to lease Lots on the Common of said Town, the fifth and Sixth Sections of which Ordinance are as follows, "to wit" "Sec 5, The leases shall contain a provision to the following effect, viz, that should the rent reserved as aforesaid, or any part thereof on any lease remain unpaid for six months after the same shall become due, the Board of Trustees may by resolution declare such lease terminated and void, and the same shall expire and be determined from that day." "Sec. 6. The leases provided for in this ordinance are to contain all the conditio-

-ms & provisions which the Board of Trustees may think necessary to secure the rent reserved as aforesaid." That under the said Ordinance the said Board of Trustees by their duly authorized officers, on the 22d day of April 1846, executed and delivered to Charles Huth the lease mentioned in the petition, for the land therein described, which lease the Court finds to be, in all respects as stated in the plaintiffs petition, - that said Huth in his lifetime paid the rent reserved in the said lease as it became due, to the said Board of Trustees; that the said Huth died in the year 1849, and Du Bouffay Fremon who was then Public Administrator of the County of St Louis on the 22nd day of June 1850, took charge of his estate for the purpose of administering the same, and paid to the authorized agent and Collector of the said Board of Trustees, the rent reserved in said lease and which had become due, up to the 24th day of April 1850; that on the 15th day of July 1852, the City of Carondelet passed an Ordinance annulling the said lease because the rent therein reserved was in arrear and had been unpaid for more than six months after the same became due & payable; that said Du Bouffay Fremon was ever ready and willing to pay the said rent, on account of the non payment of which said resolution was passed and no demand was made on him for the same; but that Thomas Chartrand then and afterwards being the duly authorized agent of the Board of Trustees for the Collection of the rent accruing on the said lease for the year ending April 24th 1851, agreed with the

33 said Frémon and promised to call on him and receive the said rent for the said year when the same should become due and payable. yet the said Chartrand failed to do so. & by reason thereof the said rent was not paid; that in the latter part of the year 1852. the said Fremon tend= =ered to the defendant all the rent which had accrued and become due and payable on said lease for the years ending April 24th 1851 and April 24th 1852. together with interest thereon from the times the same became due up to the time of the said tender, and the said Fremon has ever been ready and willing to pay the rent reserved in the said lease as the same became due and payable. and offers to pay the same, with interest from the respective times the same became due. and the said Garesché as the successor of the said Heath's estate has been willing and offers to pay said rent and interest thereon, It is therefore ordered and adjudged by the Court. that said P. B. Garesché as the admi= =nistrator of the said estate of said Heath. on the payment of all the rents in arrear on the said lease up to the 24th day of April 1856 with interest thereon at the rate of six per centum per annum from the times the said rent became due un= =til the time of payment is entitled to redeem the said lease= =hold estate from the said forfeiture, and to be restored to his estate therein, as the tenant of said defendant.

And afterwards on the same day the following further proceedings were had in this cause, to wit;

34
Judgment

Peter Bauday Garesché public administrator of the County of St Louis who has charge of and administrator on the Estate of Charles Heath deceased

vs

The City of Carondelet

Now at this day come said parties, plaintiff and defendant by their respective attorneys, and having agreed in open Court that all the rent due or in arrear on the said Seashold, descri-bed in their said petition up to the Fourth day of April 1836. together with the interest thereon to this day, amounts in the aggregate to the sum of Twenty dollars, and the said plaintiff having now here in open Court paid the said sum of Twenty dollars for the use and benefit of ~~the~~ said defendants; It is therefore ordered, adjudged and decreed by the Court that the said Peter Bauday Garesché public administrator of the County of St. Louis, who has charge of and administrator on the Estate of said Charles Heath deceased, be, and as such administrator of the said Heath's Estate, is hereby reinstated in his Estate in the leasehold described in his said petition as follows, "to wit" all that track, piece or parcel of ground, lying and being in that portion of the then town now City of Carondelet lying North of the River Des Peres, and containing thirteen Arpents and thirty two hundredths of an arpent, being lot Number Eighty six (86) in Survey Number three (3) as laid down and desig-nated on the plat of the sub-division of said portion of the said Common, made under the direction of the said Board of Trustees, on file in the office of the Recorder of St. Louis

35 County; as the tenant of the said defendant, and that as such administrator he shall have the possession, use, and enjoyment of the said leasehold premises in the same manner as if the said resolution of forfeiture had never been passed by the said Council of the said City of Carondelet. It is further ordered by the Court that said defendant recover of said plaintiff his costs and charges herein expended and have thereof execution.

And afterwards the following further proceedings were had in this cause, to wit;

Tuesday April 29th 1856.

M. for Review filed

Huth's Administrator
vs
The City of Carondelet } Motion for Review filed

Which Motion for Review is in the words and figures following, to wit;

M. for Review

In St. Louis Land Court

Garesché Adm'r. of Huth, plaintiff

vs

City of Carondelet, Defendant.

The Defendant moves for a review of the decision of the Court, and assigns for reason that under the facts found

by the Court the judgment ought to be for the defendant
Field for defendant

And afterwards the following further proceedings were had in this cause to wit;

Saturday May 10th A 1856

Mo for Review Overruled

Duc Boaffay Fremon
vs
The City of Carondelet

Now at this day come said parties by their attorneys and submit to the Court the Motion for Review hereinbefore filed, and the Court having heard and being fully advised of and concerning the premises doth order and adjudge that said Motion be overruled

37 State of Missouri
County of St Louis } SS.

I, Charles A. Mantz, Clerk of the St Louis Land Court within and for said County, Certify the foregoing Transcript to be a true and faithful copy of the Record and proceedings had in the case of Du Bouffay Fremon administrator on the Estate of Charles Huth, deceased, plaintiff, and The City of Carondelet, defendant, as fully as the same remains of Record in my Office

In Testimony Whereof, I hereto set my hand and affix the Seal of our said Court at Office in the City of St Louis this Eighteenth day of September A.D. 1856.

Charles A. Mantz, Clerk

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The State of Missouri, ss.

The State of Missouri, *To the Honorable the* St Louis Land Court ~~~~~ *in said State, GREETING:*

WHEREAS, In the record and proceedings in a certain cause lately pending in the said Land Court held in and for the county of St Louis ~~~~

wherein Peter Bandey Garesché public administrator of the county of St Louis who has charge of and is ~~is~~ administrator on the estate of Charles Huth deceased is plaintiff and the city of Carondelet is defendant

~~in an action of~~ in a civil action ~~~~~~~~~~~~~~~~~~~~ manifest error hath intervened, to the great damage of said defendant ~~~ as by its complaint we are informed.

NOW, we being willing that the error, if any there be, should be corrected, and full and speedy justice done to the parties aforesaid, in that behalf, COMMAND YOU, that you send to us, certified under your seal, the record and proceedings in the cause aforesaid, as fully as the same remain of record before you in said Court, so that we may have them before us at our Supreme Court, to be begun and held in the City of Saint Louis, in the County of Saint Louis, in said State, on the third Monday in ~~March~~ October next, so that our Judges of our Supreme Court, on inspecting the record and proceedings aforesaid, may cause to be further done therein, for correcting the error, what of right, and according to law, ought to be done.

Witness, WILLIAM S. GLANVILLE, Clerk of our said Supreme Court, at office, in the City of Saint Louis, the thirtieth day of May in the year of our Lord one thousand eight hundred and fifty seven

Wm S. Glanville

CLERK.

State of Missouri, } S. S.
County of St. Louis, }

In obedience to the Command of the within Writ, I, Charles A. Mauntz, Clerk of the St. Louis Land Court, within and for the County of St. Louis, certify the foregoing to be a true and faithful Transcript of the Record and Proceedings in the Case of Peter Bandey Garesché, Public Administrator of the County of St. Louis, who has Charge of and is administrator of the Estate of Charles Keith, deceased, is Plaintiff against the City of Carondelet, defendant, as fully as the same remains of Record in my office.

In Testimony whereof I hereto set my Hand and affix the Seal of the St. Louis Land Court, at Office in the City of St. Louis, this Fourth day of June, A. D. 1857.

Charles A. Mauntz, Clerk.

The State of Missouri, ss.

The State of Missouri, *To the Honorable the* Saint Louis Land Court *in said State, GREETING:*

WHEREAS, In the record and proceedings in a certain cause lately pending in the Land Court held in and for the County and City of Saint Louis

wherein

in an action of manifest error hath intervened, to the great damage of said defendant as by its complaint we are informed.

NOW, we being willing that the error, if any there be, should be corrected, and full and speedy justice done to the parties aforesaid, in that behalf, COMMAND YOU, that you send to us, certified under your seal, the record and proceedings in the cause aforesaid, as fully as the same remain of record before you in said Court, so that we may have them before us at our Supreme Court, to be begun and held in the City of Saint Louis, in the County of Saint Louis, in said State, on the third Monday in October next, so that our Judges of our Supreme Court, on inspecting the record and proceedings aforesaid, may cause to be further done therein, for correcting the error, what of right, and according to law, ought to be done.

Witness, WILLIAM S. GLANVILLE, Clerk of our said Supreme Court, at office, in the City of Saint Louis, the twenty second day of September in the year of our Lord one thousand eight hundred and fifty six.

Wm. S. Glanville.
CLERK.

$1.50 paid by E. Capelberry Atty for deft.

State of Missouri
County of St. Louis. }

In obedience to the Command of the Within Writ. I Charles A. Mantz, Clerk of the St. Louis Land Court, within and for the County of St. Louis, certify the foregoing to be a true and faithful Transcript of the Record and Proceedings in the case of Da Bouffay, Framon administrator of the Estate of Charles Huth, deceased, Plaintiff against the City of Carondelet, defendant as fully as the same remains of Record in my office.

In Testimony Whereof I hereto set my hand, and affix the seal of the St. Louis Land Court, at office in the City of St. Louis, this Twenty-Second day of September A. D. 1856.

Charles A. Mantz
Clerk.

69 ~~[illegible]~~

(3)

March. T. 1858

~~Du Bouffay Fromon~~ Peter B. Gruesche,
Public Administrator of the
County of St. Louis &c.
vs.
The City of Carondelet

Land Court

S. Reber for Plff

E. Casselberry for deft

Filed 4 June 1857

~~[illegible]~~

Wm S Glanville
clk

69 ~~[illegible]~~

This Transcript $11.80 Pd by Casselberry Atty

(Costs S. P. E.)

for Whitney $.80c/

1st a pigt. notice, motion, order, judgment, motion to correct mind error &c.

2d a pigt. finder, notice, bnf & stat. for deft, bnf for plff.

Reversed 24 June 58 / B p 457 /

Charles Huth's
aaministrator
vs
The city of Carondelet

In the Supreme
Court of the State of
Missouri
October Term 1856

The defendant comes and for assign=
ment of errors says that the court below
erred as follows:

First In declaring the law in favor
of the plaintiff on the facts found when
the law ought to have been declared in
favor of the defendant, that is to say, the
Court below ought to have declared the
law to be on the facts found that the
plaintiff ought not to recover or obtain
the relief asked for;

Second By giving judgment for the
plaintiff instead of the defendant;

Third. In overruling the motion for a
review filed by the defendant;

Fourth In not giving judgment
for the defendant instead of the plaintiff

Fifth In many other respects which
will be manifest to this court on the
inspection of the record of this cause.

E. Cafselberry attorney
for the defendant

Charles Huth's
administrator
vs
The city of Carondelet

Assignment of Errors
by the defendant

4 June 1857
Filed ~~[illegible]~~
Wm L Glanville
Clk

Charles Huth's admr. vs The city of Carondelet } In the Supreme Court of Missouri October Term 1856.

Defendant's Brief

We contend that this case is substantially the same as the cases of Woodson vs. Skinner & Beck 22 Mo. page 13 and Taylor vs. Carondelet 22 Mo. 105.

On the part of the plaintiff it is contended that this case materially differs from the two cases alluded to, because the puson who was agent during the year the rent accrued on account of which the forfeiture took place agreed with the plaintiff and promised to call on him and receive the rent for that year when the same should become due and failed to do so.

If the agent had power to make such an agreement and extend the time of payment the position taken by the plaintiff would be correct; but it was not shown by the pleadings nor by the finding of the court that the agent had power to make any such agreement or any such extension and in fact the agent had no power of the kind; nor did the city council know that he ever made any arrangement of the kind until long after the lease had been forfeited.

The powers of the collector are derived from the ordinances and by laws of the

city and from no other source whatever. In as much as there was no ordinance or by law authorizing the collector to make any such arrangement, all of his agreements and promises with the plaintiff or any other tenant or tax payer of the city are as null and void as an agreement of a tax collector under the State laws to extend the time of payment of a tax payer. In fact it would be wholly inconsistent with public policy to allow any such agreement to be valid or binding, because, the city would at once be involved in perpetual difficulties of the most ruinous kind. For instance the city were to forfeit a lease for the non payment of rent, and release the premises to another person and afterwards it should turn out that the collector had made a private agreement to call on the first tenant for the rent and in consequence of this private agreement the forfeiture would be void the city would have to restore the first tenant and pay heavy damages to the second; nor would the injury and confusion stop here. The second lessee and all persons connected with him in business, having deeds of trust, judgments and mortgages on the land would also be injured, and besides the whole population on the common which is a very large district of country would be in a continual uproar in law suits which

would be a great draw back to the improvements of the country. The principal object of granting the lease at such low rent was to settle the country around the city; but the lessee made no improvements nor expended any labor or money on the land. It is yet in the same condition that it was when it was leased to Charles Huth. In asking therefore to have the forfeiture set aside the plaintiff does not ask equity for justice; but merely for lucre; or in other words he asks that the forfeiture be set aside in order that he can have the advantage of the advancement in the price of property without having expended any money, labor or any thing else on the land which would be directly at war with equity.

If any person wishes to make so great a speculation off the people of Carondelet let him keep his bargain with the city and pay his rent punctually. It certainly would be a very unconscientious proceeding to let any one speculate on the property of the people of Carondelet without keeping his bargain with them as in this case.

The lessee knew as well as the city that the rent was due. Why then did he fail to pay it? If Chatrand did not call he could have gone to Carondelet and paid the rent. If he was too lazy to attend to the matter should the people of Carondelet suffer by his indolence; or

should be suffer?

The agreement between Fremon the administrator and Chartrand the collector, was a mere private affair and not binding on Carondelet. If therefore the plaintiff is injured in consequence of the non compliance of the agreement on the part of Chartrand his remedy is against Chartrand and not against the city of Carondelet.

The court below seemed to attach importance to the fact that the rent was never demanded. In the above case of Taylor vs. Carondelet this court decided that no demand was necessary see 22 Mo. page 112.

E. Casselberry attorney
for the defendant

69 ~~188~~

Charles Huth's administrator
vs
the city of Carondelet

Defendant's brief

Submitted on brief
E. Casselberry
att for dft.

Filed 4 June 1857
~~[illegible]~~
Wm. S. Glanville
Ck

Peter Bandey Garesché, public administrator of the county of St Louis, who has charge of and is administrator on the estate of Charles Ruth, deceased, plaintiff

against

The city of Carondelet, defendant.

To the above named Peter Bandey Garesché, public administrator as aforesaid

You are hereby notified that the above defendant has sued out of the Supreme court of the State of Missouri a writ of error in the above entitled cause to the St Louis Land court within and for the County of St Louis in said State upon the final judgment and decision of said land court rendered in said cause, which said writ of error is returnable to said Supreme Court at the term thereof to be begun and held in the city of St Louis in said County of St Louis on the third monday of October in the year 1857

St Louis June 1, 1857

E. Capelberry attorney
for the defendant.

(original) 69

Peter Bandy Garesche
public admr. of
Charles Huth's estate
vs
The city of Carondelet

Notice of the suing out of
the writ of error

Filed 4 June 1857.
Wm S Glauviller
Cl.

Served this notice in the County of Saint Louis June 1st 1857 by delivering a true copy of the same to the within named — Peter Bandy Garesche

Fee — 50 by Casselbury

James Castello Sheriff
By Wm. Chadbourne
" Deputy

Charles Huth's administrator
vs
The city of Carondelet

In the Supreme court of the State of Missouri

And the defendant comes and moves the court for leave to amend and correct the mistakes and omissions in the writ of error herein by inserting the names of the respective parties to this suit in the proper places in the blanks in said writ which were omitted by mistake or oversight

E. Casselbury
atty for defendant.

See Return endorsed on ~~[illegible]~~ Writ of Error

69 98

Charles Huth's adm'r
vs
The city of Carondelet

Motion to correct
the writ of error

4 June 1857
Filed ~~[illegible]~~
Wm S. Glanville
Ck.

Charles Auth's administrator,

vs.

The City of Carondelet.

The plaintiff states in his petition that the Board of Trustees of the former town (now city) of Carondelet, on the 22d of April, 1846, leased to Charles Auth (now deceased,) and to his executors, administrators and assigns, lot 86 of survey 3 of the Common of Carondelet, north of the River des Peres, containing thirteen arpens and thirty-two hundredths of an arpen, for ninety nine years from the 4th day of April, 1845, for the yearly rent of two dollars and sixty-six cents, payable at the end of each and every year; subject to the conditions and stipulations contained in said lease; that it was stipulated among other things in said lease, that if at any time the rent for six whole months should be in arrear and unpaid, the said Board of Trustees, or their successors in office might terminate said lease by order or resolution, to be entered on record among the acts and proceedings of said Board, and might enter and take possession of the said demised premises free from any claim of the delinquent lessee, his executors, administrators or assigns; that the said Auth performed all the covenants and conditions of said lease until 1849, when he died intestate and without having disposed of the said leased premises; that the plaintiff administered on the estate of said Auth on the 22d of June, 1850; that the rent was paid

up to April 4, 1850, by the deceased; that the City of Carondelet, on the 10th of July, 1852, passed an order or resolution, and entered the same on record among their acts and proceedings; that after reciting that money reserved in the form of rent upon said lease was in arrear and had been unpaid for more than six months after the same became due and payable, it was resolved that the said lease be and the same was thereby annulled that the rent since the 4th of April, 1850, has not been paid; that Thomas C. Chartrand, the agent of the city duly authorized to collect rent due upon leases, on the 5th of February, 1851, agreed with the plaintiff, that when the said rent reserved on said lease, for the year ending April 4th, 1851, should become due, that he the said agent, would call upon the plaintiff and receive the same; that he was in Carondelet afterwards and saw the agent, who never demanded the rent of the plaintiff, because the agent supposed the plaintiff had paid it; that the plaintiff in the latter part of the year 1852, petitioned the City Council, offering to pay all the rent due on the said lease and interest thereon, and all incidental expenses, and prayed the City Council of Carondelet to accept the same and rescind said resolution of forfeiture, and restore the plaintiff to all his rights under the lease as tenant, but the said City Council in the Spring of the year 1853, declined to do so, and still refused to acknowledge the plaintiff as tenant; that on the 8th of September, 1853, the plaintiff tendered to the Mayor, Treasurer and Collector of said city the whole amount of rent

due said city, according to the terms of said lease, with interest thereon from the times the same respectively became due; that the plaintiff is ready and offers to pay all the said rent and interest and any other costs and charges, if any, which may be equitably due the said city on account of the said premises; that there has been no actual possession or occupation of the said leased premises from the time of granting said lease until the present time; that the same are now unoccupied, and that the said city has not in any way entered into or upon the same.

The plaintiff prays the Court to declare that upon the payment of the said rent and the interest thereon, and all other equitable charges, if any, that the said order or resolution of forfeiture be set aside and annulled, and that the plaintiff be fully restored in his rights as tenant.

The defendant, for answer to the petition, states, that the premises were confirmed by the act of Congress of June 13th, 1812, In the year 1832, the town of Carondelet was incorporated; that the corporate authorities wishing to invite the settlement and improvement of the commons on terms easy and favorable to purchasers, in 1837, caused all that portion of the Common south of the River des Peres to be subdivided into small and convenient lots, and offered the same for sale, by auction, on the terms of the several purchasers paying two per cent on the amount by them respec-

ively bid every year for ninety nine years, and four per cent on the same amount every year thereafter, and under the express agreement on the part of the purchaser, that if such purchaser should neglect to pay said two per cent per annum for the space of six months after the same was payable for any one year, said corporate authorities might put an end to the agreement of sale, and the right of the purchasers under such agreement should thereupon cease and be determined. The defendant filed with its answer, ordinance No. 48, as evidence of the manner in which said land was sold and disposed of. Afterwards, from time to time, the corporate authorities of said town, caused that part of said common lying north of the River des Peres, to be in like manner subdivided and sold on the same terms hereinbefore set forth, and as an evidence the defendant files ordinances No. 51, 71 and 78. In pursuance of said last mentioned ordinance, No. 78, a sale was had and Charles Huth became the purchaser of lot No. 86, in survey 3, and the instrument of writing mentioned in the petition called a lease was executed. The defendant insists that said instrument, though in form, a lease, was in fact and truth, a sale of the lot therein mentioned. No actual possession of lot 86 was ever taken by said Huth or by the plaintiff, and the said lot ever since the said sale has remained and now is wholly unoccupied and unimclosed.

An account of the two per cent installment on the purchase money, payable under said instrument of writing on the 4th of April

1857, was in the early part of the year 1851, put into the hands of the defendant's collector, for collection. Notice by public advertisement was soon thereafter given by said collector, and as early as 1851; that each account was in his hands for collection. No payment of said two per cent installment was made to said collector, nor has it ever been made to the defendant.

The defendant insists that by force of the agreement in said instrument of writing contained and under the circumstances hereinbefore set forth, the resolution of the defendant's corporate authorities, terminating the agreement of sale in said instrument of writing, as is stated in the petition of the plaintiff, and the exhibit therein referred to was effectual to terminate said agreement of sale, and all right of the plaintiff under said instrument of writing.

A jury was waived by the consent of parties, and the cause was submitted to the court for trial, whereupon the court found as follows:

"Now at this day, this cause coming up for final judgment, on the issues heretofore submitted to the court, and the court being fully advised of and concerning the premises, doth ascertain the following facts: That upon the commencement of this suit, the defendant, as a corporation, had succeeded to all the powers, rights and duties of the Board of Trustees of the Town of Carondelet, that on the 15th day of March, 1845, the said Board of Trustees passed

an ordinance (No. 78) to lease lots on the common of said town, the fifth and sixth sections of which ordinance are as follows, to-wit: Sec. 5. The leases shall contain a provision to the following effect, viz: that should the rent reserved as aforesaid, or any part thereof, on any lease remain unpaid for six months after the same shall become due, the Board of Trustees may by resolution declare such lease terminated and void, and the same shall expire and be determined from the day. "Sec. 6. The leases provided for in this ordinance are to contain all the conditions and provisions which the Board of trustees may think necessary to secure the rent reserved as aforesaid." That under the said ordinance the said Board of Trustees, by their duly authorized officers, on the 22d day of April, 1846, executed and delivered to Charles Auth, the lease mentioned in the petition, for the land therein described, which lease the court finds to be in all respects as stated in the plaintiff's petition; that said Auth in his life time paid the rent reserved in said lease as it became due to the said Board of Trustees; that said Auth died in the year 1849, and Dr Bouffay Thomson, who was then Public Administrator of St. Louis county on the 22d day of June, 1850, took charge of his estate for the purpose of administering the same, and paid to the authorized agent and collector of the said Board of Trustees the rent reserved in said lease, and which had become due, up to the 4th day of April 1850; that on the 10th day of July 1852, the City of Carondelet passed an ordinance annulling said lease because the rent therein reserved was in

arrear and had been unpaid for more than six months after the same became due and payable; that said Du Bouffay Fremon was ever ready and willing to pay the said rent, on account of the non payment of which said resolution was passed, and no demand was made on him for the same, but that Thomas Chartrand then and afterwards being the duly authorized agent of the Board of Trustees for the collection of the rent accruing on the said lease for the year ending April 4th, 1851, agreed with the said Fremon and promised to call on him and receive the said rent for the said year when the same should become due and payable, yet the said Chartrand failed to do so, and by reason thereof the said rent was not paid; that in the latter part of the year 1852, the said Fremon tendered to the said defendant all the rent which had accrued and became due and payable on said lease for the years ending April 4th, 1851, and April 4th, 1852, together with interest thereon from the times the same became due up to the time of the said tender, and the said Fremon has ever been ready and willing to pay the rent reserved in the said lease as the same became due and payable, and offers to pay the same with interest ~~thereon~~ from the respective times the same became due, and the said Gareschè, as the successor of the said Frémon, in the administration of said Authe's estate has been willing and offers to pay said rent and interest thereon. It is therefore adjudged by the Court, that said P. B. Gareschè,

as the administrator of the said estate of said Ruth, on the payment of all the rent in arrear on the said lease up to the 4th day of April, 1856, with interest thereon at the rate of six per centum per annum, from the times the said rent became due until the time of payment is entitled to redeem the said lease hold estate from the said forfeiture, and to be restored to his estate therein, as the tenant of said defendant."

The court entered judgment for the plaintiff, according to the finding of the facts and declaration of the law thereon, whereupon the defendant filed a motion for review of the decision of the court, for the reason that under the facts found by the court the judgment ought to be for the defendant, which said motion was overruled by the court, and the defendant has brought this cause here on writ of error.

E. Capelberry atty for
the defendant

69 PB 1855

Charles Huth's
administrator

vs

The city of Carondelet

Statement of the case
by the defendant

4 June 1857
Filed ~~2 Oct. 1855~~
Wm J Glasgow
Clk

Page 149

No. ..... Term, 185 .....

Peter B. Garesche,
admr. of Charles Huth
v.

The City of Carondelet

Clerk Wm. S. Glanville.. $	6.	00
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Sheriff		
F. Jones S. C. M.		30
.....	6.	30
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STATE OF MISSOURI, SS.

I, WILLIAM S. GLANVILLE, Clerk of the Supreme Court, within and for said State, at St. Louis, certify that the foregoing fee bill is a true copy, in the aggregate, from the Fee Book and Execution Book in my office, and that the said City of Carondelet is liable for the same.

WITNESS, my hand and the seal of said Court, at office, in the City of St. Louis, this seventh day of July in the year of our Lord eighteen hundred and fifty-seven.

Wm. S. Glanville, **Clerk.**

No ——

Supreme Court,
October 5. 1857.

P. B. Goresche a dmr. of
Charles Huth

v.

The City of Carondelet.
E. Cossellberg.

Wm. J. Glanville Ck	$6.00
F. Jones S. C. M.	30
	$6.30
Chas Cossellberg	1.85
	$8.15

For Mr. Cossellberg.

Supreme Court
Oct 5. 1857

P B Garesche, Public Adm^r
of Charles Huth

City of Carondelet

Plaintiff & respondent comes and says that in the record of this cause there is no such error as alleged

Whittelsey
Atty p. p & resp.

69 ~~[illegible]~~

P. B. Garesche
Pub. Ad. of C Huth

v

Carondelet
Asst. of Errors
Whittelsey
atty p. resp.

Filed 22 Oct. 1857
Wm S Glarville
Ck

Hutchis Adm^x
v
Carondelet

Upon the finding of the Court plaintiff makes the following points & cites the following authorities.

1. The plaintiff was entitled to the relief sought on the ground accident and mistake.

That equity will relieve of forfeiture on the ground of accident.

2 White & Tudor L.C. Pt 2. p 464 Am Ed 1852 Eaton v Lyon 3 Ves. R. 693. Ex parte Vaugh 3 V.R. 434 Peachy v Duke Somerset 2 W & T. L.C. 450. 460 462. Bowser v Colby 1 Hare R. 128. Accident differs this case from that of Taylor v Carondelet 22 Mo. 106

2. The defendant is but a corporation, and the provisoes of its lease, although required by Ordinance, are but contracts and covenants of the parties, as between landlord & tenant.

Major v Bailey 2 Denio R. 443. Grant on Corp. 129.

3. The defendant could not by its ordenance bind any persons who were not subject to its legislative authority, and neither the plaintiff nor his intestate are shown to have been thus subject, and the provisions of the lease are but the provisions of a contract between parties.

Act. 1839 p. 210. sec 2.

The rule therefore, that equity cannot relieve against a statute does not apply to this case.

This case is distinguished from Wordson v Skinner 22 Mo R. 13. as in that case, the forfeiture was prescribed by legislative act.

4. Whether the landlord declare the lease void, or have a right of reentry, equity gives relief.
2 White & T. L. C. p 462.

5. The construction given to the 2d Sec. of Act 1839 p. 210. in 22 Mo. R. 106. in giving so great effect to the Ordinance of Carondelet, destroys the force of the 6th Sec. of same Act. 1839, which subjects the powers of the trustees, to the laws of this state.

By Rev. Code 1845 p. 689. Sec. 19 & 20, a tenant may claim relief in equity, against an entry for the non payment of rent for six months after execution issued & served in ejectment upon the tenant. This act impliedly gives the relief in equity, and Carondelet could not take it away by ordinance, except as against her own citizens, nor even then if the matter rested in contract, and not in mere construction of a legislative act.
See the English Star. 2 White & T. L. C. 462.

The ordinance of the trustees of Carondelet was contrary to the statute.

Whittelsey
Counsel for Plff.

69

Huths Admr

v

Carondelet

Plffs Brief

Whittelsey

Counsel p. q.

Filed 30 March 1858

Wm S Glanville

Ch

69

No 69. Hath: Adm: vs Carondolet

The lease in this case was made under the same law and ordinance, and is precisely similar in all its provisions to the lease in the case of Taylor vs Carondolet (22 Mo. 105), and we do not see how this judgment can be affirmed consistently with the opinion in that case.

The circumstance that the collector of Carondolet, promised the plaintiff to call upon him for the annual rent, and failed to do so, presents a case of hardship, which is more properly addressed to the Corporate authorities in considering an application to have the resolution declaring the forfeiture rescinded, than to the Court. It was the plaintiffs duty to pay the rent, without a demand, and it is his misfortune that he relied on the collectors promise. He ~~acted~~ acted no doubt on assurances that would have misled the most prudent man, but the agent was a mere ministerial officer and it does not appear that he had any power to grant indulgence or to relieve the plaintiff from the consequences of his own, or the negligence of any other person.

If a collector of the public revenue, should promise a person to extend the time for the payment of his taxes, and not to return him a delinquent, but from forgetfulness or any other cause should report the taxes unpaid, which would result in the advertisement or sale of the property for the taxes, it would not be thought that the owner could obtain any relief in the courts. And we do not discover the principle in equity by which the plaintiff in this case can be relieved against a forfeiture which has been held, to be the work of a statute.

All the judges concurring the judgment will be reversed

Mo C Richardson

No 69.

Hath: Adar.

7

Casondolet

Opinion of the Court

Reversed

Filed 24 June 1858.

Wm S Glanville Ch.

Richard Jay

Huth's Admr.
v.
City of Carondelet.

Appeal from Common Pleas

Finding of the Court.

The Court being fully advised of and concerning the premises doth ascertain the following facts

That before the commencement of this suit the defendant as a corporation had succeeded to all the powers, rights and duties of the Board of Trustees of the town of Carondelet — that on the 15 day of March 1845, the said Board of Trustees passed an ordinance (No 78) to lease lots on the Common of said Town the 5 & 6 sections of which ordinance are as follows to wit Sec 5 The leases shall contain a provision to the following effect viz. that should the rent reserved as aforesaid or any part thereof on any lease remain unpaid for 6 months after the same shall become due, the board of trustees may by resolution declare such lease terminated and void, and the same shall expire and be determined from that day. Sec. 6 The leases provided for in this ordinance are to ~~remain~~ contain all the conditions & provisions which the Board of Trustees may think necessary to secure the rent reserved as aforesaid." That under the said ordinance the said Board of Trustees by their duly authorised officers on the 22d day of April 1846, executed and delivered to Charles Huth the lease mentioned in the petition, for the land therein described, which lease the Court finds to be in all respects as stated in the plaintiffs petition — that said Huth in his life time paid the rent reserved in the said lease as it became due to the said Board of Trustees: that the said Huth died in the year 1849 and Du Bonfay Freman who was then Public Administrator of the County of St. Louis on the 22d day of June 1850 took

charge of his estate for the purpose of administering the same & paid to the authorized agent and Collector of the said Board of Trustees the rent reserved in said lease and which had became due up to the 4 April 1850. That on the 10 July 1852 the City of Carondelet passed an ordinance annulling the said lease because the rent therein reserved was in arrear and had been unpaid for more than 6 months after the same became due and payable. That said Freman was ever ready and willing to pay the said rent on account of the non-payment of which said resolution was passed & no demand was made on him for the same, but that Thomas Chartrand then & afterwards being the duly authorised agent of the Board of Trustees for the Collection of the rent ~~according~~ accruing on said lease for the year ending April 4 1851 agreed with the said Freman and promised to call on him and receive the said rent for the said year when the same should become due and payable, yet the said Chartrand failed to do so & by reason thereof the said rent was not paid. That in the latter part of the year 1852 the said Freman tendered to the defendant all the rent which had accrued and became due and payable on said lease for the years ending April 4th 1851 & April 4th 1852, together with interest thereon from the time the same became due up to the time of said tender, & the said Freman has ever been ready & willing to pay the rent reserved in the said lease as the same became due & payable, & offer to pay the same with interest from the respective times the same became due and the said Goresche as the successor of the said Freman in the administration of said Curtis estate has been willing & offers to pay said rent with the

interest thereon. It is therefore ordered & adjudged by the Court that said P. B. Goreschke as the admr. of the estate of said Huth, on the payment of all the rent in arrear on the said lease up to the 4 day of April 1856 with interest thereon at the rate of 6 per cent per annum from the times said rent became due until the time of payment is entitled to redeem the said Leasehold estate from the said forfeiture, and to be restored to his estate therein as the tenant of said defendant.

From this judgment defendant appealed.

p. 187

24 Mo 87