Farrar, James et al. v. David, Nathan

33 Mo. 482

508/2

recovery of property / ejectment

Farrar bought out to Justice of the Peace for alleged unlawful detention of property - termination of a lease

629/4
Sept
March

App
Hart

Resp
Farrar
Lewis Jones
Emmanuel Jewell
Jacob Douglas

/ Shreve

Bales: Judgment affirmed

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State of Missouri }
County of St. Louis } Ss.

Be it Remembered that on the Twelfth day of May in the year of our Lord One thousand eight hundred and fifty nine there was filed in the office of the Clerk of the St. Louis Land Court an application for a Writ of Certiorari to Peter W. Johnstone Esquire one of the Justices of the Peace in the Township of St. Louis within and for the County of St. Louis and State aforesaid.

Which Application is in the words and figures following, to wit:

Application for Writ of Certiorari

State of Missouri }
County of St. Louis } Ss.

To Charles A. Mantz Clerk of the St. Louis Land Court

Nathan David states that one James Farrar Lewis Jones, Emanuel Jewell and Jacob Douglass have sued out before Peter W. Johnstone a Justice of the Peace in the City of St. Louis, County of St. Louis a summons against him for an alleged "Unlawful Detainer" of the following described premises to wit a lot of ground Beginning at the South East corner of a lot of ground leased by Charles M. Valleau to James Farrar and others named in said lease running thence along the Southern line of said lot in a Westwardly direction sixty feet running thence in a northerly direction forty eight feet thence eastwardly to an alley sixty feet thence running along the western line of said alley forty eight feet to the place of beginning

Said Nathan David further says that the said Complainants Farrar Jones Jewell and Douglass are not entitled to recover the possession of the said premises described in the complaint before the said Justice and therefore prays that a Writ of Certiorari may issue directed to said Peter W. Johnstone Justice as aforesaid commanding and requiring him

to stay all further proceedings in said case and to certify a complete Transcript of his Docket entries and all proceedings had before him in said case together with the original papers filed in said cause and file the same in the Office of the Clerk of the St. Louis Land Court as provided for and according to the Statute Law of this State in such cases required.

Said Nathan David herewith files a true and perfect copy of the Complaint filed before said Justice in said case.

Nathan his X mark David

State of Missouri
County of St. Louis } Nathan David the above applicant and the defendant in the above case before Peter W. Johnstone Justice of the Peace being duly sworn upon his oath says that the above and foregoing application and the matters and things as therein stated are true.

Nathan his X mark David

Sworn to and subscribed before me this 12th day of May 1859

C. A. Mantz. Clerk.

(For "Copy of the complaint herewith filed" See "Transcript papers" from the Justice. See pages 4. 5 & 6 of this Transcript. Clerk)

And afterwards "to wit" on the same day there was filed in this cause a Bond.

Which Bond is in the words and figures following. to wit:

Bond

State of Missouri
County of St. Louis } ss. We Nathan David as principal and John R. Jungling as security acknowledge ourselves indebted to James Farrar Lewis Jones, Emanuel Jewell and Jacob Douglass in the sum of One thousand Dollars

3 upon this condition That whereas Nathan David has this day besought of the Clerk of the St. Louis Land Court a writ of Certiorari to Peter W. Johnstone a justice of the Peace in St. Louis City and County requiring him to certify up to said Land Court a certain cause now pending before said justice being an action of Unlawful Detainer at the complaint of James Farrar Lewis Jones Emanuel Jewell and Jacob Douglass against said Nathan David. Now if the said Nathan David will not commit or suffer any waste or damage to be committed on the premises sued for and that he will pay all rents and profits damages and costs that may be adjudged against him and otherwise abide the judgment of the St. Louis Land Court then this bond shall be void and of no effect otherwise to be in full force and effect.

Approved May 12th 1859 } Nathan his x mark David
C. A. Mantz, Clk } John R. Jungling

Upon the filing of the above and aforesaid application Complaint and Bond the Clerk then issued a Writ of Certiorari to Justice Johnstone in the words and figures following, to wit:

Writ of Certiorari

The State of Missouri

To Peter W. Johnstone Esqr one of our Justices of the Peace within and for the County of St. Louis - Greeting -

Whereas it has been represented to our Land Court within and for the County of St. Louis that there is now pending before you a suit for an unlawful detainer wherein James Farrar Louis Jones, Emanuel Jewell, Jacob Douglass are complainants and Nathan David defendant and the said Nathan David the defendant having filed the affidavit and bond with the Clerk of said Land Court which the law requires; You are therefore commanded to stop all further proceedings in said cause, certify to our said Land Court a complete transcript of your docket and all proceedings

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had before you together with the original papers filed in the cause aforesaid and file them in the office of the Clerk of our said Land Court within ten days after the service of this writ and certify hereon how you have obeyed our commands

In witness whereof I Charles A. Mantz, Clerk of the Land Court aforesaid have hereunto signed my name and affixed the seal of said Court at office this 12th day of May 1859

Seal

Charles A. Mantz, Clerk.

Upon which Writ the Sheriff of St. Louis County made his Return in the words and figures following, to wit:

Shff's Return

Executed this Writ in St. Louis County on the 12th day of May 1859 by delivering a copy of the same as furnished by the Clerk to Peter W. Johnstone one of the Justices of the Peace of St. Louis County

Michael A. Leve Shff
By Geo. N. Stevens Dy.

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

March Term 1859
Saturday May 14th 1859

Transcript from Justice filed

James Farrar, Lewis Jones, Emanuel Jewell, Jacob Douglass } Transcript from Justice Johnstone, filed in this cause.
vs
Nathan David

Which Transcript from Justice is in the words and figures following, to wit:

Justs Transcript (compld)

James Farrar Lewis Jones, Emanuel Jewell, Jacob Douglass. agst,

5 Nathan David Deft.

Plaintiffs state that they are lawfully entitled to the possession of the premises which are unlawfully withheld from their possession by the defendant Beginning at the South East corner of a lot of ground leased by Charles M. Valleau to James Farrar and others named in said lease running thence along the Southern line of said lot in a westerly direction sixty feet running thence in a northerly direction forty eight feet thence Eastwardly to an alley sixty feet thence running along the western line of said alley forty eight feet to the place of beginning -

Plaintiffs state that Defendant wilfully and without force holds over said premises after the termination of the time for which the same were let to him and after demand made in writing by the persons entitled to the possession thereof for such possession - that said lease expired on the first day of August 1858.

Plaintiffs asks judgment for the delivery of the possession of the premises and for twenty five dollars rents for the same per month from the expiration of said lease and for five hundred dollars damages.

Shreve & Boyce Attys Plaintiffs.

Personally appeared Pl.f Jones who states he believes the above complaint and matters as stated therein to be true.

Lewis Jones.

Sworn to and subscribed before me this 7th day May 1859.

P. M. Johnstone Justice.

(Notice) To Nathan David.

This is to notify you that We demand the delivery of the possession of the premises occupied by you, beginning at the S. E. corner of Lot of ground leased by Charles M. Valleau to Farrar and others, running thence along the southern line of said Lot westerly sixty feet running thence in a northwardly

direction forty eight feet thence Eastwardly to an alley sixty feet thence along the Eastern line of said alley forty eight feet to the place of beginning, in the City and County of St. Louis, and you are also notified to quit the possession of said premises your lease having expired.

Lewis Jones

St. Louis May 7th 1859 for self and agent of Co-lessors.

(Upon which notice is endorsed the words and figures following, to wit:

Clerk)

Executed this Notice by offering to Deft a copy of same, which he refused to receive.

Done in St. Louis Township this 7th day of May 1859.

Geo W. Manning Const.

By J. C. Adams Deputy.

(There is filed with the above and foregoing papers a Lease between James Farrar et ali and Nathan David for which Lease see "Bill of Exceptions."

Clerk)

(Docket entries)

James Farrar and others } Unlawful Detainer.
vs
Nathan David }

Summons and Venire issued to Constable Manning on the 7th day of May 1859. Returnable on the 13th day of May 1859 Venire Returned executed. Now on this 12th day of May 1859 a Writ of Certiorari was served upon the Justice ordering him to certify his proceedings with all the papers in the case to the St. Louis Land Court.

Justice fees 1.50
Constable 2.25

State of Missouri }
County of St. Louis } ss. I Peter W. Johnstone a Justice of

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the Peace in and for said County do hereby certify that the foregoing is a true Transcript of the Docket entries in the above case and that the papers hereto attached are all the papers on file in my office in said case.

Given and certified by me this 12th day of May 1859 Peter W. Johnstone Justice of the Peace.

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

March Term 1860.

Friday May 4th 1860.

Trial by Court Judgt.

James Farrar, Louis Jones, Emanuels Jewell, Jacob Douglass vs Nathan David } Judgment

Now at this day come said parties by their respective attorneys, and thereupon this cause coming on to be heard, and no jury being required by either party, this cause is tried by the Court upon the complaint, pleadings, evidence and proofs, adduced, and the Court, ~~and the Court~~ having heard and being fully advised of and concerning the premises, doth find the issue herein joined in favor of the Plaintiffs herein, and doth assess the damages of the Plaintiffs for Five Hundred and eighty dollars and the monthly value of the rents and profits of the premises herein at twenty five dollars, from this date until restitution of the premises is made, It is therefore Ordered and adjudged by the Court, that the Plaintiffs recover of said defendant, the possession of the premises described in the complaint, Beginning at the South East corner of a lot of ground leased by Charles M. Galleau to James Farrar and others named in said lease running thence along the southern line of said lot in a westerly direction sixty feet running thence in a northerly direction forty eight feet thence Eastwardly to an alley sixty feet thence running

along the western line of said alley forty eight feet to the place of beginning — And also that said Plaintiffs recover of said defendant and John P. Jungling, the security on the bond herein, the damages and monthly rents and profits aforesaid, in form aforesaid, as assessed; and also their costs and charges herein in this behalf expended and have a Writ of Restitution issue therefor.

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

Saturday May 5th 1860.

Mo for New Trial filed

James Farrar et ali vs Nathan David } Motion for New Trial filed in this cause.

(For which motion for new Trial "See "Bill of Exceptions." Clerk)

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

Saturday May 26th 1860.

Mo for new Trial overruled

James Farrar et ali vs Nathan David } Now at this day, the Court being fully advised of and concerning the motion heretofore filed in this cause, for a new Trial, doth order and adjudge, that said motion be overruled.

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

Monday June 18th 1860.

Bill of Exc'ns filed

James Farrar et ali vs Nathan David } Bill of Exceptions filed in this cause.

Bill of Exc.

Which Bill of Exceptions is in the words and figures following, to wit.

James Farrar et al
vs.
Nathan David

Be it Remembered That on the trial of this cause said cause coming on to be tried the parties respectively elected to have the same tried by the Court without a jury, whereupon the Plaintiffs to maintain their suit in that behalf introduced a certain lease which it was admitted and agreed by and between the plaintiffs and defendant was a duplicate of the lease signed by the said plaintiffs and said defendant, which said lease being read in evidence is in the following words.

Lease betn. Pffs & Deft.

This Lease made and entered into in duplicate this first day of June Eighteen hundred and forty nine, between James Farrar, Lewis Jones, Emanuel Jewell and Jacob Douglass of the first part and Nathan David of the second part in consideration of the covenants, agreements and stipulations here in after mentioned, as well as for the yearly rent of eighty four dollars to be paid in quarterly instalments - that is on the first of August next the sum of fourteen dollars and on the first of November next the sum of twenty one dollars, and on the first day of February, May, August and November in each and every year following alike Sum of twenty one dollars, do by these presents Lease, let and to farm to the said party of the second part for the term of nine years and two months, which term begins on the first day of June 1849 and ends on the first day of August 1858. the following described lot of ground, Towit: Beginning at the South east corner of a Lot of ground this day Leased by Charles McVallean to said James Farrar and others named above, running thence along the Southern line of said lot in a Westwardly direction fifty four feet, thence running Northwardly forty

eight feet, thence running Eastwardly to an alley fifty four feet; thence running along the western line of said alley (which is thirty feet wide) forty eight feet to the place of beginning. And the said party of the second part for himself and his legal representatives hereby covenants with the Lessors, their heirs and legal representatives to pay said rent as aforesaid with six per cent interest thereon from the time the same falls due untill paid, and also to pay all taxes, rates and assessments of every description, nature and kind whatsoever, which may legally be required or demanded of said premises from time to time whether general or special tax, and to answer to all lawful requirements of the City authorities. It is further understood and agreed that if said Lessee or his representatives shall make default in the payment of any sum of money to become due by reason of the premises in whole or in part, and shall continue so in default for a period of ten days thereafter, or shall fail to keep or perform any covenant herein, that any such default or non performance (at the option of said Lessors or their representatives) shall be a failure of this Lease, and the same shall cease, be utterly forfeited and null, and said Lessors, or their representatives may forthwith take possession of said premises as of their former estate without process of Law and be entitled thereto as if this lease had never been made, The said Lessors, or their representatives shall not be required to assert claim or enforce their right to a forfeiture of this Lease immediately on the occurrence of the cause entitling them thereto, but may claim and enforce such right at any time thereafter. It is further understood and agreed between the parties hereto that at the end of the term of this Lease, if it shall so long continue, and all the covenants and agreements shall have been faithfully kept and observed that said Lessee aforesaid, or his legal representatives, shall have the privilege of purchasing said ground at its appraised value by giving a note for amount of valke thereof payable August the first 1890, and by giving

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separate notes for the interest thereon payable quarterly at the rate of six per cent per annum, all of which said notes for principal and interest shall be secured by Deed of Trust upon said premises conditioned for their prompt payment as each of them shall fall due. The value of said premises to be determined as follows. - Each of the parties hereto shall choose one disinterested freeholder of Saint Louis who shall appraise the value of said ground without improvements, and in case the two so chosen shall not agree they shall choose a third of like qualifications with themselves and the award of said appraisers, or a majority of them shall be taken and admitted as the value of said ground, and in case the party of the second part shall refuse or neglect to purchase said ground at the time and upon the terms herein specified then, in that case, all buildings, erections or improvements made or erected upon said ground during the term of this Lease shall remain and be the property of said Lessor or their legal representatives. This lease shall not be transferable without the written consent of said party of the first part or their representatives.

In witness Whereof the said parties have hereunto set their hands and seals the day and year first herein written.

James his X mark Farrar (Seal)
Lewis Jones (Seal)
Emanuel his X mark Jewell (Seal)
Jacob his X mark Douglass (Seal)
Nathan his mark David (Seal)

Attest. Joseph Tabor,

State of Missouri }
County of St. Louis } SS. Be it remembered, that on this ninth day of August A. D. Eighteen hundred and fifty before the undersigned a Justice of the Peace within and for the County aforesaid, came James Farrar, Lewis Jones, Emanuel Jewett, Jacob Douglass and Nathan David, who are all personally known to me to be the same persons whose

names are subscribed to the foregoing Instrument of writing as parties thereto, and they severally acknowledged the same to be their act and deed for the purposes therein contained.

Taken and certified by me this 9th August 1850

Wm. W. Kitzmiller Justice of the Peace

Jack Sanders Sworn;

And the Plaintiffs further to maintain their said suit introduced a witness Jack Sanders, who testified as follows. I know the property in question, James Farrar, Stephen Woodly and Lewis Jones are the trustees of the Church and are in possession and have been for a long time cant say how long, The house on the premises contains eight rooms, and it worth $25.00 a month, We paid rent to Jonas Moore, who owned the property described in the lease, I dont know how much rent was paid. We paid for the whole of the property, our rent was payable quarterly. The lease was from Moore to the Trustees of the Church.

Cross Examined.

We call the Church the James Farrar Church. It's the African Methodist Episcopal Church, The first lease was forfeited. We redeemed it and then took a new lease from Mr Moore. The lease was to James Farrar, Stephen Woodley and Lewis Jones as trustees David paid us rent afterwards, but has paid none for over two years. I dont know who built the improvements on David's lot the premises in question.

The plaintiff also proved by witness Jack Sanders that the property in question was rented to Defendant and occupied by him from the date of the lease and that rent was demanded from him by the Plaintiff and he refused to pay it declaring he would have nothing to do with them that it was niggers work Jones doing, and that defendant continued to occupy the premises.

Stephen Woodley's Test.

Stephen Woodley a witness called for

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plaintiff testified as follows. The parties to the first lease rented the premises to David. David has not paid any rent since August 1st 1858 when his lease expired. According to our first lease our rent was $4 a foot, since then it has been $6 a foot. The property is worth $25 a month.

Cross Examined.

I do not know what became of the first lease. Douglas moved away and Jewell withdrew from the Church. The first lease which was from Valleau was about 12 years ago and was to Farrar, Jones, Jewell and Douglass. The only lease I know anything about is the Moore lease. I was in the second lease and acted under it. I dont know of any forfeiture of the first lease. We received the rent from David up to August 1st 1858. This receipt (shown witness) is the receipt given to David in full for rent up to August 1st 1858

Receipt of N. David

First M. E. Church

August 4th 1858 $21.00

Received of Nathan David twenty one Dollars for three month ground rent due the first of August

Stephen Woodley a Trustee.

S. Woodley's Ex'r cont'd

I dont know who put up and paid for the house on the premises occupied by David. David said he would not pay any more rent money as he wanted to buy the property under the lease - this was after the 1st day of August 1858 - When I demanded rent of David at the rate of $25 a month. David did not say anything about having appraisers appointed, nor did I say anything about having appraisers appointed.

Re-Examined

When I went for the rent with a Note to David - he said this was some of Jones writing - niggers doing and he would have nothing

to do with it— Didn't say he would have nothing to do with plaintiffs— He said he had money enough to law them with and would stay there ten years and not pay them a cent of rent money — Took David a notice after the Lease expired He would not accept it — I dont know of his ever having given a Note for the purchase of the premises.

Cross Examined

I was never instructed to tell David he could buy the premises.

Jas. Wallace's Test:

James Wallace testified for defendant — I know defendant and know the premises (The defendant was here about to prove by the witness that David put upon the premises a large amount of improvements in the shape of buildings at his proper cost during the term of his lease, when the plaintiffs admitted the fact and waived the necessity of farther proof on that point)

The Trustees under the first lease Jones, Jewell and Douglass, leased the premises in question to David — Farrar, Jones and Woodly were the Trustees in the second Lease, and were Trustees when David's Lease was out August 1st 1858. The Trustees under the first Lease forfeited the same — several years

E. Jewell's Test:

Emanuel Jewell testified for Defendant — I am one of the nominal plaintiffs, and was one of the parties to the original Lease — I didn't authorize this suit — did not know anything about it — I have not had any right or claim to the premises in this suit for several years. I never authorized any body to bring this suit in my name — I do not claim any right to possession against David David told me several times he wanted to stand by his contract of purchase

I know nothing of the Defendant having any right to purchase the property. I was one of the Trustees of the Church,

Others, to wit Woodly and Farrar were Trustees by succession in the Church. About four months after the expiration of David's Lease he told me that he wanted to purchase the premises under his Lease and would hold us to the contract.

The above was all the evidence produced by either party on the trial.

6 instructions being asked by the plaintiffs. The Court gave the following instructions for defendant.

Defts Instrs

1. If the continuance of Defendant to hold and occupy the premises after the determination of his term, was with the consent of the Lessors, either express or implied, Plaintiffs cannot recover in this suit.

Given. May 4th 1880. E. B. Ford

2. If Defendants possession of the premises after the determination of the term, was in the character of purchaser under a contract to purchase, and not as lessee, and possession in such character of purchaser was with the consent of the Plaintiffs, then the Plaintiffs cannot recover in this form of proceeding.

Given. May 4th 1880. E. B. Ford

The following instructions asked by defendant were refused by the Court,

Refused May 4th 1880. E. B. Ford.

Upon the evidence the Plaintiffs cannot recover in this form of proceeding.

Refused May 4th 1880. E. B. Ford.

The demand of notice to quit being on the same day of the institution of this suit under the evidence of this case the plaintiffs cannot recover.

Refused May 4th 1880. E. B. Ford.

If being shown by the evidence that at the time of the notice to quit and institution of this suit, Emanuel Jewell one of the Plaintiffs had retired from the Trust and relinquished his right and title to the property in dispute to other trustees - the Plaintiffs are not entitled (to) recover.

Bill of Exep.

and the fact that Defendants Counsel then and there excepted to the ruling and decision of the Court.

Thereupon the cause was submitted to the Court.

(For "Finding & Judgment of the Court" See pages 7 and 8 of this Transcript. Clerk)

Afterwards and within four days of the same term the defendant moved the Court to set aside the finding and Judgment of the Court and to grant a new trial

Mo. for New Trial

James Farrar. Lewis Jones
Emanuel Jewell & Jacob Douglass Plffs. } In the St Louis Co
vs.
Nathan David Defts } 2nd Court

And now comes the Defendant by his Counsel Henry N. Hart, and moves the Court here to set aside the judgment rendered in the above entitled suit and to grant a new trial in said cause and assigns for reason.

1st That the Court erred in giving judgment for the Plaintiffs and against said defendant in said suit;

2nd Because the plaintiffs by their own showing were not entitled to recover in said suit.

3d Because the judgment of the Court in said suit is against the evidence and the weight of evidence.

4th Because the judgment rendered in said suit was against law.

5th Because the Court erred in refusing the instructions asked by defendant.

6th Because the complaint was insufficient to authorize or warrant the judgment rendered in favor of said plaintiffs.

Henry N. Hart

Bill of Exc.

Attorney for Defendant.

Afterwards of the same October Term the said motion coming on to be heard.

(For "which judgment of the Court overruling the motion" See page 8 of this Transcript. Clerk)

To which defendants counsel then and there excepted to the ruling of the Court overruling the motion.

Thereupon the cause being submitted to the Court found for the plaintiffs

(For judgment of the Court. See pages 7 & 8 of this Transcript. Clerk)

Afterwards of the same term and within four days the defendant move the Court to set aside the finding and judgment of the Court and to grant a new trial -

(For "motion & grounds" See page 16 of this Transcript. Clerk)

And the said motion afterwards to wit of the same term coming on to be heard.

(For "decision" See page 8 of this Transcript. Clerk)

of Court overruling the motion and the fact that defendants counsel excepted to acts, opinions, decisions and rulings of the Court - and tenders the above bill of exceptions.

C. R. Lord.

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

Monday July 2nd 1860.

Affidavit for Apl filed Apl. granted & Bond filed

James Farrar et alé
vs.
Nathan David

Appeal to the Supreme Court.

Now at this day there is filed in this cause an affidavit for an appeal, and on motion of the attorney for the defendant, an appeal to the Supreme Court is granted him from the

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decision herein rendered, and thereupon he files herein, a bond as required by the Court, in the sum of Sixteen hundred dollars, with Nathan David as principal and Edward Stock and Henry N. Hart as sureties, which is approved by the Court.

Which affidavit for Appeal and Bond are in the words and figures following, to wit;

Affidavit for Appeal

James Farrar Etal Plaintiffs
vs.
Nathan David Defendant
} In the St. Louis Land Court, St. Louis County, SS

Nathan David defendant being duly sworn upon his oath says that the appeal in the above entitled cause was not made for vexation or delay but because he believes that he is aggrieved by the judgment or decision of the Court

Nathan X David

Sworn to and subscribed before me this day of June A. D. 1860.

L. Seal

Herman A. Haeussler Notary Public

Bond

Know, all men, by these Presents, That we Nathan David as principal, and Edward Stock and Henry N. Hart as sureties are held and firmly bound unto James Farrar in the sum of Sixteen Hundred 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 2d day of July A. D. 1860.

The condition of the above Obligation is such, that whereas Nathan David has appealed from the judgment rendered against him and in favor of James Farrar Louis Jones Emanuel Jewel and Jacob Douglass in the St. Louis Land Court, for the sum of Five Hundred and eighty Dollars and $25 monthly rents, together

with costs. Now if the said appellant will pay all costs and damages that may be awarded against him occasioned by such appeal; and shall prosecute his appeal; and shall perform such judgment as shall be given by the Supreme Court, and such as the Supreme Court may direct the St. Louis Land Court to give; and shall, if the judgment or any part thereof be affirmed, comply with and perform the same so far as it may be affirmed; and pay all damages and costs which may be awarded against him by the Supreme Court, and neither commit or suffered to be committed any waste or damage on the premises, then this obligation shall be void, otherwise it shall remain in full force and effect.

Nathan his / David (Seal)

Approved by the Court July 2d 1860 — Edward mark Stock (Seal)

E. N. Tracy Clk — Henry N. Hart (Seal)

State of Missouri }
County of St. Louis } ss.

I, Edward N. Tracy, Clerk of the St. Louis Land Court within and for said County, certify the foregoing Transcript to be a true and correct copy of the Transcript and paper from Justice Johnstone (except the Venire and Summons) and of the Record and proceedings had (as required) in the St. Louis Land Court, in the case of James Farrar and others plaintiffs and Nathan David 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 Twentieth day of September A. D. 1860.

Edward N. Tracy, Clerk.

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Mo for New Trial filed. Mo overruled & Bill of Exc. filed. " 8.
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6500 words $9.75

Certificate .50

$10.25

(4) No 34

March Term 1863

~~9~~ 183 ~~XXV~~ ~~190~~ ~~191~~ ~~294~~

James Farrar and others,
respondent.

vs.

Nathan David,
appellant.

M. E.

Land Court.

L. M. Threve Atty for Elff

H. N. Hart Atty for Deft.

Filed 28th September 1860.
W. J. Hanville
Cl.

Affd D157

James Farrar. Lewis Jones
Emanuel Jewell & Jacob Douglas. } Supreme Court of the
Respondents } State of Missouri
vs } March Term 1863.
Nathan David
Appellant }

Statement of Case & Brief on behalf of Appellant by his Attorney Henry S Hart.

This is a complaint filed before Peter W Johnstone a Justice of the peace within & for St Louis County on behalf of James Farrar. Lewis Jones. Emanuel Jewell & Jacob Douglass against Nathan David for an unlawful detainer of a piece of ground in the City of St Louis which they the said complainants alledge David unlawfully holds over & gainst them after the determination of the time the same was let to him. the suit was instituted on the 7th day of May 1859 on the 12th day of May 1859, David applied to the Clerk of the St Louis Land Court for a writ of Certiorari to issue to said Johnstone which was granted and the cause of action removed thereby to the Land Court. the facts proven by the respondents to maintain their case are as follows. that in the year 1849 the respondents acting as Trustees of the African Methodist Episcopal Church leased a piece or parcel

of ground - that a portion of said ground they the said respondents sublet to the appellant for the period of Nine Years & two months to commence on the 1st June 1849 & to terminate on the 1st day of August 1858 at the price of four dollars a foot per annum, with the privilege to said Nathan David at the end of said term of Nine Years to purchase the said premises from the lessors in the following manner. the said premises as to value may to be determined as follows. Each of the parties hereto shall choose one disinterested freeholder of St Louis who shall appraise the value of the said premises without the improvements thereon and in case the two so chosen shall not agree they shall choose a third of like qualifications with themselves and the award of said appraisers or a majority of them shall be taken & admitted as the value of said ground - and in case the said Nathan David party of the second part shall neglect or refuse to purchase said ground at the time and upon the terms herein specified then and in that case all the buildings erections and improvements made or erected upon said ground during this lease shall remain and be the property of said lessors or their legal representatives - Under this lease

Nathan David entered & made considerable improvements thereon by building &c and promptly paid the rent thereof during all the time to wit from the 1st June 1849 to the 1st August 1858 inclusive, it also appears by the evidence that during this time the respondents forfeited their lease. that a portion of them withdrew from the Church to wit Emanuel Jewell & Jacob Douglas That Stephen Woodley with James Farrar & Lewis Jones two of the respondents were elected Trustees of said Church & that thereupon the said Woodley. Farrar & Jones as such Trustees redeemed the property and took a new lease from one Moore - it appears from all the evidence that at no time did Nathan David refuse to purchase the premises but on all occasions declared he was ready to fulfil his contract of purchase, it also appears from the evidence and in no way or manner contradicted - that the complainants did fail & refused to comply with the conditions & Covenants to sell to David - but on the contrary demanded of Nathan David twenty five dollars a month from the said 1st day of August 1858 which he David rightly & justly spurned & refused always declaring his right to purchase from that date and not liable to pay rent thereafter this state of things went on until the 7th day of May 1859. when a notice was served on David

not in the name of the New Trustees of this Church - but in the name of the Respondent demanding possession of the premises held on the same day instituted proceedings before the said Justice Johnstone agt David for an alleged unlawful detainer of the same - judgment was rendered in favor of respondent agst David upon the foregoing state of facts in the St Louis Land Court - motion was in due time made for a new trial which being overruled, this case now comes before this Hon Court by Appeal

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The change in the complaint is that Nathan David holds over the premises after the termination of the time for which they were let to him and after demand made in writing for the possession thereof to the persons entitled to the possession of the same. the notice referred to is signed Lewis Jones for self and agent for Co Lessors. is served on Nathan David the same day the suit is instituted - We say that the provisions of the statute in such cases "And after demand made in writing for the delivery of the possession thereof by the person having the legal right to such possession his agent or attorney"

means a reasonable demand - and that in this case a notice in writing or demand in writing on the same day & time of the bringing this suit - is not such a notice as is contemplated by Law - it must be as to time reasonable

Let us for a moment look at the evidence in this case it presents to my mind a clear case in favor of David - and upon no hypothesis can I account for the finding and judgment of the Land Court either on the law or facts of the case -

The first witness introduced by the plaintiff to support his case is Jacob Sanders - his testimony which will be found on page 12 of the record is that Farrar Woodley & Jones are the Trustees of the Church - that they leased as trustees of the African M. E. Church - the lease was from Moore to the Trustees of the Church - he says the first lease was forfeited and that then they Farrar Woodley & Jones redeemed it & took a new lease from Moore - this evidence is confirmed by the testimony of one of the respondents Emanuel Segell who was introduced by David as a witness his testimony will be found on page 14 - he states that he never authorised this suit - that he did not know anything about it - that he has not had any right or claim to the

premises in this suit for several years that David told me several times he meant to stand by the contract of purchase. also to the same point is the evidence of James Wallace on page 14. he says Farrar Jones & Woodley are the Trustees in 2d lease and were trustees when David's lease run out on the 1st August 1858 - The Trustees under the 1st lease forfeited the same several years ago. -

The second & only other witness for plaintiff is Stephen Woodley. page 15. he says the parties to 1st lease rented the premises to defendant - he does not know of any forfeiture of 1st lease. he received the rent in full up to 1st August 1858.

He further says David said he would not pay any more rent he wanted to buy the property

again he say When I demanded the rent from David at Twenty five dollars a month David did not say anything about having appraisers appointed nor did I say anything about it myself

on page 14. this witness states - David did not say he would have nothing to do with

Plaintiffs - he said he had money enough to law them with & would stay there ten years & not pay a cent of rent he It is admitted that David put large improvements on the property.
I think I have given a full statement of the evidence - and what does it in reality establish.
1st It establishes that these respondents had for many years before the expiration of the lease to David - forfeited their right to possession of the same
2d That long before & at the time of the expiration of the lease to David and at the time of the bringing of this suit Farrar Jones & Woodley were the lessees of the premises as Trustees of the African Church the former lessees Farrar Jones Lenard & Douglas (respondents herein) having forfeited the lease under which they held.
3rd That David never refused to purchase the premises - but on the contrary declared his determination to stand by & fulfil the covenant to buy & all contained in said lease
4th That the respondents would not fulfil the contract to sell.
5th That after David had expended his earnings to improve the property they the respondents seek to recover poss.

session of the property in total violation of the covenants & agreements in said lease and without a shadow of right in them and without any legal notice or demand even if they had a colorable right to possession.

The court was asked found against the law given. three instructions are as follows

Instructions given.

1st. If the continuance of defendant to hold and occupy the premises after the termination of his term was with the consent of the lessors either express or implied Plaintiffs cannot recover in this action

2d. If defendants possession of the premises after the determination of the term was in the character of purchaser and not as lessee and possession in such character of purchaser was with the consent of the plaintiffs then the plaintiffs cannot recover in this form of proceeding

in connection with these instructions. I had passed over calling the Courts attention to the fact that after the 1st August 1858. the demand of defendant David was Twenty five dollars a month

We complain of the Court below in refusing to give the instructions following

1 as to the notice or demand for possession that instructions reads as follows

"The demand of notice to quit being on the same day of the institution of this suit under the evidence of this case the plantiffs cannot recover

as to the whole case

2. Upon the whole case the plantiffs cannot recover in this action

as to the parties plantiffs

3 It being shown by the evidence that at the time of the notice to quit and institution of this suit Emanuel Jewell one of the plantiffs had retired from the trust and relinquished his right and title to the property in dispute to other trustees - the plantiffs are not entitled to recover

Inspectfully refer the court to the case of Young vs Ingle & Schribner 14. Mo 426

and in conclusion will say that I consider this case but the result of a bad & corrupt move on the part of Jones & Woodley who would seek to evict a man from his premises without any recompense therefore by a sham proceeding. To let this judgment stand against defendant would not only wrong him out of his just rights under a solemn contract to sell on part of plaintiffs ~~land~~ to purchase on his part which he always was willing and anxious to fulfil. ~~to~~

The damages is at the rate of 50 dollars a month & the rents & profits fifty Dollars a month. all of which we complain as iniquitous in the extreme

Hugh McHarg
for appellant

Supreme Court
of Missouri

Farrar et al
respondents

vs

Nathan David
appellant

Statement & Brief
By H. Hart
for appellants

Filed March 31. 1863
A. W. Mead
Clk

[12]

Lt. Shreve for Respt
H. N. Hart for Appt

James Farrar & others Respts. } Appeal from
" } Land Court
Nathan David Appt

This is an action for unlawful detainer
At the trial the defendant claimed the right to hold over after the termination of a lease to him, under a clause in the lease giving him the privilege to purchase the land, but as the Court gave all the instructions he asked on that subject, and no instructions were given for the plaintiff.
The Court refused three other instructions asked by the defendant. The first was "upon the evidence the plaintiff cannot recover in this form of proceeding". We suppose that it is not expected that we will review this instruction. We do not weigh the testimony.
The second was, "The demand of notice to quit being on the same day of the institution of the suit, under the evidence in this case the plaintiff cannot recover".
Without looking into other questions which might be involved in a consideration of this instruction, it is sufficient to say that it was improper in that it required the Court to assert as a fact that the demand was made on the "same day of the institution of the suit".
The third was "It being shown by the evidence

that at the time of the notice to quit and institution of this suit Emanuel Jewell one of the plaintiffs had retired from the trust and relinquished his right and title to the property in dispute to other trustees the plaintiffs are not entitled to recover".

This instructions also required the Court determine matters of fact and also required the consideration of a question of title, which is not to be considered in this form of action.

Judgment affirmed

Barton Bates

Judge Bay & Dryden concur.

Parrar &c
vs
David

Opinion
Affirmed
Bates

Filed April 10. 1863
A.W. Mead
Clk

James Farrar applt.
vs.
Nathan Laird Respdt } In Supreme Court Mo
March T. 1862

Now comes the Respdt. And moves the Court dismiss this cause or affirm the judgment rendered in the St Louis Land Court for want of errors assigned as requires the Statute

Shreve
for Respondent

183

James Farran

v

Nathan David

Filed April 24, 1862
A W Mead
Clk

Mo. to dismiss appl

or

affirm judgt.

Hannah
vs
Nathan David

The ~~record of~~ transcript of the record of this cause was filed in this Court on the 28th day of September 1860. & at Several different terms of the Court, Causes from the same Circuit have been set for hearing and yet no assignment of errors has been filed.

The Respondents now move for an affirmance of the judgment or dismissal of the appeal.

By the 23d section of the 144th article of 'Practice in Civil Cases' Revised Code page 1295, they are entitled to have the motion granted.

Judgment affirmed

Barton S Bates

Judges Bayly & Brydew concur.

183

Farrar &c
vs
N David
= = = = = = =

Opinion

On Respondents' motion
Judgt affirmed
Benton Bates

Filed April 25. 1862
H W Head
Clerk

James Farner et al
vs Respdt
Nathan David Appellt

IN SUPREME COURT,
March TERM, 1862

AND now comes the said Nathan David Appellant and says that in the record and proceedings of the Court below, in the above entitled cause, there is manifest error, and for error said Appellant assigns the following, to wit:

1. That said Court admitted improper and illegal testimony offered by Respondents
2. That said Court rejected proper and legal testimony offered by Appellant
3. That the Court gave to the Jury improper and illegal instructions.
4. That the Court refused to give to the Jury proper and legal instructions offered by Appellant
5. That the verdict was against the evidence.
6. That the verdict was against law.
7. That the verdict was against both law and evidence, and against the law under the evidence.
8. That the verdict was against the weight of evidence.
9. That the judgment was rendered in favor of the Respondents when it should have been rendered for the Appellant
10. That said Court overruled the motion for a new trial, made by Appellant

Henry N. Hart
Atty for Applt.

The Respondent joins in the errors assigned & says no such error appears —
L M Shreve

No 183.
Supreme Court
March T. 1862

James Farrer
Respdt

vs

Nathan David
Applt

Assignment of Error

Filed April 26, 1862
Henry N Hart
for Applt

In the Mo. Supreme Court.
March Term. 1862.

James Farrar, Respondent
vs.
Nathan David, Appellant.

It is agreed that the judgment of affirmance in this case may be set aside, and error may be now assigned & filed.

L M Shreve
atty Respondt

April 25. 1862.

A. N. Hall
for A. Hamilton, for Appellant.

No. 183.

James Farrar, Respt.

v. } Agreement.

Nathan Dain D. Appt.

Filed April 26. 1862

James Farrar and others
Trustees African Church
vs. Respondents
Nathan David
Appellant

In Supreme Court Mo.
Mch Term
A D 1862.

This action was brought for the unlawful detainer of leased premises after the termination of the time for which they were demised.—

The Respondents were trustees of the Methodist African Church; as such leased the premises for ten years from the owner Jonas Moore, and sublet the same to appellant for nine years and two months from 1st June 1849 to 1st August 1858 at an annual rent of $84.00 payable quarterly. The Respondents were in possession under Moore up to the lease made to Appellant. The appellants occupied from that time to the institution of this suit on 7th May 1859 paying rent as provided in the lease.— By the terms of the lease at its expiration 1st August 1858 the appellant was entitled to purchase the premises at an appraised value, to be determined by appraisers mutually selected— Any failure to comply with the conditions of the lease by the appellant (to appraise among others) worked a forfeiture— The Lease expired No appraisement was had— The Respondents after several interviews, demanded the possession of the premises in writing, the Appellants refused to hear the demand, or to deliver the premises, and Respondents immediately commenced this action, proved these facts upon the trial

in the Land Court, to which Court the Cause was taken by Certiorari,— The only pretence of compliance with the terms of the lease by the appellant was that four months after the lease expired when the Respondents were urging the surrender of the premises the appellant said he wanted to buy the premises, but owned pay nothing and had money enough to law the Church for ten years.

The Instructions asked that if Respondents regarded appellant as bound of the premises, or consented to his occupation after the lease expired as purchaser, were given although there was no proof to warrant them — The Instructions refused, were that the Respondents could not recover — and that because the suit was commenced the same day the notice of demand was given, that the Respondents could not recover —

The Court granted a judgment for the rent due under the Lease and the monthly value of the premises as proved by the testimony —

Respectfully submitted
G W Stone
for Respondents

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Jas Farrar
& others

vs.

Nathan David
Respondent

Filed May 19. 1862
A W Mead Clerk
Statement.