Alexander, Corbin v. Helber, John J.

35 Mo. 334 522/6

635/11

St. Francois Cty

Unlawful seizure and sale of a negro boy

- Def. marshall and collector of Farmington - plaintiff sound town.

- refused to pay taxes
- not actually seized
- plaintiff seizure without a judgment

Property, slaves

App
Helber
J.O. Beal

Resp
Alexander
John Burke

Notes: Reversed: Cause

The Trustees of the town of Farmington
in the State of Missouri }

To all to whom these presents shall come Greeting
Know Ye that whereas John Jacob Helber has been appointed by the Board of Trustees of the town of Farmington Marshall of said Town Now Therefore in the name and on behalf of the Corporation of the said Town of Farmington. The Board of Trustees of said Town does hereby commission the said John Jacob Helber Marshall as aforesaid and authorize and empower him to discharge the duties of said office according to law and ordinance

In testimony whereof, I Stephen E Douthit Chairman of said Board of Trustees have hereto subscribed my name and caused the private seal (there being no corporate seal yet provided) to be affixed this eighteenth day of April A D 1859. Done at the said Town of Farmington

By the Chairman (Seal) S E Douthit Ch m

J J Brady Clerk of
Bd T of Town of F

State of Missouri }
County of St Francois } ss I W R Taylor Clerk of the Circuit court within and for said County certify that the foregoing is a true copy of the original commission of John Jacob Helber as Town Marshall as fully and completely as the same remains among the corporate papers of the town of Farmington

In testimony whereof I hereunto set my hand and affix the seal of said Court at office this 12d day of August 1864 W R Taylor Clerk

By M Arnold D C

State of Missouri } ss
County of St. Francois }

Be it Remembered that heretofore to wit: on the 28th day of October AD 1859. there was filed in the office of the Clerk of the Circuit Court of St. Francois County in the State of Missouri, a petition in the words and figures following to wit:

Petition

"Corbin Alexander Plaintiff
against
John J. Stelber Defendant
In Saint Francois County Circuit Court
November Term AD 1859.

Plaintiff for petition says that defendant assuming to have and exercise a certain office under the name and style of Marshal of the Town of Farmington in Saint Francois County State of Missouri, and Ex-officio Collector of Taxes within and for said Town, did on or about the 15th day of May AD 1859. unlawfully seize, take and detain a Negro Boy by the name of Nelson belonging to Plaintiff; and did afterwards on or about the 22nd day of June 1859. unlawfully proceed to sell and did ~~[illegible]~~ unlawfully sell said Negro Boy with all plaintiffs right, title and interest. Plaintiff says that this seizure, and this selling of his Negro

2 Boy by defendant, took place without his plaintiffs acquiescence and consent and against his express remonstrance and prohibition at the time, and that such seizure and selling of plaintiffs property by defendant were a violation of the statute in such case made and provided. Plaintiff further says that by such unlawful seizure and unlawful selling of his said Negro Boy, Plaintiff suffers damages in the amount of Twelve hundred dollars. Plaintiff therefore claims Judgment for this amount with Costs, and for such other and further relief as Justice and Equity require. John Bush for Plaintiff

Corbin Alexander Plaintiff makes oath & says that the foregoing petition & matters therein stated he believes are true, Corbin Alexander, Sworn to and subscribed before me this 28th of October 1859. John Cobb Clerk

Endorsed "Filed October 28th 1859. John Cobb Clerk"

And on the 28th day of October 1859 there was issued on said petition a Summons in the words and figures as follows to wit:

Saint Francois County.

Summon

The State of Missouri. To the Sheriff of said County Greeting: These Command You to Summon John S. Helber if he shall be found in your County, to be and appear before the Circuit Court of said County, on the first day of the next

term thereof. to be begun and holden at the Court house at the Town of Farmington within and for said County on the second Monday in the Month of November next then and there to answer. Corbin Alexander, in relation to the Matter set forth and stated in his foregoing petition, and Certify to our said Court how you execute this writ, and have you then and there this writ. In witness whereof I. John Cobb Clerk of said Court hereto subscribe my name and L.S. affix the seal of said Court at office at Farmington the 28th day of October A.D. 1859.

John Cobb. Clerk

And on the 28th day of October 1859. said Summons was returned endorsed as follows to wit

Sheriff's Return

"Served the foregoing writ and petition by delivering a copy of the same to the within named. John I. Helber in Saint Francois County. Missouri October 28th 1859. F. B. Matkin Sheriff of S. Francois County Mo

And afterwards to wit: on Saturday May 19th 1860. It being the May Term 1860 of said Court amongst others was the following proceedings had to wit:

"Corbin Alexander. Plff.
vs
John I. Helber. dept } Civil action

Filing answer

Now at this day Come said defendant by his attorney, and files his

3

answer to plaintiff's petition. & this Cause is Continued till the next term of this Court.

Which answer is in words and figures as follows to wit:

"Corbin Alexander Plaintiff
against
John J. Helber deft } In the Circuit Court To Nov. Term. 1859.

Answer

defendant. States that on the 15th day of May 1859. and on 22 day of June 1859 when he levied on and sold the plaintiff's Slave as alleged by plaintiff in his petition he was in fact the Marshall of the Corporate body styled the Inhabitants of the town of Farmington and by virtue of his office the Collector of the Revenues and taxes of said body politic and Corporate. Defendant States that on the tax list of the taxable property and inhabitants of said Corporation for the year 1858. & for the year 1859. there was the sum of $16.68/100 due from the plaintiff to said Corporation Defendant States that this list was placed in his hands for Collection, and by virtue of his official authority of Marshall and Collector of the said taxes, and in pursuance and by authority of the Statutes in such case, made and provided and in pursuance to the Ordinances of said Corporation he demanded of the said plaintiff the said taxes so due & owing by him to said Corporation on the 14th day of April AD 1859. but that the plaintiff

refused to pay the same or any part thereof, defendant states that having waited on plaintiff 30 days after said demand, as required by the ordinances of said Corporation, giving plaintiff ample time to deliberate on the impropriety of his course, he afterwards to wit: on the 15th day of May 1859 demanded property of plaintiff to be levied on, Plaintiff of his own choice gave up the slave mentioned to be levied on but kept him in his own possession till the day of sale Defendant states that he as such officer afterwards sold said slave for the purpose of coercing the plaintiff to the payment of the taxes so due & owing after having given due notice of said sale - defendant avers that the negro sold for his value and after deducting the taxes due the balance of the money was returned to the plaintiff. Defendant denies that he levied upon and sold said slave unlawfully, but avers that he had authority to levy & sell under the circumstances and that his said levy & sale was lawful and proper as aforesaid. Defendant denies that plaintiff was, or is damaged, by any unlawful act of the defendant, but that if any damage was in fact done to plaintiff, it was the result of his own improper conduct, in & about the matter, Defendant denies that plaintiff is
5 entitled to recover, the alleged damages or

any part thereof, or even costs, Defendant avers that plaintiff had the slave bid in with his own Money & has him now in his possession as his own property; defendant asks Judgment for costs, J. G. Beal atty for deft,

John I. Helber being sworn states the above answer, and the matters therein as stated he believes to be true, John I. Helber.

Sworn to and subscribed before me this 19th day of May 1860. W R. Taylor. Clerk

Endorsed. "Filed May 19th 1860. W R Taylor Clerk"

And afterwards to wit: on Monday November 12th 1860. It being the November Term 1860 of said Court was the following proceedings had to wit:

Filing Motion Strike out Answer

"Corbin Alexander, } Civil action
apt.
John I. Helber } Now at this day said plaintiff by his attorney comes and files a motion to strike out the answer, of said defendant to plaintiffs Petition & this cause is Continued.

Which said motion is in words and figures following to wit:

Motion

"Corbin Alexander plaintiff }
against
J. I. Helber defendant }
In Saint Francois County Circuit Court.
November Term 1860.

Plaintiff comes and moves the Court to strike out defendants answer in the foregoing, cause for the following objections.

1st. The answer presents no facts which make a legal defense to plaintiff's action,

2ndly. The answer claims that defendant was marshall and Exofficio Collector for the Town Corporation of Farmington where the Statute in relation to towns neither makes a marshall Collector in virtue of his office nor has any provision authorizing a person to exercise both their offices at the same time,

3.dly. The answer, shows a selling of the Negro slave in question by defendant in the manner the ordinances of the Corporation of Farmington directs but fails to show a compliance in such selling with the provision of the Statute in such cases.

4thly. The answer shows no Judgment against plaintiff in favor of the Inhabitants of Farmington as the Statutory provision in reference to the Collection of the revenue of town Corporations requires

5thly. The balance of said answer, is but argument + inferences from previous statements

Endorsed "Filed Nov 12th 1860. W R Taylor Clerk"

And afterwards to wit. on Thursday May 15th

7

1862. It being the May Term 1862. of said Court was the following proceedings had to wit:

Continued

"Corbin Alexander. pltff
vs.
John I. Helber. deft } Civil action

Now at this day come the parties aforesaid, and it is ordered that this cause be continued untill the next term of this Court on plaintiffs exceptions to defendant answer,

And afterwards to wit: on Wednesday May 13th 1863. It being the May Term 1863. said Court, was the following proceedings had to wit:

~~[illegible]~~ Motion Sustained

"Corbin Alexander Pltff
vs.
John I. Helber deft } Civil action

Now at this day come the parties aforesaid by their respective attorneys and the plaintiffs Motion to strike out defendants answer, being seen and fully understood by the Court and the arguments of Counsel thereon heard is by the Court sustained, therefore it is ordered by the Court, that the answer of said defendant to plaintiffs petition be stricken out accordingly, and leave is given said defendant to file his amended answer to plaintiffs petition

And afterwards to wit: on Thursday May.

14th 1863. It being the May Term 1863 of said Court. the following proceedings were had to wit:

Filing Amended Answer

"Corbin Alexander Plff
vs
Jno J. Helber Dept. } Civil action

Now at this day Come said defendant by his attorney and files his amended Answer to plaintiff's petition

Which said amended answer is in words and figures following to wit

Amended Answer

"Corbin Alexander plff
vs
J. J. Helber dept } In the Circuit Court of St Francois County State of Missouri AD 1863.

The defendant for answer to plaintiff's petition denys that he unlawfully seized and unlawfully sold the slave belonging to plaintiffs in manner and form as plaintiff has alleged in his said petition, Defendant avers that he was at the time mentioned in the petition of the plaintiff, of the alleged selling of said Negro boy, Marshall and Ex-officio Collector of said Corporation in the petition mentioned, Defendant denys that the plaintiff was ever damaged thereby in the sum of twelve hundred dollars or any other sum whatever, and that he aught not to recover Judgment for any sum whatever - he therefore asks Judgment

9

for his Costs J. G. Beal atty for dept,
J. G. Beal being duly Sworn states that the above answer, he be lieves to be true, J G Beal Sworn to and subscribed before me this 14th May 1863. W R Taylor Clerk
Endorsed "Filed May 14th 1863. W R Taylor Clerk"

And afterwards to wit: on Friday the 15th day of May 1863. It being the May Term 1863 of said Court, the following proceedings were had to wit:

Filing Bill Exceptions to striking out answer

"Corbin Alexander pltff.
vs. } Civil action
J. J. Helber dept } Now at this day come the parties aforesaid by their respective attorneys and defendant files his Bill of Exceptions to the Sustaining of Motion of Plaintiff to strike out answer, of defendant which is signed sealed and made part of the record herein

Which said bill of Exceptions is in words and figures following to wit:

Bill Exceptions

"Corbin Alexander } St. Francois County.
" } In the Circuit Court.
J. J. Helber } May Term 1863.

Be it remembered that the plaintiff in order to strike out the answer of the defendant herein, filed his motion in words & figures as follows to wit: "Plaintiff comes and moves.

the Court to strike out defendants answer in the foregoing cause for the following objections
1st. The answer ~~claims that defendant~~ presents no facts which make a legal defense to plaintiffs action.
2ndly. The answer claims that defendant was Marshall and Ex officio Collector for the town Corporation of Farmington. where the statutes in relation to towns neither makes a Marshall Collector in virtue of his office. Nor has any provision authorizing a person to exercise both these offices at the same time
3rdly. The answer shows a selling of the negro slave in question by defendant in the manner the ordinances of the Corporation of Farmington directs. but fails to show a compliance in said selling with the provisions of the statute in such cases.
4thly. The answer shows no judgment against plaintiff in favor of the Inhabitants of Farmington as the statutory provisions in referenced to the collection of the revenue of town Corporations requires
5thly. The balance of said answer is but argument + inference from previous statement."
Which being seen and heard by the Court the same was by the Court sustained. and the said answer adjudged to be stricken out to which decission of the Court the defendant objects and excepts

11

and prays that this his bill of exceptions may be signed & sealed and made part of the record which is done accordingly James W. Owens Esq
Endorsed "Filed May 15th 1863. W R Taylor Clerk"

And afterwards to wit: one Saturday May 16th 1863. It being the May term 1863. of said Court, the following proceeding were had to wit
"Corbin Alexander Pfff
vs } Civil action
J. J. Stelber defd } Now at this day come the parties aforesaid by their respective attornies and for Good Cause shewn this Cause is Continued generally untill next term of this Court

Continuance

And afterwards to wit: on Tuesday May 10th 1864. It being the May term 1864. of said Court, the following proceedings were had to wit:
"Corbin Alexander pfff
vs } Civil action
John J. Stelber defd } Now at this day come said parties by their respective attornies and the defendant files his motion for an order on the plaintiff requiring him to answer on oath the Interrogatories of defendant filed herein at this time

Filing Motion & Interrogatories

Which said ~~Interrogatories are~~ motion is in words and figures following to wit:

Motion

Corbin Alexander
vs
J. J. Stelber } The defendant states that he expects to prove by the plaintiff in his interrogatories herewith filed that the plaintiff had the slave Nelson, levied on & sold for the sum of $16.68/100 taxes due & owing by him to the Corporation of the town of Farmington — That at such sale the slave Nelson was bid off by one William Stuart, for plaintiff and that plaintiffs money paid for the slave & that after the sale, after deducting the taxes & Costs amounting to about 18$ the remainder of the sum of the price of the slave was returned to the plaintiff amounting to some $582 — That plaintiff kept possession of said slave all the time both before and after the sale, That his possession was not disturbed by deft by such levy & sale so as to work any damage or injury to the plaintiff defendant moves the Court to be allowed to file interrogatories to the plaintiff to be answered by him relative to the facts which he expects to prove J G Beal atty for defts J G Beal being duly sworn states that he believes the answer of the plaintiff to the Interrogatories ~~may or~~ propounded will be material evidence for the defts on the trial of the above Cause That he believes he cannot prove the same

13

facts, or prove them as satisfactorily by any other person, & that this application is made by delay. J. H. Beab.

Sworn to & subscribed before me 10th day of May 1864. W R Taylor Clerk

Endorsed "Filed May 10th 1864. W R Taylor Clk"

And that said Interrogatories are in word and figures as follows to wit

Interrogatories

"Corbin Alexander
vs
J. J. Stelber } The defendant moves the Court to be allowed to propound to the plaintiff in the above cause the following interrogatories for the reason that he cannot prove the same as he expects to elicit by said interrogatories by any other witness of whom he knows now in reach of the process of the Court in time for the trial thereof,

1st Interrogatory — Was not the slave Nelson alleged to be sold by the defendant bid in by William Hunt as your agent — and was not the money bid for said slave at such sale your own money.

2nd Interrogatory — After the sale of the said slave Nelson by defts, as stated did you not receive back from defts, or from your agent William Hunt the purchase money after deducting the taxes then due owing by

plaintiff to the Corporation of the town of Farmington amounting to sum of five hundred and eighty two dollars received back & less Corporation taxes + Costs $18.00

3rd Interrogatory - Did you not continue in possession of said slave after the levy up to the time of sale, and after the sale of said slave did you not still continue in possession of said slave - as your property

Endorsed "Filed May 10th 1864. W R Taylor Clk"

and afterwards to wit: on Wednesday May 11th 1864. It being the May Term 1864 of said Court, the following proceedings were had to wit

Motion - Sustained

"Corbin Alexander pltff
vs
John I. Stelber deft } Civil action

Now at this day come the parties aforesaid by their attorneys, and defendants Motion to require plaintiff to answer interrogatories filed by defendant, being seen and argument of Counsel thereon heard is by the Court sustained, Therefore it is ordered by the Court that said plaintiff be and he is hereby required to answer on oath defendants interrogatories herein filed

and afterwards to wit: on Wednesday May 11th 1864. It being the May term 1864 of said Court

15

16 the following proceedings were had to wit:

Filing answer to Interrogatories

"Corbin Alexander plff
vs
John I. Helber dept } Civil action

Now at this day come the parties aforesaid by their attornies and plaintiff files his answer to defendants Interrogatories with leave to enter his objection to the admission of said answer as evidence on the trial of this cause

Which said answer to defendants Interrogatories is in words and figures following to wit:

Answer to Interrogatory

"Corbin Alexander Plaintiff
vs
John I. Helber Dept }

In St. Francois County Circuit Court May Term 1864 Corbin Alexander plaintiff makes answer to the interrogatories which defendant files in this cause and says that in response to the first interrogatory of defendant,

That said Plaintiff did not constitute or employ William Hunt as his agent to bid in said Slave. nor was the money which said Wm Hunt gave or paid for said Slave his the said plaintiffs money. (Plaintiff objects to answering the 1st Interrogatory of defendant and to the admission of his above answer in evidence on the ground that such interrogatory elicits, and such answer, contains

immaterial, irrelavant and incompetent testimony, and testimony upon points not in issue in the cause and about facts are neither a defense to plaintiffs action nor showing anything in Mitigation of damages)

For answer to the second interrogatory of defendant, Plaintiff says that he said Plaintiff, according to his present recollection did receive after said sale from J. J. Helber defendant, the sum of five hundred and eighty two 32/100 dollars but does not remember that the defendant at the time of delivering said amount to Plaintiff declared said sum as being derived from the sale of said Slave, though he thinks that such was his plaintiffs impression at the time. (Plaintiff protests against answering this 2nd Interrogatory of defendant and objects and excepts to the admission of said Answer, in evidence on the ground.)

For answer, to the third Interrogatory of defendant Plaintiff says that he continued in possession of said Slave from the time of levy to the time of sale, but that he held such possession only by giving Bond to redeliver said Slave to defendant on the day and at the place of sale, and plaintiff says that he did acquire possession of such Slave after said sale by Contract with Wm Hunt, the purchaser, of said

17 Slave at the sale transferring said Slave to

plaintiff, and that all the right to said slave and the possession which plaintiff acquired and had after sale was derived by and through contract with said Mr Hunt. after said sale, Plaintiff protests against answering the 3.d. Interrogatory of defendant and objects to the admission of his above answer in Evidence on the ground that such Interrogatory states and such answer, contains testimony which contradicts the answer and allegations of defendant in said cause and that such interrogatory requires plaintiff to disclose and such answer does disclose plaintiffs right and title to property not in issue in the cause nor necessary to determine the matter in controversy and because such interrogatory and answer shew nothing which is a defense to plaintiffs action and nothing in mitigation of damages Corbin Alexander Plaintiff

Corbin Alexander plaintiff says that the foregoing answers to Interrogatories are true to the best knowledge recollection and belief of affiant Corbin Alexander.

Sworn and subscribed to before me this 11th day of May 1864 W R. Taylor Clerk

Endorsed "Filed May 11th 1864. W R Taylor Clerk

And afterwards to wit: on Thursday. May 12th

1864. It being the May Term 1864. said Court the following proceedings were had to wit:

Filing Pltff. Bill Exceptions

"Corbin Alexander. pltff
vs. } Civil action
John S. Helber. deft } Now at this day come the parties aforesaid by their attorneys. plaintiff files bill of Exceptions to ruling of the Court in sustaining motion of defendant requiring plaintiff to answer. defendants. interrogatories which is signed, sealed and. made. a part of the records in this cause. and this cause coming on to be heard, a Jury came to wit: Milton Poston 1. James Lundiff 2, John A Williams 3 Waid H Clay 4. G L. Simms 5. Addison Murphy 6. W Sebastian 7. Wm Dent 8. Robert O Mitchell 9. and. Calvin Westover 10. Good and lawful men of St Francois County (by consent of both parties) were elected tried and sworn well and truly to try the issues joined between said parties. after hearing a part of the evidence and there not being sufficient time to complete the trial herein to day, ordered this cause be continued until to morrow, morning 8 O'clock until which time the Jury is permitted to disperse

Jury Empanelled

Which said Bill of Exceptions is in words and figures following to wit:

20 Corbin Alexander plaintiff
against
J. J. Helber defendant

Peff's Bill Exceptions

In the Circuit Court of St Francois County
May Term 1864

Be it remembered that, on the 2nd day of the May Term 1864 of said Circuit Court, being the 10th day of May AD 1864 the defendant, in the foregoing cause filed his motion in said cause prying the Court for leave to examine the plaintiff on Interrogatories, which motion was in the following words to wit:

"The defendant states that he expects to prove by the plaintiff in his interrogatories herewith filed that the plaintiff had the slave Nelson levied on & sold for the sum of $16.68/100 taxes due & owing by him to the Corporation of the town of Farmington - That at such sale the slave Nelson was bid off by one William Hunt for plaintiff and that plaintiffs money paid for the slave, & that after the sale, after deducting the taxes & costs, amounting to about 18$ the remainder of the sum of the price of the slave was returned to the plaintiff amounting to sum $582 - That plaintiff kept possession of said slave all the time both before and after the sale, That his possession was not disturbed by deft, by such levy & sale so as to work any

damage or injury to the plaintiff. defendant moves the Court to be allowed to file interrogatories to the plaintiff to be answered by him relative to the facts which he expects to prove

I G Beal atty for deft

I G Beal being duly sworn states that he believes the answer of the plaintiff to the interrogatories propounded will be material evidence for the defendant on the trial of the above Cause that he believes he cannot prove the same facts or prove them as satisfactorily by any other person & that this application is made by delay I G Beal.

Sworn to & Subscribed before me 10th day of May 1864. W R Taylor Clerk"

and that afterward on the 3rd day of said Term said Court over the objection and against the Consent of plaintiff. Sustained the said Motion of defendant and made an order allowing defendant to file and requiring plaintiff to answer the following interrogatories to wit:

Corbin Alexander pltff
" }
Defts Interrogatories I I. Helber deft } The defendant moves the Court to be allowed to propound to the plaintiff in the above Cause the following interrogatories for the reason that he cannot prove the same as he expects to elicit by said interrogatories by
21 any other witness of whom he knew - now in

22 reach of the process of the Court, in time for the trial thereof.

1st Interrogatory. Was not the slave Nelson alleged to be sold by the defendant bid in, by William Hunt, as your agent, and was not the money bid for said slave at such sale your own money.

2nd Interrogatory — After the sale of the said slave Nelson by deft, as stated, did not you receive back from deft, or from your agent William Hunt the purchase money after deducting the taxes then due & owing by plaintiff to the Corporation of the town of Farmington, amounting to sum of five hundred & eighty two dollars received back & left Corporation taxes & Cts $18.00

3rd Interrogatory — Did you not continue in possession of said slave after the levy up to the time of sale and after the sale of said slave, did you not still continue in possession of said slave as your property.

To which action of the Court in sustaining said Motion allowing defendant to file and requiring plaintiff to answer said Interrogatories plaintiff objected and excepted in due form at the time on the ground of the immateriality incompetency and irrelevancy of the evidence which said Motion and interrogatories purpose to elicit, to the Matters, and questions at issue

in said Cause and for the further reasons that defendant by said Motion and Interrogatories undertakes to elicit evidence which contradicts his own answer and allegations in said Cause and that the answer of defendant in said Cause contains no defense to which the evidence said Motion and Interrogatories undertake to elicit can in any wise apply or relate, and because defendant has no right to make such defense to the action of plaintiff as said Motion and Interrogatories contemplate

and said plaintiff for and by reason of the premises tenders here to the Court this his Bill of Exceptions which he prays may be signed and sealed by the Court and make a part of the record herein which is done according

William Carter (seal)

23

And afterwards on Friday the 13th day of May 1864. it being the May term 1864 of said Court the following

proceedings were had to wit:

"Corbin Alexander pltff
vs } Civil action
John I. Helber. deft } Now at this day come the parties aforesaid by their attorneys and the Jurors of the Jury aforesaid also appear and proceed with the trial of this cause, and after hearing all the evidence adduced for and against, and the arguments of counsel, return into Court the following verdict to wit: We the Jury find for the plaintiff three hundred and forty nine dollars and twenty three cents, Therefore. It is considered by the Court that said plaintiff recover, against said defendant, the aforesaid sum of three hundred and forty nine dollars and twenty three cents for his damages. together with his costs by him about his suit in that behalf expended, and that execution issue therefor.

Judgment

And afterwards on the 14th day of May 1864. It being the May term 1864. of said Court there were the following proceedings to wit.

"Corbin Alexander pltff
vs } Civil action
John I Helber. deft } Now at this day come the parties aforesaid by their attorneys. and defendant files his motion for a new trial herein

Filing Motion for New trial

Which motion for a new trial is in words and figures following, to wit:

Motion for New Trial

Corbin Alexander pltff
against
J. J. Helber. deft } The defendant Comes and moves the Court to set aside the verdict of the Jury and grant a new trial to him herein for the following reasons

The Court committed error in refusing to give the instructions asked by deft,

The Court committed error in the instructions given to the Jury of its own motion.

The verdict of the Jury is against the evidence in the cause

The verdict of the Jury is contrary to law,

The defendant has discovered since the trial new and material evidence in his behalf of which he had no knowledge before or at the time of trial. J. G. Boal atty for deft.

Endorsed "Filed May 14th 1864. W R Taylor Clerk"

And afterwards on Monday May 16th 1864 it being the May Term 1864 of said Court, the following proceedings were had to wit:

Overruling Motion

Corbin Alexander pltff
vs. } Civil action
John J. Helber. deft } Now at this day Comes the parties aforesaid by their respective

attorneys, and defendants motion for a new trial being seen and understood by the Court, and the arguments of Counsel heard is by the Court overruled, to which defendant objects and Excepts,

And afterwards on Tuesday May 17th 1864 It being the May Term 1864 of said Court, the following proceedings were had to wit:

Filing Bill Exceptions Affidavit Bond

"Corbin Alexander pltff
vs
John J. Helber deft } Civil action

Now at this day come the parties aforesaid by their respective attorneys, and defendant files his bill of

Appeal Granted

exceptions to the rulings and decision of the Court which is signed sealed and made part of the record herein, defendant also files his affidavit and bond and prays an appeal to the Supreme Court, which bond is approved and the appeal granted accordingly

Which said Bill of Exceptions is in words and figures following to wit:

Bill of Exceptions

"Corbin Alexander pltff
against } Circuit Court
John J. Helber deft }

Be it remembered that at the May Term of this Court this cause come on to be heard and a Jury being duly sworn to try the cause

the plaintiff in order to sustain his cause introduced the following testimony to wit:

John B. Fleming being sworn on behalf of plaintiff states, I knew the negro boy Nelson, subject matter in controversy being sold at the court house door in St. Francois County 4 or 5 years ago. He was sold by defendant. He belonged to the plaintiff and was worth there between 900$ and 1000$. The plaintiff forbid the sale, did not stay till the sale was over. Plaintiff told bystanders to be aware lest they got no title.

Elisha Arnold, witness for plaintiff being duly sworn testified: About the 15th June AD 1859 William Hunt in company with Achilles Smith came to the County Treasurer of the County then kept at Mr. Cayce's Store. Said Smith had some County warrants. Calling for money & said he wanted to draw the money & pay Wm Hunt $585,00 which he said he owed him. The money was paid on the warrants, and when Wm Hunt was paid he left the money on deposit with me, who transacted the official business & said he wanted it to remain till he called for it. Wm Hunt is brother in law, of plaintiff a short time after the sale, and on the same day Hunt came to me and drew out the money.

R. D. Clay. Sworn for plaintiff stated, I am acquainted with the slave Nelson, at the time of sale he

was worth $800. or $900. I was not at the sale
The witness stated on Cross examination that the
effect of forbidding the sale of property at a
public sale was to make property sell for less
than its value, after the sale the boy went back
to plaintiffs possession & remained in his possession
He was at no time in possession of Mr Hunt –

Milton Sebastian, Sworn for plaintiff. testified: I know
Nelson the slave sold by deft. in June 1859. He
was then worth 800 or 900$. or might have sold
for more. I was present at sale, Heard plaintiff
sale, told bystanders they would get no title,
that the whole thing was illegal, The witness stated
on Cross examination that he was an officer &
the effect of forbidding sale of property at public
sale under such Circumstances is to cause the
property to sell for less than its value, as it
deters bidders, The slave was worth 800 or 900$ at the
time of sale, This was all the testimony offered
by the plaintiff

The defendant in order to sustain his defense
gave in evidence to the Jury the following testimony
to wit: The following petition of the Inhabitants of
the County of St. Francois - viz:

Petition to Incorporate Farmington

"To the Hon. the County Comm. of St Francois County
We the undersigned Citizens of St Francois County
and the Town of Farmington and State of
Missouri, would respectfully represent that

29

30 they desire an act or order of your Court to incorporate said Town of Farmington according to its original boundaries as recorded. and the addition or additions made since said original boundaries as fixed. Walter K Brady, Alfred A Rudy, R D Clay, J. J Brady D T. Murray W. H Stratton, C. Myers. F H Gooch J. J. McFarland v C Peers, F. B. McFarland, T. S. McMullen. A Isenberg. M. P. Bynum, L J Bynum. B Villars Henry Heist C. Eggerman, William W White — George Eisenberg S E Douthit N. L. Fleming Jno A Weber, Geo W. Williams Rufus Alexander J H Elgin,

Your Petitioners represent the following as the metes and bounds of said Town with addition, said original Town or Conveyance from David Murphy. and wife Rachael Murphy. to Commissioners is Recorded in Book "A" pages 48 & 49. and described as follows. viz. "One certain tract or parcel of land situate lying and being in St Francois County adjoining Jesse Murphy's farm and to be taken off the South East Corner of the farm on which said David Murphy now lives. Containing fifty two acres, and bounded as follows. to wit: Beginning at a stake at the head of a spring in said Murphys field with a hickory tree eight inches diameter as a bearing tree. running thence South 3 degrees

East 135. links to a stake with a cherry tree as a bearing tree, thence South 85°. west 13 chains 31 links to a stake, thence South 5°. East 15 chains to the line of Jesse Murphy's to a stake with ash bearing trees, thence East with said line 30 chains, 14 links to a stake, with a walnut and dogwood bearing trees, thence North 18 chains to a stake with walnut and ash bearing trees thence west through the center of the before mentioned Spring to the beginning, And the plan of said Town as reported by said Commissioners, and received and approved by the Court is recorded in Book "A" on page 83. and the Survey of said Town as made by order of the Court is recorded in Book "E" on page 25. Your petitioners represent that the Addition to said Town is as follows viz: Bounded on the East by Washington Street continued in a straight line South from said Town and commencing at a stone where the Eastern side of said street intersects the line on the South side of the Alley bounding Farmington on the South side, Commencing at the North East corner of said addition at a stone from whence the South west Corner of Joseph M Berrys dwelling-house bears N. 71. E. 1.56. chains distant, an Elm tree 36 inches diameter bears N. 80 E. 1.49
31 chains. A Honey Locust 8 inches diameter bears

S. 3. W 14½ links, a plat of said addition is recorded in book "D" pages 437.

The defendant then offered the record entry of incorporation as asked in petition, on the record of the County Court of St Francois County, after producing the County Court record and making proof that the same contained the records of the County Court of said County: to wit:

"At a county Court begun and held at the Court house in the town of Farmington within and for St. Francois County in the state of Missouri, on Monday the 10th day of November 1856, Present Hon. Charles Hart presiding Justice Henderson Murphy and Abner Bean Esqrs Justices of the County Court and Elisha Matthis Sheriff and John Cobb Clerk, on Friday November 14th 1856 being the 5th day of said term amongst others was the following proceedings to wit:

Act Incorporating Farmington

"Now at this day come Walter K. Brady and presents the petition of two thirds of the Inhabitants of the town of Farmington praying that they may be incorporated and a police established for their local government, Whereupon, It is ordered by the Court that all of that district of Country situated in the County of St. Francois and State of Missouri known by the name of the town of Farmington and Boyce's addition to the town of Farmington and bounded as follows to wit: Beginning at a stake

at the head of a Spring in David Murphy's field with a hickory tree eight inches in diameter as a bearing tree running thence south 3 degrees East 1.35 links to a stake with a cherry tree as a bearing tree, thence South 85° west 13 chains 31 links to a stake, thence South 5°. East 15 chains to the line of Jesse Murphy, to a stake with ash bearing trees thence East with said line 30 chains 14 links to a stake with walnut and dogwood bearing trees thence North 18 chains to a stake with walnut and ash bearing trees, thence west through the center of the before, mentioned Spring to the begining being the bondary of the Town of Farmington, And Boyce's Addition to said town, to wit: bounded on the East by Washington Street, continued in a straight line South from said town, Commencing at a stone where the eastern side of Washington Street intersects the line on the south side of the alley bounding Farmington on the South side Commence at the North East Corner of said Addition at a stone from whence, the south west Corner, of Joseph M Berry's dwelling house bears N 71° E. 1.56 chains distant, an Elm tree 36 inches diameter bears N 80° E 1.49 chains, a Honey Locust 8 inches diameter bears S. 3° W 14½ links; And the Inhabitants of said town of Farmington and Boyce's Addition to the town of Farmington shall be and they are hereby

33

Constituted a body Polatic and Corporate by the name and style of the Inhabitants of the Town of Farmington. And it is further ordered by the Court that Valentine C Pees, John Cobb Charles Myers, George M Williams and Stephen E Dorthit be and they are hereby appointed Trustees for the Corporation of said town of Farmington"

The defendant then produced in Court certain Books which he proved by S S Brady were the record books of the Corporation of the town of Farmington from which he offered to read in evidence & did read by permission of the Court the following therein recorded, to wit

"Farmington Mo. Nov. 26th 1856. Charles Myers Stephen E Dorthit George M. Williams Valentine C. Pees and John Cobb appointed by the County Court of St. Francois County on the 14th November 1856. as Trustees for Corporation of the town of Farmington met at the office of the Clerk of the Circuit Court in said Town and organized as a board of Trustees as aforesaid by appointing Charles Myers Esqr. Chairman & Wm R. Taylor Clerk The Board adjourned to meet at said office on the 3d Tuesday of December next

Charles Myers.

Organization First Board Trustees

The following entries shewing the adoption of the ordinances of the Corporation as follows to wit:

Tuesday December 16th 1856. The Board met pursuant to adjournment. Present Charles Myers Chairman George W Williams and John Cobb. absent Messrs. Peers & Douthit Trustees and Wm R. Taylor Clerk,

Appointment Committee to Prepare Ordinances

On Motion John Cobb was appointed Clerk Pro tem.
On Motion of George W Williams, John Cobb is appointed a committee to prepare a set of Ordinances suitable for the action of this board and report the same at the next meeting of this board

Wednesday December 24. 1856.

Added to Committee Myers, Douthit, Williams & Peers

The board met pursuant to adjournment Present Charles Myers Chairman S E Douthit George W Williams V C Peers & John Cobb Trustees,
On Motion of John Cobb. It is resolved that Messrs. Myers. Douthit Williams & Peers be added to the Committee on Rules and ordinances and that said Committee report on the 2nd day of January next

January 2nd 1857.

Report Progress

The board met pursuant to adjournment. Present Charles Myers Chairman, S E. Douthit, Geo W Williams V C Peers & John Cobb Trustees.
The Committee on rules and ordinances — report progress and ask further time to report which is granted

January 21st. 1857.

35 The board met pursuant to adjournment Present

Charles Myers Chairman, V C Peers. S E Douthit George W. Williams and John Cobb Trustees —

addopting Ordinances

The Committee on Rules and Ordinances present their report and on Motion of S E Douthit the same was unanimously received,

On Motion of John Cobb It is ordered that said reports be addopted, and the rules and ordinances be spread upon the record of Rules and Ordinances

The following entries showing organization of board of trustees appointment of assessor & other officers for 1858.

Farmington Mo. Monday January 4th AD 1858.

The board of trustees of the town of Farmington held a regular meeting at which there were present: Mes, Douthit Myers, McMullen, Williams and Brady. The Minutes of the preceeding Meeting were read and approved. George W. Williams was appointed Clerk, Pro tem,

Mes. Myers, McMullen and Douthit shewed good cause for absence from the regular meeting of last October. Mes Williams and Brady a Minority Could transact no business hence we have no record of a regular meeting on the first Monday in October last.

Assessor appointed

Mr Alfred A Rudy was appointed assessor for the ensuing year,

January 5th 1858. 6 h. PM,

The Board met pursuant to adjournment Mes, Donchit Myers McMullen, and Brady. The minutes of preceeding meeting were read and approved, Mes. John J Helber James H Elgin and Henry C. Rudy were appointed Judges of the ensuing April election

Election Trustees 1858

April 8. 1858. Thursday. 10h. A M, The Board met pursuant to adjournment Present Mes. Myers McMullen, Brady & Donchit Chairman, absent Dr Geo W Williams, The minutes were read and approved, Dr Williams appeared and took his seat, Henry C Rudy. Christian Helber and L S Ryman, Judges of election and George A Myers Clerks of Election returned the Poll book of an election held on the first Monday of April 1858 for trustees of the town of Farmington which Poll book shewed, that at said election George W Williams received twenty six votes Stephen E. Donchit received twenty five votes, Joseph J. Brady received twenty three votes, Wm H Strallon received twenty two votes. John J. Helber received twenty two. Nicholas L. Fleming received four votes Hy Steist received four votes James H Elgin received three votes and Thos. S McMullen received three votes, whereupon it was unanimously determined, agreed and declared, that Mes. Geo W Williams, Stephen Ellis Donchit, Joseph J. Brady, William H Strallon and John Jacob Helber

37

were elected Trustees of the town of Farmington for one year from and after said Election and untill their Successors shall be elected and qualified. The Newly Elected Trustees appeared and were qualified, the oath of office being administered by Alfred A Rudy a Justice of the Peace, within and for the County of Saint Francois. Alfred A. Rudy. assessor presented an account for the sum of Seven and 5/100 dollars which was allowed and warrant No 7. for that amt, his favor was issued. Warrants No one to six inclusive heretofore paid, and Cancelled were burned, said Six Warrants amounting together to the Sum of one hundred ten and 7/100 dollars. The Treasurer made a settlement and presented his accounts books vouchers &c, and it was ascertained by actual Count that there was in the hands of the Treasurer the Sum of one hundred and twenty and 48/100 dollars. The Minutes were read and approved, and the board adjourned to Meet on Tuesday evening the 13th instant for the purpose of installing the newly elected board of trustees.

record entry of qualification of assessor for 1858. page 18. Janry 25. 1858. to wit.

Janry 25th 1858. 6 o'c. PM, The board met pursuant to adjournment present a full board

Qualification Assessor 1858

The minutes were read and approved, Alfred A Rudy Assessor, by appointment presented his bond jointly with J H Gooch as his security which was approved, and ordered to be filed and a commission was presented to him by the chairman. And the board adjourned untill the 10th of Febry next at 6 h. P.M,
Also shewing return of tax book for 1858. page 19 March 15 1859. to wit:

March 15th 1858. Monday 10 h. A M

C. Court of Appeals

The Board met pursuant to adjournment, and for the purpose of hearing and determining appeals from the assessment List. There were present Mrs. Douthit, Myers, McMullen, and Brady, absent Williams, The minutes were read and approved. an a/c in favor of J J Brady for the sum of twelve and 05/100 dollars was presented and allowed and a warrant ordered in his favor, that amount, The appeal of Philip G Long from the assessment list was heard and determined, and it was ordered that the assessed value of his property be reduced from seven hundred dollars to six hundred dollars, The Tax book or Assessment list of Alfred A Rudy Assessor, was received and the board adjourned
record shewing appointment of McMullen Marshall & Collector for 1858. to wit:

39 Tuesday April 13th 1858

40

Appointment Marshall & Col. 1858

The Board met pursuant to adjournment when there were present a full board. the Minutes of previous meeting were read and approved The newly qualified members Mes. Stratton and Helber were introduced to whom Mes Myers & McMullen, relinquished their places The new board organized by appointing Dr Geo W Williams chairman and Joseph J. Brady Clerk. Thomas S McMullen was appointed Marshall and Jasper S Douthit Treasurer. P H Gooch Marshall and Collector presented and made a settlement which was approved and his account for sixteen and 69/100 dollars was allowed and warrant No 8. for that sum his favor was issued, Commissions were ordered to be made and issued to Thos S McMullen as Marshall and Jasper S Douthit as Treasurer of the Town of Farmington Also his return of tax book Shewing delinquency of tax payers. page 22 Sept 9. 1858 to mit

September 9th 1858.

The Board met at a called Meetory when there were present Mes. Williams. Douthit. Brady Stratton & Helber,

Delinquent Tax payers 1858

The minutes were read and approved. J J. Brady gave satisfactory reasons for absence on the 5th of July last,

Thos S McMullen, a/c for Eight and 69/100 dollars

was allowed and warrant No 15 for that sum was issued his favor.
Wm Pickles account for five & 67/100 dollars was allowed and warrant No 16 for that sum his favor was issued, J. J. Bradys account for two and 25/100 dollars was allowed, and warrant No 17 his favor for that sum was issued
J. G Beals account for thirty dollars was allowed & warrant No 18 for that sum his favor was issued
Thos S. McMullen Collector returned the tax book upon which there appeared to be due the sum of thirty six and 73/100 dollars which book was received, and the sum thirty six & 73/100 dollars ordered to be credited in his account, he then tendered his resignation of the office of Marshall which was accepted
William Sarthoff was appointed Marshall for the unexpired term, the Clerk was ordered to make out and deliver a Commission to said Sarthoff, and to give him the tax book & such Blank licenses as may be necessary so soon as the said Sarthoff, shall have filed his official Bond & oath of office
A petition from John S. Levering requesting the board to have the alley near his his house opened was received, and on motion of J. J. Heller, the marshall was directed to Notify E Arnold Esq. to remove

41

the obstruction erected by him a cross the alley east of his lot No twelve
Appointment of J. S. Leavering assessor for 1859. page 23. Jany 3 1859.

Monday Jany 3rd. AD 1859.

Appointment Assessor 1859

The Board met at a regular meeting when there present Mes. Williams, Donehit. Stratton. Helber and Brady. The Minutes were read and approved The officials Bonds of Wm Santhoff & Wm Howard were approved. The Clerk was ordered to procure a Corporate seal the devise. "Farmington Mo. Seal", and to have printed and published the town ordinances from XIV. to XX. inclusive and to supply the Marshall with Necessary blank licenses.
John S Leavering was appointed Assessor and the Clerk was ordered to give him a Commission as such, after his Official Bond and oath of office shall have been filed. The tax Book was ordered to be placed in the hands of Wm Howard Marshall for Collection of taxes remaing unpaid for 1858. and the meeting was adjourned untile thursday Next at 6 h. PM,
Court of appeals page. 24. 1859
"Farmington Mo. Monday. Mar. 21st 1859.
The Board of Trustees of the Town of Farmington met when there were present. Mes Geo W Williams

Board of Appeals 1859

John S. Helber and Wm H Stratton, absent. Mes Douthit and Brady. Ges W Williams was appointed Chairman and Wm H Stratton, Clerk.
The meeting was held for the purpose of hearing and determining appeals from the assessment list. There being no appeals the assessment list was approved and the account of John S Leaming assessor was allowed for the sum of Eight dollars and warrant No 24 his favor for same was issued

and organization of board of trustees for 1859 page 24. April 9. 1859.

Saturday April 9th 1859.

Organization Board Trustees 1859.

The board met pursuant to adjournment when there were present. Mes. Williams Chairman, Douthit Stratton, Helber & Brady. the minutes were read and approved. Dr G W Williams showed good cause for absence from our last regular meeting and was excused therefor, John S. Leavering's account in favor of one Clerk and three Judges of the Election held on Monday last was allowed and warrant No 25 for six dollars to pay same was issued, William Pickles account, for Lumber and Hauling was received and refered to Mes. Douthit, & Helber for examination and report thereon to be made Next Friday P.M. Christian Helber, L S Bynum, and Ben Danger Judges and John S Leavering Clerk of Election

returned the Poll Book of an Election held on Monday the 4th day of April 1859. for five Trustees of the town of Farmington which Poll book showed that at said Election John Cobb received twenty two votes, S E Douthit, received twenty two votes, John A Weber received twenty one votes, Wm H Stratton received twelve votes. J J Brady received twenty one votes J. J. Helber, received eight votes, Henry Heist received nine votes. Geo. W. Williams, received two votes and L. S Bynum, received one vote — Whereupon it was agreed unanimously that Mrs. Jno. Cobb. Stephen E. Douthit John A. Weber Joseph J. Brady and Wm H Stratton were elected Trustees, of the Town of Farmington for one year, from and after said Election and untill their Successors shall be elected and qualified, Mrs. Stephen E. Douthit John A Weber, Joseph J. Brady and Wm H. Stratton Newly elected, members of the Board of Trustees being present were qualified, the oath of Office being administered by John Cobb Clerk of the Circuit Court of the County of Saint Francois in the State of Missouri, Whereupon the old Board Surrendered up the officers of the Board. The new Board then Organised by appointing S. E. Douthit Chairman Pro tem, and J J. Brady Clerk Pro tem

Page 25. April 15. 1859. Qualification of Assessor approved, to wit:-

Friday April 15th 1859.

C Appointment Marshall 1859

The Board of Trustees, met pursuant to adjournment when there were present Mes — Douthit Chairman Pro tem, Stratton, Weber and Brady. Clerk Pro Tem, Col. John Cobb presented his oath of office which had sub-scribed and acknowledged before John S. Leavering a Justice of the peace in and for the County of Saint Francois and took a seat as a member of the board,

The minutes were read and approved.

Stephen E. Douthit was appointed Chairman Joseph J. Brady, Clerk, Josper S Douthit Treasurer, and John J Helber Marshall of the town of Farmington for the ensuing year,

Appointment of Capt Marshall.

The accounts of Wm Pickles which had been refered to Mes. Douthit and Helber for examination were reported upon as correct, and Warrant No 26, for twenty seven and 77/100 dollars was issued to pay the said account.

Defendant thereupon offered in evidence the bonds & oaths office of A A Rudy & John S. Leavering Assessors for 1858 & 1859 as follows to wit:

Assessors Bond 1858 45

Know all men by these presents that Alfred A Rudy as principal and Patrick H Goode

as Security are held and firmly bound unto the Trustees of the Town of Farmington and their Successors in Office in the Sum of one hundred dollars, to the payment of which sum well and truly to be made we do hereby bind ourselves our heirs executors and administrators firmly by these presents, The Consideration of the above bond is such that whereas the above bound Alfred A Rudy has been appointed by the board of Trustees of the town of Farmington assessor of said Town for the year of our Lord 1858. Now if the said Alfred A Rudy shall faithfully perform all acts and duties required of him as assessor as aforesaid by any law of the State of Missouri or ordinance of the said Town of Farmington existing at the date hereof or subsequently passed, then this bond to be void otherwise to remain in full force and effect, Given under our hands and seals in the Town of Farmington and State of Missouri this eighteenth day of January AD 1858.

Alfred A Rudy (Seal)
J H Gooch (Seal)

Oath of Assessor 1858

State of Missouri } ss.
County of St Francois } Alfred A Rudy deposits and says that he will support the Constitution of the United States and of this State and that

he will faithfully demean himself in the office of assessor of the Town of Farmington during his continuance in office January 18th 1858.
acknowledged and sworn } Alfred A Purdy
before me this 2nd day of Feby 1858.
John Cobb Clerk. By W R Taylor D C.

Assessors Bond 1859.

Know all men by these presents that Jno. S. Leavering as principal & Christian Helbu as security are held and firmly bound unto the Trustees of the Town of Farmington and their successor in office in the sum of one hundred dollars to the payment of which sum well and truly to be made we do hereby bind ourselves our heirs executors & administrators firmly by these presents. The condition of the above bond is such, Whereas the above bound John S. Leavering has been appointed by the board of trustees of the town of Farmington assessor of said Town for the A D 1859. Now if the said John S. Leavering shall faithfully perform all acts and duties required of him as assessor as aforesaid by any laws of the State of Missouri or Ordinances of the said Town of Farmington existing at the date hereof or subsequently passed, then this bond to be void otherwise to remain in full force and effect Given under our hands and seals in the town of Farmington this fourth day of January AD 1859

47

John S. Leavering (seal)
Christian Helber (seal)

Oath Assessor of 1859

State of Missouri } ss.
County of St. Francois } John S. Leavering deposes and says he will support the Constitution of the United States and of the State of Missouri and that he will faithfully demean himself in the office of Assessor of the Town of Farmington as required by law, and ordinances during his Continuance in said office
Farmington January 3rd 1859 } John S. Leavering
acknowledged and Sworn before me this 15th day of Jany 1859. John Cobb Clerk By W R Taylor DC
Also the bonds & oaths office of Collectors Thomas S. McMullen for 1858 and of defendant for 1859 in words & figures as follows to wit:

Oath Marshall 1858.

State of Missouri } ss.
County of St Francois } Thomas S. McMullen deposeth and says he will support the Constitution of the United States and of this State and faithfully demean himself in the office of Marshall of the town of Farmington during his Continuance in office T. S. McMullen
Sworn to and Subscribed before me this 20th day of April 1858. John Cobb Clerk By W R Taylor DC

Bond Marshall 1858

I Thomas S McMullen as principal and I. P H Gooch as Security do hereby acknowledge ourselves to be held and firmly bound unto the

Trustees of the Town of Farmington and their Successors in Office in the Sum of one thousand dollars to the payment of which sum well and truly to be made, we do hereby bind ourselves our heirs executors and administrators firmly by these presents, The Condition of the above bond is such. Whereas the above bound Thomas S. McMullen has been appointed by the board of Trustees of the town of Farmington, "Marshall" of said Town, Now if the said Thomas S. McMullen shall faithfully perform the duties of his office according to law, then this bond to be void, Otherwise to remain in full force and effect, In testimony whereof we have hereto set our hands and affixed our seals this fourteenth of April AD 1858 T. S. McMullen (seal)
P. H Gooch (seal)

Oath Marshall of 1859

State of Missouri
County of St Francois } John Jacob Helber depues and says he will support the Constitution of the United States and of the State of Missouri and faithfully demean himself in the office of Marshall of the Town of Farmington during his Continuance in the said office. John J. Helber Sworn to and subscribed before me this 18th day of April 1859. John Cobb. Clerk By W R Taylor Dep

Bond of Marshall 1859.

I. John J. Helber as principal and Christian Helber & Henry Heist as securities do hereby

49

acknowledge ourselves to be held and firmly bound unto the Trustees of the Town of Farmington and their Successors in Office in the sum of one thousand dollars to the payment of which well and truly to be made we do hereby bind ourselves our heirs executors & administrators firmly by these presents, The Condition of the above bond is such. Whereas the above bound John Jacob Helber has been appointed Marshall of the Town of Farmington by the said Trustees of the Town of Farmington, Now if the said Helber shall faithfully perform the duties of his office according to Law then this bond to be void, otherwise to remain in full force and effect. In testimony whereof we have hereto set our hands and seals this 18th day of April 1859. John J. Helber (Seal)

Christian Helber (Seal)

Henry Hirst (Seal)

Also Commission of deft. for 1859. Shewing authority to act.

(There is no Commission to deft for 1859 on file in this Case Test. W R Taylor Clerk)

defendant also offered & read the following ordinances of said Corporation as addopted to wit.

Ordinance No. II.

Respecting Officers

Be it ordained by the Trustees of the Town of Farmington as follows:
Section 1. At the first regular meeting after the election of trustees there shall be appointed by the Board of Trustees a Clerk, Treasurer and Marshall, and attorney, when deemed necessary by the board.
Sec. 2. Every person so appointed to office shall be a citizen of the United States, over twenty one years and shall hold his office for one year and until his successor is appointed and qualified, unless removed for cause
Sec 3. Before any person shall undertake to perform the duties of his office he shall be commissioned, and at the time of being commissioned, he shall take and subscribe an oath before an officer authorized to administer oaths, that he will support the Constitution of the United States and of the State and faithfully demean himself in office, and when bond is required shall give the same,
Sec 4. Official bonds shall be made to the Trustees of the Town of Farmington, and their successors in office, and shall be conditioned for the faithful performance of all acts and duties required of the officer in his office by any laws of the State of Missouri

57

or ordinance of the Town of Farmington
existing at the date of the bond or subsequently
passed. Said bond to be approved by the board,
Sec 5. At the next meeting after the taking of
any official bond they shall be presented
to the board for approval.
Sec 6. Upon such oath and bond being
filed with the Clerk, he shall deliver to the
person appointed as aforesaid, a commission
in the Corporate name, and signed by the
Chairman authorizing and empowering such
person to discharge the duties of the office
for the time for which he has been appointed
and until his successor, shall be appointed
and qualified

Ordinance No. IX.

Revenue. Article I.

Assessment of Property for taxation. Appeals &c.

Be it ordained by the Trustees of the town
of Farmington as follows.

Section 1. Upon all property situated within the
incorporated limits of the town as laid down
in the order of incorporation and subject
to taxation for state purposes, there shall be
levied for Corporate purposes a tax of one fifth
of one per cent upon the assessment thereof,
Sec 2. At the first meeting in January in each
year the board of Trustees shall appoint

an Assessor, for the purpose of ascertaining the assessment value, of the property aforesaid, who shall make a list of said property; and in making the same, he shall be governed by the same rules and regulations and possess the same, power and authority in every respect as the Assessor, under, the laws of this State; and such assessor, before entering upon the duties of his office, shall take and subscribe an oath before a Justice of the Peace that he will faithfully demean himself in office according to the best of his ability and skill perform the duties of assessor, without fear or partiality, and that he will do equal right and Justice in every case, in which he shall act as Assessor, he shall receive for his services for making out said assessment list eight cents per name,- All kinds of property belonging to the same person shall be entered under one name,

Sec. 3. The person, appointed Assessor, shall within thirty days after the first day of February in each year, make out and return to the Clerk, an assessment list of all the taxable property in said in corporate limits and it shall be the duty of said Clerk within ten days after the sitting of the board of Trustees for hearing appeals from such

53

assessment to make out a fair copy thereof to be delivered to the Collector of said taxes upon the delivery of which he shall receipt upon the original list for such copy for the purposes of collection

Sec. 4. The Collector upon the receipt of a copy of such list, shall forthwith proceed to collect the tax specified therein according to law and shall settle with said board of trustees at the next ensuing regular meeting of the board, and such Collector shall be liable for the amount of such tax to the board of Trustees, and shall settle for the same in the same manner, that the Collector of the County tax is liable to settle with the County Court for taxes collected for County purposes, and shall upon such settlement be allowed for delinquencies in the same manner, and under like rules and restrictions as the Collector of taxes for County purposes is liable to the County Court; and upon such settlement it shall be the duty of the Collector to pay over to the Town Treasurer, for the time being the amount of money he shall be found charged with on such settlement, who upon such payment shall receipt to him therefor. For any failure in paying over as aforesaid he and his sureties shall be liable to be proceeded against before

said board in the same manner that the Collector may be proceeded against before the County Court for failing to pay over taxes. Collected for County purposes. and shall be liable to the like penalties in every respect

Sec. 5. There shall be held by the board of trustees on the third Monday in March in each year a meeting for the purpose of hearing and determining appeals from, the assessment list, Any person feeling aggrieved by the assessment made by the assessor, may appeal therefrom to said board of trustees and the proceedings therein shall be conducted in the same manner that the appeals from the assessment of the assessor, of taxes for state purposes are conducted,

Sec. 6. From the time the assessment list shall be returned till the first meeting of the board the same, shall be open to the inspection of all persons interested who may apply to inspect the same,

Sec 7. The person appointed assessor shall take and subscribe the oath required in section 3. of Ordinance No II. and give bond in such sum as the board shall direct; which bond and affidavit shall be prepared by the Clerk and by him taken and preserved in his office in all respects as papers of a similar nature are taken of other officers

55

It is agreed by the counsel for the respective parties that a printed copy of the ordinances of the Town of Farmington shall accompany the transcript of this cause to the Supreme Court and that each party may read therefrom such portions thereof as he may think proper that the whole or so much as shall be pertinent, shall be considered as evidence contained in this bill of exceptions in this cause in to be used on the hearing of this cause in the Supreme Court: Subject to the objections of plaintiff as hereinafter mentioned

Defendant thereupon offered in evidence the tax books of said Corporation for years 1858 1859. and read from same the assessment of the plaintiffs property for 1858. 1859. in words & figures as follows. to wit

Corporation Tax list for the Town of Farmington Feby 1st 1858.

Entry on Tax books 1858.

Alexander Corbin Description of Real estate Lots 1.2.3.4.5.6.21.71.72.73. in Farmington value 3000$. value Personal property 5000$. Total value 8000$ amount of Corporation tax 16$

Corporation tax list for the Town of Farmington for year 1859.

Entry on Tax books 1859.

Alexander, Corbin Discription of Real estate Lots 1.2.3.4.5.21.71.72.&73 in Farmington 1 Poll value real estate 3000$. value Personal Property

2150$ total value 5150$. Corporation tax $10\frac{68}{100}$$. Same real estate for 1858. valued at 3000$ Corporation tax $6.

John S. Levering Sworn for Deft testified That he called on plff. after he was qualified as assessor for the Corporation for 1859. for a list of his taxable property. That the list as made out by him in the book returned by him for 1859. was delivered to him by the plaintiff & that he also assessed plaintiffs real estate for arrears of 1858. my reason for assessing the same for arrears for 1858. was that I understood that for some reason the assessment for that year was incorrect & that plaintiff had paid no taxes on same,

J. J. Brady. being Sworn for deft. Stated that a copy of the tax book for the year 1859. was made & delivered to deft, for which a receipt was taken on the original. That the deft. was charged with amount of taxes due thereon & when he made payments to the Treasurer he was credited with the amount so paid on account of same. The receipt for the tax book is as follows.

Receipt for Tax book 1859

Received Farmington Mo. April 23d. 1859. of Joseph J. Brady Clerk of the board of trustees of the town of Farmington a certified Copy of the foregoing tax list for the Current year beginning on the 1st day of Feby. last upon

57

which tax bill there appears to be due the sum of three hundred thirty two and 89/100 dollars.

J. J. Helber Marshall,

Objections of Plaintiff to Evidence

To the reading of all of said testimony relative to the organization of the Corporation of the town of Farmington & the acts and doings - and ordinances of said Corporation & their offices & all papers books, bonds &c were objected to by the plaintiff at the time the same were respectively offered in evidence the objections overruled by the Court & the same permitted to be read by the Court to which ruling the plaintiff objected excepted at the time the same were offered & permitted to be read,

The defendant thereupon caused the plaintiff to be sworn as a witness in his behalf, who testified as follows to wit: The plaintiff objects to the defendant making him witness in this Cause in his behalf for the reason that before this trial Cause on defendant propounded certain interrogatories to the plaintiff which were answered before the trial Commenced;

Plaintiffs Testifies

At the time the defendant called on you as Marshall of said Corporation in the year 1859 for you to make payment of the taxes due the Corporation of the town of Farmington for that year & for arrears of 1858 did you make such payment of such taxes at that time?

Ans. I did not.
Quest. Did the defendant as town Marshall for that year make a demand of said taxes if so at what time did he make such demand & did he inform you of the amount due for the years specified
Ans. Deft did make a demand of said taxes I cannot state the time - because I cannot recollect - I expect the defendant informed me of the amount due - I suppose I enquired into that matter but I have no distinct recollection. (Plaintiff objects to this question and answer, on the ground of immateriality and irrelevancy to the matters at issue)
Quest. How long was it from the time of making such demand till deft. came & the levy was made as refered to in the delivery bond.
Ans. I do not recollect - I did not make any record of it - date of the bond I suppose is correct.
Quest. When defendant came to levy on property as refered to in your delivery bond, did the defendant levy on the slave Nelson at his own choice, or did you not point out that particular property on which he should levy & direct him to levy on him,
59 Plaintiff objects to this question on the ground.

of irrelevancy and immateriality to the matter in issue

Ans. I had told Mr Stelber previous to his applying for property - that if I did not pay the tax - I would furnish plenty of property, I told him furthermore previous to his applying that I considered the whole thing was illegal I never told him that I would pay the money nor did I ever say anything that would induce him to believe that I intended to pay the money, then it was I told him if I did not pay the money I would furnish him plenty of property - Mr Stelber finally came to me & said he must have the money or property - I then pointed out this boy and directed him to levy on that boy - I supposed he would be enough - he seemed to be satisfied & did it so - I then supposed & I still suppose I had the right to point out the property to be levied on - as to my wishing the boy to be levied on - I don't wish to be understood in that way - I was bound to give him property I pointed to that boy - I could not wished my property sold in a case & manner which I supposed was illegal - I was remonstrating all the time,

Quest. was not the boy that was levied on left with you from time of levy till the day

of sale, by your giving bond to deliver him at the time of sale,
Ans. Yes Sir of Course, this bond shews it,
Ques- Did you not have the entire Control + services of the boy after such levy till the sale,
Ans- I suppose I had - after giving that bond - till the sale, (Plaintiff on the grounds of irrelevancy objects to this question and statement,)
Ques- At the time fixed for the sale did you bring the slave to the place of sale,
Ans- I did Sir
Ques- Were you present at the sale if so state what did you do to prevent the sale - who bid for the slave, how much he was sold for and to whom was the slave sold, at the sale made on the 22nd June 1859.
Ans- I was present at the sale, I forbid the sale giving about the same kind of reasons as I had given to Mr Stelber, - that I considered the whole thing was illegal + I went on to caution the by standers, that if the sale was illegal the title would not be good, I added that I supposed that, that was a matter of which they would judge for themselves - My reason for forbidding the sale was that I was present + although illegal if I did not object being present might

61

make the title good in the purchaser,— that was my impression — I cannot state who bid for the slave entirely — I think Mr Beck bid ten dollars to start the matter & after that I did not know who bid except, occasionally I could hear Wm Hunt bid, — believe there were other bidders — I thought so from the crying of depts, — I did not know who they were — I think Wm Hunt was the purchaser & the sum was six hundred dollars — that was my understanding —

Ques — Did you make any arrangement previous to or at the time of sale, with William Hunt to bid in the slave for you if so state what that arrangement was and all the conversation that was had between you and the said William Hunt upon the subject of sale & purchase of the boy & for whom he bid him off.

Ans — I had had some conversation with him before the sale I think about to this effect — that I was not going to pay the money — that I was not going to redeem the negro. I was going to let him be sold if any body was fool enough to buy him — to let them do so — I may have stated to him the reason, that I considered the whole thing illegal — I went on and stated to this effect, there were good many negro traders in the country at that time —

scouring the Country buying up all the negroes they could find & I was a little afraid that the negro traders would buy him & run him off to the lower Countries - I think I told him this. I did not want him run off to the lower Country - I did not want him to go to the lower Country any way - & on the score of redress I did not want him to go there. I did not know then what would be my mode of redress, whether against the Corporation the officer or the purchaser, or against all - I went on to state to William Hunt that if the Negro had to be sold - I would rather he or some good person or citizen of the Country would bid him off - who would not run him off to the lower Country - I supposed the slave was bid off for the purchaser - this was all the arrangment that I ever made & the substance of the Conversation had with him on the subject - (Plaintiff objects to the above
question and statement on the ground that the same question in substance was among defendants Interrogatories filed in the cause and answered by plaintiff and on the ground of immateriality & irrelavancy)
Ques. Did your wife Mrs Lucy Alexander with your knowledge consent or approbation make any arrangment with the said Mr Hunt
63 to bid in the slave at the sale for you. if

so state what arrangement and any conversation, they may have had relative thereto
Ans- She did not to my knowledge - I know of no conversation
Ques. Whose money paid for the slave where was it got or who furnished it.
Ans- I think Mr Hunt's money paid for the slave He drew the money or nearly the amount out of the County treasury after the sale was made that day - I do not know that I can state the amount (Plff objects to the question and answer on the grounds of irrelavancy)
Ques. Did you or any one at your request furnish the money or any portion of it, or did you give Mr Hunt any directions where to get the money -
Ans- I think not - (Plaintiff objects to the question and answer, on the ground immaterialty and irrelavancy)
Ques- After the sale did the defendant return to you any portion of the money arrising from the sale of the slave, if so how much,
Ans- He returned to me money after the sale that I suppose was intended as the balance of the proceeds of the sale of the boy - I don't remember any specific declaration to that effect but from circumstances I suppose the same returned was the balance of the proceeds of sale

of slave, I cannot say the exact amount returned, but I think it was $582 $\frac{32}{100}$ – (Plff objects to this question and answer on the ground that deft. in his interrogatories and plff answered a question of the same purport.)

Ques – did you receive the money –

Ans – I suppose I received it.

Ques – Did deft owe you any money at that time –

Ans. I do not know that he did –

Ques – After the sale what become of the slave, did he not remain in your possession all the time + under your control, (Plff objects for the same reasons as is the next preceeding question) –

Ans – After he was sold I made a contract with Wm Hunt to retain his services –

Ques – State that contract was – + whether in writing or verbal.

Ans – The contract was verbal – I needed the services of the boy at the time – I promised to hire him + agreed to give him so much by the month – I am not certain as to the amount – some five or six dollars per month, after that again I bought the boy + paid him for him – cannot state what time it was –

Ques – Did you ever pay William Hunt in his life time any money for the hire of the boy, under that contract referred to?

65

Ans- I did
Ques- When & how much.
Ans- I Cant. state - because I dont recollect.
Ques. When did William Hunt. transfer the slave to you & how was the transfer made by writing or parole.
Ans- I cant say when it was- and by parol
Ques- Did deft, at time of sale transfer the slave to Mr Hunt. or to you & how was such transfer made by writing or parol.
Ans- Deft transferred to Mr Hunt by Bill of sale
Ques- When you received the balance of the proceeds of the sale of the slave, what did you do with it, did you not return it to Mr Hunt.
Ans- I did not return it to Mr Hunt.
Ques- What sum did you pay to Mr Hunt for the slave, - When & how was it paid
Ans. I dont recollect the exact sum I paid him & I dont recollect when - I think I paid him in money.
Ques- What relation does Mr Hunt bear to you.
Ans- My wife's brother.
Ques- During the time the slave was being sold did you not repeatedly whisper to Mr Hunt or spoke to him in low tone, and was not such Conversation in relation to his bidding for the slave

Ans- I think I did not speak a word to him
Qus. Did you effect the arrangement with William Hunt to buy the negro through any other person than yourself.
Ans- I never did - Cross Examined. I never made any arrangement with Mr Hunt to buy in or bid off said slave.

Charles Myers. Sworn on behalf of defts.
I was present when defts sold the boy. acting as Marshall - I saw no person from the lower counties bidding for the slave, - I bid for the boy - & saw Mr Hunt bid - The effect on me of objecting to the sale was to prevent him from bidding the value of the slave sold. - I did not bid the value of the slave because I expected from the statement and threats of the plaintiff at time of sale that if I bought the slave I would have a law suit with him for the slave & therefore did not bid full value
The defendant also offered in evidence the following bond, to wit:

Delivery Bond

Know all men by these presents that we Corbin Alexander as principal and Aaron Isenberg as his security are held and firmly bound unto J. J. Helber for the use of the Inhabitants of the town of Farmington in the County of St. Francois in the state of Missouri in the sum

of one hundred dollars for the payment of which well and truly to be made we hereby bind ourselves our heirs executors and administrators Jointly and Severally firmly by these presents In witness whereof we have hereto set our hands & seals this 29th day of May 1859. The condition of the above bond is such that whereas said J. J. Helber as Town Marshall of said town of Farmington has levied on the following property to wit: Negro boy Nelson, to satisfy and pay the taxes of said Corbin Alexander alleged to be due & owing to said town for the years 1858 & 1859. & the said Alexander is desirous to retain the possession of said property till the day of sale which is fixed to take place on the 22nd day of June 1859. Now if the said Alexander shall well and truly deliver or cause to be delivered said Negro boy Nelson, to the said Helber at the Court house door in said town of Farmington at 9 (nine) of the Clock in the forenoon of the said 22nd day of June AD 1859 then this bond to be void else to remain in full force and virtue Corbin Alexander (Seal)

A. Isenberg (Seal)

to the reading of which in evidence the plaintiff objected but the Court overruled the objection permitted the same to be read & the plaintiff excepted Defendant then offered the following notice of

sale, after being permitted to make his return thereof as thereon endorsed. to wit

Notice of Sale

Notice - Is hereby given that the undersigned Tom Marshall visitor and for the Corporate town of Farmington in St. Francois County in the State of Missouri and ex-officio Collector of the taxes for said Corporation styled and known as the Inhabitants of the Town of Farmington. have by virtue of the assessment list of the taxable property of said Corporation, and by authority and in pursuance to the laws and ordinances of said Corporation levied upon and seized as the property of Corbin Alexander a Negro boy named Nelson for the purpose of paying and satisfying the taxes due and owing by the said Corbin Alexander to said Corporation for the year 1858 & 1859. amounting to the sum of sixteen 68/100 dollars. having previously demanded payment of the same of the said Corbin Alexander, and on the 22nd day of June AD 1859. between the hours of 9 in the forenoon & 5 in the afternoon of that day at the Court house door at and in the said town of Farmington State of Missouri I will expose to sale at public auction for ready money all the right title interest and Claim of the said Corbin Alexander upon and to the said Slave Nelson for the purpose of paying and satisfying said taxes and Costs of this

69

Marshall's Return on Notice

levy and sale. J. J. Helber. Tom Marshall
of the Town of Farmington

J. J. J. Helber former Tom Marshall of the town of Farmington in St Francois County state of Missouri in the year 1859. do hereby make this as my return to the putting up of Copies of the within Notice as follows to wit: I put up three Copies of the within notice more than ten days before the day of sale at the most public places in different parts of St Francois Township said County. and one in Perry Township at Big River Mills - one in Pendleton township at Doe Run school house, and one at J. M. Harris Store in Liberty township, the adjoining townships to the township of St Francois township & said places being public places in said township. Given under my hand this 13th day of May AD 1864. John J Helber. Former
Tom Marshall of the Tom of Farmington

To the ruling of the Court permitting the Deft, to make said return on said Notice of sale & to the ruling of the Court in permitting said notice & return to be read to the Jury. the plaintiff objected but the Court overruled the objection to which the plaintiff excepts. —

This was all the testimony offered by the defendant.

The plaintiff thereupon gave in evidence

the title given to Wm Hunt, by deft, at the sale of said boy. to wit:

Bill of Sale To Wm Hunt for Slave

To all to whom these presents shall come I. John J. Helber Town Marshall of the Town of Farmington Mo. send Greeting: Whereas by the tax list of the taxable property of the Town of Farmington incorporated by the name of the Inhabitants of the town of Farmington in St. Francois County in the State of Missouri for the year 1859 there was and is due from Corbin Alexander a taxable inhabitant of said town the sum of sixteen 68/100 dollars as taxes for the years 1858 & 1859 due to said Corporation as appears from a Certified Copy of said tax list heretofore delivered to me to wit: on or about the day of April 1859. & whereas afterwards on the 13th day of April AD 1859. I the said town Marshall demanded of the said Corbin Alexander the payment of said taxes but the said Corbin Alexander refused to pay the same or any part thereof, and delivered up to me as his property a certain Negro boy named Nelson a slave to be levied on for the purpose of paying said taxes Costs & Commissions and having seized and levied on said slave as aforesaid for the purpose aforesaid I. advertised the sale of said slave by putting up three written hand bills at public places

71

72 within said Corporate limits and one written notice in a public place in each of the townships of Liberty - Pendleton & Marion in the said County of St. Francois more than twenty days previous to the day of sale hereinafter mentioned and afterwards to wit: on the 22nd day of June AD 1859. between the hours of nine in the forenoon and five in the afternoon of that day at the Court house door within the Corporate limits of said of Farmington. agreeably to said Notice I exposed said Slave to sale at public auction and William Hunt being the highest last and best bidder for the same at the price & sum of six hundred dollars the said Slave was stricken off & sold to the said William Hunt for that sum. Now therefore Know ye that I. John I Helber Tom Marshall as aforesaid in Consideration of the premises and of the said sum of six hundred dollars to me in hand paid the receipt whereof is hereby acknowledged have and do hereby sell bargain and Convey unto the said William Hunt all the right title interest and property of the said Corbin Alexander of in and to the above described Slave Nelson that I. Wright sell as Tom Marshall as aforesaid by virtue of & in pursuance to the premises. to have and to hold the same with all the right & title of the said

Alexander unto the said William Hunt his heirs and assigns forever, In witness whereof I John I Helber Tom Marshall of the town of Farmington & ex-officio Collector of the taxes of said town have hereto set my hand & seal this 22nd day of June 1859. John I Helber (Seal)
Tom Marshall and Ex officio Collector of taxes of said town
Endorsed.

Rec'd of William Hunt Two dollars as my fee for the above bill of sale. I I Helber.
June 22 1859. Tom Marshall and Collector

Instructions to Jury by Defendant

This was all the evidence given in the Cause Thereupon the defendant asked the following instructions to be given to the Jury, to wit

1 If the Jury believe that at the time of making the levy and sale of the boy Nelson, the property of plaintiff that said town of Farmington was an incorporated body that the defendant was Marshall of said Corporation duly Commissioned and qualified to act as such and that the defendant in such Capacity levied upon, sold the slave mentioned, to enforce the collection of taxes due and owing at that time by the plaintiff to said Corporation, and that the laws and ordinances of said Corporation authorized the said levy & sale of such property to enforce the payment of taxes due the Corporation and that in discharging this duty the

Refused

73

74 said defendant did not exceed the authority in him vested by said laws & ordinances then the defendant was justified in making such levy and sale, and they will find for the defendant, But if the Jury should find that the defendant was not justified or authorized in making such sale & levy by the ordinances of the Corporation & laws of the state, then the measure of plaintiffs damages is the actual damages sustained by him in making such sale & levy by deft, and if the Jury believe that after the sale the defendant returned to the plaintiff the entire proceeds of the sale after deducting the taxes ~~& costs~~ of sale, then plaintiffs damages actually sustained is only the costs about making said sale. if deducted out of the price of the sale of the slave

Refused.

2 Although the Jury may believe that the slave did not sell for his real value at the time of sale and although they may believe that the defendant was not authorized to make such levy & sale under the Corporation ordinances yet if they find that the plaintiff forbid the sale and made statements and threats calculated to deter bidders from bidding for the slave and thereby caused the property to be sold for less than its value, and that they should further find that after the sale the defendant paid over to the plaintiff the balance of the

Refused.

proceeds of the sale after deducting the taxes then they will find for the defendant.

3 If the Jury believe that at the sale of the slave William Hunt was acting for the plaintiff in bidding in the slave, and after the sale let the plaintiff have the slave back at the same sum paid at the sale & that the proceeds of the sale less the taxes were paid back to the pltff, then they will find for the defendant, unless they shall further find the sale was illegal and, in that event they will find for the plaintiff only such sum as they may believe was deducted out of the proceeds of the sale of the slave, over and above the taxes due & owing by the plaintiff to the Corporation of the town "Farmington" but the Court refused to give the same to which decission of the Court the defendant excepts,

Refused

Instructions given by the Court

The Court thereupon of its own motion gave the following instructions to the Jury. to wit:

1st. The Jury are instructed that if they find from the evidence that the defendant levied upon and sold the negro boy in Controversy without a Judgment first having been obtained in the name of the said Corporation against the pltff for the amount of the taxes assessed against him for said years by Civil action before said Court of Competent Jurisdiction; and not upon a process issued upon such Judgment

75

then the fact that the defendant acted as Marshall of said town of Farmington and was Ex officio Collector thereof at the time of such levy and sale was no Justification for his acts in making such levy and sale; and they will find for the plaintiff the amount of damages he may have sustained in Consequence of such seizure and sale.

2nd In assessing the plaintiffs damages the Jury are instructed that the proper measure of the same is the value of the negro boy at the time of said sale, with interest from the time; unless they shall find from the Evidence that William Hunt was the agent of the plaintiff or acted as such in bidding off said negro boy. Should they so find then the measure of damages will be the amount bid by the said William Hunt.

3rd The Jury are further instructed that in making up their verdict they should deduct from the value of said boy the amount of Money paid over to the plaintiff by the defendant arising from the sale of said negro boy, but not the amount of the taxes claimed to be due said Corporation from said plaintiff for said years and the Costs of Collecting the same which was retained by the defendant.

To the giving of which the defendant objected, the Court overruled the objection & gave said instructions to the Jury to which decision of the Court the

defendant excepts.

Thereupon the Jury returned into the Court the following verdict to wit:

Verdict of Jury

"We the Jury find for the plaintiff Three hundred and forty nine dollars and twenty three Cents

James Cundiff foreman"

The defendant in order to obtain a new trial in this cause filed a motion herein in words and figures as follows to wit:

Motion for New trial

Corbin Alexander pltff
against
J. J. Helber defts. } The defendant comes and moves the Court to set aside the verdict of the Jury and grant a new trial to him herein for the following reasons

The Court committed error in refusing to give the instructions asked by deft.

The Court committed error in the instructions given to the Jury of its own motion

The verdict of the Jury is against the evidence in the cause.

The verdict of the Jury is against the weight of evidence

The verdict of the Jury is contrary to law.

The defendant has discovered since the trial new and material evidence in his behoff of which he had no knowledge before or at the time of trial

J G Beal atty for deft.

Which being seen & heard by the Court the same was by

the court overruled, to which decision of the Court the defendant objects & excepts.- and prays that this his bill of exceptions may be signed sealed and made a part of the record which is done accordingly

William Carter (Seal)

Endorsed "Filed May 17th 1864 W R Taylor Clerk"

Which said affidavit for appeal is in words and figures following to wit

Affidavit for Appeal

Corbin Alexander pltff } In the Circuit Court of
against } St Francois County
John I. Helber deft } May Term 1864

J. I. Helber being duly sworn states that his appeal from the judgment of the ~~circuit~~ in the above cause is not made for vexation or delay but because he believes that he is aggrieved by the judgment and decision of the Court herein. John I Helber.

Sworn to and subscribed before me this 18th day of May AD 1864 W R Taylor Clerk"

Endorsed "Filed May 17. 1864 W R Taylor Clerk"

And that said appeal bond is in words and figures following to wit:

Bond for Appeal

Corbin Alexander pltff } In the Circuit Court of
against } St Francois County
John I. Helber deft } May Term 1864

Know all men by these presents that We John I Helber as principal and Charles Hart, J G Peal

as his Security acknowlege ourselves to owe and stand indebted to Corbin Alexander the plaintiff in the above Cause in the sum of Eight hundred dollars for the payment of which well and truly to be made we hereby bind ourselves, our heirs executors and administrators Jointly and severally firmly by these presents. The Condition of the above recognizance is such that the said J I Helber has appealed from the Judgment of the Circuit Court of St Francois Co in the above cause at the May term AD 1864 Now if the appellant shall prosecute his appeal with diligence and to a decision in the Supreme Court, and shall perform such Judgment as shall be given by the Supreme Court or such as the Supreme Court may direct the Circuit Court to give and of the Judgment of such Court or any part thereof, shall be affirmed and will pay and perform the same so far as it may be affirmed, and will pay all damages and Costs which may be awarded against the appellant by the Supreme Court then this obligation to be void else to remain in force. Witness our hands & seals this 18th May 1864. John I Helber. (Seal)

Executed & approved in Open Court attest { Charles Hart (Seal) / J G Beal (Seal)

W. R. Taylor Clerk

Endorsed "Filed May 19. 1864. W R Taylor Clerk"

79

State of Missouri } ss.
County of St. Francois } I William R. Taylor Clerk of the Circuit Court within and for said County do hereby certify that the foregoing is a full and complete transcript of the record and proceedings in the above entitled Cause of Corbin Alexander plaintiff against John A. Helber defendant, as fully and completely as the same remains of record and on file in my office

In testimony whereof I hereunto set my hand and affix the seal of said Court at office this 3rd day of August AD 1864

William R Taylor Clerk

CIRCUIT COURT SEAL ST. FRANCOIS CO. MO.

	Page
Petition	1
Summon	2
Sheriffs return on Summons	3
Filing Answer	3
Answer	4
Filing Motion to strike out Answer	6
Motion	6
Continuance	8
~~Overruling~~ Motion Sustained	8
Leave to Amend Answer	Ib.
Amended Answer	9
Defts Bill Exceptions to striking out Answer	10
Continuance	12
Filing Motion & Interrogatories	12
Motion	13
Interrogatories	14
Motion Sustained	15
Answer to Interrogatories	16
Pltff Bill of Exceptions to Sustaining Motion	29
Issue Joined Jury Empanelled	19
Judgment.	25
Motion for New Trial	26
Overruling Motion	26
Appeal Granted	27
Bill Exceptions	27
Jno B Fleming's Testimony	28
E Arnold. "	"
R D Clay "	"
M Sebastian "	29
Petition to Incorporate Town	"
Act Incorporating Town	32
Organization 1st board Trustees	34
Appointed Committee to perform Ordinance &c	35
Ordinances adopted	36
Assessor appointed	36
Electing Trustees 1858	37
Court appeals.	39
Appointed Marshal &c 1858	40
Delinquent Taxpayers 1858	Ib
Appointed Assessor 1859	42
Court appeals. 1859	43.
Organization board Trustees 1859	43
Appointed Marshall 1859	45
Assessors bond. 1858	45
His oath of office	46
Assessors bond 1859	47
His oath of office	48
Oath Marshall 1858	48
His bond.	Ib
Oath Marshall 1859	49
His bond.	Ib

Copy entry on Tax book 1858	56
Copy entry on Tax book 1859	57.
Jno S. Leavering Testimy	57
J. J. Brady "	57
Receipt Tax book 1859.	57
Corbin Alexander Testimy	58
Charles Myers - "	67
Delivery Bond	67
Notice of Sale.	69
Marshall Return	70
Bill Sale of W Hunt.	71
Instructions of deft refused	73
Instructions by Court	75
Verdict of Jury	77
Motion for New trial	77
Affidavit for Appeal	78
Appeal Bond	78

(11) 23 12

October Term 1864

Corbin Alexander Res.

versus

John I. Helber appl.

St Francois County

Appeal to Supreme Court

Transcript

E.M.

John Bush for Res
J. G. Beal for appl

Filed August 16. 1864
A. W. McEad
Clk

To Wm R. Taylor Clerk
for this Transcript $25.00
10 $ paid by Appl

1864 Oct 19 Argued by Appt & Submitted
1865 Jany 7. Reversed & Remanded
Opinion filed $300

86

Corbin Alexander plff
against
J. J. Miller - Deft.

State of Missouri
Supreme Court
Oct. Term 1861

Brief by A. G. Bead atty for appellant

The Court below committed error in striking the answer of the defendant and herein the appellant maintains the following propositions

1 The Corporation of the town of Farmington had power to "pass by-laws and ordinances" to "levy and collect taxes" 2. Rev Stat. p. 1525. s. 7 The power to "levy and collect", necessarily implies the power to provide the mode and manner of collecting. Whenever a power is granted all necessary means to carry the power into force are implied 1 Kent Com. 464. 2 Hilton (N. Y. C. P.) 203.

2. The provision in Sec 14 act entitled towns that the town collector may bring suit for the taxes due from any one refusing to pay is suggestive of a remedy and cumulative; and not imperative. By the same section power is given to sell the real estate of non-residents whose taxes are not paid, by the ordinances of the Corporation without suit & judgment first obtained. It would then be inconsistent to hold that the Corporation could not exercise the less important power of selling personal property by provisions of ordinance. The construction of this section by the respondent is not only inconsistent but exceedingly inconvenient. Sedwick on construction of Statutes p. 238 ~~3 Mass. 221. 7 Mass 310~~

3rd The words "may" or "shall" are only imperative only when the public or individuals are interested in the act being done and have a ~~right~~ claim de jure that the power be exercised. ~~Angel and Ames on Corporations. Sec. 358. & authorities referred to.~~ 5 John. Ch. R. 101. 3 Howard 188. 6. Howard 223. 10 Howard 238. Plaintiff had no right in suit being brought. The ordinances provided for, and a Court of appeals was actually held in all respects as in cases of State & County taxes. Sedgwick on the Construction of Statutes. p 438. et sequens. Ib. 238

4th The answer alleges that the slove was bed off by the plaintiff and paid for with his own money. This was a good defence as to all things except nominal damages and it should not have been stricken out. 9. Wendell 36. 16 Wend. 609. 3. Dana. 491 Board us Recall — 16 Wend. Baker as Lemon 36

5th The answer alleges that if the plaintiff was damaged, it was by his own improper and imprudent interference at the sale and should not recover damages occasioned by himself. This constituted a defence to the plaintiff action. 2 Greenl. Ev. Sec 266-8. 3 Am. Jur. 287-313. 2 Greenl. Ev. Secs 268. 272. A party is entitled to no more damages than the facts & circumstances show him entitled to.

6th Application of the proceeds of the sale of the slove to the payment of the taxes due and owing by plaintiff to the Corporation and a return of the balance to the plaintiff was a good defence as mitigation of damages 2 Greenl. Ev. Sec 276. 14 Pickering 356. 361. 9 ib. 551. 6 Mass. 20. 5 Mass. 104. 3 Zabriskie 342. 2 Greenl. S. 625.

7 Damage is the loss or diminution of what is a man's own occasioned by the fault of another. 1 Ruthf. Institutes B. 1. Ch. 17 sec 1. p. 200. Damage must be the natural consequence of the act complained of 1 Dana 378 2 Greenl. Ev. Secs 256. 261. damage occasioned by the interference of the plaintiff is damnum absque injuria 2 B. Monroe. 212. 1 Phil Ev. 140 2nd Ed. 2 Starkie Rep. 143 ~~Dam~~ 3 Starkie Ev. 1310. 2 Phil Ev. 155

II The instructions asked by the defendant should have been given & the Court committed error in refusing the same. See authorities above referred to.

Record p. 73

III The instructions given by the Court did not contain the law of the case mistead the Jury & wholly took the case from them.

Record p. 75

1st The first instruction given by the Court was wrong because it told the Jury the levy & sale of the property by the Marshall was all wrong unless there a previous Judgment obtained against the plaintiff.

2nd The second instruction given by the Court takes away from the jury all mitigating circumstances in evidence and directs them how to make up their verdict – The hypothetical part of this instruction is so ambiguous as to allow the Slave to be bid in for plaintiff and also allow him to recover the price bid, 2 Grif. S. 625 – 33 Mo. Rep 128. Porter vs S. Mo R.R. – Sedgwick on damages 546.

3 The third instruction is wrong because it assumes that the jury will find for the plaintiff and then erroneously ~~but then erroneously~~ directs them not to deduct from the proceeds of the sale of the boy the amount thereof applied to the payment of the taxes due by the plaintiff to the Corporation. Ibid.

IV The plaintiff ought not recover for damages which at a trifling costs or by reasonable exertion he might have avoided. He could have delivered property of less value. 28. Mo. Rep. 36. Sedgwick on damages p. 93. 94.

V The plaintiff should only recover such damages as are the legal and natural Consequence of the act Complained of. Sedgwick on damages 82 Any damage Caused by forbidding the sale and threats of Suits & declarations that no title would pass, were damages occasioned by the Conduct of the plaintiff – and not the natural Consequence of the act of the defendant – Mayne 62. Sedgwick 37. 38 –

VI . Forbidding of the Sale by the plaintiff was unnecessary to secure any right in the plaintiff, but having done so, he thereby elects to pursue the title to the Slave, or such price as the property may bring at the Sale 2 Grif. S. 263. Sedgwick on damages 473.

VII The Court should have granted a new trial.

C

Corbin Alexander

against

J. J. Miller

Brief by J. G. Beal

atty for appellant

Filed Oct 17. 1864

A. W. Mead

Clerk

Corbin Alexander appellee
against
J. J. Hilber appellant

State of Missouri
In the Supreme Court
October Term AD 1864

The appellant assigns the following errors Committed by the Court below in this Cause to wit:

1 The Court Committed error in sustaining appellee's motion to strike out the answer of the appellant.

2 The Court Committed error in refusing to give the instructions asked by the appellant -

3 The Court Committed error in the in the instructions on its own motion & as asked by the appellee -

4 The Court Committed error in refusing to set aside the verdict of the jury and grant a new trial

J G Beal
Atty for appellant

To make in error

John Bush
Atty for appellee.

Corbin Alexander

vs

J. J. Heller

Errors assigned

Filed Oct 17. 1864

A. W. Mead

Clerk

Corbin Alexander appellee
against
J. A. Hilbert appellant

State of Missouri
Supreme Court
October Term 1864

Statement by D. H. Beal atty for appellant

On the 28th October 1859 the plaintiff and appellee in the above Cause commenced suit against the defendant and appellant in the Circuit Court of St Francois County. In his petition he alleges that the defendant on or about the 15th day of May 1859 assuming to have and exercise a certain office under the name and style of Marshall of the town of Farmington in said County, State of Missouri and ex-officio Collector of taxes in said town, did unlawfully seize take and detain a negro boy by the name of Nelson belonging to the plaintiff and afterwards on the 22nd day of June AD 1859 unlawfully proceeded to sell and did sell said boy with all plaintiff's right title & interest. That such sale was against his express prohibition, and that by
Record. p. 1. 2. such unlawful seizure and selling of said slave plaintiff suffered damage in the sum of twelve hundred dollars for which he asks Judgment —

The defendant put in his answer at the following Term of said Court in which he sets up as his defence to plaintiff's Cause of action, that at the times of levey and sale of said slave, he was in fact Marshall and ex-officio Collector of the taxes due the Corporation of the town of Farmington duly Commissioned and qualified as such. That said town of Farmington was duly incorporated under the laws of the State under the name and style of the Inhabitants of the town of Farmington. That there was on the tax list for the years 1858 and 1859 the sum of $16 68/100 due and owing by the said plaintiff to said Corporation. That said lists were placed in his hands for Collection — That he demanded of plaintiff payment of said taxes on the 14th April 1859. That plaintiff

refused to pay the same and that he afterwards on the 15th day of May AD 1859 by authority of and in pursuance of the ordinances of said Corporation did levy on and seize the bay mentioned for the purpose of coercing the payment of said taxes. That the sale was made by authority of and in pursuance to said ordinances. That the stone sold for his bolce and out of the proceeds of sale defendant deducted the taxes aforesaid, to wit: $16 68/100. and applied the same

Record p. 4. to the payment of the taxes due and owing by the plaintiff to said Corporation, and returned the remainder to the plaintiff. defendant denies that the plaintiff was or is injured by any unlawful act of the defendant, but that if any damage was in fact done to the plaintiff it was the result of his own improper conduct in and about the matter. Defendant avers that plaintiff had the stone hea in with his own money and had him then in his own possession as his own property —

The plaintiff filed a motion to strike out the defendant's answer for the following reasons. First. It presents no facts which make a legal defence. Second. The answer claims that the defendant was Marshal and ex-officio Collector of the town of Lamington but that the statute in relation to towns does not make a Marshal Collector nor authorize the same person to exercise the same offices. Third. The answer shows a selling of the stone as directed by the ordinances of the Corporation, but fails to show a

Record p. 6. compliance with the provisions of the statutes in such cases. Fourth. The answer shows no judgment in favor of the Corporation against the plaintiff as required by statute. Fifth. The answer is argumentative.

The motion of the plaintiff was sustained, the answer stricken

Record p. 18. out and the defendant excepted —

The defendant on leave of the Court filed an amended answer. denying that he unlawfully seized and sold the stone mentioned. Denying that the plaintiff was damaged by the ~~unlawful~~ seizure and sale of the stone

averring that he was Marshall & ex-officio Collector of said Corporation, and denying that the plaintiff ought to recover any sum whatever as damages for the alleged seizure and sale of said Stone.

At the May Term of said Court 1864. the Cause came on to be tried a jury selected and the plaintiff in order to sustain his Cause gave in evidence the following evidence. That the defendant sold the bay in question at public sale at the Court house door in St Francois County State of Missouri, 4 or 5 years ago — That plaintiff was present at the sale and forbade the sale — He told the bystanders to be aware, they would get no title. That the whole thing was illegal — That at the time of the sale the bay was worth from $800. to 1000.$. That about 15th June AD 1859. Wm Hemet in Company with Achilles Smith Came to the treasurer's office of St Francois County, presented some County warrants drawn in favor of Achilles Smith and drew $585. & left it with the treasurer till called for & on the day of the sale of the Stone and ~~had~~ immediately after the sale he came and drew the money. Defendant on the Cross-examination of plaintiff's witnesses proved that the effect of forbidding the sale of property at a public sale was to cause it to sell for less than its actual value and that after the sale the Stone returned to the possession of the plaintiff and remained with him till the bringing of this suit and until he ran off in 1862. That he never was in possession of ~~any other person than~~ Wm Hemet or any other person than the plaintiff.

The defendant then proved that the Stone sold for $600. That after the deducting the taxes due from plaintiff to the Corporation and some small amount for costs the remainder was returned to the plaintiff which accepted and receipted for. That at the sale the bidders were deterred from bidding by the threats of the plaintiff. That the purchaser would get no title and that he would sue the purchaser &c

The defendant then proved that the town of Lamington was duly incorporated under the statutes by the County Court of St Francois County. That he was on the 15th day of May 1859 and on the 22nd day of June AD 1859 duly qualified and Commissioned as Marshall of the town of Lamington, That by the ordinances he, as Marshall & ex officio Collector, was authorized to levy upon and sell personal property of any one residing in the Corporation, who might refuse to pay the Corporate taxes - That the tax list was duly made out and placed in his hands previous to his making demand of the plaintiff for his taxes and previous to the seizure of plaintiff's property as above stated. That the taxes due by the plaintiff to the Corporation for the years 1858 and 1859 amounted to $16 68/100. That the property levied upon was surrendered by plaintiff of his own choice when called on by the Collector for property — That a replevy bond was taken after the levy and plaintiff retained possession of the stone. That the sale took place in all respects as provided for and required by the ordinances of the Corporation. That the ordinances were duly adopted by the board of trustees of the Corporation — A printed Copy of which is attached to the record, the whole of which or so much as either party may wish to read is Considered in evidence —

(See printed ordinances attached.)

C

Cortlin Alexander

against

J. J. Neilber

Statement by atty for

appellant

Filed October 17. 1864

A. W. Mead

Clerk

Corbin Alexander
vs
John J Helber

This was a suit to recover damages for the unlawful seizure and sale of a negro boy. The defendant attempted to justify his acts upon the ground that he was Marshall and ex-officio Collector of the town of Farmington and acted in performance of his duty as such collector as the means of collecting a tax which the plaintiff owed that town, ~~and also denied the alleged amount of plaintiffs damage~~

It appears that the town of Farmington was incorporated by the County Court of St Francis County, under the act of the General Assembly which gave ~~the~~ to County Courts that power, and that the trustees of the town had passed an ordinance which required the collector to seize and sell personal property of persons who refused to ~~sell~~ pay the taxes assessed against them; that the plaintiff had refused to pay a tax assessed against him, that the defendant then seized the negro boy and proceeded to sell him when one Hunt (a brother in law of the plaintiff) bought the boy. – The

negro was never in fact taken from the plaintiff, but when the defendant told the plaintiff that he must have the money or that he would levy on property the plaintiff pointed out the negro as the property to be seized (at the same time protesting against the legality of the seizure) and retained the boy in his own possession by giving the defendant a bond to produce the boy at the sale. He did produce him & the defendant put him up at auction and sold him to Hunt. The negro then returned to the plaintiff and remained in his possession under an agreement with Hunt that he the plaintiff would pay Hunt hire for him, and afterward the plaintiff bought the negro from Hunt. — At the sale the plaintiff gave public notice of the illegality of the sale and warned the persons present not to buy, because they would get no title to the negro. — A large portion of the money for which the negro was sold was paid to the plaintiff by the defendant There was verdict and judgment for the plaintiff and the defendant appealed. The first instruction given by the Court in effect declared that the seizure and sale by the Marshall, without a judgment of a Court was illegal and that the

plaintiff might recover the damages which he may have sustained by the seizure and sale.
This instruction stated the law correctly.
Although the town ordinance authorized the seizure and sale, yet the general laws under which the town was incorporated did not give it authority to pass the ordinance.
The act of the General Assembly gave to the town, the power to levy and collect taxes, and another section of the law (14th) provided that "if any person fail to pay any tax levied on his real or personal property, the town collector may recover the same by civil action in the name of the corporation before any court of competent jurisdiction"
It is unnecessary to inquire nicely as to the means for enforcing the collection which the town could employ under the general power granted to it "to levy and collect taxes" because the provision for the collection by means of a civil action having been made, other modes of enforcing the payment of taxes are thereby excluded and forbidden.
This determines the most important point in the case in favor of the judgment of the lower Court, but that Court, in some minor matters, ~~which~~ so erred as to make it necessary to reverse its judgment.

The Court, by striking out an answer filed by the defendant, and by instructions given at the trial, in effect decided that the measure of the plaintiffs damages was the value of the negro with interest, deducting therefrom the ~~value~~ money repaid to the plaintiff but without deducting the amount of the taxes retained by the defendant.

1st Assuming that the value of the negro, with proper deductions from that value is the correct measure of the plaintiffs damages, yet the amount of the taxes should have been formed a part of the deduction. As a mere trespasser, A has no right to take the property of B and apply it to the payment of B's debt and in a suit by B against A, that application of it would not mitigate the damages which B could recover; but the authorities ~~made~~ seem to make an exception in the case of an officer who commits a trespass by an honest mistake and in the discharge of what he believed to be his duty, and to mitigate the damages by the amount of the tax or debt of the plaintiff which was paid by the defendant.

2d The second instruction given states too absolutely that the measure of damages is the value of the negro with interest (subject to deductions). The case as shown in the record

has several aspects and whilst in some of them, the value (with deductions) is the measure of damages, in at least one other it is not, that is, if the plaintiff were himself the purchaser of the negro, through the agency of Hunt, then the value of the negro is not the measure, but the price bid at the sale is (with deductions), and the instruction was so worded as to fail to give the defendant the full benefit of a consideration of this aspect of the case.

My individual opinion is that there was also another aspect of the case in which the value was not the measure of damages; that is, if the plaintiff after the sale had the possession of the negro, and knowing as he did, that Hunt had no title to the negro, voluntarily and unnecessarily bought the negro from Hunt, he cannot be said to have lost the negro (or the price paid Hunt for the negro) and if the negro was not lost to him, of course the measure of damages is not the value. He may be entitled to full compensation for all the injury which he has sustained by the acts of the defendant, but not for the injury sustained by means of his own voluntary acts.

In the answer which was stricken out, there were some immaterial averments which might have been stricken out, but there were other matters also which were properly pleadable in mitigation of damages. –
With the concurrence of Judges Bay and Dryden the judgment is reversed and the cause remanded.

Barton Bates

23

Alexander
vs
Keller

Opinion
Reversed & Remanded
Bates

Filed Jany 7. 1865
M W Cady
Clk

CHARTER

AND

ORDINANCES

OF THE

TOWN OF FARMINGTON,

ST. FRANCOIS COUNTY, MO.

ST. LOUIS;
PRINTED BY BENJ. CHARLES, BOOK AND JOB PRINTER.
1857.

CHARTER.

An Order of the County Court of St. Francois County, in the State of Missouri, Incorporating the Town of Farmington, made Nov. 14th, A. D. 1856.

Now at this day come Walter K. Brady, and presents the petition of two-thirds of the inhabitants of the town of Farmington, praying that they may be incorporated, and a Police established for their local government: Whereupon it is ordered by the Court that all of that district of country situated in the county of St. Francois and State of Missouri, known by the name of the town of Farmington, and Boyee's addition to the town of Farmington, and bounded as follows, to-wit: Beginning at a stake at the head of a Spring in David Murphy's field, with a hickory tree eight inches in diameter as a bearing tree, running thence south 3 degrees, east 1.35 links to a stake with a cherry tree as a bearing tree, thence south 85 degrees, west 13 chains 31 links to a stake, thence south 5 degrees, east 15 chains to the line of Jesse Murphy, to a stake, with ash bearing trees, thence east with said line 30 chains 14 links to a stake, with a walnut and dogwood bearing trees, thence north 18 chains to a stake with walnut and ash bearing trees, thence west through the centre of the before-mentioned Spring, to the beginning, being the boundary of the town of Farmington. And Boyee's addition to said town, viz: Bounded on the east by Washington street continued in a straight line, south from said town, commencing at a stone where the eastern side of Washington street intersects the line on the south side of the alley bounding Farmington on the south side, commencing at the north-east corner of said addition, at a stone from where the south-west corner of Joseph M. Berry's dwelling house bears N. 71 degrees 1.56 chains distant; an elm tree 36 inches diameter bears N. 80 degrees, E. 1 49 chains, a honey locust 8 inches diameter bears S. 3 degrees, W. 14½ links.

And the inhabitants of the said town of Farmington and Boyee's addition to the town of Farmington, shall be and they are hereby constituted a body politic and corporate by the name and style of the "*Inhabitants of the Town of Farmington.*"

And it is further ordered by the Court, that Valentine C. Peers, John Cobb, Charles Myers, George W. Williams, and Stephen E. Douthet, be and they are hereby appointed trustees for the corporation of said town of Farmington.

ORDINANCES.

ORDINANCE NO. I.

RESPECTING THE MEETING OF THE BOARD.

SECTION 1.—Time of regular meetings.
" 2.—Special meetings may be called.
" 3.—Place of meeting.

Be it ordained by the Trustees of the town of Farmington, as follows:

SECTION 1. The Trustees shall hold regular meetings to transact the business of the corporation, on the first Mondays in January, April, July and October, of each year, and no notice shall be necessary to attend a regular meeting.

SEC. 2. There may be special meetings held by the Trustees, whenever the interest of the corporation shall require it. Such called meetings may be called by the Chairman, or any three of the Trustees, and in such case, two days' notice shall be given to the other members of the board before the time of meeting, which notice may be served by the Marshal, Clerk, or any member of the board.

SEC. 3. The Board of Trustees shall hold their meetings at the regular sessions, in the Court House, and continue in session during such time as may be necessary to transact the business of the corporation, and the time of meeting shall be at 10 o'clock, A. M., or according to the time adjourned to. All special meetings to meet at such time as required by the notice.

Approved, January 21, 1857.

ORDINANCE No. II.

RESPECTING OFFICERS.

SECTION 1.—Appointment of Officers.
" 2.—Citizens only eligible—term of office:
" 3.—Oath of office.
" 4.—Bond required—condition.
" 5.—Bond to be approved.
" 6.—Commissions to issue—when.
" 7.—Vacancies—how filled.
" 8.—Books, Papers, &c., to be delivered to successor.
" 9.—Penalty for neglect of duty.

Be it ordained by the Trustees of the town of Farmington, as follows:

SECTION 1.—At the first regular meeting after the election of Trustees, there shall be appointed by the Board of Trustees, a Clerk, Treasurer and Marshal, and Attorney, when deemed necessary by the Board.

SEC. 2. Every person so appointed to office, shall be a citizen of

the United States, over twenty-one years, and shall hold his office for one year, and until his successor is appointed and qualified, unless removed for cause.

Sec. 3. Before any person shall undertake to perform the duties of his office, he shall be commissioned, and at the time of being commissioned he shall take and subscribe an oath, before an officer authorized to administer oaths, that he will support the Constitution of the United States, and of this State, and faithfully demean himself in office, and when bond is required, shall give the same.

Sec. 4. Official bonds shall be made to the Trustees of the town of Farmington, and their successors in office, and shall be conditioned for the faithful performance of all acts and duties required of the officer in his office, by any laws of the State of Missouri, or ordinance of the town of Farmington, existing at the date of the bond, or subsequently passed. Said bond to be approved by the Board.

Sec. 5. At the next meeting after the taking of any official bonds, they shall be presented to the Board for approval.

Sec. 6. Upon such oath and bond being filed with the Clerk, he shall deliver to the person appointed as aforesaid, a commission in the corporate name, and signed by the Chairman, authorizing and empowering such person to discharge the duties of the office for the time for which he has been appointed, and until his successor shall be appointed and qualified.

Sec. 7. If a vacancy occur in either of the offices above mentioned, before the expiration of the time for which the incumbent shall be appointed, from resignation, death, or removal from office, or any other cause, then the Board shall, by appointment, fill such vacancy in all respects as at the expiration of the term of service, and for this purpose they may call a special meeting.

Sec. 8. Every officer upon going out of office, shall deliver to his successor all books, papers, furniture, and other things appertaining to his office.

Sec. 9. Every officer of the corporation who shall refuse, or wilfully neglect to perform any duty enjoined upon him by law or ordinance, and shall, in the discharge of his official duties, be guilty of any fraud, extortion, partiality, oppression, wilful wrong or injustice, shall forfeit and pay a sum not exceeding one hundred dollars, and may be removed from office.

Approved, January 21, 1857.

ORDINANCE No. III.

RESPECTING CLERK.

Section 1.—Clerk shall give bond.
" 2.—Attend meetings, keep Journal and Records.
" 3.—Keep Seal, and have custody of the Records.
" 4.—Issue Commissions and Public Documents, and keep Register of same.
" 5.—Issue Licenses, and deliver same to Collector.
" 6.—Procure Stationery, Fuel, &c.
" 7.—Render accounts at regular meetings.

Section 8.—Publish Ordinances.
" 9.—Record Ordinances, &c.; prepare Official Bonds, &c.
" 10.—Clerk's Fees.

Be it ordained by the Trustees of the town of Farmington, as follows:

Section 1. The Clerk shall take the oath required in Section 3, of Ordinance No. 2, and give bond for the faithful performance of his duties, in such sum as the Board of Trustees shall direct, with like conditions, and payable as provided in Ordinance No. II.

Sec. 2. It shall be the duty of the Clerk to attend all meetings of the Trustees, keep a Journal of the proceedings of the Board, and record the same at full length, in a well bound book to be kept for that purpose, and after the record shall be made up, he shall read the same in the meeting, and if approved by a majority of the Board present, the Chairman shall sign the same.

Sec. 3. The Clerk shall have the custody of the corporate Seal, public records, the original rolls of ordinances and resolutions of the Board of Trustees, and all other papers, records and documents, pertaining to the corporation, that may be delivered into his possession. He shall fix the seal to all public instruments or official acts of the Board of Trustees, which by law or ordinance are required to be attested by the corporate seal, and countersign the same; and shall fix the seal to and certify any documents, copies or papers in his office, required for individual use, or for any officer of the corporation; and shall furnish to the attorney of the corporation any record or document, in his office, which may be called for to be used in any court, taking his receipt therefor.

Sec. 4. The Clerk shall prepare all commissions, and other official documents which the Chairman of the Board is required to issue, and shall countersign and fix the corporate seal to the same, and shall keep a register of all such commissions and documents, in which the substance thereof shall be stated.

Sec. 5. The Clerk shall preserve, sign, and affix the corporate shal to blank licenses for all purposes for which a license is required to be issued, and shall, from time to time, in cases where blank licenses are required to be delivered to the Collector, deliver any number of the same required by the Collector, of which he shall keep a register, stating the number issued, the amount thereof, for what issued, and shall take a receipt therefor.

Sec. 6. The Clerk shall procure stationery, books, fuel, and other articles necessary for his own office and for the Board of Trustees, and shall keep an accurate account thereof.

Sec. 7. The Clerk shall, at each regular meeting of the Board, render accounts with the proper vouchers, to be passed upon and allowed by the Board.

Sec. 8. The Clerk shall cause the ordinances to be published as required by ordinance; superintend and cause the same to be correctly published.

Sec. 9. The Clerk shall record the ordinances and resolutions

passed by the Board, in a book to be kept for that purpose, and the date when passed; and shall prepare all official bonds and affidavits, and file the same in his office.

SEC. 10. The Clerk shall receive the following fees: for every meeting of the Board, and for making up the records, one dollar.

For issuing each license, (to be paid for by the applicant) fifty cents.

Engrossing, reading, and copying ordinances of the Board, ten cents per hundred words.

For each certificate and seal attached to a paper, twenty-five cents.

For drawing up and filing each bond, affidavit, or other paper, (to be paid by the applicant,) except ordinances, fifty cents.

For making out copies of Tax-List, ten cents per hundred words.

Approved, January 21, 1857.

ORDINANCE No. IV.

RESPECTING ATTORNEY.

SECTION 1.—Attorney to prosecute or defend suits—when.
" 2.—Keep Docket—what to contain.
" 3.—Take and prosecute appeals.
" 4.—Assistant counsel may be employed.
" 5.—Compensation.
" 6.—Fees for benefit of corporation, on conviction.

Be it ordained by the Trustees of the town of Farmington, as follows:

SECTION 1. It shall be the duty of the Attorney for the corporation to prosecute or defend, as the case may be, all suits and actions originating and pending in any court in this State to which the corporation is a party, and in which, in the opinion of the Chairman of the Board of Trustees, the interests of the corporation are brought into controversy, and to advise the officers of the corporation on such legal questions as may arise in relation to the business of the corporation.

SEC. 2. The corporate Attorney shall keep a docket of the cases in which the corporation is a party, in which he shall enter the names of the parties, when and in what court the suit was commenced, motive of the action, names of the witnesses, proof, &c., for the corporation, the proceedings had in each cause, the date and amount of the judgment, when and to whom the execution issued, when returnable and how satisfied; and which shall be exhibited to the Board of Trustees at every regular settlement of the Board with the Collector.

SEC. 3. The Attorney shall by the advice and consent of the Chairman, take and prosecute an appeal or writ of error in any and all cases, and make necessary affidavits therefor; and the Chairman is authorized to procure, on behalf of the corporation, such securities as required by law, and the Chairman and such securities shall be kept harmless by the Corporation.

SEC. 4. Assistant Counsel may be employed in the discretion of the Chairman,

SEC. 5. The Attorney appointed by the Corporation shall receive a compensation of twenty-five dollars per year for his services as a stated compensation, and such other pay as allowed by ordinance; additional compensation may be allowed in the discretion of the Board of Trustees.

SEC. 6. In all cases of a breach of the Ordinances of the Town, in which there shall be a conviction of the accused, whether by confession, verdict or judgment, there shall be taxed and recovered as costs, on every case when the fine shall be five dollars, or under, the sum of one dollar; on every case where the fine shall exceed five dollars, and not exceed ten dollars, the sum of two dollars; on every case where the conviction shall be for a sum above ten dollars, and not exceeding twenty-five dollars, the sum of three dollars; on every case where the conviction shall be for a sum above twenty-five dollars, and not exceeding fifty dollars, the sum of four dollars; and on all cases where the fine assessed exceeds fifty dollars, the sum of five dollars as attorneys fees.

Approved, January 21, 1857.

ORDINANCE No. V.

RESPECTING TOWN MARSHAL.

SECTION 1.—Marshal to call assistance when necessary.
" 2.—Persons refusing to assist, to be fined.
" 3.—Marshal to be fined for neglect of duty.
" 4.—To be ex officio Collector.
" 5.—May appoint one or more Deputies.
" 6.—Marshal's duty to visit disorderly places.
" 7.—His duties after arrests.
" 8.—In what cases arrests to be made.
" 9.—Fees of Marshal.

Be it ordained by the Trustees of the town of Farmington, as follows:

SECTION 1. The Town Marshal shall, and he is hereby authorized and empowered, whenever he or his deputy shall deem it necessary in the execution of any process to him directed by the Chairman or any Justice of the Peace within the corporate limits, or in discharging the duties enjoined on the said Marshal by ordinance or law, to call to his or their aid and active assistance, all free male inhabitants of the town, above the age of eighteen years, or so many as he or they may think necessary.

SEC. 2. If any person or persons who shall have been called to aid and assist the Marshal, or any of his Deputies as aforesaid, shall refuse or neglect to obey such call or summons, such person or persons so neglecting, shall forfeit and pay to the corporation, as a fine, a sum not exceeding twenty dollars, to be recovered as other fines and penalties.

Sec. 3. The Marshal, wilfully neglecting to perform the duties of his office, besides his liability on his bond, shall be liable to pay a fine, for each neglect or refusal, not exceeding three dollars, for the use of the corporation.

Sec. 4. The town Marshal shall be, ex officio, collector of the revenue, and all monies due the corporation on assessment of property and granting of license, and shall pay the same, together with all fines that shall be collected by him, to the Treasurer of the town, taking duplicate receipts therefor, one of which he shall deliver to the Clerk.

Sec. 5. The Marshal may appoint one or more deputies, and he or one of his deputies shall attend every meeting of the Board of Trustees, and make all necessary preparation for their comfort, &c., and shall perform such other duties as may be required of him by the Board, and shall receive, as compensation, the sum of fifty cents for each attendance, with such additional sum as he may be out for fuel and lights.

Sec. 6. It shall be the duty of the Marshal to visit, at all times, suspicious or disorderly houses, or places, and all parts of the town where disorder or breaches of the ordinances are most likely to be committed, to arrest and take into custody without warrant, any and all persons who may be found in the commission of, or about to commit, any offence against the corporate ordinances.

Sec. 7. Whenever the Marshal, or his deputy, shall arrest any person or persons who have committed a breach of any of the ordinances of the corporation, he shall forthwith take him or them before a Justice of the Peace, within the corporate limits, to be dealt with according to law, except when such arrest shall be made after 8 o'clock, P. M.; then, and in that case, the officer making the arrest shall commit such offender or offenders to the jail until an early hour the ensuing morning, unless such offender or offenders shall give security to said Marshal or his deputy. to be approved by them, or either of them, and enter into bond to the town of Farmington, for the sum of fifty dollars, conditioned for his or their good behavior, and for his or their appearance before some Justice of the Peace within the corporation limits, at a time and place to be specified in said bond.

Sec. 8. In all cases of breaches of ordinances which may come to the knowledge of the Marshal or his deputies, it shall be the duty of him so receiving information, to repair forthwith to the place where the offence has been or is about to be committed, and to arrest and take into custody, without warrant, any and all such offenders, as he may have good reason to believe are guilty of any violation of the ordinances; and in all cases of breaches of ordinances which may come to the knowledge of the Marshal or his deputy, the one so receiving information shall forthwith file a complaint or information against such offenders before some officer having cognizance of the offence, and also give to such officer the names of all persons who are material witnesses, to prove the offence charged.

Sec. 9. The Marshal shall be entitled to fees for his services not herein otherwise provided for, as follows, to-wit: For all moneys (taxes excepted) collected by him without a levy on and sale of property, ten per cent. For posting every copy of an ordinance, or other matter required to be posted up by the Board of Trustees, five cents. For committing any person to jail, fifty cents. For discharging any person from jail, fifty cents. For collecting taxes levied by the Board of Trustees, on the town, eight per cent.; and for other services done by him in the line of his duty, he shall be entitled to such fees as are allowed constables by law for like services.

Approved, January 21, 1857.

ORDINANCE No. VI.

MISDEMEANORS.—ARTICLE I.

Section 1.—Misdemeanor, in shooting, riding, or driving wheeled vehicle fast, slaughtering in town—Penalty.
" 2.—Action to commence within five days.
" 3.—Nuisances.
" 4.—Duty of householders to keep streets clean, &c.
" 5.—No person to keep more than one dog, without tax.
" 6.—Charivaris prohibited.
" 7.—Trespass on private property—penalty, &c.
" 8.—Disturbing public peace.
" 9.—Minors and slaves buying liquor without order—Penalty on vendor.
" 10.—Resisting officers.
" 11.—Privies declared nuisances, when, &c.

Be it ordained by the Trustees of the town of Farmington, as follows:

Section 1. No person shall, within the limits of said corporation, fire any pistol, gun, or other fire-arms; ride any horse or mule, or drive any cart, wagon, or wheeled carriage faster than a moderate trot; or shall let any stallion or jack to mares; or carry on a public slaughter. For any offence against any provisions of this section, the person offending shall pay a fine not less than one dollar, nor exceeding ten dollars. The parents and guardians of minors, or the owners of slaves, or the persons in whose employ said slaves shall be, who shall violate any of the provisions of this ordinance, shall be subject to pay any fine which may accrue by reason of any breach thereof.

Sec. 2. All prosecutions under the above section to be commenced within five days after the offence may have been committed.

Sec. 3. No person shall throw into any street or square included in the boundary of the corporation, any decayed vegetables or other offensive or refuse vegetable matter, nor into any of the streets or squares within the corporate limits or within three hundred yards of any house, any offal, dead carcasses of animals, or putrid animal matter of any kind, nor shall any person or persons suffer any stagnant water to accumulate on his or her premises, whereby the health of

the inhabitants of the town may be endangered. Any person or persons offending against the provisions of this section, shall be fined not less than two dollars for every offence.

Sec. 4. It shall be the duty of every householder within the limits of the corporation, to keep the streets opposite his or her respective lots, as far as the middle of the street, clean, by removing therefrom all nuisances. Any person failing to do so, for every day he or she shall fail, shall be held liable to pay a fine of not less than two nor more than ten dollars for each offence.

Sec. 5. No person or persons shall be allowed to keep more than one dog or bitch in or about his, her or their house or premises, without paying a tax of fifty cents per head on each and every one above one to each family, and every person so keeping a dog or dogs, shall keep a collar on said dog or dogs, with the initials of the owners' names on the same; and if any dog or bitch, the property of any inhabitant of said town, be found in the corporate limits without a collar, it shall be lawful to shoot such dog or dogs. It shall be the duty of the Assessor of the town to assess all dogs, over and above one to each family, that the owners may wish to keep.

Sec. 6. No person or persons shall hereafter go into a charivari; any person or persons offending against the provisions of this section, shall each be fined one dollar.

Sec. 7. If any person or persons shall, within the corporate limits, with a malicious, mischievous, or bad intention, upset, remove, or break down any house, out-house, or building of any kind, or any part thereof, or any sign-board, sign, or other fixture, or shall make any barricades, or place any boxes, barrels, or other impediments in the streets, or shall remove any cart or other vehicle from its place, or commit any other mischievous act or trespass on the person or property of others, they shall, upon conviction thereof, be fined in a sum not less than two dollars, nor more than ten dollars for each offence. The parents and guardians of minors and the owners of slaves, shall be responsible for all fines incurred by their children, wards or slaves, under this ordinance.

Sec. 8. Any person or persons who shall be found disturbing the public peace within the corporate limits, by any unusual noise, either by singing, loud hallooing, or using profane language, or by fighting, quarreling, or challenging to fight, under any pretence or pretext whatever, tending to produce a breach of the peace, such person or persons so offending shall be fined in a sum not less than one dollar, nor more than ten dollars, or by imprisonment in the county jail, not exceeding ten days, or by both; such fine and imprisonment at the discretion of those trying the case.

Sec. 9. No person or persons shall sell any ardent or spirituous liquors to any minor or slave, unless such minor or slave produce a written order from his or her guardian, father or mother, master, owner, or person under whose control they are; any person so offending, shall pay a fine of not less than five, nor more than ten dollars, for the use of the town.

Sec. 10 If any person or persons shall knowingly and wilfully obstruct, resist, or oppose any officer of this town, or any person duly authorized, in executing or attempting to execute and carry into effect any ordinance passed by the proper authorities of the corporation of the town of Farmington, or in serving or attempting to serve and execute any legal writ, warrant, process, or order issued by authority of law, or any ordinance by the Chairman of the Board of Trustees, or any Justice of the Peace, such person shall be punished by fine, in a sum not exceeding fifty dollars, or by imprisonment, not exceeding ten days, or by both such fine and imprisonment.

Sec. 11. No person or persons shall keep, or suffer to be kept, on his, her or their premises, a privy in such condition as to be a nuisance to his, her, or their neighbors, or any of the inhabitants of the town; and any person who shall refuse or neglect, after having ten days' notice thereof, to cleanse the same, shall pay a fine of not less than five, nor more than ten dollars, upon conviction thereof.

Approved, January 21, 1857.

ARTICLE II.

RESPECTING PUBLIC INDECENCY.

Section 1.—Penalty for openly exposing one's person.
" 2.—Profane swearing, loud and boisterous language, &c.—Penalty.

Be it ordained by the Trustees of the Town of Farmington, as follows:

Section 1. That every person who shall, within the corporate limits of said town, or so near thereto as to be seen by persons therein, openly expose his or her person to public view, in the act of passing urine or excrement, or affecting or appearing to be so engaged, or shall publicly expose his or her person in an indecent and unbecoming manner, in any other way, shall, on conviction, be fined not less than one nor more than five dollars for every time he shall so offend.

Sec. 2. Every person who shall, within the corporate limits of said town, or so near thereto as to be heard by persons therein, use loud and boisterous language, or make loud and unusual noise, in an angry, or boisterous, or turbulent manner, or blaspheme, or utter oaths in the name of his Maker, or use other vulgar or indecent language, in a loud and unusual manner, shall, on conviction, be fined in a sum not less than one nor more than five dollars for every such offence.

Approved, January 21, 1857.

ARTICLE III.

OBSTRUCTING STREETS.

SECTION 1.—Penalty for obstructing streets.
" 2.—Penalty for camping on street, &c.

Be it ordained by the Trustees of the Town of Farmington, as follows:

SECTION 1. That no person or persons shall throw or place on or in Columbia street, of said town, any iron, metal, wood, timber, or other obstructions, except for the purpose of erecting a building or making some improvement in said town, and that all persons who shall so offend, shall, on conviction, be fined not less than twenty-five cents for every hour he or they shall let such obstructions remain in the street.

SEC. 2. That no person or persons shall camp with his or their wagon or wagons, or those under their control, in or upon Columbia street, in the town of Farmington, between sundown and sunrise; any person violating the provisions of this section, shall forfeit and pay not less than one dollar, nor more than five dollars for each offence.

ORDINANCE No. VII.

RESPECTING LICENSES.

SECTION 1.—Who required to take license.
" 2.—Clerk to issue blank licenses.
" 3.—Statement to be rendered by applicant.
" 4.—Merchant's license.
" 5.—Dramshop keepers.
" 6.—Taverns, hotels and Inns.
" 7.—Pedlers.
" 8.—Keepers of billiard tables.
" 9.—Circuses, shows, &c.
" 10.—Auctioneers.

Be it ordained by the Trustees of the Town of Farmington, as follows:

SECTION 1. No person or persons shall deal as merchants, grocers, dramshop or tavern keepers, within the corporate limits of the town of Farmington, without first obtaining a license therefor, signed by the Chairman of the Board, or by the Clerk, and countersigned by the Collector; and any person offending against the provisions of this section, shall forfeit and pay to said corporation, a fine not less than ten dollers, nor more than fifty dollars, to be collected as other fines or penalties. The term "merchant" shall be construed to embrace drug store keepers, variety and clothing store keepers, whose stock or manufacture is not the manufacture of the town.

SEC. 2. The Clerk shall issue and deliver to the Collector as many blank licenses for merchants, grocers, dramshop keepers and tavern keepers as the Board shall direct, and shall charge the Collector therewith.

SEC. 3. Before any grocer or merchant shall receive a license, they shall deliver to said collector an aggregate statement of all goods, wares, merchandize and groceries, (except such as are the manufacture, growth, or produce of this State) received at their store, stand, warehouse or shop, for sale within the last six months, next preceding the application for such license. Such statement shall be subscribed by the applicants, and sworn to before the Collector, or some Justice of the Peace.

SEC. 4. There shall be paid upon every such license every six months, a tax, at the rate of one dollar for every thousand dollars' worth of goods, wares, merchaudize and groceries embraced in such aggregate statement—but in no case shall the tax to be paid be less than one dollar—and upon the payment of such tax to the Collector, together with fifty cents for the Clerk's fees, he shall deliver a license to the applicant, after countersigning the same.

SEC. 5. Dramshop keepers shall pay a tax of five dollars on their license every six months, and shall obtain from the Collector the same on payment of said tax, and fifty cents for Clerk's fee.

SEC. 6. Every tavern, inn, or hotel keeper shall pay a tax of five dollars on his license every six months, and an additional tax of five dollars for every six months, if a dramshop keeper in said tavern, inn or hotel, or in any connection therewith, together with fifty cents for Clerk's fee.

SEC. 7. No person shall exercise the business of a pedler within the corporation limits, without obtaining a license, and shall pay the sum of five dollars for the same, to continue for six months, and Clerk's fee of fifty cents. Any person so offending, shall pay a fine of not less than ten dollars, nor more than twenty-five dollars, for each and every offence.

SEC. 8. No person shall keep, or use, or suffer to be kept or used, in or about his or their premises within the corporation limits, any billiard table, nine or ten-pin alley, or table upon which any kind of game is played with balls or pins, without regard to number or kind, and receive compensation therefor, directly or indirectly, or gain therefrom, in any manner whatever, without first obtaining a license therefor; and such persons shall each pay for their license, to continue for six months, the sum of five dollars, and fifty cents each for Clerk's fee. Persons violating the provisions of this section, shall forfeit and pay to the corporation a fine of twenty dollars for every such offence.

SEC. 9. No person or persons shall, within the corporate limits, or within one-half mile thereof, exhibit any show of any description whatever, or any theatrical or other amusement, or receive pay or compensation therefor, without first obtaining a license therefor, signed as other licenses, and paying a sum therefor not less than five dollars, nor more than twenty-five dollars, in the discretion of the Clerk or Collector, who are hereby authorized to grant the same. Any person violating the provisions of this section, shall forfeit and pay a fine of fifty dollars.

Sec. 10. No person shall exercise the business of auctioneer, within the corporation limits, without first obtaining a license, for which he shall pay the sum of five dollars. Any person offending against this section, shall be fined in any sum not less than five, nor more than twenty dollars.

Approved, January 21, 1857.

ORDINANCE No. VIII.

PATROL, OR NIGHT WATCH.

Section 1.—Appointment of Captain.
" 2.—Assistants to be appointed by Chairman.
" 3.—Duty of Patrol.
" 4.—County Jail to be used as a place of confinement, when.

Be it ordained by the Trustees of the Town of Farmington, as follows:

Section 1. There may be appointed at such time as the Trustees shall think fit, some proper person as Captain of the Night Watch or Patrol, who shall serve for such time and on such terms as shall be agreed upon between him and the Board.

Sec. 2. Assistant members of the patrol may be appointed by the Chairman of the Board, in such numbers and for such time as he may think requisite, and the Captain shall be responsible for their official conduct and proper discharge of their duty as such assistants; and the whole patrol shall be subject to such regulations as the Board shall enjoin upon them.

Sec. 3. It shall be the duty of the patrol to arrest all persons offending in the night time against any of the town ordinances, and to deal with them as provided in said ordinances.

Sec. 4. The County Jail shall be used as the place of confinement for offenders against the town ordinances, until otherwise ordered, leave from the County Court being granted.

Approved, January 21, 1857.

ORDINANCE No. IX.

REVENUE—ARTICLE I.

ASSESSMENT OF PROPERTY FOR TAXATION—APPEALS, &c.

Section 1.—Rate of Tax.
" 2.—Appointment of Assessor—oath of office.
" 3.—Duty of Assessor; duty of Clerk, &c.
" 4.—Duty of Collector.
" 5.—Appeals from Assessment may be had.
" 6.—Assessment List to remain open for inspection.
" 7.—Assessor to give bond.
" 8.—Clerk to give notice of return of List by Assessor.

Be it ordained by the Trustees of the town of Farmington, as follows:

Section 1. Upon all property situated within the incorporated limits of the town, as laid down in the Order of Incorporation, and subject to taxation for State purposes, there shall be levied for corporation purposes, a tax of one-fifth of one per cent. upon the assessment thereof.

Sec. 2. At the first meeting in January, in each year, the Board of Trustees shall appoint an Assessor, for the purpose of ascertaining the assessment value of the property aforesaid, who shall make a list of said property, and in making the same, he shall be governed by the same rules and regulations, and possess the same power and authority in every respect, as the Assessor under the law of this State; and such Assessor, before entering upon the duties of his office, shall take and subscribe an oath, before a Justice of the Peace, that he will faithfully demean himself in office, according to the best of his ability and skill, perform the duties of Assessor without fear or partiality, and that he will do equal right and justice in every case in which he shall act as Assessor. He shall receive for his services for making out said assessment list, eight cents per name—all kinds of property belonging to the same person, shall be entered under one name.

Sec. 3. The person appointed Assessor, shall, within thirty days after the first day of February, in each year, make out and return to the Clerk, an Assessment-List of the taxable property in said incorporated limits, and it shall be the duty of said Clerk, within ten days after the sitting of the Board of Trustees for hearing appeals from such assessment, to make out a fair copy thereof, to be delivered to the Collector of said taxes, upon the delivery of which he shall receipt upon the original list for such copy, for the purpose of collection.

Sec. 4. The Collector, upon the receipt of a copy of such list, shall forthwith proceed to collect the tax specified therein, according to law, and shall settle with said Board of Trustees at the next ensuing regular meeting of the Board; and such Collector shall be liable for the amount of such tax to the Board of Trustees, and shall settle for the same in the same manner that the Collector of the County Tax is liable to settle with the County Court for taxes collected for county purposes, and shall, upon such settlement, be allowed for delinquencies in the same manner, and under like rules and restrictions as the Collector of taxes for county purposes is liable to the County Court; and upon such settlement, it shall be the duty of the Collector to pay over to the Town Treasurer, for the time being, the amount of money he shall be found charged with on such settlement, who, upon such payment, shall receipt to him therefor. For any failure in paying over as aforesaid, he and his securities shall be liable to be proceeded against before said Board, in the same manner that the Collector may be proceeded against before the County Court, for failing to pay over taxes collected for county purposes, and shall be liable to the like penalties in every respect.

Sec. 5. There shall be held by the Board of Trustees, on the third Monday in March, in each year, a meeting for the purpose of hearing and determining appeals from the Assessment-List. Any person

feeling aggrieved by the assessment made by the Assessor, may appeal therefrom to said Board of Trustees, and the proceedings thereon shall be conducted in the same manner that the appeals from the assessment of the Assessor of taxes for State purposes are conducted.

Sec. 6. From the time the Assessment-List shall be returned, till the first meeting of the Board, the same shall be open to the inspection of all persons interested, who may apply to inspect the same.

Sec. 7. The person appointed Assessor, shall take and subscribe the oath required in section 3, of Ordinance No. II, and give bond in such sum as the Board shall direct; which bond and affidavit shall be prepared by the Clerk, and by him taken and preserved in his office, in all respects as papers of a similar nature are taken of other officers.

Sec. 8. The Clerk shall cause notice to be given in the same manner as ordinances are published, of the delivery to him of the Assessment-List.

Approved, January 21, 1857.

ARTICLE II.

COLLECTING TAXES, AND SALE OF REAL ESTATE FOR TAXES.

Section 1.—When Marshal receives List to demand taxes.
" 2.—Tax not paid in thirty days, to sell personal property.
" 3.—Oath required before Delinquent List allowed.
" 4.—Delinquencies to remain as lien on property.
" 5.—Fees of Marshal for levy or sale.
" 6.—When Marshal to sell real estate for taxes.
" 7.—Notice required upon sale of real estate.
" 8.—Upon sale, Marshal to execute deed.
" 9.—Fees allowed Marshal in case of sale.
" 10.—When sale of real estate of residents for taxes, made.
" 11.—Property subject to sale for taxes.

Be it ordained by the Trustees of the town of Farmington, as follows:

Section 1. When any tax list shall be placed in the hands of the Town Marshal for collection, it shall be the duty of the said Marshal to demand of each individual taxed in said list, the payment of his or her tax, as in said list expressed.

Sec. 2. If, within thirty days of the time such tax shall have been so demanded, it shall not be paid in full to said Marshal, it shall be the duty of the said Marshal to seize and levy upon personal estate of the said individual or individuals so delinquent as aforesaid, sufficient to pay the tax due from him, her or them, with all intervening costs, and to sell the same at public vendue, to the highest bidder, first giving notice of the time, terms and place of sale, in the same manner as is required by law to be done in cases of personal property sold under execution issued in this State by a Justice of the Peace, unless such tax and intervening costs be paid to the Marshal on or before the day of sale.

Sec. 3. No delinquencies shall be allowed to the Marshal, on his settlement with the Board of Trustees, for any tax or taxes put into his hands for collection, unless he first make an oath before the Board that he has diligently endeavored and used all lawful means to collect the same.

Sec. 4. All delinquencies allowed on any tax list, shall remain as a perpetual lien on the personal estate of delinquents, whenever such personal estate shall be found in the corporate limits.

Sec. 5. The Marshal shall be entitled for any levy on or sale of property for taxes, the same fees as township constables are allowed for like services on writs of execution issued by Justices of the Peace.

Sec. 6. Whenever any real estate within the corporate limits shall belong to a non-resident of the corporation, and the same shall not be tenanted, and the taxes due thereon shall not be paid by any person within one month from the time the Assessment-List shall be delivered to the Town Marshal, then and in that case, the said Marshal shall sell the same, or so much thereof, if susceptible of division, as will be sufficient to pay the taxes and costs due thereon.

Sec. 7. Before any real estate shall be sold for taxes due thereon, the Marshal shall put up a notice in four public places, in different parts of the corporation limits, describing the real estate on which the taxes are due, the amount of taxes due thereon, the name of the person to whom the property belongs, the time and place of sale, and that unless the taxes be paid on or before the day therein mentioned, the real estate therein described will be sold for cash to satisfy the taxes and costs; such notice shall be posted up at least twenty days before the day of sale therein mentioned.

Sec. 8. Upon every sale of real estate for taxes, the Marshal shall execute a deed (reciting the assessment and delinquency, notice and sale,) for the same, in all respects and with like effect as are executed by the Sheriffs upon sale of real estate under execution.

Sec. 9. The Marshal shall be allowed for putting up the notice required in section seven, fifty cents, and two dollars for making a deed.

Sec. 10. After the assessment list shall be delivered to the Collector, he shall proceed immediately to collect the taxes from all persons residing in the corporate limits, who shall be bound to pay a tax; and if any person or persons shall fail or refuse to pay the taxes owing, and there be not sufficient personal property whereof to levy and make the taxes due, then and in that case, the said Collector shall proceed to sell the real estate of such person or persons, or so much thereof as shall be sufficient to pay all taxes due, and costs of sale, in the same manner and with like proceedings and effect, as in cases of persons non-resident.

Sec. 11. The Collector shall have power to seize and sell any personal property, not exempt from seizure and sale for taxes due the State, and in such cases he shall proceed as the Collector of the State and County revenue is required by law.

Approved, January 21, 1857.

ORDINANCE No. X.

SEAL.

Be it ordained by the Trustees of the town of Farmington, as follows:

Sec. 1. The common Seal of the corporation of the town of Farmington, shall be of circular shape, one inch and a half in diameter, with such device as may be prescribed by the Board of Trustees.

Approved, January 21, 1857.

ORDINANCE No. XI.

SLAVES.

Section 1.—Slaves not to assemble without permission.
" 2.—Not to leave home after 10 o'clock at night without pass.
" 3.—Not to carry fire-arms.
" 4.—Duty of Marshal.
" 5.—Slaves over 15 years, not to use indecent or insolent language in streets, &c.
" 6.—Provisions not to be so construed as to prevent going to and returning from religious meetings.

Be it ordained by the Trustees of the Town of Farmington, as follows:

Sec. 1. No male negroes or male mulattoes, over the age of fifteen years, shall be permitted to assemble within the corporate limits, to the number of five or more, and remain so assembled for the space of thirty minutes, without there being permission in writing, signed by two of the patrol, or two of the Trustees of the town; which permission shall be in the possession of some negro or mulatto of such assemblage, specifying the time and place of such assemblage. Any negro or mulatto found at such an assemblage, when there shall be no permission, and after having been notified by a person having patrol authority, to disperse, and shall fail or refuse to do so, shall be liable to receive any number of lashes not exceeding five.

Sec. 2. No negro or mulatto shall be suffered to go from home after ten o'clock at night, unless he or she has a written permission from his or her master, mistress, or overseer, or person having control; and if he be a free man or woman of color, then, in cases of necessity only, such as going for the doctor or medicines for some sick person; any negro or mulatto offending against any provisions of this section, shall be liable to receive five lashes.

Sec. 3. No negro or mulatto shall carry any weapon of any kind. Any negro offending against this section, shall be fined one dollar and costs, or in default of such fine and cost, shall receive five lashes. The master and owners shall be responsible for all fines and costs incurred by their slaves under any of the provisions of this Ordinance.

Sec. 4. It shall be the duty of the Town Marshal to see that the provisions of this Ordinance are strictly enforced; and he shall receive for every negro or mulatto he shall take up and punish for violating the provisions thereof, the sum of one dollar, to be collected off

the owner or the person having the charge of such negro or mulatto.

Sec. 5. Any slave over the age of fifteen years who may be guilty of using any indecent, loud or insolent language in the streets, or shall be found guilty of treating any white person with unbecoming reverence and respect, shall receive for every offence, not less than five lashes.

Sec. 6. The provisions of this Ordinance shall not be so construed as to prevent any negro or mulatto from going directly to and returning from Divine Worship, or going to and returning from the residence of his wife, or from holding religious meetings under the supervision of some discreet white person.

Approved, January 21, 1857.

ORDINANCE No. XII.

VAGRANTS.

Section 1. Who deemed Vagrants.
" 2. Evidence to establish vagrancy; penalty.

Be it ordained by the Trustees of the town of Farmington, as follows:

Section 1. All able-bodied persons who not having visible means to maintain themselves, live idly without any employment, or are found loitering or rambling about and not giving a good account of themselves; all keepers or exhibitors of any gambling table or device, and all persons upon whom shall be found any instrument or thing used for the commission of burglary, or for picking locks or pockets, and who cannot give a good account of their possession of the same, shall be deemed vagrants.

Sec. 2. On the trial of any person on a charge of vagrancy, it shall be lawful in support of said charge, to introduce testimony of the general character and reputation of the defendant, touching the offence and charge set forth in the complaint; and the defendant may likewise resort to like testimony for the purpose of disproving said charge; and if the defendant shall, after all the proofs shall have been heard, be found guilty, he or she shall be ordered by the Chairman of the Board of Trustees or Justices of the Peace before whom such charge is tried, to leave the town in ten hours; and if such person shall be found within the corporate limits after the expiration of such time, he or she shall be lodged in jail at night, and confined to hard labor in the streets in the day, for the whole time he or she shall remain in town.

Approved, January 21, 1857.

ORDINANCE No. XIII.

STREETS—IMPROVEMENT OF.

Be it ordained by the Trustees of the Town of Farmington, as follows:

SECTION 1. After the payment of all the annual expenses of the corporation, the money remaining in the treasury arising from any source whatever, shall be appropriated by the Board of Trustees to making such improvements on the streets within the corporate limits, as to them shall seem proper.

BY-LAWS AND REGULATIONS

For the government of the Board of Trustees of the Town of Farmington.

RULE 1. The Chairman shall take the chair at the hour to which the Board may have previously adjourned, and on the appearance of a quorum, shall call the members to order, cause the roll to be called, and the proceedings of the previous meeting to be read.

RULE 2. It shall be the duty of the Chairman to preserve order and decorum, and to decide all questions of order; subject to an appeal to the Board.

RULE 3. After the proceedings of the previous meeting have been read, business shall be disposed of in the following order:

I. Petitions, Memorials and Resolutions.
II. Reports from Special Committees.
III. Unfinished business.
IV. Motions and Propositions.

RULE 4. No business shall be taken up, except the class to which it belongs shall be in order, unless by unanimous consent of the Board.

RULE 5. Every member present when a question shall be put, shall vote, unless the Board, for special reasons, excuse him.

RULE 6. If the yeas and nays are demanded by any member, the names of the members shall be called, and their votes recorded, the Chairman voting last.

RULE 7. Every motion or proposition shall be reduced to writing before the same shall be considered by the Board, if required by any member.

RULE 8. Every motion may be withdrawn before an amendment is offered or decision made.

RULE 9. A motion to adjourn shall be in order at all times, and shall be decided without debate.

RULE 10. When a question is before the Board, no motion

shall be in order, unless it be for an amendment, postponement, commitment, to lie on the table, or adjournment, or a call for the previous question.

RULE 11. Previous to taking the vote on any subject, the Chairman shall, in an audible voice, ask—"Is the Board ready for the question," after which no member shall rise to speak, and no member except those present shall be entitled to vote.

RULE 12. Whenever it shall become necessary to refer any matter to a committee, the Chairman, on motion of any member, shall appoint such committee.

RULE 13. Every bill or ordinance, before it shall be passed and become such, shall receive the votes of a majority of the trustees.

RULE 14. A majority of the trustees shall constitute a quorum to do business; but a smaller number may adjourn from time to time, and may send a special messenger for the absent members.

RULE 15. Any member who shall absent himself from any regular or special meeting, without good cause, shall pay a fine of one dollar.

RULE 16. No member shall annoy the board by walking across the room, entertain private discourge, or do anything which might annoy the board or any member, under a fine, subject in amount to the discretion of the presiding officer.

RULE 17. When two or more members shall rise to speak or deliver any matter to the board, the chairman shall designate who shall proceed. No member shall speak more than twice on the same subject, unless by consent of the board.

RULE 18. No member shall speak unless there is a motion before the board, and every member shall abstain from personalities in debate.

RULE 19. When a member rises to speak, he shall respectfully address the Chair, and no member shall leave his seat when another is speaking.

RULE 20. Whenever any of the members transgress any of these Rules, he may be called to order by any member, whereupon the offending party shall take his seat, or upon leave make an explanation.

RULE 21. No member shall vote on any question in the event of which he is immediately or particularly interested.

RULE 22. When a motion has been put and decided in the negative or affirmative, it shall be in order for any member

who voted on the side which prevailed, to move for a reconsideration thereof, at the same meeting, or at the next meeting of the board thereafter, and not afterwards.

RULE 23. A bill, motion, or ordinance, or resolution, may be introduced at any time in their respective orders, upon being seconded, and may be considered and discussed immediately, and put upon its passage, or may be laid on the table by a vote of the majority, and it shall not be taken up again, except by a vote of the majority.

RULE 24. The Chairman shall announce the order of business.

Approved, January 21, 1857.

ORDINANCE No. XIV.

OF THE TIME WHEN THE ORDINANCES AND RULES TO TAKE EFFECT.

Be it ordained by the Trustees of the Town of Farmington, as follows:

SECTION 1. That the foregoing Rules and Ordinances take effect and be in force from and after the 16th day of February, 1857.

Approved, January 21, 1857.

CHARLES MYERS,
Chairman.