

as receiver, can be, and is claimed to be, chargeable only under the executor, and what would discharge the executor would discharge him. *Spencer v. Dearth*, 43 Vt. 98. This bill was not brought till March 27, 1890. This defendant has not set up the statute of limitations, and perhaps could not, as a bar, in favor of the executor, but has answered that the assets sought to be reached were acquired by the executor and residuary legatee as of their own property, after the decree of distribution. To charge him with these assets, after such long delay about pursuing the executor beyond the statute period, would be highly inequitable.

Besides, further, charging the executor with these assets in the probate court as a foundation for decreeing payment of the legacies made them his own as to the legatees; and their rights to their legacies thereafter rested upon the decree. *Sowles v. Witters*, 39 Fed. Rep. 403. The wills provided that the defendant Edward A. Sowles should be executor without surety. But for this, the laws of the state would have required bonds with sufficient surety for the security of the legatees, as well as all others interested. The legatees had no right to any legacy except as should be provided for in the wills, and the testators could provide for them upon such security for payment as they should see fit to require. They required none but the personal security of the executor; and, when he was decreed to pay the legacies, his personal responsibility for the performance of the decree was all the security that the testators intended the legatees should have. The legatees allege that he became insolvent in 1882. If so, by waiting while he was solvent till he became insolvent, they put themselves in the same situation with others who trusted to his continuing to be solvent. In no view do the orators appear to be entitled to any decree against the defendant Witters as receiver.

As one of the orators and all the defendants are citizens of this state, this court has no jurisdiction of the rest of the case. As this want of jurisdiction appears now, the rest of the case must, by section 5 of the act of 1875, be remanded to the state court. Let a decree be entered dismissing the bill of complaint as to the defendant Witters, with costs; and let the residue of the case be remanded to the court of chancery for the county of Franklin, without costs.

DANIELS et al. v. STRAW.

(Circuit Court, D. New Hampshire. October 10, 1892.)

SPECIFIC PERFORMANCE—LEASE—RENEWAL.

A lease containing covenants against underletting or occupancy by persons other than the lessee, with a provision for renewal at the lessee's option, was executed to an agent, who took it in trust for his principal, the owner of the business to be conducted on the premises. The lessor supposed that the agent took for his own benefit, and as owner of the business, but the latter made no representations on this point, and intended no fraud or concealment, and at the time of the execution the actual ownership was not a material consideration. The lessor had no personal objection to the true owner, but, induced by an offer of higher rent, refused to renew the lease. *Held*, that specific performance of the renewal clause should be enforced.

In Equity. Bill by Franklin B. Daniels and Sarah J. Bliss, doing business under the name of the Manchester One Price Clothing Store, against Hannah F. Straw, to enforce specific performance of the renewal clause in a lease. Decree for complainants.

Bingham & Mitchell, for plaintiff.

Burnham, Brown & Warren, for defendant.

ALDRICH, District Judge. This is a proceeding in equity to compel specific performance. July 18, 1881, the plaintiff Daniels was the agent of the Manchester One Price Clothing Store, doing business at Manchester. The other plaintiff, Sarah J. Bliss, was the sole owner of the business. And the defendant executed a lease of certain premises in Manchester to Daniels, reciting therein that the premises leased were the same then occupied by the Manchester One Price Clothing Store. The lease was under seal, signed by Hannah F. Straw and Franklin B. Daniels, and contained the usual covenants against underletting and occupancy by persons other than the lessee; was for the term of 5 years, and at a rental of \$2,500 a year, with the right of renewal for a further term of 5 years if the lessee should so elect. At the time of its execution, Sarah J. Bliss was the sole owner of the business, and Daniels, her agent, knowing this, took the lease in his own name for her benefit, and for the benefit of the business, and held it in trust for the owner, and for the business. The lessor knew that it was taken for such a business, and that the premises were to be occupied by the Manchester One Price Clothing Store. Daniels did not disclose the ownership of the business, and the lessor did not inquire. Daniels assumed that the lessor knew, and did not intend to conceal any material or other fact. The lessor assumed, without inquiry, that Daniels owned the business, and was carrying it on under the name and style of the Manchester One Price Clothing Store. The premises were occupied during the term of the lease for the purposes of the "One Price Clothing" business, and until the following December, without a renewal; the occupants paying the rent by checks, sometimes signed by Daniels, as superintendent, and sometimes by Curtis, as general manager.

December 1, 1886, Daniels, acting as agent for the owner of the business, called for a renewal and for another five-years option, and a new lease was executed, with a like option for another five years; and the premises were occupied during the second term in the manner described, the occupants paying the rent by checks signed sometimes by Daniels, as superintendent, and sometimes by Curtis, as general manager; and at the expiration of the term Daniels, acting as agent of the owner, asked for a renewal under the option provision, and the defendant refused to comply, on the ground that she was relieved by the fact that Daniels did not disclose his principal, and that she had, therefore, no contract with the owner, Bliss, and upon the further ground that the right was forfeited by permitting occupancy by other persons.

I find as facts that all the parties are responsible, and the owner of the business is not personally objectionable to the lessor; that Daniels intended no fraud or concealment; that the defendant knew

the premises were to be occupied by the Manchester One Price Clothing Store, and that at the time of the execution of the first lease, and at the time of the renewal in December, 1886, the actual ownership of the business, and the defendant's supposition upon the subject, was not a controlling or material consideration; that during the summer or fall of 1891 the defendant was offered a rental exceeding the sum named in the lease by something like \$1,000 a year, and the refusal to comply with the option provision results from this offer, rather than the discovery of ownership.

Upon the facts, I rule that neither the failure to state the ownership, under the circumstances, nor the character of the occupancy, works a forfeiture of the option provision; and I think the defendant should execute a lease according to the terms of the agreement, and it is so ordered. It may be considered at the defendant's option to execute the lease to Daniels, as agent, or to the Manchester One Price Clothing Store, or to Sarah J. Bliss.

JARECKI MANUF'G CO., Limited, v. CITY OF TOLEDO, (three cases.)

(Circuit Court. N. D. Ohio, W. D. January 3, 1893.)

No. 1,076.

MUNICIPAL CORPORATIONS—CONSTITUTIONAL LAW—RETROSPECTIVE LAWS.

Where a city incurs liabilities for materials furnished for the completion of a natural gas plant, after exhausting the proceeds of bonds issued under an enabling act, a supplementary statute (Act Ohio, April 7, 1892) validating and providing for the enforcement of such obligations is not unconstitutional, as imposing upon the city burdens without consent or consideration, or as conferring new corporate powers upon the city. *Read v. City of Plattsmouth*, 2 Sup. Ct. Rep. 208, 107 U. S. 568, and *New Orleans v. Clark*, 95 U. S. 644, applied.

At Law. Actions by the Jarecki Manufacturing Company, Limited, against the city of Toledo, Ohio, to recover for materials furnished and used in the completion of a natural gas plant. Heard on demurrer to the amended reply. Overruled.

King & Tracey and E. W. Tollerton, for plaintiffs.
W. H. A. Read, for defendant.

RICKS, District Judge. This suit, and two others of similar character, were instituted against the city of Toledo to recover for the value of certain material furnished the trustees of the natural gas works of the city, and used in completing their lines, in order to furnish natural gas to the citizens of that city.

The plaintiffs, in their petitions, aver that the materials and supplies were furnished at prices agreed upon, and were used for the purposes stated; that the city received said materials and supplies; has used the same in the construction of said natural gas plant; is still using the same; has not paid the plaintiffs any part of the sums due, but that the same are just liabilities against said city. The answer sets forth, substantially, the defense that under the original enabling act the city of Toledo was authorized to issue not to exceed