hundred and eleven unpaid notes of the company received by their predecessors have been deposited in court subject to the company's order, and the failure to restore or tender the proceeds of one note, amounting to six hundred and sixty-six dollars, previously paid, may be justified or explained on grounds consistent with the repudiation of the lease. Ratification of unauthorized acts of public agents, or persons assuming to be public agents, can only be inferred from conduct indicating an intention to adopt the acts and inconsistent with any other purpose. The alienation by sale or lease of any portion of the public levees and landings of the city after the restoration of its civil authorities could only be made, if at all, by ordinance or resolution of its common council, and it may be doubted whether there could be a ratification of an unauthorized alienation, attempted by their predecessors, by any proceeding less direct and formal.

I am of opinion, therefore, that the decree of the court below should be reversed, and the bill be dismissed.

LYON *v.* POLLARD.

1. Where a person agreed to serve in superintending a large hotel for another, at a compensation specified, either party being at liberty to terminate the contract on thirty days' notice to the other, and the person agreeing to superintend was ejected by the other on less than thirty days' notice, *held*, in a suit for damages by the party thus ejected—the general issue being pleaded and notice of special matter given—that the defendant might prove that the party ejected was unfit to perform his duty by reason of the use of opiates, and by reason of unsound mental condition.
2. Where by the terms of a contract a party is bound to give thirty days' notice of an intention to terminate it, and having given the notice afterwards waives it, he may in fact renew the notice, though the form of his communication purport to insist on the notice which he has waived; and at the expiration of the required time the second document will operate as a notice.

Statement of the case.

3. Though where, under a contract of hiring services, a party is bound to give a certain number of days' notice to terminate it, it is not terminated until the full term of days has elapsed, yet where an action has been brought for damages for a dismissal without the proper notice, a notice of termination may be given, though the full number of days has not expired when an actual dismissal took place; this to show that the plaintiff had a right now to serve but a portion of the thirty days.

ERROR to the Supreme Court of the District of Columbia.

Mrs. E. A. Pollard sued J. E. Lyon in the court below, and declared on a written contract, by which Lyon agreed to furnish the means of carrying on the St. Cloud Hotel, a hotel of considerable size in the city of Washington, and Mrs. Pollard agreed to superintend and conduct it. For this service she was to receive one-fifth of the net profits, in ascertaining which the rent paid by Lyon for the house was to be excluded. Either party was at liberty to terminate the contract by giving thirty days' notice in writing. The breach alleged was that the defendant ejected the plaintiff from the premises without having given the stipulated notice. Under pleas which amounted to the general issue, the defendant undertook to show that he had given the notice required, and under a special notice of what he would offer in evidence, offered to prove that the plaintiff was unfit to perform her part of the contract by reason of the use of opiates, and by reason of her unsound mental condition. The court refused to receive the evidence; and the defendant excepted.

The defendant then offered evidence of a service of notice on the 11th July on the plaintiff, under the contract to terminate it. Also evidence of service of a notice on the 19th September, in this form:

"September 19th, 1870.

"MRS. E. A. POLLARD.

"MADAM: On the 11th of July last I caused notice in writing to be served upon you, which notice terminated the agreement between us. I now notify you that the time specified in that notice *has fully expired*, and that *you are no longer superintendent* of this hotel, and no longer entitled to the appellation of proprietress.

"Respectfully,

"J. E. LYON."

Argument in support of the judgment.

Testimony was also given tending to show that the first notice had been waived or withdrawn.

The plaintiff was dismissed on the 4th of October.

On this testimony the defendant asked the court to charge that, even if the notice of July 11th had been wholly withdrawn, the subsequent notice of September 19th was in legal effect a renewal of it, and of itself operated to terminate the contract at the expiration of thirty days from its date.

This prayer the court refused to grant; and verdict and judgment having been given for the plaintiff, the defendant brought the case here on exceptions to the evidence, and to the refusal to charge as requested.

Mr. J. H. Bradley, in support of the rulings and charge:

The court rightly refused the offers as to the use of opiates, and as to the plaintiff's unsound mental condition. The suit was for damages on a contract which if the plaintiff failed to perform it, it was in the power of the defendant to rescind on thirty days' notice. If a contract provides a special mode of putting an end to it, that mode must be followed. However imperfectly the plaintiff may have performed her duties, so long as the defendant chose to accept her performance, he was bound to pay her in the manner stipulated between them.

The next exception is directed to the charge of the court on the subject of the notices. The charge was right. Whether there was a waiver by the defendant of the notice of July 11th, 1870, was purely a question of fact for the jurors to determine, and was properly left to them. If they found that it was waived by the defendant, it became extinct; and could not be revived by the defendant.

The notice of the 19th September, 1870, could not then have been made a renewal of its predecessor.

Nor is it a good notice operating of itself to terminate the contract at the expiration of thirty days from its date. It does not propose or pretend to be a notice to take effect at a future day, but sets up a former notice that the plaintiff

was holding over against that notice after the term expired, and is, if anything, a demand of immediate possession.

Messrs. Davidge and Cox, contra.

Mr. Justice MILLER delivered the opinion of the court.

The offers, as to the use of opiates and the unsound mental condition, are the subjects of the first bills of exception.

We do not agree with counsel that, for the insanity of plaintiff, or her mental incapacity to perform her part of the contract, whether from natural infirmities or from the use of opium, the only remedy of the defendant is an action against her on the contract. The plaintiff was employed to perform important and specific duties. Her compensation for this was to be one-fifth of the net proceeds of the business which she had agreed to superintend. If she rendered herself, or otherwise became, incapable of performing these duties, that of itself authorized defendant to rescind or terminate the contract. He was not bound to continue as the superintendent of a large hotel a person who was a lunatic, or who was so stupid under the influence of narcotics that her presence was a danger and an injury, and who could render no reasonable service. The contract on her part implied some capability of performing the duties she had assumed, of rendering some service. If she could render none defendant was not bound to continue it even for the thirty days which the termination of it by notice required. The court below erred in refusing to admit this evidence.

The defendant offered evidence of a service of notice on the 11th July on plaintiff, under the contract, to terminate it. Also evidence of service of a notice on the 19th September of his intention to act on the first notice, and that the time had expired. Testimony was also given tending to show a waiver or withdrawal of the first notice. The plaintiff was dismissed about the 4th of October. On this testimony the court was asked by defendant to instruct the jury that, even if the notice of July 11th had been wholly withdrawn, the subsequent notice of September 19th was in legal

effect a renewal of the former notice, and of itself operated to terminate the said contract at the expiration of thirty days from its date.

Assuming as the bill of exceptions seems to show, that the date of the notice of September 19th was the date of its service on plaintiff, we think the court erred in refusing this prayer.

The only object or purpose of any notice in the case was to apprise the party on whom it was served that the other party intended to terminate the contract. The contract itself fixed the time when this should take place, namely, thirty days after the service. The fact that the notice refers to a past notice and speaks of the termination of the contract as being already accomplished, does not destroy its effect as a notice of present intent to put an end to the arrangement. This notice of intent the contract makes effectual at the end of thirty days, and so the court was asked to instruct the jury. In declining to do this the court left the jury to infer that it had no effect whatever.

It is probable that if the first notice was wholly waived or abandoned the defendant had no right to dismiss the plaintiff until the 19th day of October. But even in reference to damages defendant had a right to show that under the contract and the notice she had only fifteen days to remain, and was injured only to that extent.

JUDGMENT REVERSED.

AVERY *v.* HACKLEY.

A valid lien is not divested by the mere fact of the holder of it subsequently taking a transfer of the equity of redemption made to him with a view of giving to him a preference, and in violation of the Bankrupt Act. The transfer of the equity of redemption of course is void.

ERROR to the Circuit Court for the Western District of Michigan.

Avery, assignee of Blake, a bankrupt, brought trover in