

No. 12272

Supreme Court of Illinois

Baker.

vs.

Pratt.

71641  7

Be it remembered, that on the fourth day of January in the year of our Lord one thousand eight hundred and fifty four there was filed in the office of the clerk of the Circuit Court in and for the county of Peoria in the State of Illinois a copy of a distress warrant and a schedule of the property distrained thereunder written, which are in the words and figures following, to wit,

copy distress warrant = "State of Illinois,
Peoria County. To the Sheriff of the said county,
I distrain the goods and chattels of Elias Pratt which are liable to be distrained wherever they may be found in the County of Peoria, where said Elias Pratt resides for the sum of two hundred and fifteen dollars being rent due to me on the first day of January 1854, for the South half of the South East quarter of Section Number Thirty Six in Township One Ten North of Range No. Seven East of the fourth principal meridian claimed to him by me, and situated in the said county of Peoria in the State of Illinois.
Peoria January 3 1854. Miram Becker."

Schedule of property
distrained
[12272-1] "State of Illinois,
Peoria County. By virtue of the above distress warrant I have this day levied upon the following personal property, to wit: about twenty acres of un-gathered corn, (the same more or less) forty six sheaves

of cut corn - two rail pens of corn - one pen
husked and the other not husked, supposed to be
three hundred bushels, (the same more or less), and several
lots or piles of potatoes, buried in the ground, all
upon and being the products of the land above described,
January 4th 1853.

Leonard B. Cornwell
Sheriff of P. C. and
Agent of said Baker.

Certificates Endorsed = I certify that the within is a true copy of the
original Distress Warrant, now in my hands,
and true list of the property this day seized upon
by me, and that I left a copy of the warrant
and schedule of the property seized upon - with
Mrs Pratt the wife of Isaac Pratt, the occupant
of the premises named in the warrant, and the
^{former} residence of Elias Pratt, the present residence of
Elias Pratt being to me unknown.
January 4th 1853. L. B. Cornwell

Sheriff P. C. Ill.

Whereupon the clerk of said court issued under the seal of
said court to the Sheriff of said County, a summons, which
with the return of said Sheriff, endorsed is in the words & figures following
to wit.

Summons = The People of the State of Illinois
To the Sheriff of Peoria County, Greeting.
We command you to summon Elias Pratt if he
may be found in your county, to appear before our Circuit
Court on the first day of the next term thereof, to be held
at Peoria, within and for the said county of Peoria,
on the fourth Monday of January instant, then and there,
in our said court to show cause against the assessment

of the amount of rent due from you to Miram
Baker, for which he has distrained your property
and filed in the office of the clerk of said court,
a copy of the distress warrant and an inventory
of the property levied upon, and make return of
this writ, with an endorsement of the time and
manner of serving the same, on or before the first day
of the term of the said court to be held as aforesaid.

Witness Jacob Sale, clerk of our said
court, and the seal thereof, at Peoria,
this fourth day of January in the year
of our Lord one thousand eight hundred
and fifty four.

Jacob Sale clerk."



[Endorsed]

I served this writ by reading to Elias Pratt,
January 10th 1854.

L. B. Cornwell

Shiff P. C. Sec."

Proceedings in the Circuit Court, in and for the county of
Peoria in the State of Illinois, at a special term begun
and held at the Court House in the City of Peoria, in said
county, on the fourth Monday in the month of January
in the year of our Lord one thousand eight hundred and
fifty four, it being the twenty third day of said month,
Present the Honorable Anselm Peters Judge of the
sixteenth Judicial Circuit in the State of Illinois -
Elbridge S. Johnson States Attorney, Leonard Corn-
well, Sheriff & Jacob Sale, clerk, Court,

Wednesday January 25th A.D. 1854.
Miram Baker,
vs
On distress for rent.
Elias Pratt.

The defendant by Bryant Pratt his attorneys enters a motion for the plaintiff to file his declaration or statement herein forthwith - and the plaintiff by Grave & McCoy his attorneys entered a motion for an assessment of the amount of rent due him from the defendant.

Thursday January 26th A.D. 1854.
Miram Baker,
vs
Distress for rent.
Elias Pratt.

This day came on to be heard the motion of the defendant for a rule on the plaintiff to file a declaration or statement herein forthwith. On consideration whereof, it is ordered that the plaintiff file an inventory of the property levied upon in this case, and the motion for a rule on plaintiff to file a declaration herein is over-ruled.

Whereupon on the same 26th day of January A.D. 1854, the said Baker filed the following Bill of particulars, Schedule & copy of Lease to wit,

Bill of particulars = Miram Baker,
vs
Elias Pratt.

In the Circuit Court
of Peoria County.

On distress for rent & for
assessment of amount of rent due.

Elias Pratt

To Miram Baker, D^r

January 1st 1854,

To amount of rent then due \$215.00
Said rent being for the use of the South
Half of the South East quarter of Section
N^o. Thirty Six in Township Ten North
of Range Seven East of the fourth
Principal Meridian, situate in Peoria
County, Illinois, being same premises
demised by said Baker to said Pratt.

Schedule =

Schedule of property distrained by Sheriff
of Peoria County on 1st January 1854, to secure
amount of above rent, to wit:

About twenty acres of ungathered corn, (the same
more or less.)

Forty six shocks of cut corn -

Two rail pens of corn -

One pen husked and the other not husked - sup-
posed to be three hundred bushels (the same more or less.)

And Seven lots or piles of potatoes buried in
the ground.

All being the property of said Pratt & being
the products of &c. on the land above described.

Copy of lease =

This Indenture made this 23^d day of March
in the Year of our Lord eighteen Hundred and fifty three,
between Miram Baker of the first part and Elias Pratt
of the second part, both of the county of Peoria and
State of Illinois, witnesseth, that the party of the first
part, hath and by these presents doth lease unto the

party of the second part, all of that piece or parcel of land known and described as the South half of the South East quarter of section No. (36) Thirty Six in Township No. (10) Ten North of Range No. (7) Seven East of the fourth principal meridian for the term of one year from the first day of March A. D. 1853, and the said parties of the second part doth agree to pay to the said party of the first part, the sum of two hundred and fifteen dollars on or before the first day of January next, and the said party of the second part is not to take more than one half of the grain of said farm till the above rent is paid & the crop on said land shall be holding for the above mentioned sum of money, and the said party of the second is to put the slough East of the house on said land in Timothy Grass in good order and said slough is to be ploughed before the grass seed is sowed and the same party is to put another slough in grass on the South East corner of said farm without ploughing. And the said party of the second part doth agree to take good care of the fence on said farm, and also is to deliver up said farm on the first day of March 1854 in as good order as it is at the time of commencement, except the natural wear and use of said farm.

In Witness whereof, the said parties have hereunto set their hands the day and year first above written.

Miram Baker

Elias H. Pratt

And afterwards on the 20th day of March A. D. 1854 there was filed in said cause the said Elias H. Pratt's statement of his defense in the words & figures following, to wit:

Statement of defense = "Hiram Baker,

An distress for rent,
March Term 1854.

vs
Elias Pratt.

And now comes the said defendant and for plea or defence says that the said plaintiff before the execution of the said lease of the said premises in said distress warrant mentioned to this defendant, to wit: on or about the 3rd day of September A. D. 1851, the said plaintiff by his deed in writing, sealed with his seal, leased and let the same said premises to Isaac H. Pratt, Isaac J. Pratt and this defendant for the period of one year from and after the first day of March A. D. 1852, with the privilege to said lessees or either of them of retaining and occupying the said premises for the period of three years from and after said first day of March A. D. 1852, if they or either of them should so elect at the expiration of said first year = That at the expiration of said first year said Isaac J. Pratt and said Isaac H. Pratt did elect to retain and keep the possession of said premises for the period of two years from and after said last mentioned time (of which said plaintiff had notice = That at the time of the execution of said lease from said plaintiff to this defendant, the said Isaac H. and Isaac J. Pratt were in the actual possession of said premises and did during all the said term in said last mentioned lease mentioned occupy and enjoy said premises by virtue of and under said first mentioned lease - and that this defendant did not and could not by reason of such adverse possession of said premises by said Isaac J. and Isaac H. Pratt, occupy and enjoy the entire and free possession

of said premises, and that said Plaintiff did not deliver the possession of said premises to this defendant, as he was bound to do by virtue of the said lease.

And defendant further says that all the enjoyment and occupation of said premises by this defendant was under and by virtue of said first mentioned lease and not by virtue of said last mentioned lease, and that said last mentioned lease is and ever has been a nullity.

Defendant further says that all the property distrained herein belongs to Isaac H. Pratt and that no part of the same belongs to this defendant.

And the said defendant further says that at the time when the said distress was made there was no rent due the said Plaintiff under or by virtue of the said first mentioned lease.

And the said defendant further says that at the time when the said lease in the said distress warrant mentioned was executed the said defendant had no authority whatever from the said Isaac H. Pratt and Isaac J. Pratt or either of them to execute said last mentioned lease, or to rescind, cancel, modify or change said first mentioned lease or any of the terms thereof, and that the said first mentioned lease remains in full force.

Pratt & Bryan
for defts.

Proceedings at a term of the Circuit Court begun and held at the Court house in the City of Peoria, in and for the County of Peoria in the State of Illinois on the second Monday of May in the year of our Lord one thousand eight hundred and fifty four it being the eighth day of said month. Present the Honorable Orslove Peters, Judge of the sixteenth Judicial Circuit in the State of Illinois, - Leonard B. Cornwell, Sheriff, Eldridge S. Johnson, State Attorney and Jacob Oak, Clerk, twins

Wednesday May 17th A. D. 1854.

Hiram Baker,

vs
Elias Pratt.

Distress for rent.

This day came the said Hiram Baker by Grove & McKeoy his attorneys and the said Elias Pratt by Manning & Pratt his attorneys, and it is ordered by the court, that a jury be empanelled to assess the amount of rent due from said Pratt in this cause, whereupon came a jury of twelve good and lawful men, to-wit: Henry B. Spangler, George Houston, Cyrus Tucker, Robert Ridgely, David Morry, Simon L. Train, Thomas Lambertson, Stephen Richardson, Matthew Brown, John B. Durlett, Hiram M. Moffitt and Daniel Schindler who being duly chosen, tried and sworn, well and truly to assess the amount of rent due from the said Elias Pratt to said Hiram Baker in this cause and a true verdict give according to evidence, the evidence not having been fully heard were adjourned to meet the court again to-morrow morning.

Thursday May 18th A. D. 1854.

This day came the Jury empanelled in this cause on yesterday and the evidence of the parties and arguments of counsel having been fully heard the jury aforesaid on their oaths aforesaid, say, we the Jury find for the defendant—whereupon the said Hiram Baker entered a motion to set aside the verdict and for a new trial in this cause, for the following reasons, 1. The verdict is against law—2. The verdict is against evidence—3. The court refused to give proper instructions asked for by plaintiff—4. The court modified and altered instructions asked for by plaintiff, 5. The court gave improper instructions for the defendant, 6. The court allowed the witnesses Jefferson Pratt and Isaac Pratt to testify when they were incompetent on the ground of interest—7. The verdict should have been for the plaintiff.

Wednesday May 24th A. D. 1854,

This day this cause came on to be heard on the motion of the plaintiff, to set aside the verdict for a new trial in this cause, on consideration whereof the court being fully advised in the premises, over-ruled said motion—Therefore it is considered, that the said Elias Pratt go hence without day and have and recover of the said Hiram Baker his costs and charges by him about his defense in this behalf expended and that he have execution therefor.

The said Hiram Baker prayed an appeal in this cause to the Supreme Court of this state, which is allowed him upon his filing in the clerk's office of this court in thirty days an appeal bond payable to the said Elias Pratt in the penal sum of two hundred dollars with Henry Grove as surety and conditioned according to law.—Ordered that the bill of Exceptions be settled & signed in vacation.

On the first day of June A. D. 1854, the following Bill of Exceptions

Bill of Exceptions - Was filed in said cause, duly signed & sealed, to wit
State of Illinois, } In the Circuit Court
Peoria County, } of Peoria County.

Miram Baker,

Elias H. Patt.

Distress for rent,

Be it remembered that on the trial of this cause before a Jury the plaintiff to maintain the issue on his part called Matthew Craig who being sworn testified that he was acquainted with the parties in this suit, that some time in March A.D. 1853, the plaintiff and the defendant called at his office in Keokuk and requested witness to write a lease or contract for them, that he done so, that it was executed by Miram Baker & Elias H. Patt and by agreement the contract was left with witness for safe keeping, Contract handed him was the identical tract contract executed by the parties, that both understood what they were doing & knew the contents of the instrument as it was read over to them before it was executed. Plaintiff then read the contract to the jury without objection, and which is in the words and figures following,

" This Indenture made the 23rd day of March in the year of our Lord eighteen hundred and fifty three between Miram Baker of the first part and Elias Patt of the second part, both of the county of Peoria and State of Illinois, witnesseth, that the party of the first part hath and by these presence doth lease unto^{the} party of the second part all of that piece or parcel of land known and described as the South half of the South East quarter of Section N^o. (36) Thirty Six in Township N^o. (10) Ten North of Range N^o. (1)

Seven East of the fourth principal meridian for the term of one year from the first day of March A.D. 1853, and the said party of the second part, doth agree to pay to the said party of the first part the sum of two hundred and fifteen dollars on or before the first day of January next and the said party of the second part is not to take more than one half of the grain of said farm till the above rent is paid & the crops on said land shall be holding for the above mentioned sum of money and the said party of the second part is to put the Slough East of the house on said land in timothy grass in good order and said Slough is to be plowed before the grass seed is sowed and the same party is to put another Slough in grass on the South East corner of said farm without plowing,

And the said party of the second part doth agree to take good care of the fences on said farm and also is to deliver up said farm on the first day of March 1854 in as good order as it is at the time of commencement, except the natural wear and use of said farm.

In Witness whereof, the said parties have herunto set their hands the day and year first above written.

Wiram Baker,
Elias H. Pratt. "

On Cross examination the witness stated, that there was another contract there, not certain on thinking of it yesterday, I think I took the numbers of the land from that paper, Do not know whose names was signed to it, think it was put into the store, It was spoken of that they would destroy it, It was consented to, No persons present except Ref. Deft witness - Don't know

which of them brought the other paper there, I can't tell which stated the terms of the contract for me to write down, I think both did, I think so from something that was said about some of it to be put in grass, was nothing fraudulent that I saw.

Plaintiff then called Robert Campbell who being sworn testified, that he knew premises described in contract, lived between $\frac{1}{4}$ & $\frac{1}{2}$ mile from them Defendant was there this spring a year and helped put a crop in - Slough East of the house was plowed & harrowed, but don't know as grass seed was put in.

On Cross examination Campbell stated that defendant was married about a year ago, house on premises, Isaac Pratt and defendant all lived in the house, Isaac is defendant's father, defendant lived on premises until last August, they had lived there the year before, know of no change in the business, Jefferson absent most of the year before, but was at home last year, Elias did not come back again to live, crop raised was principally corn, saw no difference in last & first year.

On R. Examination witness stated that Elias allways appeared to be the active person of the family, Isaac was absent two or three weeks last spring in April or May, his family did not go away - Witness had recommended Elias as a proper person to Baker, and he got the place on my recommendation, Isaac was there and worked so did Jefferson, Isaac done most of the work on the house on the farm last year, Elias worked on the farm until August last.

Jefferson was absent driving stage most of the year before, at home occasionally.

Plaintiff then offered the original warrant & the copy thereof & sheriff's return thereon, which were read to the Jury, subject to exception, & which are in the words following,

"State of Illinois, }
Peoria County, } To the Sheriff of the said county,
Distrain the goods and
chattels of Elias Pratt which are liable to be
distrained, wherever they may be found in the
county of Peoria, where said Elias Pratt resides
for the sum of two hundred and fifteen dollars,
being rent due to me on the first day of January
1854, for the South half of the South East quarter
of section number thirty six in Township N^o Ten
North of Range number Seven (7) East of the
fourth principal meridian, demised to him by
me, and situated in the said County of Peoria
& State of Illinois.
Peoria January 3^d 1854. Hiram Baker

State of Illinois, }
Peoria County, } To the Sheriff of the said county.
Distrain the goods
and chattels of Elias Pratt which are liable
to be distrained, wherever they may be found in
the county of Peoria, where said Elias Pratt
resides for the sum of two hundred and fifteen
dollars being rent due to me on the first day of
January 1854, for the South half of the South East
quarter of section number thirty six in Township
N^o Ten North of Range N^o Seven (7) East of the
fourth principal meridian, demised to him by me

and situated in the said county of Peoria & State
of Illinois
Peoria January 3rd 1854. Miram Baker,

State of Illinois,
Peoria County. By virtue of the above
distress warrant I have this day levied upon
the following personal property, to wit: about twenty
acres of ungathered corn, (the same more or less),
forty six shocks of cut corn - two rail pens of
corn - one pen husked and the other not husked -
supposed to be three hundred bushels - (the same
more or less, and seven lots or piles of potatoes
buried in the ground, all upon and being the
products of the land ~~of the land~~ above described.
January 4th 1854. Leonard B. Cornwell,
Sheriff of P. C.
and Agent of said Baker.

I certify that the within is a true copy of the original
Distress warrant now in my hands and true list
of the property this day levied upon by me, and that
I left a copy of the warrant and schedule of the
property levied upon - with Mrs Pratt, the wife
of Isaac Pratt, the occupant of the premises named
in the warrant and ^{former} residence of Elias Pratt,
the present residence of Elias Pratt being to me
unknown.
January 4th 1853. L. B. Cornwell
Sheriff P. C. Ill^{ts}

Plaintiff there rested.

Defence called William Gifford who testified,
that knew Jeff left Isaac & Jefferson Pratt,

I drew up in 1851, a lease about first of September for S^d, S^e, S^w, between Peff & 3 Pratts all signed it, Baker on one part and Pratts on the other, I scrawls on it opposite the names, it was left in my possession till last of Feb, or first of March 1853, when I delivered it to Elias & Baker, They both came for it,

(The Defendant was then sworn & testified to the Court, The lease written by Gifford was taken to Craigs and Baker tore up & put in the stove.)

Gifford continued, I wrote out the contents as nearly as I could recollect it, This I did after this suit was commenced, Some time since first of last of January (writing shown witness,) This is correct as I recollect it, It is the substance of the other writing, the wording may be different in some respects, Made no memorandum or copy of the lease at the time, Had no occasion to refer it while in my possession, The parties came there to settle rent of 1852,

(Defendant then read copy as written by witness to the Jury, which is as follows
"This Indenture made this third day of Sept in the Year of our Lord one thousand eight hundred and fifty one between Miram Baker of Boone County and State of Illinois, party of the first part and Elias H. Pratt, Isaac H. Pratt and Isaac J. Pratt of county and state aforesaid, part of the second part, witnesseth, that the party of the first part hath and by these presents doth lease unto the party of the second part, all that piece or parcel of land, known as the S^d of the S^e & S^w.

qr. of Section Thirty Six in Township Ten North Seven
East of fourth principal meridian for the term of
one year from the first day of March next with the
privilege of retaining it three years from the first
day of March next if the party of the second part
fulfill their part of the conditions of this lease,
and the party of the first part covenants and agrees
with the party of the second part, that he will put
the fences in good repair - that he will furnish
materials for building a good and substantial dwell-
ing house, and the party of the second part cove-
nants and agrees with the party of the first part that
they will pay as rent for the above the sum of
three dollars for each and every acre that has been
broken and is under cultivation, the payments to
be made one year from the first day of Jan,
next for all land that shall be cultivated in
wheat or other small grain, the balance shall be
paid one year from the first of March next
and they further agree that they will put up
the house in a good and workman like manner,
and at a reasonable price, which shall be deduct-
ed out of rent, and in case the price for putting
up the house cannot be agreed upon, it is to be
left out to two men mutually chosen whose de-
cision shall be final. And the party of the second
part further agrees that they will prevent all strip and waste,
that they will put up the building as agreed and at the expiration of
this lease they will deliver up the premises quietly and peaceably in as
good condition as the same now are unavoidable accidents and
casualties accepted. In Testimony hereoff, the parties have hereunto
set their hands and seals the day and year first above written.

Baker (Seal)
Pratt (Seal)
Pratt (Seal)
Pratt (Seal)

Pratts commenced building house immediately after the lease written by me. Mr Pratt built the house & Baker found the materials, no house on it when leased, Elias & Isaac moved on the premises in the Spring of 1852 & Elias & Isaac worked the farm along until August 1853. The rent of 1852 was settled it was left to Mr. Billings and witness to determine, paper shown, this is the award we made & the receipt on the back of it was signed by Baker at my house. At time of first lease about 65 acres of the land was broke, think as much as half of it in small grain & balance in corn & potatoes, large portion considerable more than half in corn last year, Dont know how it was farmed in 1852, it looked well from the road.

On crop examination witness stated the land is about half of mile from his residence at the time, first lease was written just before seeding time, was not certain I was right as to date - Do not know it was on 3 of Sept. - Defendant is son in law of witness - wrote at Pratts - Dont know that Elias had negotiated with Baker before lease was written - was informed of the leasing by Isaac Pratt - read lease on the day of the arbitration - The controversy was between the three Pratts and Baker - Difficulty was as to some of Pratts charges, - There was no account of Jefferson Pratt in controversy at the arbitration - Elias done most work, old man most talking - The work account over-balanced the rent from 12 to 15 \$, They had charged more than Baker was willing to allow. The Pratts selected me & Baker selected Mr. Billings as Arbitrator, The Arbitrator cut down the account so as to leave a balance in favor of Baker of thirty six

dollars — The balance was paid by corn receipts of Wacker & Kellogg & some money money from 3 to 10¢ — Baker then said the lease might be destroyed as there was no farther use of it. Elias said No for they would have nothing to show til 1st of March — When lease was written no one present except parties & witness — Baker lives twelve miles off — Followed my usual form of lease so far as applicable.

In old lease Mr. Baker was to furnish materials for putting up a good and convenient dwelling house & if they could not agree they were to leave it to two persons & if they could not agree it was to be left to a third whose decision should be final — Nothing said in lease as to kind or size of house. The Pratts were to have it three years from 1st March 1853 if they complied with lease — I think I have not said there was nothing in lease about continuing three years — Jefferson took no part about building the house — Think there was 20 to thirty dollars in corn receipts & 3 to 10¢ in money — Arbitration held Feb. 17. 1853.

Re-Examined — Cannot say whether anything was said at settlement about keeping premises longer 2 years

The defendant then offered Jefferson Pratt as a witness.

Plaintiff objected to the competency of the witness on the ground that he was interested. On being examined on the *voir dire* the witness testified that he signed the original lease & claimed an interest in the crop raised in 1853, that said crop was

Seized by the Sheriff on the distress warrant in the present suit & that the Sheriff still held the corn under the warrant — that he looked to the Sheriff or Baker for damages, the plaintiff then moved to exclude said witness on the ground that he was interested in defeating the present suit — but the court over-ruled said motion & objection and permitted said witness to testify, to which decision of the court overruling said motion and permitting said witness to testify — the plaintiff by his counsel then & there excepted & objected & prayed that his bill of exceptions might be signed & sealed by the court which is done. —

Said witness then testified — I have an interest in the crop that was distrained — I am one of the parties to the first lease, after the first lease I went to work & got in wheat; my Father & Brother put up the ~~same~~ house & helped some, we put in about 18 or 20 acres in wheat & some 10 or 12 acres we rented to R. Campbell — I was not there much in 1852 — a small piece of oats was sowed — an acre or two — the balance in corn, about 65 acres in cultivation — I was there at work on the place off & on — was there a year ago now & worked through last year; 8 or 9 acres were in Spring wheat & balance in corn & potatoes — There was no change in the management of the farm & the business the different years; Never heard there was any but the first lease, till Mr. Baker told me there was another one, was at home a year ago last March, Father then there occupying farm.

Crop-exam. Never gave any authority to any one to cancel the first lease, I signed the first for myself as a party to it — First lease written latter part of August or first of September,

I went away first fall after wheat was down -
Elias & my father helped to sow - Can't see the
time he left in Spring - was at home in July -
and worked some when they were in a pinch -
Can't say where he was at during Arbitration
Mason He was not there was he was satis-
fied to leave his Brother & Father to settle with
Baker - Witness paid no part of rent for
year 1852 - Baker told him about new lease
about 2 or 3 weeks before January last, we worked together
last year - supposed my Brother was carrying on the
first year - worked for myself in 1853 -

The defendant then called Isaac Pratt & Puff exam-
ined witness as to the interest to the court -
Witness testified that he was Father of defendant &
had signed old lease & had bought out defendant's
interest on the crop of 1853 & had bill of sale &
had promised defendant to pay the rent for the
year 1853, under the old contract, that Baker had
taken the crop or the Sheriff had seized the crop
on the warrant in the present suit, that witness
had sued Baker & the Sheriff in Tres pass for
taking the corn & said suit was brought & still
pending in Peoria Co. Circuit Court undetermined.

Plaintiff then moved the court to exclude the
witness on the ground that the witness was in-
terested in the result of the suit but the court
over ruled said motion and permitted said Isaac
Pratt to be sworn & testify to the Jury in chief,
to which decision of the court overruling said mo-
tion & permitting said witness to testify, the plain-
tiff then and there objected & excepted & prayed

that his bill of exceptions might be signed & sealed which is done accordingly.

Isaac Isaac Pratt then testified that the rent due Jan'y 1. 1853, was over paid — My son's name is Isaac I. Pratt, Eli's not of age when first lease signed, of age March after rent first year was settled under first lease. never gave any one authority to release the first lease — never heard of it till last fall when Baker told me — In Summer of 1852 John Peff asked me if we intended to continue on, I told him I did — At settlement something was said about another lease — And it was said by Eli's or Mr. Sifford that the old one would do just as well — Had no notice not to hold on under old lease till January last — Summer before last he spoke about staying another year — He said he did not wish to keep changing tenants — Lease was wrote for one year with privilege of three in 1853, 1½ acres of wheat, ballance in corn, except some potatoes, Baker was paid the rent for the part in small grain part by breaking slough & harrowing worth 15¢. — Had a fence & moved it, he gave no directions about moving the fence — he had 100 Bus Corn worth 26¢, over paid him about 20¢.

Cross Examination — Don't remember Baker said he wanted me to plow the slough — He asked me if we had sowed the grass seed — I said No, he thought it was dry & it had better not ~~be~~ sowed as it might be used for something else — I think the lease was that he was to allow me for any improvements I might make, out of the rent — He got 100 Bus. Corn Jan'y 2. 1854.

If Baker said anything it was the corn should be applied on the rent — I owed Baker fifteen dollars for an order he gave me on Kurlenius & Griswold's store and it is not paid, I supposed it was paid — Baker also claimed for three or four hundred rails we burned on the place, worth five dollars per hundred — they were burned accidentally — My account went against the 15th order, and the rent due 1st Jan'y.

Plaintiff then called Mr. Billings — In Feb. 1853 resided at Brimfield, he was one of the Arbitrators — Went with Baker to Pratt's house on the premises — found old man at home & Elias was at Gifford's house. Pratt the old man said he wanted the difficulty settled — He said he would like to know whether he was to have the place another year — Baker replied that whoever did have it must make different arrangements so as to have no difficulty again — The matters were submitted to Gifford and witness — ~~said~~ ^{Pratt} Isaac had charged by the day & I cut it down to what I was worth by the job — we brought in 36th due Baker which was paid in corn receipts & money — Baker then said we might as well destroy the lease — Elias Pratt said no, the time was not out yet, and they would not have anything to show any right to remain.

On cross examination the witness stated that Isaac Pratt said he wanted the difficulty settled and to know whether he was to stay another year — In ^{con}versation with Elias don't know whether old man was present or not — Elias paid over corn receipts & money to Baker & took receipt — Elias was out thrashing, said he would leave it to us to settle —

The receipts were signed by Walker & Kellogg —
There was hard words between Baker & old man
at the house.

Plaintiff then called William Kellogg, who testified
that he was the Kellogg that had given the corn
receipts to Pratt — That some time in Feb or
March 1853, Baker presented some receipts to him
that had been given by witness & his partner to
Pratt — Witness did not pay anything to
Baker on the receipts then as there was nothing due
on them — They (Walker & Kellogg) had advanced
as much on the receipts as was coming to the Pratts —
Some time after Baker & Elias Pratt came again —
Some arrangement was made — Some time during the
present year and since the commencement of this suit,
Baker told witness he had got his pay, but did not
say when nor what he got it in, for those receipts.
Can't tell how the corn receipts were paid — Pratt
was charged some interest last fall — It may have
been paid to Baker & charged as cash advanced to
Baker for Pratt. Account was kept with Elias Pratt
& when ended corn receipts were given up — Baker pre-
sented some repts for himself, every man has to bring
in his own receipts when there has been anything advanced.
I have no recollection of paying anything to Baker
on the Pratt receipts — witness further stated that
when Baker & Elias Pratt were there he promised
Baker that he would pay him the amount of these
corn receipts, out of the first money that should
be due for corn that the Pratts should bring in
to them.

Plaintiff then called J. Shepler who testified that
he heard Isaac Pratt since the fore part of last
winter say to Baker that he Isaac Pratt owed Baker
fifteen dollars ^{for goods} & he should pay it.

Defence called Thos Brady - Was present about March 1, at Brimfield, we met Baker, Isaac Pratt said he had the money to pay what was due him - Baker said it was no use now, the matter was in Court - I can't settle now & will have nothing to do with it - Pratt had money with him.

Defence called Wm Sifford who said he was present at time Pratt met Baker near Brimfield - Pratt said it was March 1 & he had come to pay him if he would settle the damages - Baker says I have nothing to do with you -

This was all the evidence & the Plff again moved to exclude the testimony of Jefferson & Isaac Pratt from the jury on the ground that they were interested, but the court over-ruled said motion & the Plff accepted & prayed for said exceptions to be allowed which is done accordingly.

This was all the evidence offered by the parties.

The Plaintiff then asked the following instructions numbered 1, 2, 3, 4, 5, 6 & 7, which are as follows:
1. If the Jury believes from the evidence that the Plaintiff and the defendant executed the lease or contract between them this would fix the liability of the defendant unless some fraud was practiced upon the defendant,

2. If the Jury believe from the evidence that the defendant executed the new contract with a full knowledge of all the circumstances it would be binding on the defendant even if his Father still claimed a right under the old contract.

3. If the Jury believe from the evidence that Jefferson Pratt authorized the defendant to act for him and that the defendant consented and agreed to cancel the old agreement, such consent and agreement would bind both the defendant & Jefferson Pratt.

4. If the Jury believe ~~that~~ from the evidence that Isaac Pratt stated to Baker on the day the Arbitrators met that he was anxious to know whether he could have the place another year or not & that Baker replied that he could not say, and that whoever did have the place must make different arrangements & if Isaac Pratt made no reply, this would be evidence proper to be considered by the Jury tending to show that said Isaac Pratt believed that he would have no further right to the possession of the land after the first of March 1853, and it would be proper evidence to be considered by the Jury tending to prove that Isaac Pratt considered his term at an end at the end of the first year.

5. The only question for the Jury to determine is to assess the amount of rent due if any from the defendant to the plaintiff, and the right or title to the property distrained has nothing to do with the question of damages or amount due the plaintiff.

6. If the Jury believe from the evidence that the old contract was for one year with the privilege to the three Pratts to hold for three years on condition that they should faithfully perform the conditions binding on them, and if the Jury should further find that said Pratts did not pay the rent due for the first year at the time they agreed ^{to} and that they

thereby failed to execute the contract on their part
then they had no further claim to the land. And Baker
had a right to consider it at an end.

7. If the jury believe from the
evidence that the Pratts paid part of the first years
rent in Walker & Kellogg's receipts for corn and
if they should further believe from the evidence that
there was nothing due from Walker & Kellogg on
such corn receipts & that Baker received nothing
from Walker & Kellogg by the first of March 1853,
then the delivery of such corn receipts to Baker by the
Pratts constituted no payment & Baker notwithstanding
he signed a receipt can still show that he
was not in fact paid for his rent.

the first and 6th of which the court refused to give
as asked but altered & amended the first by adding
the words at the end thereof, as follows "Or there
was another lease to three Pratts that remained
in force." And the court altered and
amended the 6th instruction as asked & added thereto
the words "unless he afterwards accepted the rent
and waived his right to insist upon the forfeiture
of the rights of the Pratts to hold under the first lease."

To which alteration and amendment of said 1 & 6th
instruction the said plaintiff by his counsel then &
there at the time excepted & objected.

The court then gave the instruction numbered 8 and
attached to plaintiff's instruction, which is as follows,
"8, If the Jury believe from the evi-
dence that the defendant executed the lease offered in

evidence & went into possession under that lease & cultivated the ground therein mentioned, the plaintiff would have his lien on the crops raised thereon & would have a right to distrain said crop, at the time mentioned in said lease when the rent would become due - if the defendant was rightfully holding under the second lease, to the exclusion of the other lessees of the first lease."

to which the plaintiff then and there at the time said instruction was given by the court objected and excepted, but the court over-ruled said objection and gave said instruction to which the plaintiff then and there excepted.

The Defendant then asked the instructions following, numbered 1, 2, 3, 4, 5, 6, 7, 8, & 9.

"1. In this case the jury are to find - 1st Whether any rent was due from the defendant to the plaintiff at the time when the distress was levied which was on the 4th day of January A. D. 1854.

I^a If any rent was due at the time last aforesaid, how much was so due.

I^a If the jury believe from the evidence that before the time when the lease introduced by the plaintiff in evidence was executed, another lease had been signed and sealed, and delivered by Isaac Pratt, Elias H. Pratt and Isaac S. Pratt, and the leasing the same premises to the same three Pratts that at the time of the distress for rent the said last mentioned lease remained in force never having been legally cancelled or ended, and that according to the terms of said last mentioned lease all rent

due thereon has been paid - then the jury will find in favor of the defendant.

3. Where there are three lessees holding under a lease under seal, the mere taking a new lease not under seal by one of such lessees, will not annul or end the former lease, especially if the new lease be taken without the consent of the other lessees, and if the other lessees do not act under or recognize the second lease nor claim to have & occupy under it -

4. Although the first lease was torn up or destroyed by Elias Pratt, this would not at all end the rights of the other Pratts under such lease, unless Elias Pratt had the consent and authority of the other Pratts to do so, or they consented afterwards to hold & occupy under the second lease.

5. A lease given to three cannot be ended by the agreement of one, of the three alone.

6. Where a lease has been given to three and any one of the three is in possession, claiming under such lease, the landlord cannot make a valid lease as against the person in possession while he so remains in possession, and the lease under which possession was first taken, (if such possession was taken and continued bona fide) is to govern as to the amount of rent and the times of payment until it is ended by its terms or the act or consent of the lessee in possession.

7. If the Jury believe from the evidence that the defendant never obtained the full possession of the premises leased but only had such possession as he was entitled to under the first lease, and that the first lease had not been legally ended, then the first lease is to govern as to the amount of rent and the times of payment.

And if no rent was due at the time of the levy of the distress, although rent would have been due on the first of March then next, still the Jury must find for the defendant.

8. If Baker received accepted the corn receipts as a payment, then such payment is good although such receipts were not paid when first presented.

9. Although the rent was not paid the precise day when it was due, yet if the landlord received it within a few days thereafter and without insisting upon any forfeiture at the time, and permitted the lessee to hold over after the time when the lease would have expired if he insisted on the forfeiture, this would constitute *prima facie* evidence that the landlord waived his right to insist on such forfeiture."

to which the plaintiff then and there and before said instructions were given by his counsel objected. Yet the Court over-ruled said objection and gave said instructions as asked, to all of which rulings and doings of the court the plaintiff by his counsel at the time then & there excepted, and then and there prayed that his list of exceptions in that behalf might be signed & sealed & made part of the record in said cause which is done accordingly.

The Jury having returned a verdict for the defendant the plaintiff entered a motion to set aside the verdict and for a new trial for the reasons following,

1. The verdict is against law.
2. The verdict is against evidence.
3. The court refused to give proper instructions asked for by plaintiff.
4. The court modified and altered instructions asked for by Plff.
5. The court gave improper instructions for the defendant.
6. The court allowed the witnesses Jefferson Pratt and Isaac Pratt to testify when they were incompetent on the ground of interest.
7. The verdict should have been for the Plff.

Which said motion the court overruled and refused to set aside said verdict, or grant a new trial to which decision of the court overruling said motion to set aside the verdict & to grant a new trial the plaintiff by his counsel then and there excepted & prayed the court to sign and seal his bill of exceptions, which is done accordingly.

Enslow Peters Dea

And afterwards on the sixth day of June A.D. 1854 there was filed in the office of the clerk of said court an appeal bond in the words and figures following, to wit,

"Know all Men by these presents that we Hiram Baker as principal and Henry Grove as security are held and firmly bound unto Elias Pratt of the county of Peoria in the State of Illinois, in the penal sum of two hundred dollars for the payment of which well and truly to be made we bind ourselves, jointly, severally and firmly by these presents. Witness our hands and seals this third day of June A.D. 1854.

The condition of the foregoing obligation is such that whereas on the seventeenth of May A.D. 1854, at and during the May term of the Peoria County Circuit Court A.D. 1854, the said Elias Pratt recovered a judgment against the said Hiram Baker in a suit for distress for rent, wherein the said Baker was plaintiff & the said Pratt was defendant; for the sum of fifty four dollars & fifty five cents for costs, from which judgment the said Hiram Baker prayed an appeal to the Supreme Court of the state of Illinois, which appeal was granted.

Now if the said Hiram Baker shall duly prosecute his said appeal, and shall pay the said judgment, costs, interest and damages in case the judgment shall be affirmed, then this obligation to be void, else to remain & to be in full force and virtue.

Hiram Baker *Read*
Henry Grove *Read*

State of Illinois
Peoria County } I, Jacob Gale, Clerk of the Circuit Court of said Peoria County do hereby certify that the foregoing is a full and correct transcript from the Record of all the proceedings in a certain cause therein of Hiram Baker against Elias Pratt as the same remain of record & on file in my office. In witness whereof I hereto set my hand & the seal of said Court at Peoria June 23rd A.D. 1854.
Jacob Gale, Clerk.

Bates fees for transcript certificate that \$8.00 -
 William Baker } Received payment of plaintiff
 Elias Pratt } Appellate from Below } Just Galt clerk.

"And now comes the said Appellant and
 Says that in the Record and proceedings &
 in the rendition of the Judgments aforesaid
 there is manifest error in this to wit

- 1st. The Court Erred in Overruling the Appellants
 motion for a new trial
- 2nd The Court Erred in Giving the instructions asked
 by appellant,
- 3 The Court Erred in Refusing to give instructions
 1 & 2 as asked by the Appellant,
4. The Court Erred in Rendering Judgment
 against Appellant

For these and other errors manifest
 in said Record he Prays that said Judgment
 may be reversed set aside wholly for nothing
 & dismissed.

June 27th 1854.

A. C. Truple
 for Appellant

"In nullo est erratum"

Manning Merriman
 for appellee

74.
 William Baker
 or
 Elias Pratt
 Record Examined & found

Filed June 27th 1854.
 L. Ireland Clk.
 By Wm. Ireland & J. J.

13550

Baker
vs
Pratt Appeal from Peoria

Isaac Pratt, Isaac J. Pratt (commonly called Jefferson Pratt) and Elias Pratt by agreement under seal leased certain premises of Baker for one year from the first day of March 1852 with the privilege of retaining it three years if the Pratts complied with their part of the agreement: The Pratts went on occupied and cultivated the premises that year though Jefferson did not labor much on the premises: Elias Pratt was not "of age" when this lease was executed.

At or about the close of the first year the parties had a settlement in regard to the rent of that year Elias and Isaac being present, but Jefferson absent. By the testimony of Isaac Pratt it appears that in the summer and fall of the first year he had told Baker that he intended to ~~hold~~^{continue} on [under the lease] and at the settlement something was said about a new lease and it was said by Elias or Mr. Gifford who was present that the old one would do just as well. Baker had spoke about staying another year and said he did not wish to be changing tenants.

Mr. Purple says "I think the evidence shews that the terms of the lease for the

first year were complied with" The first year expired March 1st 1853 and the Pratts continued in possession during the ensuing season in the same manner as before - Isaac Pratt residing on the premises with his family. The second year Jefferson remained and labored on the premises.

On the 23^d day of March 1853 - 23 days after the expiration of the first year Elias Pratt alone surrendered the first ~~lease~~ ^{not under seal} to Baker - destroyed it and took a new lease from Baker to himself alone until the 1st day of March 1854.

The terms of the first lease were \$3. per acre - for that cultivated with small grain payable January 1st; for all the other land payable March 1st.

By the new lease to Elias the rent was fixed at \$215. all payable January 1st.

Isaac Pratt testifies that according to the terms of the first lease the rent was over-paid on the 1st day of January 1854. Both Isaac and Jefferson that Elias had no authority from them or either of them to surrender the first lease or to take a new one.

Jefferson did not know of the new lease until 2 or 3 weeks before the 1st of January last, when he was told of it by Baker - and Isaac did not know of the new lease until "last fall" when Baker

told him of it.

The Question was whether there was any rent due Baker on the 4th day of January 1854 the time of the levy of the distress. If the old lease was in force and the occupation of the premises had been under it, then no rent was due if the jury believed that all the rent according to the terms of that lease had been paid up to the time of the distress.

If however the new lease was in force and the occupation had been under it, then rent was due and the distress had been well levied.

By the instructions the court in effect left it to the jury to determine whether the first lease had been surrendered or cancelled by the consent of Isaac and Jefferson Pratt, and whether they had acquiesced in the new lease - but he did instruct that where a lease under seal had been executed to three, and they were in possession under it, the mere taking of a new lease not under seal by one of them without the knowledge or consent of his co-lessees would not extinguish the former lease but that it would still remain in force and govern the rent due to the Landlord.

One of the two leases was in force. The new lease was not collateral to the old one. Either it extinguished the old

one, or it was no operative lease itself. If the former lease was in force as to Isaac & Jefferson, it was necessarily in force as to ~~Isaac~~ ^{Elias}, for it is a lease to three jointly and except by a new contract in which they all join the lease cannot be extinguished as to any one. It is either something or nothing as a whole. No contract of one can make it two-thirds of a lease.

If the doctrine contended for on behalf of the plaintiff be correct then full rent can be recovered off Elias, and then another full rent off of Isaac & Jefferson, or at least $\frac{2}{3}$ of full rent, and all for the same occupation: For Isaac & Jefferson could not plead in bar that Elias had paid his own rent on his own lease and that therefore their rent was ^{not to be} paid on their lease. But this difficulty is avoided by the simple proposition that either there was a lease to three in force and there has been a joint occupation of the three under it, or there was a lease in force to one and the occupation has been under it. Which ever one was in force governs as to the rent.

There was no merger or extinguishment of the old lease. A merger only takes place where the debt is one and the parties one. Jones vs Johnson 3 Watts & Sergt. 276 Taking a bond and

mortgage of one of several obligors in a sealed note previously given, is not an extinguishment of the note Phelps vs Johnson 8 Johns 54. The principle is precisely the same where one of two lessees takes a new lease.

A surrender of a lease by a lessee does not divest the rights of sub-tenants McNemie vs Lexington 4 Dana 129: The lease still remains in force for the purpose of sustaining the rights of the subtenants.

Where there were two lessees and the lessee conveyed to one of the lessees this did not extinguish the lease: Sperry vs Sperry 8 N. H. 477.

A bond ~~taken~~^{given} by one partner does not extinguish the partnership debt. Fleming vs Sawhorn Dudley (S.C.) 360

Bond vs Atkins 6 Watts & Sergt. 165.

All these cases proceed upon the same principle that in all such cases the act of one does not supersede the original contract of himself and his co-contractors. The case is still stronger where the specialty of three is undertaken to be succeeded by the mere simple contract of one of the three.

Elias was a minor when the first lease was made. He could disaffirm it so far as he was concerned upon arriving at majority, but if he did do so, that would leave the lease good both for and

against his co-lessees. If his act in destroying the old lease was a repudiation of his act as an infant in executing it, then it remained good as to the other two then in possession for the entirety, and altho' Elias occupied with them he could only occupy under them, for the old lease would be still in full force. The act of the adult in disaffirming the act of the infant, is a personal act, and like the plea of infancy in court leaves the contract binding as to all his co-contractors.

But it is argued that by taking the second lease Elias the defendant here, is estopped from disputing the plaintiff's claim under the new lease. That is, altho' he did not and could not occupy under the new lease—of which the plaintiff had notice, for he was bound to know whether Elias had authority to cancel the old lease—he is estopped from denying that rent is due upon the new lease! Suppose the premises leased had been entirely destroyed at the time the new lease was executed—then would Elias have been estopped from showing this fact because he had taken a new lease?

The doctrine of estoppel does not apply. It is true that one taking a lease from another and receiving possession from him is estopped from denying the land-

lord's title: but here the defendant does not deny the landlord's title - he admits it: he admits his right to recover rent: but having taken two leases of the landlord he disputes his right to recover on more than one, and says his recovery can only be upon that one which is in force. If the old one is in force, then is it not clear that Elias, Isaac, and Jefferson jointly are estopped from denying Baker's right to recover on that lease? and that notwithstanding the abortive attempt of Baker and Elias to destroy it as a subsisting lease. Then if Elias is also estopped, Mr. Baker recovers twice by estoppel. The common sense view of it is that there has been an occupancy not under both leases, but under one or the other, and that the rent is to be recovered only on the one under which the occupancy was had.

It is said Elias took the new lease with his eyes open. Yes, and Baker made it with his eyes open. He knew or was bound to know that the old lease was in force, that Isaac & Jefferson were in possession under it, that it was just as much subsisting after it was torn and put in the store as before, and that Elias remaining in possession would only be in under the old lease, unless by agreement of his co-lessees. And Baker knowing all this is just as much estopped from denying it, as Elias is.

from denying that he held under the new one.

A person merely taking a deed or a lease is not always estopped from disputing his landlord's right.

Norton v. Norton 5 Cush. 524.

Averill v. Wilson 4 Bart. S. Ct. 180.

Where a debtor whose land was sold on execution, under impression that notice of the sale had been left at his house in his absence, takes a lease of the premises from his creditor the purchaser at the sale, he is not thereby estopped from denying the validity of the sale or the title of his lessor. Morris v. Moon. 11 Humph. 433.

The last case is in principle like this, tho' it is far stronger against the doctrine of estoppel than it is necessary for us to contend for in this case.

Estoppels are not to be encouraged. They are not in modern jurisprudence favorably received except where not enforcing them would work a fraud on the party in whose favor they are enforced. This is not one of those cases. Baker has his full remedy. The mistake he made was in taking the strong measure of a distress on the 4th day of January instead of waiting till the first of March - distressing the corn in the field at the time of high prices when the Pratts were hurrying it to market, thereby cutting off

their very means of paying his rent. And when the 1st of March arrived and he was tendered his pay he refused to receive it. Nearly all this time it seems he stood by - saw the Pratts occupying as before, and never ~~never~~ gave them notice of the new lease until the crop was matured, and it was too late to prepare to meet the payment of the \$215. on the 1st of January.

It is objected that Isaac Pratt and Jefferson Pratt were incompetent witnesses for the defendant on the ground of interest. But why? They were called to prove that they themselves were liable to pay this rent. Their interest was to make Elias pay it and thereby exonerate themselves: they were therefore interested, if it all, against the party calling them.

If the verdict were in Elias's favor, it could not be used in their favor; it might be used against them to show that the rent had not been recovered off Elias.

It is said the property distrained was claimed by them: that question was not in issue in ~~this~~ suit: if their property was illegally distrained they had their remedy. The verdict in this suit would have nothing to do with that question. But suppose it did: their claim in that prop.

erty was $\frac{1}{3}$ each undivided to be used in payment of this rent: they admit that they were bound to pay the rent jointly & severally: that is, each one witness was bound for the payment of the whole rent; under the old lease, which was far more than the $\frac{1}{3}$ of the property. And although their property was illegally sold on this distress they would still be liable on the old lease according to their own testimony, and would have their remedy for the damages if their property should be sold, which does not necessarily follow, as Baker was not bound to sell their property illegally altho' he did recover a verdict of rent due from Elias.

It is said that Sease had bought out the defendants interest in the crop of 1853 and had agreed to pay the rent under the old lease: Will. He had purchased the defendants interest of $\frac{1}{3}$ under the old lease, and had agreed to pay the rent according to the terms of the old lease: Now he was called to prove in effect that the old lease was in force. If he testified in favor of the party calling him he would prove that the new lease was not in force: that is, that he, the witness, would have to pay the rent instead of Elias. He was interested against the party calling him. Verbum sat. A witness is not incompetent because his property may be wrongfully sold on the execution.

An objection is made to the qualification to the 1st instruction of the plaintiff. My opinion is that this instruction itself is not law at all, and if not an erroneous qualification couldn't injure it. The mere fact of their executing a lease wouldn't fix the defendant's liability at all. The qualification is "or [unless] there was another lease to three Pratts that remained in force". From the evidence before the jury and the other instructions given it is evident that this was but stating the principle, for which we, and against which our opponents have been contending throughout. It could not mislead the jury, or do the plaintiff an injury even if erroneous. The intention of it is sufficiently explained by the other instructions. It might have been more explicit if it had been added "under which they occupied the premises" but this is given with sufficient certainty as a qualification to the instruction as asked.

The court is asked to instruct the jury that a certain lease fixes the defendants liability, and the court says - yes, unless there was that other lease in force. The qualification need not go further than the first proposition did.

9
Baker
vs
Pratt

Argument for deft

Manning & Merriam

No person present except Pff, Deft and Witnys
Old lease burned at the time—

Robert Campbell

Shed the premises described in
lease, lives between 1/4 & 1/2 miles from it, helped
put in a crop there this spring. Slough East of
the house was ploughed & manured, but doubt
if much as grass seed was put in

Defendant married about a year ago
House on the premises. Isaac Pratt and defendant
and defendant's wife lived in the house. Isaac is
defendant's father, defendant lived on the premises
until last August, they had lived there the year
before. Knows of no change in the business

Jefferson absent most of the year before, at house
last year, Elias did not come back again to
live. Crop raised principally Corn. Saw no
difference in last or first year.

Elias always appears to be the active
person of the family—absent about 2 or 3
months in Apr or May last, family did not
go. Witnys had recommended Elias as a
proper person to Baker, got the place on
his Witnys recommendation, Isaac was then
sick, so did Jefferson—Isaac did the most
of work on the house & on farm last year,
Elias worked till August last, Jefferson absent
most of year before driving Stage —

Plaintiff then offered Original Warrants
levy etc in Evidence—

and Rested

Mr Gifford states

After lease was destroyed I wrote a copy
as near as I could recollect it,

The substance was.

That Baker leased 1/2 Sec 36. 10 N.
7 E. To Elias, H. Pratt Isaac H. Pratt & Isaac
S. Pratt for 1 year from 1st March 1852 lease
dated 3. Sept 1851 " With the privilege of retaining
it 3 years from said 1st March if the party
of the second part fulfil their parts of the covenants
of this lease. Baker to put the fences in good
repair, to furnish materials for building a dwelling
house. Pratts to pay \$300 per acre for all under
cultivation. Payment to be made 1st January 1853
for all land cultivated in wheat or other small
grain. Balance 1st March 1853.

To Put up house in good & workman like
manner & at a reasonable price, to be deducted
out of the Rent. If Price can not be agreed
upon, to be left to two men mutually chosen
whose decision shall be final - within possession
at the End of the lease.

Lease under Seal, Dated 3 Sept 1851

Pratts commenced building house imme-
diately after lease was made. House was built
and Elias & Isaac moved on the premises in
the Spring of 1852. and worked farm along
til August 1853 - The Rent for the year
1852 was settled, time 1st lease 65 acres
of land broke - One half in Small grain

Balance in Corn and potatoes

The balance of the Rent for 1852 was paid in Cash and Corn Receipts of Walker & Shillegy.

Baker then said the lease might be destroyed as there was no further use for it. Cline said no for they would have nothing to show til 1st March.

Jefferson Pratt. Objected to as incompetent
on the Grounds of interest.

He stated that he was a party to the original lease and claimed an interest in the property distressed in this case - That he looked to the Sheriff or Baker for damages. (The Court decided he was competent).

He stated he was a party to the lease after lease went to work and got in wheat

+ No Put up the house - No change in management of the farm for the different years. Never heard of any change in lease till Baker told me. Never authorized any one to cancel 1st lease - Baker told me about new lease in Dec 1853. Worked for myself in 1853.

Isaac Pratt - Objected to as incompetent
on the Grounds of interest.

Whiff said. He was Sifts father, Had bought out Sifts interest in the crop of 1853. Had a bill of sale and had agreed to pay the rent for 1853. under old lease. Had sued Baker & Whiff for taking the Corn. Suit pending

He stated that rent due 1 Aug 1853, was
Overpaid. Never authorized any person
to release the first lease. Never heard
of it til last fall when Baker told me
in fall 1852. told Plaintiff we intended
to continue on - At time Settlement something
was said about a new lease. Elias or Gifford
said the old one would do just as well
Had no notice not to hold on under old lease
til January last. Summer before last he spoke
about staying another year, he said he did
not wish to keep changing tenants &c

Plaintiff then called Mr Billings who stated

that Old Pratt said he wanted the difficulties
settled - This in February 1853 - like to know
whether he was to have the place another year
Baker said whoever did have it must
make different arrangements so as to have
no difficulty again. Difficulties were submitted
to Gifford & Wmup who made an award
settling them

Mr Kellogg - not important
Thomas Brady, " "

Court refused to give the following instruction

1st

"If the Jury believe from the Evidence that the Plaintiff and the Defendant executed the lease or contract between them, this would fix the liability of the defendant unless some fraud was practiced upon the defendant."

The Court qualified this instruction as follows.

"Or there was another lease to three Pratts that remained in force,"

6th. If the Jury believe from the Evidence that the old contract was for one year, with the privilege to the three Pratts to hold for three years, on condition that they should faithfully perform the conditions binding on them, and if the Jury should further find, that the said Pratts did not pay the rent due for the first year of the time they agreed to and that they thereby failed to execute the contract on their part then they have no further claim to the land, and Baker has a right to consider it at an end." Qualification

"Unless he afterwards accepted the rent and waived his right to insist upon the forfeiture of the Rights of the Pratts to hold the land under the first lease."

9 Instructions asked by the defendant were given -
The Substance of the whole is

That if the new lease was made, without the consent of all the parties to the old lease - and the defendant thought he knew of the old lease when he made the new one; and that it had not been cancelled by consent of the other Lessees; and if the defendant on account of the old lease did not and could not use and enjoy the whole premises on account of the continued possession of the other Lessees, he the Plaintiff could not recover.

A Motion for a new trial was overruled -

Errors Assigned

1. Overruling Motion for new trial
2. Giving Appellee, instructions
3. Refusing instructions 1 & 6 asked by Appellant
4. Rendering Judgt. against Appellant.

Prople for appellant

news.

Isaac Pratt made the contract with a full knowledge of all the facts and circumstances attending the prior lease. The second lease was not under seal, contained no covenants, guarantees, assurances or representations.

There was no fraud practiced on him, & he took the lease at his own risk, that his other co-lessees would surrender to him the entire possession. There was no undertaking express or implied on the part of Baker that they should quit possession or give up their lease in his favor.

If Baker had attempted the collection of the Rent under the old lease he would have been met by a similar objection, that the 1st lease had been cancelled and destroyed.

2. Refusing the 1st and 6th Instructions asked
by the Plaintiff — as to the 1st instruction, It is
wholly immaterial whether there was another lease to the
3 Platts remaining in force, as to the two. Isaacs. It could
not be in force as to Eliza the deft. If no pond was
practical on Eliza & the 1st of the prior lease & took no
covenants against it. He is bound by his contract to
pay the rent as per last lease. #

3. The witnesses Isaac & Isaac H. Platt were
incompetent, being interested in the result.

Both claimed to be owners of the property distrainted
They have a direct interest in defeating the
Quit & Re-possessing themselves of the property

Isaac H. had agreed to pay the Rent for 1852. Leg
Isaac H. had agreed to pay the Rent for 1852. Leg

a lease may be Summended by parol
 Allen vs Sagnish St. Mend 628
 McKinney vs Reeder 7 Watts 123
 Williamson vs Richardson Q. Monr 596.
 Kenzie vs Lexington 4 Dana 129.
 Leckman vs Croft 7 Conn. 48

Chief Having Summended the first lease and
 destroyed it & having made the new one
 in the absence of all fraud or misrepresenta-
 tion or Eviction is Estopped to dispute the
 Plaintiffs claim under the new lease.

Reynolds vs Townsend, 6. Hill. 536
 Sayre vs Odell 3 " 220.

I can find but little direct authority upon
 these questions. I must therefore mainly
 rely on Common Sense & General princi-
ples

It seems to me that the point
 particularly is clearly in our favor.

Wm. B. Rye for Def.
 Henry Parker

Hiram Baker }
94) m }
Elias Pratt }

Abstract. Bmip. Ac

Purple

94

Hiem Baker
vs
Elias Pratt

94

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1854