

No. 13853

Supreme Court of Illinois

Williams

vs.

Reil et al

State of Illinois---Supreme Court, 3d Division.

WILLIAM S. WILLIAMS, }
vs. } Appeal from Bureau.
JOHN REIL, and }
THOMAS REIL. }

Record Page 8. This suit was originally brought by appellees against appellant, before a Justice of the Peace. The summons was as follows:

STATE OF ILLINOIS, } ss.
BUREAU COUNTY, }

Record Page 8. The people of the State of Illinois to any Constable greeting: You are hereby commanded to summon William S. Williams to appear before me at my office in Milo on the 17th day of January, 1857, at 7 o'clock P. M., to answer the complaint of John and Thomas Reil for trespasses on personal property, to their damage \$100—a certain demand not exceeding \$100—and hereof make due return as the law directs.

Before the Justice the plaintiff filed a statement of their cause of action, as follows:

THOMAS and JOHN REIL, }
vs. } Justice's Court, Milo, Bureau County.
WILLIAM S. WILLIAMS. }

Trespass on personal property. Damages \$100.

The gist of this action is, in that the defendant's cattle and hogs between the first of May, 1856, and December of same year, destroyed the plaintiffs' crops to the damage of \$100. The appellees recovered a judgment before the Justice; Williams appealed to the Circuit Court. The

Record page 1. transcript of the Justice states the action to be an action of trespass on personal property. On the trial in the Circuit Court the plaintiff offered in evidence the following contract:

January 25th, 1856.

Milo Township, Bureau County, Illinois.

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This is to certify that I have hired, rented and taken of William S. Williams, eighty acres of plow land, at \$2.50 cts per acre, from one year from date, being on the northwest quarter of section 30 of said township. Payments as follows; \$100 on the 25th of September, 1856, the second payment on the 1st day of January, 1857. Said Thomas and John Reil may take possession when they please, and at the expiration of the year surrender the premises in as good state and condition as he received it; said Williams is to put up the fence against farming time: said Reils agree to keep it up. The privilege of a house at 75 cts per month. The time to expire the 1st of March, 1857, of house and land.

To Thomas Reil and J. Reil.

WILLIAM S. WILLIAMS.

Cook

1. 2. The content of Mrs. to make a good and sufficient fence, or only to make a fence out of the materials there & keep it up -

Peters - 1. The land is identified 2. The contract was to "put up" the fence - Sec. file of exceptions - Understanding of parties plain - not rails then upon the ground but to put up the fence - Railed new rails -

3. Action not misconceived - action not on the contract. (Can temporary be if the temporary party has not a good fence, & can party say it was his duty to put up the fence.)

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Plaintiff proved that it had been executed by defendant, to the reading of which contract the defendant objected. The Court overruled the objection; to which decision the defendant then and there excepted. The contract was read in evidence. The plaintiffs then proved that the fence enclosing the crops in question, which were proved to be on the premises rented by the defendant to the plaintiffs, was a very poor fence; that many of the pannels were entirely down; that the fence on the west side of the field continued down and insufficient to turn ordinary stock during the year 1856; that along said west side was a public highway; that most of the damage done to the crops was on that side; that during the spring, summer and fall of 1856, plaintiffs repeatedly attempted to fix the fence so as to keep out stock; that defendant had crops growing also in said field; that the above was also the condition of the fence at the time defendant rented the place to the plaintiffs, and continued so during the year 1856, and at the time the trespasses were committed. Plaintiffs further proved that defendant's stock and hogs had gone upon and damaged plaintiffs' crop at several different times between the 1st day of May, 1856, and the close of that year. Plaintiffs offered evidence tending to prove that the crops in question in this suit were raised by the plaintiffs in the season of 1856, upon land of the defendant which had been rented by him to the plaintiffs by the aforesaid written contract, and also tending to prove that the defendant had not put up any fence around said crops sufficient to turn ordinary stock, and that in June stock got in and destroyed from one to two acres of plaintiffs' corn.

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Defendant then proceeds: That immediately before the execution of said contract, one of the plaintiffs went all around the fence enclosing the field in which said crops were raised and examined the same, and at that time, and at the time when the contract was signed, the said fence around the field was down in many places, but the remainder of the fence, which was much the greater part thereof, was standing in the same condition that it had been in for several years; that in one or two places where it was down the materials had been carried away, and that that part of the fence which was standing was not nor never had been a sufficient fence to turn ordinary cattle. The defendant also gave evidence tending to show that he had, before the commencement of farming time in 1856, put up the fence as good as he could with the materials that were then there, and as good as he had the spring before, and that he had hauled three loads of new rails and put on to the fence, so as to put those parts that were down at the time of making the contract, in as good condition as those parts which were standing.

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The plaintiffs, by their counsel, then asked the Court to instruct the said Jury as follows:

1st. That by the contract between the parties in evidence to the jury, the defendant was bound to put up the fences around the premises which he rented to the plaintiffs, so as to protect the premises rented from the trespasses of defendant's stock, and the defendant cannot set up that such fences were not good and sufficient except that the defendant has proved that he put up good fences in as good condition as they were put up by the defendant.

2d. That if the defendant's stock trespassed upon the crops of the plaintiff, raised upon the premises rented by the plaintiffs of the defendant, as per the written contract in evidence, then the jury should allow to

the plaintiffs such damage as they have sustained by such trespasses, unless the defendant has proved that said stock got in through the defects of fence caused by the neglect of the plaintiffs to keep up such fences after the defendant had put up good and sufficient fences around the premises rented.

3d. That if the defendant did not raise any question upon the trial as to the identity of the premises trespassed upon with the premises rented under the written contract in evidence, it is too late to raise such a question upon argument after both parties have introduced, without objection, proofs in regard to trespasses upon the same premises, and as to whether the defendant had put up the fence thereon as required by said contract.

To the giving of each of which instructions to the jury the defendant, by his counsel, then and there objected, but the Court overruled said objection of the defendant, and gave each of the said instructions on the part of the plaintiffs to the jury, to which decision of the Court the defendant then and there excepted; and the defendant then and there asked the Court to instruct the jury on the part of said defendant as follows, to wit:

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1st. The plaintiffs cannot sustain this action so far as the trespasses of the defendant's cattle are concerned, unless they have proved that the field containing the plaintiffs' crops in question were surrounded by a good and sufficient fence.

2d. The contract in writing which has been read to the jury, does not relieve the plaintiffs from the necessity of surrounding their field with a good and sufficient fence.

3d. The jury should pay no attention to the contract in writing which has been read to them.

4th. The defendant is not liable in this action for any non-performance of the contract in writing which has been read to the jury.

5th. By the contract in writing which has been read to the jury, the defendant was not bound to put up a good and sufficient fence, but only to put up the fence which was on the premises at the time of making the contract.

6th. The defendant is not liable for any damages done on account of the fence not being put up (if it was not put up) after the plaintiffs had notice that the fence was not up, and had had opportunity to put it up himself.

7th. If the plaintiffs have not proved that the crops in question were surrounded by a good and sufficient fence, nor have proved that the contract in writing which has been read to the jury, was made in regard to the fence surrounding the crops in question, then the jury cannot find the defendant guilty on account of any trespass committed by said cattle.

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8th. This action is not brought for any breach of the contract which has been read to the jury, but for trespasses committed by the defendant's cattle and hogs, and the jury cannot allow the plaintiffs any damages for any breach of said contract in this action.

9th. If the jury should find the defendant guilty, they should not allow the plaintiffs damages beyond what they really sustained by the defendant's cattle and hogs trespassing, unless it is proved that the defendant was willing that his cattle and hogs should trespass upon the plaintiffs' crops.

10th. If the defendant put up the fence according to the contract, then

he is not liable for trespasses of his cattle unless the plaintiffs have proved that the fence was good and sufficient.

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The defendant excepted to the refusal of the court to give each of the above instructions.

The Jury found a verdict for the plaintiffs.

The defendant moved for a new trial—which motion the court overruled and the defendant excepted.

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Errors assigned :

The court erred in admitting the contract, as aforesaid, in evidence.

2.—The court erred in giving the instructions, asked for by the plaintiffs, severally.

3.—The court erred in refusing the instructions asked for by the defendant.

The court erred in overruling the motion for a new trial.

POINTS AND AUTHORITIES :

1st.—The contract read in evidence should have been excluded, because it was void for uncertainty in the description of the land. — It is

Signed by Williams and not by Reib -

2d.—If the plaintiffs sustained injury by the breach of that contract on the part of the defendant, their remedy was upon the contract itself,

The settled law is that a man cannot recover if his crops are not ruined by a good and sufficient fence -
The remedy is on the contract - where no verdict damages can be allowed -

3d.—The rule laid down in the third instruction given for the plaintiffs is wholly wrong. The defendant had a right to rely upon the failure of the plaintiffs to make out their case by failing to identify the premises, and to insist upon such failure for the first upon the argument.

The fourth instruction asked for by the defendant, contains a plain proposition of law and should have been given.

What was it matter whose cattle (and) hogs did the injury -

The 7th instruction asked for by the defendant, contains a principle

which has been settled law in this State since the decision in the case of Seely vs. Peters—5th Gilman, 130.

The ^{9th} ~~eleventh~~ instruction, which lays down the principle that exemplary or vindictive damages can be recovered only in an action of Trespass, can be recovered only in case of wilful trespass, is law and ought to have been given.

The twelfth instruction asked for should have been given.

GLOVER & COOK, Att'ys for Appellant.

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William S. Williams

v3

John Neil et al

Agreed May 20

(part of the former)

Filed Apr. 19. 1858

L. Belmont
Clerk

13853

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