No. 19835 A

Supreme Court of Illinois

Secon

---

vs.

Bestana

71641

Mr. Justice Breese delivered the opinion of the Court:

This was an action of Forcible detainer. The facts briefly stated are, that the appellee leased by writing certain premises on Dearborn Street in the city of Chicago, for a term to expire on the first day of May 1863. Afterwards, by a verbal agreement, appellant leased the same until the first day of May 1864, and the question is, was the tenant entitled to notice to quit, before action brought.

His tenancy was for a fixed period, namely, to the first day of May, 1864, consequently no notice was necessary. On that day, appellant was found to occupy the premises, as his term had expired by its own limitation. Taylor's Landlord and tenant Chap. 2 Page 44 Section 1. Page 44; Walker Adm. vs Ellis, 12 Ill. 475.

The act of 1861 applies only to tenancies of uncertain duration, as tenancies from year to year in which sixty days notice is required and tenancies by the month, or for any time less than one year where the tenant holds over without a special agreement, when thirty days notice is required. (Sess. Laws 1861 Page 136)

It is urged the Court erred in refusing the following instructions asked for by appellant

1. If the jury believe from the evidence that after the lease, introduced in evidence, expired, the defendant, by verbal contract with the plaintiff, leased the premises for another year, then in such case the defendant became a tenant from year to year, and was entitled to a notice for sixty days if the plaintiff desired possession of the premises at the end of that year, and unless such

notice is shown by the evidence the jury must find for the defendant.

2. If the jury believe from the evidence that the defendant, under a verbal agreement, entered upon and occupied additional premises than those described in the lease, after the termination of the original written lease, and the description of the premises in the plaintiff's complaint and notices includes or describes only the premises in the said written lease, then the variance between the proof and the description is fatal, and the jury must find for the defendant.

4. If the jury believe from the evidence that after the expiration of the original tenancy the defendant continued to occupy the premises under a new agreement for one whole year, or for an indeterminate period of more than one year, it was a tenancy from year to year, and the defendant was entitled to a notice in writing of sixty days before the end of the year, and unless such notice was given the jury must find for the defendant.

5. The jury are instructed that mere verbal declarations made to persons who are not the agents of both or either of the parties cannot be taken as binding the party making them, and must be disregarded in the consideration of the evidence, and unless the jury believe from the evidence that Mary and Sarah Pestana were the agents of the plaintiff, and acting at her instance at the time when they say Secor said he was going to leave on the first of May, and that as such agents they were authorized to receive and agree to a proposition to quit, then such a declaration on the part of Secor could not bind him or shorten his term afterwards agreed to by the plaintiff, and unless the jury believe from the evidence that such declarations were so agreed to they should reject them altogether.

7. The plaintiff having served notices to quit and acted as though she considered them necessary, cannot now abandon that ground and seek to recover on the ground that no notice was necessary.

These instructions were properly refused, the first, because it was not a tenancy from year to year - the second, there was no proof of the occupancy of additional premises different from those described in the lease. There was an attornment only by the tenant to a partition wall, by which means the appellants accommodations were increased. The fourth was properly refused, as no tenancy of the kind specified in it was

proved.

As to the fifth instruction, it was properly refused because the admissions and declarations of appellant were admissible no matter to whom made, & confessions relating to the character and extent of his tenancy. There is no rule of law requiring such admissions to be available, that they should be made to the party or his agent.

The sixth instruction was properly refused because of public way not connected by the notices the had a right to, as to the character of the tenancy. It was his right to repudiate them and place himself on the true ground.

As to the ninth instruction which the Court did not give or refuse, it is only necessary to say, it is based on the idea of a tenancy from year to year, which he knew did not the nature of the tenancy about which the controversy exists.

Perceiving no error in the record, the judgments of the courts below must be affirmed.

Judgment affirmed.

137 – 71

Secon 1425

vs

Pentana

—

Opinion by

Rhea J

C. C. –

Records Book

13. P 448.