No. 14111

Supreme Court of Illinois

Thomas Armstrong

vs.

Galen Eastman

71641 7

Armstrong
Eastman } Deft's Brief -

I The submission proved varies from that alleged in declaration - 1st because. It was for rent only for specified time, from May to July 15th 69

2d Because the only question was as to amt. due

3d. Because the time of submission is not proved as land, & is material also -

II Submission was void for want of mutuality

1st There can be no apportionment of rent to date at certain periods under lease, when a surrender occurs before maturing of instalment -

II Greenl. Ev. § 72

Oayton Land. 45	§ 6 x 8 cites
Hall v Burgess 7 B&C.	333
Zule v Zule XXIV Lond.	78
Clunes case X Rep.	127
Perry v Aldrich XIII N.H.	344
Wood v Partridge XI Mass.	493

2d Parol sub. & award only equivalent, to accord or at most acc. & sat., which is not pleadable to action on debt before breach

II Greenl. Ev. § 28 -

Caldwell v Alt. 36 n. 1

III Award does not follow submission as laid in Dec^n & cannot be explained by parol.

1st Does not purport to adjudicate upon all rent due to

2d

IV Award is uncertain —

1st does not purport to be a final settlement or require release from either party

2d Refers to Lay v Defd shall pay £200 for two months a <u>henceforth</u> when it does not appear from lease or evidence that payment had been so made —

V The award is against law, and the submission of <u>amount</u> of a void obligation to award does not preclude inquiry into character of obligation

Steers v Lashley T Esp. 167
II Chrnl. Ex. 548.

The question here submitted was whether there had been any express agreement at time of cancelation of lease, that rent should be paid from May to July — it being tacitly admitted by parties that unless there was such agreement rent could be collected: the question of <u>law</u> was not referred

or decided —

VI. The award was mutually shared —

Cartman ~~said~~ accepted the proposition forwarded saying "Since you force me to it, we will stand upon our legal rights, which I think will give me all balance

Armstrong
vs } Deft's Brief
Eastman

W J Norman
Defts Atty

State of Illy } Superior Court of Chicago
Cook County } At the September Term AD 1857

Thomas R Austrian plaintiff in this suit by Barker & Duly his Attorneys complains of Solon Eastman defendant who has been summoned &c. of a plea of trespass on the case upon promises —

For that whereas before the making of the promises and undertaking of the said defendant hereinafter next mentioned certain differences had arisen and were then depending between said plaintiff and the said defendant touching and concerning the amount of rent due if any from said defendant to the said plaintiff for the North half of lot One of Block Fifty One of the Original Town of Chicago and of the North half of Washington Street running from the South Branch of Chicago River to West Water Street leased by said plaintiff to said defendant by lease in writing dated May the first AD 1857, and touching and concerning what amount if any should be allowed to said defendant by the said plaintiff for his the said defendants removal of his lumber goods and chattels from the said premises and touching and concerning the use occupation removal from and the rent of said premises — to wit at the County of Cook aforesaid

And thereupon for the putting an end to the said differences the said plaintiff and the said defendant heretofore to wit

on the Fifteenth day of July in the year Eighteen Hundred and fifty Nine at town the County aforesaid respectively submitted themselves to the award of Thomas M Avery and Benjamin Ackley to be made between them of and concerning the said differences; and in consideration thereof and that the said plaintiff at the special instance and request of the said defendant had then and there undertaken and faithfully promised the said defendant to perform and fulfil the award of the said Thomas M Avery and Benjamin Ackley to be so made between the said plaintiff and the said defendant of and concerning the said differences in all things therein contained on the said plaintiff's part and behalf to be performed and fulfilled he the said defendant then undertook and there and there faithfully promised the said plaintiff to perform and fulfil the said award in all things therein contained on the said defendants part and behalf to be performed and fulfilled ——

And the said plaintiff in fact saith that the said Thomas M Avery and Benjamin Ackley having taken upon themselves the burthen of the said arbitrament afterwards towit on the Eighth day of August AD 1859 at town the County aforesaid made their certain award between the said plaintiff and the said defendant of and concerning the said differences, and did thereby award that the said defendant should pay to the said

plaintiff the sum of One Hundred and fifty dollars in full satisfaction and discharge of the said matters in difference of which said Award the said defendant afterwards towit on the day and year last aforesaid at towit the County of Cook aforesaid had notice —

And although ~~the~~ the said defendant afterwards towit on the day and year last aforesaid at towit the County of Cook aforesaid was requested by the said plaintiff to pay him the said sum of one hundred and fifty dollars according to the tenor and effect of the said award and his said promise and undertaking yet the said defendant not regarding his said promise and undertaking aforesaid but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said plaintiff in this behalf did not nor would on the day and year last aforesaid or when he was so requested as aforesaid or at any time afterwards pay the said sum of One hundred and fifty dollars or any part thereof to the said plaintiff but hath hitherto wholly neglected and refused and still doth neglect and refuse so doing towit at the County aforesaid —

And whereas also the said defendant afterwards towit on the fifteenth day of August in the year AD 1857 at towit the County aforesaid was indebted to the said plaintiff in the further sum of Two Hundred and fifty dollars upon and by virtue of a certain award made by Thomas McCoy and

Benjamin Ackly* of and concerning all matters in difference then depending between the said plaintiff and the defendant and upon and by virtue of which said reference the said Thomas M Avery & Benjamin Ackly had then and there awarded that the said defendant should pay a certain sum of money to the said last mentioned sum of money to the said plaintiff and being so indebted he the said defendant in consideration thereof afterwards to wit on the day & year last aforesaid at the County aforesaid undertook and then and there faithfully promised the said pltff to pay him the said last mentioned sum of money when the the said deft should be thereunto afterwards requested.

after by written by mutual consent submission before defendant & the said Thomas M Avery & Benjamin Ackly

Count on the award (£250)

D.N.P. £250 ——

" accord and upon.

Plea Payment to Wm R Armstrong, &c

to Bal due upon account stated £250

Thomas & Armstrong
vs
Walter Gaston

Copy Orig
Filed Aug 25
1857

Consid^n that Pl^ff had
proved validly around
his bids

T Caines 583

Award contrary to law bad

II Bacs Ab. 15

Dr. Bates VI Pick 148

Pick v Nau IV Cranch 347-
364

Must be formal

Cox v Higgs II Cowen 638

Jack v Amb. XIV John 96

Chronolo vol II. 1031

VII E.R. 81

Award void as such may
be given in an under Ap[illegible]

Ackerly v Ver. XVII John 38

Where factors' way of all counters, N.Y. 1st and 2nd
which to all counters before Ver v Ap^ll Court erroneously
not intend that there were other bidders, but if it be
shown that there were several void

Burchfield v Burchfield Burgess 77

Thomas R. Armstrong
vs
Galen Eastman } Superior Court of Chicago.

To Galen Eastman
& J. B. Thomas Jr. his Atty

you will please take notice that we shall (in the Superior Court aforesaid) on Wednesday morning at the opening of Court, or as soon thereafter as we can be heard, call up the above entitled cause for trial, and you are hereby notified to attend

Barker & Tuley
Attys for Thos R. Armstrong

Chicago Dec. 5. 1859.

Superior Court of Chicago.

Armstrong
vs
Eastman } Errors Assigned

1. Court erred in admitting improper evidence

2d. Finding against law

3d. Finding against evidence

4th Judgt. shd have been for deft. for costs

5th Court erred in overruling mot. for new trial

Obj. to Subm.n 1. variant from dec.n
2d. By parol of matter under seal
4th without consid.n
5th " mutuality

Obj.ns to Award. 1. variant f. dec.n
2. founded on void Subm.n
3. contrary to law
4. uncertain
5. not final
6. void in suff.

"We find that Armstrong shall collect of Carlton Two Hundred dollars for two months rent from May 1st to July 1st as he has collected during the past year and that Mr Armstrong shall deduct Fifty dollars as agreed by Mr Baxter for cost of moving from Two Hundred dollars allowed for rent

43

John Carlton
Appt.
vs
T. R. Armstrong
Appee

Mem

Armstrong
Earthman } Rent cannot be apportioned as to time

Zule v Zule XXIV Wend. 78
Clunes case X Rep. 127
Peary v Aldrich XIII N H 344
+ ~~the~~ Wood v Partridge XI Mass 493
Taylor L & T § 648 cites
Hall v Burgess V B & C. 333

No action in this case for use and occ.n because there was a deed —
See Land & T (Rev & Fat) § 1
Hall v Burgess V B & C 333

a verbal subm.n is valid when matter is such that a verbal agreement between the parties in the terms of the award would have been valid — but where law requires cont.n in writing then sub.n & award must be in writing
Cald on Arb. 36 Ch. 1

vid — Lawrence v Gist 11 Harr & Gill 433
Lamar v McNamee X Gill & Johns 116

Subm. must be mutual
1 Greenl. Ev. § 72

Acc & Sat.n before breach not good
1 Greenl. Ev. § 28 —

Mein

LEASE.

This Indenture, Made this First day of May in the year of our Lord One Thousand Eight Hundred and Fifty Seven **BETWEEN** Thomas R. Armstrong, of the City of Chicago, and State of Illinois of the first part, and Galen Eastman of the second part,

Witnesseth, That the said party of the first part, for and in consideration of the covenants and agreements hereinafter mentioned, to be kept and performed by the said party of the second part, his executors, administrators and assigns, has demised and leased to the said party of the second part, all those premises, situate, lying and being in the City of Chicago, in the County of Cook, and in the State of Illinois, known and described as follows, to wit: being, the north half of Lot 1. (One) of Block 51 (Fifty one) of the City of Chicago, and State aforesaid, with the south half of Washington Street, running from the South Branch of the Chicago River, to West Water Street, nevertheless subject to the conditions of a lease from the City Authorities to the said Armstrong, and provided also, that if all, or any part of the Street, so leased, shall during the term of this lease, be taken by the said Authorities, then such amount to be deducted from said rent, as is the relative proportion to the whole amount, of the ground above described

TO HAVE AND TO HOLD the said above described premises, with the appurtenances, unto the said party of the second part, his executors, administrators and assigns, from the First day of May in the year of our Lord One Thousand Eight Hundred and Fifty Seven for and during, and until the First day of May, One thousand eight hundred and sixty.

And the said party of the second part, in consideration of the leasing of the premises aforesaid, by the said party of the first part to the said party of the second part, does covenant and agree with the said party of the first part, his heirs, executors, administrators and assigns, to pay to the said party of the first part, as rent for said demised premises the sum of Fifteen hundred Dollars, to be paid yearly as follows, viz: Three hundred and Seventy five Dollars, at the end of each, and every quarter during the full term of three years.

And the said party of the second part further covenants with the said party of the first part, that the said second party has received said demised premises in good order and condition, and that at the expiration of the time in this lease mentioned, he will yield up the said premises to the said party of the first part in as good condition as when the same were entered upon by the said party of the second part, loss by fire, or inevitable accident or ordinary wear excepted; and also will keep said premises in good repair during this lease at his own expense.

It is further agreed by the said party of the second part that neither he nor his legal representatives will underlet said premises or any part thereof, or assign this lease, without the written assent of said party of the first part first had and obtained thereto.

And the said Galen Eastman for himself, his executors, administrators and assigns, agree further to pay, (in addition to the rents above specified) all water-rents levied or charged upon said premises for and during the time for which this lease is granted, and save said premises and the party of the first part harmless therefrom, and that he will keep said premises in a clean and healthy condition, in accordance with the ordinances of the City and the directions of the Sewerage Commissioners.

IT IS EXPRESSLY UNDERSTOOD AND AGREED, by and between the parties aforesaid, that if the rent above reserved, or any part thereof, shall be behind or unpaid on the day of payment whereon the same ought to be paid, as aforesaid, or if default shall be made in any of the covenants or agreements herein contained, to be kept by the said party of the second part, his executors, administrators and assigns, it shall and may be lawful for the said party of the first part, his heirs, executors, administrators, agent, attorney or assigns, at his election to declare said term ended, and into the said premises or any part thereof, either with or without process of law to re-enter; and the said party of the second part, or any other person or persons occupying, in or upon the same, to expel, remove, and put out, using such force as may be necessary in so doing, and the said premises again to re-possess and enjoy as in his first and former estate, and to distrain for any rent that may be due thereon, upon any property belonging to the said party of the second part, whether the same be exempt from execution and distress by law or not, and the said party of the second part in that case, hereby agree to waive all legal rights which he may have to hold or retain any such property under any exemption laws now in force in this State, or in any other way. Meaning and intending hereby to give the said party of the first part, his heirs, executors, administrators or assigns, a valid and first lien upon any and all the goods, chattels or other property belonging to the said party of the second part, as security for the payment of said rent in manner aforesaid, anything hereinbefore contained to the contrary notwithstanding. And if at any time said term shall be ended at such election of said party of the first part, his heirs, executors administrators or assigns, as aforesaid, or in any other way, the said party of the second part his executors, administrators and assigns do hereby covenant and agree to surrender and deliver up said above described premises and property peacably to said party of the first part, his heirs, executors, administrators and assigns, immediately upon the determination of said term as aforesaid, and if he shall remain in possession of the same ten days after notice of such default, or after the termination of this lease in any of the ways above named, he shall be deemed guilty of a forcible detainer of said premises, under the statute, and shall be subject to all the conditions and provisions above named, and to eviction and removal, forcibly or otherwise, with or without process of law, as above stated.

And it is further covenanted and agreed by and between the parties, that the party of the second part shall pay and discharge all costs and attorney's fees and expenses that shall arise from enforcing the covenants of this indenture by the party of the first part.

WITNESS the hands and seals of the parties aforesaid.

The interlineation of "from said rent" made before execution.

Thos. R. Armstrong (Seal)

Galen Eastman (Seal)

LEASE.

Date May 1st 1857.

Thomas H. Armstrong.

TO

Galen Eastman

14111

Chicago Democrat Print, 45 La Salle Street.

Form of Bill of Exc'pts
Obtd from Proctor 414

John Noker
v
Joseph Styles } Plea Case
In the Superior Court of Chicago

Be it remembered that on the trial of this cause at the Term of said Superior Court of Chicago A.D. 1859 the said John Noker gave in evi. to maintain the issue on his part (on the 2d or 3d count as may be) that &c and further that &c and thereupon the said J. N. offering no other evi. in support of J. S. moved said Court to direct the J. N. to become nonsuit in that behalf. But the said Judge then & there held & decl. that evi. was suff. to maintain issue & thereupon overruled the motion of said J. S. to the Judge & then & there said & left exc. thereof & they agreed & gave verd. against J. S. whereupon counsel of said J. S. moved the matter aforesaid do not appear by reco. of verdict aforesaid & pray that Judge seals sel. this Bill of Exc'pts containing the overall matter so proved and given in evi. or aforesaid &c. & that it and cause may be spread upon the record. Thereupon the said Judge at request of counsel of said J. S. did sign seal this Bill of Exc'pts pursuant to aforesaid & that in said cause made part

From Bill of Exchange

Final Acct of

Dec. 2	Amount
"	Water
"	Surveying
Bill	
"	"
"	Warden
"	
Bill Exchange	Chairman
Bill	Hastings

We find that Armstrong shall collect of Eastman Two Hundred Dollars for two months rent from May 1st to July 1st as he has collected during the past year and that Mr Armstrong shall deduct Fifty Dollars as agreed by Mr Baxter for cost of moving from Two Hundred dollars allowed for rent

Chicago Aug 8th 1859

J M Avery
Benjn Ackly

Thomas R Armstrong } In the Superior Court of
vs } Chicago
Galen Eastman } In Assumpsit

Be it remembered that on the trial of this cause, at the December Term AD 1859 of said Court, the said Thomas R Armstrong to maintain the issues on his part gave in evidence, a certain lease in writing under seal, dated on the First day of May AD 1857 executed by the said Armstrong and the said Eastman (Here insert a copy of the lease) ~~by which the said Armstrong leased to the said Eastman certain premises therein described for the space of three years next following the date thereof, at a rental of Fifteen Hundred Dollars per annum payable at the end of each quarter year during the continuance of said lease, in instalments of Three Hundred and Seventy five Dollars each, but the said lease contained no covenants or agreements with reference to an apportionment of said rent under any circumstances whatever~~ — And the said Armstrong further proved that on or about the 10th day of July AD 1859, the said Eastman then being in possession of said premises under said lease, an agreement was made between the said Eastman and one G. W Baxter claiming to act as the agent of the said Armstrong, by which the said Eastman was to surrender the possession of said premises under said

base, and to receive from the said Armstrong Fifty Dollars as compensation for the removal of his property therefrom:- that said Eastman in pursuance of said agreement immediately relinquished the possession of said premises and the same was forthwith occupied by the said Armstrong:- that on or about the 1st day of August AD 1859 the said Armstrong called upon the said Eastman for ~~the amount~~ rent claimed by him to be due on said lease, for occupation of the premises described therein from May 1st 1859 to July 10th 1859, which the said Eastman refused to pay, claiming that by the agreement between Baxter and himself, as he understood it, no rent was to be paid by him for said time, - but that he, Eastman, was to receive Fifty Dollars for expense of vacating premises, in addition to a release of all rent - The said Armstrong further proved that on the 8th day of August AD 1859 by mutual verbal agreement between the said Armstrong and the said Eastman, it was submitted to one T. M. Avery and one Benjamin Ackley, as arbitrators to decide whether by the agreement between the said Eastman and the said Baxter, on the 10th of July 1859, under which the said Eastman had left the said premises, the said Eastman had been expressly released from the payment of rent, from May 1st 1859 to July 10th 1859 - and if not so released, how much rent should be paid by said Eastman for said time, and what if any deduction should be made for the expense

Thomas R Armstrong
vs
Galen Eastman

In the Superior Court of Chicago —

Be it Remembered ~~that on the day of December AD 1859, the above entitled cause came on for trial before the Honorable Van H Higgins one of the judges of said Court without the intervention of a jury and~~ that on the trial the above entitled cause at the December Term AD 1859 of said Court ~~thereof~~, it was proven on the part of the Plaintiff that on the First day of May AD 1859, by a certain lease in writing under seal, executed between the said Plaintiff and the said Defendant, the said Plaintiff had leased to the said defendant certain premises described in said lease, for the term of three years then next ensuing, and ending on the first day of May AD 1860 at a rental of fifteen hundred dollars per annum to be paid in instalments of three hundred and seventy five dollars each, at the end of each quarter year during the said term — that the defendant entered into and remained in possession of the said premises under said lease, until about the 10th day of July AD 1859. that about the said 10th day of July AD 1859, one T. W. Baxter representing himself to be the agent of the plaintiff in so doing, applied to the defendant to obtain from ~~offered~~ him a surrender of his possession of the said premises under the said lease, and offered to pay him the sum of fifty dollars as compensation for the expense of the defendants removal of his certain lumber and merchandise from said premises — which proposition the defendant accepted and immediately gave up the possession of the said premises, and the

same were forthwith occupied by the plaintiff, he being cognizant of all the facts above stated. That on or about the 1st day of August AD 1839, the said Plaintiff called upon the defendant, for a proportion of the amount of rent for the quarter then ending corresponding with the time the premises were occupied by the defendant viz from May 1st to July 10th - which the defendant refused to pay claiming that he understood from the arrangement with Baxter, that no rent was to be paid for said time, but the £50 to be paid him the deft was to be in addition to the fee and the plaintiff then proved that the said Pltff and the said Deft on the day of August by verbal agreement, submitted to one Thos McAvey and one Benjamin Rickley a arbitrator to decide whether by arrangement between deft and Baxter as Pltff aft on July 10th the deft had been released from the payment of rent from May 1st to July 10th and if not so released what amount should be paid to the plaintiff for such occupation for such time - the £50 the admission of parties under the oath of plaintiff rec'd under the Act of Parliament, by his counsel then and there objected, Because the evidence failed to show a submission of the time alleged in first Count - 2d Because the matter submitted

varied materially from that alleged —

3d. Because the submission proved was not mutual, and as the deft. was without consideration —

4th Because the submission by parol of matters arising on sealed instrument before breach (which objections the Court overruled, and admitted the said evidence, and the defendant then and there by his counsel excepted thereto)

The Plaintiff then having proved the execution thereof offered in evidence, an award in writing by said arbitrators in the words and figures following to wit:

To the admission of which award under either Counts of said Pltffs declaration the deft. by his Counsel objected — 1st Because the submission on which said award is founded is void for want of mutuality 2d — Because said award is contrary to law — 3d Because award is not final being ~~by parol~~ simple not Cont. under seal 4th — Because the award is variant from that alleged in Decln

5th — Because the award is uncertain —, which objections the Court overruled & admitted the said award and the defendant by his counsel then and there excepted thereto —

The defendant then proved that after the date and delivery of the said award the Plff frequently called upon the agent of the Deft (in Deft's absence) and stated that he would not ~~his acceptance to~~ abide by the award and also stated the same to Mr Avery one of the arbitrators - That on Sept 1st Plff came to his office and demanded a settlement. Deft asked of him whether he would settle by the award, he replied "No. I will have the whole I claim or none" The defendant then replied "Very well, since you force one to it, we will stand upon our legal rights, which will give me no Claim - no cent" - The defendant then rested his case, and this defendant avers that the foregoing is all the evidence submitted on the part of the Plaintiff or Deft in said Cause - The Court having heard the evidence found the issues for the Plff whereupon the Defendant by his Counsel then and there moved the Court for a new trial 1st Because the Court erred in ~~admitting~~ refusing to exclude the evidence of Dsabrin & Davis.

1st Because the Court erred in admitting the award in ev.

3d Because the decision of the Court was against law

4th Because the decision of the Court was against the evidence -

which motion the court overruled and the deft then and there excepted -

Armstrong
vs } Bill of Exceptns
Eastman