

12684

No. 12684

Supreme Court of Illinois

Olt

vs.

Lohnas, et al

71641  7

10 Days Ott

31 6

From John, Calm

Lahore

att

313

1858

12684



State of Illinois } 3 Grand Divisions
Supreme Court } April Term A.D. 1858

Philip Ott }
vs. } Appeal from
Henry & John Thomas } Foxwell.

We agree that this case may be
submitted to the Supreme Court at
this Term of the Court, and that
the annexed record shall be taken
as a full and complete record of
the case.

James Roberts
att. for Appellant.
B. B. Coffman
att. for Deft.

Plas to a term of the Circuit Court begun and
held at Pekin within and for the County of
Tazewell and State of Illinois on the
first Monday of the month of April in the
year of our Lord one Thousand Eight
Hundred and Fifty Eight. Before the
Hon James Warriette Judge of the 2nd
Judicial Circuit of the State of Illinois
Composed of the Counties of Menard and
Mason Tazewell &c

Be it remembered that on the 17th day
of April in the year of our Lord one Thousand
Eight hundred and fifty Eight an agreement was
filed which agreement is in the words and figures following
to wit:

" State of Illinois } In Tazewell County Circuit
" Tazewell County } Court April Term 1858
" Henry and John Schmus }
" Philip Sch. }
" Philip Sch. }

It is agreed by the parties in this
case - that the compact made upon was altered into in the
month of October 1836 by which the Defendants agreed to
let the Plaintiff have and occupy a farm the occupation
of which was to commence on the first of March 1837 and
continue until the first of March 1838 and that on the first of
March 1837 Plaintiff agreed to occupy said farm.

" that the Defendants refused and therefore Plaintiffs ^{in pursuance of the writ of habeas corpus} ~~sub~~
 " that Plaintiffs ^{in pursuance of the writ of habeas corpus} ~~sub~~ fall ^{in October 1835} ~~sub~~ upon the premises in the
 " fall, ¹⁸³⁵ and occupied the premises while doing so.
 " And it is further agreed that the said contract was
 " not in writing but by parol and if the Supreme Court
 " should be of opinion that said contract was void by
 " the Statute of Frauds and Perjuries, ^{by reason of} not being in writing
 " the judgment should be reversed otherwise to be affirmed.
 " It is further agreed that this cause may be decided
 " without reference to the pleadings and that it may be decided
 " by the Court as though every portion of the Statute applicable
 " to the case had been pleaded - and that this may be
 " taken as a Rule of acceptance and the Second Count
 " of the Declaration, the pleas and replications, and
 " the Verdict of jury and the judgment of the Court
 " thereon may be certified as the whole records in this case.

R. L. Pellyman atty for Plaintiffs
 James Roberts atty for Defendants

And now heretofore to-wit: on the 26th March A.D. 1835. the Second
 Count of the Declaration was filed in the words and figures following
 to-wit:

And Whereas, also afterwards to-wit: on the 10th day of October
 1836 at the County of Middlesex the plaintiffs at the special
 instance and request of the said defendant, the said plaintiff bar-
 gained with the said defendant to-wit: to rent his farm near
 " Pinner known as the "Old Farm" and that the said defendant
 " was to give the plaintiff possession thereof by the first day of

March 1837. and that the plaintiffs were to occupy the said
 farm and appurtenances from that date until the first day
 of March 1838. the said plaintiff bargained with the said de-
 fendants. to pay him a certain rent of one third of all
 the grain to be raised on said farm, and in consideration
 thereof and that the plaintiffs at the like special mission
 and requests of the said defendant, have then & there
 undertaken and faithfully promised the said defendant to
 accept and receive the possession of the said land and
 pay the rent for the same at the rate and prices aforesaid
 and the said defendant there and there ^{faithfully} provided the
 said Plaintiff. to permit and give the plaintiff occupancy and
 possession of the said farm as aforesaid. And the plain-
 tiff aver that at the time aforesaid, to wit: March 1st 1837.
 they were ready to and offered to possess and farm said premises
 which defendant there and there refused to permit them to do
 notwithstanding they had already by his leave and permission under
 said contract. sowed on said premises a large crop of
 19 acres of Winter Wheat, of the benefit of all which they were
 thereby deprived by said def. & the plaintiff aver that by
 reason of the expenses incurred in procuring other lands
 and being deprived of said Wheat crop and the loss of time
 to wheat and loss of crop and pasturage and the rent of house
 disappointment and trouble in procuring other lands houses &c.
 they have sustained a great ~~damage~~ loss to wit: for
 nevertheless the said defendant notwithstanding his promises
 and undertaking did not, nor would not, permit the said plaintiff
 to use and occupy said premises, or any part thereof. But to do

hath entirely. (although often requested to do so) failed to do
any part thereof. to the damage of the said Plaintiff of \$500
therefore they bring their Suit

Prattman vs L.

And afterwards on the 10th day of April A.D. 1888 the referee
filed his plea in the words and figures following to-wit:

"State of Illinois - N. D. Sizewell Circuit Court April Term 1888
"Sizewell County

"John & Henry L. L. L.

"Philip Oct

And the said Defendant by James
Robert his attorney comes and defends the wrong and
injury when &c. and says that the first count in said plaintiff's
declarations mentioned is insufficient in law for the plaintiff
to maintain his aforesaid action. And that he is ready to verify
Wherefore he prays that may not have or maintain his
aforesaid action against Defendant

"Consider by Pltts

James Robert for Defor

"Per Prattman atty

"And as to the remaining count of said declaration the said
Defendant saith that he did not undertake nor promise in
manner and form as the plaintiff hath above thereof com-
plained against him. and of this he puts himself upon the
country &c.

James Robert

"& Pltts doth the like

"And for a further plea hereunto as to the remaining counts

of said Plaintiff's Declaration said Defendant saith & also now
 he saith he says the said supposed promises and mentioned
 were special promises and each of them was a special
 promise upon an agreement that was made to be performed
 within the space of one year from the making thereof,
 and no agreement in respect of or relating to said supposed
 causes of action in said Comts mentioned, or either of
 them, nor any memorandum or note thereof
 wherein the considerations of said special promises
 or either of them was or were stated or shown was or is
 in writing, or was or is signed by the said defend-
 ant or by any other person by him thereto lawfully
 authorized, according to the form of the Statute
 in such cases made and provided, and this he
 is ready to verify wherefore he prays judgment &c
 James Roberts ally West.

And now afterwards, tenets on the day and year last
 aforesaid the said Pts filed their depositions in the
 word, & figures following: tenets:

And as to the 3^d Plea of the said
 Defendant above pleaded Plaintiff says preclusion now
 he saith he says that the matters and things therein
 contained, ^{in reference to forms as the same are therein set forth} are not sufficient in law to preclude these
 Plaintiff from recovering against him in this cause, and
 this they are ready to verify & wherefore they pray judgment
 Prettyman for Pts.

6

And now afterwards, trials were held of the Circuit Court begun and held at Pekin within and for the County of Tazewell and State of Illinois on the first Monday of the month of April in the year of our Lord one thousand eight hundred and fifty eight. Present the Hon James Harriott Judge, Hugh Fullerton Prosecuting Attorney, Chapman Williams Sheriff and Menis Cyrony clerk. and on the 14th day of April a full court being the 12th day of said Term, the following proceedings were had in said case: to-wit:

Thursday

Saturday April 17th 1858.

" Henry Labner and John Labner

"

" Philip Olt

} Affirmative.

And now again came

" the parties by their attorneys whereupon came a jury
 " of twelve good and lawful men, to-wit: duly elected
 " him and sworn. Who was to-wit: John C. Davis
 " Erad West, Israel P. Springer, Henry A. Hammond
 " Lucius H. Case, Elijah Shubert, Joseph Matt,
 " Nicholas C. Clark, John McHenry, Wm. Cunningham
 " Sam. Admon, Peter Lang and Sam. Nichols
 " Who having heard the allegations and proofs of the
 " parties and argument of counsel thereon for
 " Verdict say. That the jury find for the Plaintiff

and assess his damages to the sum of (Fifty)
Dollars

It is therefore ordered and adjudged
by the Court that the Plaintiff recover of the said
Respondent their damages found as aforesaid
and likewise the costs and charges by them made
their Costs Respondent and that Execution
issue therefor.

State of Ohio
Sagwell County, S. J. Merrill C. Young Clerk
of the Circuit Court within and for said
County do hereby certify that the foregoing pages
contain a full and ^{correct} and perfect Transcript of
the Pleadings and the Record of the proceedings
in the cause therein named. as the same appears
in my office and in conformity with the agree-
ments of the attorney in the said cause incor-
porated this Transcript.

Witness my hand and the Seal of said Court here to
affixed at Athens this 28th day of
April 1858.

J. Merrill C. Young Clerk
Per Wm. Donnell Deputy

State of Illinois }
Supreme Court } April Term
1858

And for assigning error the
of Yelland says that the Court
erred in reversing judgment
for plaintiff below

The judgment below ought be
reversed

James Roberts
for appellant

And the said Roberts says there is no error
in the Court below reversing judgment for Plaintiff
below & that the judgment ought not to be
reversed
B. L. Roberts for
Appellee

Henry Laune
and John Laune
vs

Philip Alb

Transcript

Filed April 30, 1858
Leland Alb

Roberts

12 1/2
12 1/2
12 1/2

STATE OF ILLINOIS—SUPREME COURT.

Third Grand Division—April Term, 1858.

PHILIP OLT.
vs.
HENRY and JOHN LOHNAS. } *Appeal from Tazewell.*

ABSTRACT OF THE RECORD.

**Decla-
ration.** This was an action of assumpsit, brought by the plaintiffs below against
Page 3 the defendant below, to recover damages for the refusal of the defendant
to allow the plaintiffs to take possession of, and occupy, a farm.

Pleas. The defendant filed a plea of general issue, and also a plea of the stat-
1 & 5 ute of frauds, that the contract sued on was by parol, and was not to be
performed within one year from the making thereof.

The following agreement was made by the parties :

**Agree-
ment.** That the contract was entered into in the month of October, 1856, by
1 & 2 which Olt agreed to let the plaintiffs have and occupy his farm. The oc-
cupation was to commence on the first of March, 1857, and continue until
the first of March, 1858; that plaintiffs offered to occupy the farm, and
defendant refused to allow him to do so, and thereupon plaintiff sued;
that defendant sowed fall wheat on the premises, and occupied the same
while so doing. And it was further agreed that said contract was not in
writing, but by parol; and if the Supreme Court should be of opinion that
the contract was void by the statute of frauds and perjuries, by reason of
not being in writing, the judgment should be reversed, otherwise to be
affirmed; that the case might be decided without reference to the plead-
ings, and that it might be considered by the court without reference to the
pleadings, and it might be decided by the court as though every part
of the statute, applicable to the case, had been pleaded.

That the said agreement might be considered as a bill of exceptions.

JAMES ROBERTS, *for Appellants.*

313

Oct
27
Lahmes

THE UNIVERSITY OF CHICAGO
LIBRARY

[illegible]

...and the ...

[illegible]

10

State of Illinois } April Term 3^d
Superior Court } Grand Division

Phillip B. L. } Argument for
H. L. Schuster } Appellee -

The Plaintiff insists that the Contract was
void, under the Statute of Frauds.
I was made Beneficial on good Consideration
& and as far as the Plaintiff is concerned was con-
- curred was to be performed in a year from
the date of making. He was to give the
Deft. possession on the first of
March 1887, and refused to do so & for so
refusing to give possession at that time
this suit was brought, & Damages were
This then was not a Contract which was not
to be performed in the space of one year
from the making of it, But the Contract or
agreement, was a Customary & ordinary
leasing for one year, and no more, and
the agreement, to put in fall wheat, was
a part and parcel of the Contract. The
Deft. took possession of that
part of the Premises, & sowed the wheat
& relying on the Contract and acquiescence
of the Plff. as to part of the Premises claimed
the possession of the remainder, and by this
refusal they were damaged, by which an
action accrued to them, against the Plff.
See 1 Hill 484, refused by Plff.

But should the Court cannot decide the issue
based on the whole a party, with the consent of the
lessor, takes possession of part of the Premises
at the time, and awaits only a few weeks
to receive the residue, under the English
statute, when a party takes possession under
the lease, he is entitled to the benefit of a
covenant from year to year, & 6 mo notice
to quit, & cannot be dispossessed
unless the Land Lord has given the 6 mo notice.
Adams on Torts 243 & note (93)

But it is insisted that the case in 1 Hill, Page
484, shows this to have been a contract in
present; if so possession according to the
provisions of the Contract was taken immedi-
ately, by receiving wheat; and therefore the
Contract was good for 1 year from the
making of it although, it provided for
a longer term, before its conclusion
and the Plaintiff was liable for non
performance of his Contract for the
year, & Defendant being entitled to recover
may rescind this suit at any time.

But it is insisted that this is a lease
in futuro, & so ruled by the English & New York
Courts. It has been held valid, to this we
dissent. That on statute of New York, ^{Revised Statute 259} & paying
affirmation the English & New York Statute.

The 3^d section of an act provides, that it shall
not extend to any interest or unto a Profit of
Land, which shall be bonafide assigned to any State
Now Assurance does not necessarily import
a writing - Cases even good at Common Law
by Poll, and might Common Law in future,
and be a part of the Estate, even if
if then they are Bonafide made, and
stay out for one year, and the Statute says
such assurance as an made bonafide, this cannot
be in the provisions of the Act, and the Statute
referred to in the English Case, referred to the
Case in New York. Contains no such
provision as the 3^d section of the Statute
of Illinois above referred to, as will be seen
on inspection. Hence the construction of their Statute
But our Statute has not changed the Common
Law in regard to lease for one year, and unless
may be given to support ^{an action for} one year's interest, if
that be the sense of the Contracting Parties
or consistent a comfortable matter.
See ^{John v. Campbell} 18 Ill. 110, and then can be no question
about the sense of these Contracting Parties
that this was a lease for one year only
These terms could at Common Law & may now
for one year be provided ^{by Poll} in support of an
action for the Poll of it. See 18 Ill. 111.
The Power and Mode of Leasing
is not affected by the Statute of Frauds, but is left.

as it was at Common Law 18 Vls 114,
The whole Contract then was not void or
voidable, & the Plaintiff ~~below~~ should
recover, and judgment in the Court be
affirmed
Profferson
for appellee.

Philip Ditt
vs
Henry & John Latimer

Written by argument

State of Illinois } April Term 3^d Grand
Supreme Court } Division.

Philip Ott

vs. } Argument for
Henry & John Solinas } the Appellant

The only question in this case is whether the contract sued on is void by the Statute of Frauds. This is not a new question in the English Courts and has been settled for many years by those Courts in their construction of the English Statute of the 29th of Charles 2^d. And unless the Court are satisfied that our Legislature has intended to alter the construction of the act, the construction of the English Courts which has been acquiesced in for years will not now be departed from without good reason.

It was decided by Ch. J. Holt, in 12 Modern Rep. page 610, that a lease for three years to commence in future is ~~in void~~ is void within the English Statute. See also 1 Lord Raymoud Rep. 736.

It is very true that the first and ^{2^d} ~~and~~ sections are not adoption in precise the same language of the English Statute. But the first section of our Statute and the 4th section of the English Statute are word for word except that our Statute

has these additional words, to wit
"or any interest in or concerning them
(lands), for a longer term than one
year"; and which words are in the
first and 2^d section of the English
Statute. The English Statute will
be found in full in the Appendix
to Roberts on the Statute of Frauds
page 467.

And it has been decided by the
supreme court of the State of New
York, that a statute precisely similar
~~sh~~ to ours should receive the same
construction with the 1st & 2^d section
of the English Statute. Croswell vs.
Crane & Barbois (C.V.Y) Rep page 191.
And it was also decided in the 1st
Hill (C.V.Y) Rep 484, that a devise to
commence in futuro, passes a present
interest in the term to the use.
If such is the case it cannot be
doubted that this contract for the
sale of lands an interest in land
for a greater term than one year
and is consequently void.

But whether the construction by
the New York Court is correct or
not in relation to that portion of the
statute, it is very certain that this
was not an agreement to be per-
formed within one year from the
making thereof.

Others
This point has been expressly decided
in the case of Delano vs. Montague
& Cushing (Mass) Rep. 42, and also in
the case of 7 Barbours 191 above referred
to.

It may be contended however, the
provision of the statute in reference
to ~~as~~ the agreement not being per-
formed within a year has no reference to
real estate, but it is very evident that
the whole action being combinable
together was clearly intended to in-
clude any agreement not to be
performed within one year from the
making thereof.

It may also be contended that sowing
the wheat, and taking possession ^{as stated}
sowing the wheat ^{will take the case out of the statute} is not it will be known
that post performance cannot take the case
out of the statute at law. Opinion of Ch. J.
Kent 2 Johns. 241. Nor does it appear that
what the defendant may have sown
the wheat, and if he has not and
it has been taken by him he has been
action of trover or trespass.

James Roberts
att'y for defendant

31c
Philip Olt
vs.

Henry & John

Thomas.

Written argument.

Filed April 30. 1838
S. Leland
Clerk