No. 12481

Supreme Court of Illinois

Buck

vs.

Emon

71641 7

County Court Peoria County State of Illinois,

April Term A. D. 1851

Tuesday April 8th 1851.

Josephine R. Eaman
by her next Friend
Archibald McIlrea
vs
Charles A. Buck

Assumpsit

This cause coming on to be heard was on Motion of the Plaintiff continued until the May Term at his costs,

May Term A. D. 1851

May 5th 1851

Josephine R. Eaman
by Archibald McIlrea
her next Friend
vs
Charles A. Buck

Assumpsit

This day came the said Defendant Charles A. Buck and moved to dismiss the suit for the reason that the Declaration filed herein and Summons issued in this case name Josephine R. Eames Plaintiff instead of Josephine R. Eaman the proper person — Thereupon came the Plaintiff by Grove & McCoy her attorneys

and entered a cross Motion for leave to amend said Declaration and Summons which leave was granted on the payment of costs made herein and by agreement the said cause was continued until Saturday at 11 o'clock A.M. the 10th day of May A.D. 1851.

County Court Peoria County Illinois,
May Term A.D. 1854.

May 10 1854

Josephine R. Eaman
by her next friend
Archibald McIlrea
vs
Charles A. Duck

Assumpsit.

This day came the Plaintiff by Grove & McCoy her Attorneys and the Defendant by Purple & Pratt his Attorneys and waived a trial by jury and agreed that all matters both of law and fact arising in this case should be tried by the Court. Thereupon the Defendant entered his motion to dismiss the said suit for the following reasons 1st. The said Court has no jurisdiction of the subject matter and amount in controversy in said suit. 2d. Because the proceedings are otherwise informal and insufficient - Which motion was overruled by the Court.

Thereupon this cause came on to be heard on the Demurrer of the Defendant to the Bill of Complainant filed in this cause, In consideration whereof the Court overruled the said Demurrer.

The Court having heard the Evidence and find for the Plaintiff and do Assess the damages at Two Hundred and ~~Twelve~~ Twenty five and 36/100 Dollars

[12481-2]

Therefore it is considered by the Court that said Josephine F. Eaman by Archibald McIlreather next friend have and recover of the said Charles A. Buck the sum of Five Hundred and ~~Thirty~~ Twenty five and 36/100 Dollars damages aforesaid and also her costs and charges by her about this Suit in this behalf expended and that she have Execution therefor.

Be it Remembered that on the 27th day of February 1851 there was filed in this cause the following Bill of particulars by the Plaintiff in this cause - Which is as follows to wit.

Josephine F. Eaman an Infant by Archibald McIlreather next friend

vs

Charles A. Buck

In the County Court of Tuscaloosa

Damages $300.00

Sometime in the month of June 1850 Charles A. Buck agreed to sell & convey to James Eaman the West half of the North West quarter of Section 14 Town 7 North 11 East in Tuscaloosa for 300$ Eaman paid Buck 175$ on the contract & Buck gave Eaman a bond conditioned ~~according to law~~ to convey the land when paid the further sum of 125$ & interest which bond is here attached & made part of this

of this Statement. Eaman died some two or more years since leaving Josephine R. Eaman his only children & heir at law. On May 1855 Mr. Shreve tendered to Buck the balance on the bond & demanded a conveyance to Josephine R. Eaman. Buck refused to convey and has put it out of his power to convey & this Suit is brought to recover back the 150$ and interest since June 1 1851 5 yrs and 9 mos in all. 232.75

The said Defendant is also indebted to the Plaintiff in Three Hundred Dollars for money paid in the year 1850 by James Eaman the father of the said Plaintiff for the use and benefit of the said Plaintiff to the Defendant, for real Estate agreed at that time by the Defendant to be deeded and conveyed to the said Plaintiff's Ancestor, for the use of the Plaintiff which he neglected & refuses to do, and in Three Hundred Dollars for money paid by the Father of the Plaintiff to the Defendant in the year 1851 for the use of the Plaintiff which said money the said Defendant afterwards at the County of Peoria & State of Illinois faithfully promised to pay back to the Plaintiff which he has wholly neglected and refused to do to the damage of the said Plaintiff Three Hundred Dollars.

Dy Grove & McCoy for Plff.

[12481-3]

On the same day to wit the 27th day of February A. D. 1851 the following Summons.

The People of the State of Illinois.

To the Sheriff of Peoria County Greeting;

We command you to summon Charles A. Buck if he may be found in your County to appear before our County Court for Peoria County on the 1st Monday of April at the hour of 10 A. M. to be held at Peoria within and for the said County of Peoria then and there to answer unto Josephine R. Eaman Infant by her next friend Archibald McDhea in a plea of Assumpsit - Damages Three Hundred Dollars as he says and make return of this Writ with an Endorsement of the time and manner of serving the same on or before the 1st Monday of April next.

Witness Charles Reed Clerk of our said County Court and the seal thereof at Peoria this 27th day of February in the year of our Lord One Thousand Eight Hundred and Fifty Six

Seal

Charles Reed Clerk
Geo. W. Reed Dpty

was issued by the Clerk of said Court and endorsed on back as follows "Served on Charles A. Buck by reading to him this writ March 17 1851. D. D. Grant Sheriff by A. R. Kidwell Deputy."

Service	50
10 miles	50
Re	10
	110

Josephine K. Eamon
By her next Friend
Archibald McElrea
vs
Charles A. Buck

In the County Court of Peoria County Ills.

Be it Remembered that on this 10th day of May A.D. 1856 this cause was called for trial, and the Defendant by his counsel objected to the Jurisdiction of the Court for the following Reasons

1st. That said court has no Jurisdiction of the Subject matter and amount in controversy in this Suit

2nd Because the proceeding are otherwise informal and insufficient

The Court overruled said Motion and the Defendant then and there Excepted.

The Defendant then filed his Demurrer to the Plaintiff's Declaration or Statement, which is as follows

The Defendant comes and says that the said Plaintiff's Declaration and the matters and things therein contained are not sufficient in law to entitle the Plaintiff to recover in this

suit - and this he is ready to verify &c and that the cause of action in the Declaration are one and the same and not otherwise different.

The Court overruled the said Demurrer and the defendant then and there Excepted and abided by his Demurrer and the Court then and there signed and sealed the following bill of Exceptions.

This day this cause came on to be heard upon the Demurrer to the Plaintiff's statement in this cause and the Court being sufficiently advised doth order and adjudge that the said Demurrer be overruled and thereupon the said Defendant excepts to the opinion of the Court in overruling the said Demurrer & requests the Court to sign this Bill of Exceptions which is done.

Thomas Bryant

And thereupon the Court made the following Order to which the defendant then and there Excepted and requested the Court to Sign & seal the following bill of Exceptions which was then and there done, which Order and Bill of Exceptions is as follows.

Thereupon upon Motion of the Plaintiff it is ordered that this cause proceed to trial under the rules and practice of this Court and that the Witnesses be examined for the pur-

No 2

pose of showing whether the Plaintiff is or not entitled to recover to which order the Defendant objected and excepted and further requested the Court to Seal this Bill of Exceptions which is done. Thomas Bryant (Seal)

The cause then proceeded to trial upon which said trial, the following Bill of Exceptions was taken by the Defendant and Signed by the Judge of the said Court.

It Remembered that upon the trial of this cause the Plaintiff to sustain his cause gave in evidence the following papers,

Know all Men by these Presents, That I C. A. Duff of the first party of the County of Peoria and State of Illinois for and in consideration of the sum of One Hundred and Twenty five Dollars to be payed to C. A. Duff or his assigns as follows The Interest is to be payed annually computed at 10 per centum on the 4th day of June in each and every year and the sum of $125 may be payed at any time with in the Five Years from the 4th of June 1850 with interest of time of payment or any part of said sum with interest may be payed have agreed to See unto James Eaman of the County

[104815]

of Peoria and State of Illinois the following
Tract of land to Wit: The West half of the North
West Quarter Section Fourteen in Township
Nineteen North Range Eight East lying and being in the County
of Peoria and State of Illinois containing Eighty (80)
Acres be the same more or less.

Now Provided the said James
Caman shall pay or cause to be paid to the said
C. A. Duff at the time as above specified the above
sums at the time above named then the said party
of the first part firmly binds himself his heirs
Executors and Administrators under the penal-
ty of Three Hundred Dollars to convey by a quit
claim Deed with all my right, title & int. the a-
bove described land to the said James Caman
his heirs or assigns. But however the said James
Caman shall not punctually pay the said sums
at the time and place above named, then the
said C. A. Duff reserves to himself the right to
rattify or confirm this agreement or not, Sealed
and delivered this Twelfth day of June A. D.
1850.

C. A. Duff (Seal)

Also introduced the following copy of Deed.

Dec. 4th 1854 This indenture made this 5th day of December
in the year of our Lord One Thousand Eight
Hundred and Fifty four between Charles A. Duff
and Eunice his Wife of the County of Peoria
State of Illinois of the first part and Thomas Dry-
ant of the same place of the second part witness-
eth that the said party of the first part for and in

consideration of the sum of One Hundred Dollars paid by the said party of the second part the receipt of which is hereby acknowledged do by these presents remise release and quit claim unto the said party of the second part his heirs and assigns a certain tract or parcel of land known and described as the West half of the North West quarter of Section Nineteen (19) in Township (No Seven (7) North of Range No Six (6) East of the fourth principal meridian containing Eighty Acres more or less, Together with all and singular the hereditaments and appurtenances thereunto belonging or in any wise appertaining. To have and to hold the said premises as above described with the appurtenances unto the said party heirs and assigns forever. In testimony whereof the said party of the first part have hereunto set their hands and Seals the day and year first above written.

Signed sealed and delivered in presence of William H. Smith

Chas. A. Duck (Seal)
Eunice Duck (Seal)

State of Illinois }
Bond County } ss

I William H. Smith a Justice of the Peace for said County do certify that on this day personally appeared before me Chas. A. Duck & Eunice his Wife whose name appears subscribed to the foregoing deed of conve-

(12481-6)

ance as having Executed the same who is personally known to me to be the real person who and in whose name the acknowledgement is proposed to be made and acknowledged the Execution thereof as his voluntary act and deed for the uses and purposes therein Expressed and Eunice wife of the said Charles A. Bush having been by me made acquainted with the contents of the said Deed and by me examined seperate and apart from her said Husband whether she has Executed the same and relinquished her dower to the lands and tenements therein mentioned acknowledged that she has done so voluntarily and freely and without compulsion of her said husband and does not wish to retract. Given under my hand and Seal of Office at Young Dogan this 11th day of December A. D. 1854

William H. Smith J. P. Seal

State of Illinois
Peoria County } ss.

I James S. Parkman Clerk of the Circuit Court and Ex officio Recorder for the County of Peoria in the State of Illinois do hereby certify that the foregoing is a full and correct Copy of a Deed and of the Certificate of acknowledgement thereof as the same stand recorded on pages 230 & 231 in Book K. W. in the Recorders office of said County.

In Witness whereof I hereto set my hand and affix the seal of said Court at my Office in Cove this twenty seventh day of May in the year eighteen Hundred and Fifty six.

Seal

James S. Parkman Clerk & Recorder.

"

They also proved by the following Witnesses the facts as follows Go Viz.

Elizabeth Houghtaling.

I was present at a conversation not more than 20 days after the death of James Eaman in which Lucas the Defendant stated that if Mrs Eaman would deliver to John or William Houghtaling the Bond which he had given to James Eaman for the land he would pay back the Money Eaman had paid him within one year the amount of money was $175. I think Eaman died Six years agoin August next. I know Eaman started with the money to Lucas.

Mrs Houghtaling.

About five years ago this Spring I went to Doc Lucas the Deft in this case with a Man by the name of Inch to see if Lucas would pay the balance due on the

(12481-2)

land and pay the ballance due on the land and pay Mrs Eaman $150.00 Duck refuses to let him have the said land unless he would pay the Amount Eaman had paid with interest the Amount was $175.00.

At another time about 4 years since in a conversation with Duck he stated to me that he had intended to pay back to Mrs Eaman the amount Mr Eaman had paid on the land, but that she had stolen some Kettles from him and for that reason he would not pay it to her but that after the five years given in the Bond had run out he would deposit the money in the Sagetty Suna Bank for the use of her child.

I think in the Fall of 1850. Mr. Duck told me that if his lawyers would tell him that he could pay back the money Eaman had paid him for the land to Mrs Eaman he would do and Mrs Eaman give him the Bond and the next day Duck returned the Bond and said his lawyers told him he could not take back the Bond for One year and that he would do so in that time, in all the Conversations they were in relation to the Bond now before the Court Duck recognised this Bond now before the Court as his Bond, - Plaintiff offered Bond in Evidence.

Geo. D. Golana.

On the last Monday of May 1855 I went with Archibald McIlrea the present husband of Mrs Eaman to Dr. G. A. Duck with about $200 in gold to tender to Duck and demanded a Deed for the land that he Duck had sold to James Eaman. Mr McIlrea told Duck he had come to pay him the money for the said land and wanted the deed. Duck said he could not make the Deed and in the conversation McIlrea demanded the Deed a second time and Duck told him to go to and became enraged & raised his hoe at him. McIlrea said he was acting as agent for the child Mr James Eamans child - this took place on Ducks farm.

John Coughtaling.

The next Monday after Mr Eaman was buried, I at the request of Mrs Eaman went to see Dr. Duck to know if he would take back the Bond he had given to Mr Ds Eaman and pay back the money that had been paid, he said he would if any lawyer would say he could do so, he told me to see a lawyer, I saw Judge Peters and stated the case to him and he said it could be done, I reported the fact to Duck and he then refused to pay

back the Money.

In a Conversation with Duck in 1852 about this land Duck said if the Chiefs of Mars Caman live untill it was 18 years old it should have something.

Cheeps.

I went with Da Caman to A. Ducks and heard a conversation about a tract of land which Caman was about purchasing of Duck and Duck said the lowest price he would take for the land was $300. Caman asked him if $175 Dollars in cash and the ballance in five years with interest would answer his purpose, Duck said it would. I did not see him pay the money.

Archibald McDrea.

I have not the Deed from C. O. Duck to Thomas Dugan in my possession and I never saw it. Plaintiff's Counsel then offered Copy of Deed in evidence.

After the hearing the Court gave judgment for the Plaintiff for Two Hundred and Twenty five 31/100 Dollars and costs of Suit.

No other Evidence was given in the case.

The Defendant then and there excepted to the opinion of the Court and requested the Court to seal this Bill of Exceptions, which is done. Thomas Bryant (Seal)

And thereupon the Defendant prayed an appeal to the Supreme Court which is allowed upon his giving bond with John Reynolds as security in the penalty of Five Hundred Dollars in 30 days conditional according to law.

State of Illinois
Peoria County ss

I Charles Kettelle Clerk of the County Court in and for said County do hereby certify that the foregoing is a true transcript of the record, of papers filed in this cause and Bill of Exceptions made and signed by the Court

In testimony whereof I have hereunto set my hand and official Seal at Peoria this 4th day of June A. D. 1856.

Charles Kettelle Clerk

Clerks Costs $4.55
Sheriffs " 5.20
Const. Witnesses

[12481-9]

And now comes the Defendant C. A. Buck and says that in the Record and proceedings and in the Rendition of the Judgment aforesaid there is Error in this to wit

1st. The Court Erred in Overruling the motion of Defendant to Dismiss the Cause for want of Jurisdiction in said Court

2. The Court Erred in Overruling the defendants Demurrer to the Plaintiffs Declaration or Statement

3. The Court Erred in Rendering Judgment for the Plaintiff

For these & other Errors in said Record the Defendant prays that said Judgment may be reversed set aside and wholly for nothing esteemed

J. M. Pruyn
Defts Atty

And the Defendant in error comes & says there is no error in the record and proceedings aforesaid in the manner & form as the same stands assigned by the plaintiff in error

The appeal Bond filed in this cause on the 22nd May A. D. 1851 is as follows,

Know all Men by these Presents, That we Charles A. Bush and John Reynolds are held and firmly bound unto Josephine R. Eaman of the County of Peoria Illinois in the penal sum of Five Hundred Dollars ~~current~~ of lawful money of the United States to which payment well and truly to be made and done we bind ourselves, our heirs, Executors and Administrators and each and every of them by these presents, jointly and severally.

Witness our hands and seals this 20th day of May A. D. 1851.

The condition of this Bond is this: Whereas on the 11th day of May A. D. 1851 in a certain Action then pending in the County Court of Peoria County wherein Josephine R. Eaman by her next friend Archibald McIlrea was Plaintiff and the said Charles A. Bush was Defendant, a judgement was rendered against the said Defendant for the sum of Five Hundred and Twenty five Dollars and Thirty Six cents and costs of Suit, from which said judgement the said Defendant then and there prayed an appeal to the Supreme Court of the State of Illinois, which was allowed, now if the said Charles A. Bush shall duly prosecute his appeal and shall pay the

[12481-10]

said judgement interest costs and damages in case said judgement shall be affirmed in said Supreme Court then this Bond shall be void otherwise in force.

C. A. Duff
John Reynolds

State of Illinois
Peoria County ss

I Charles Rett Clerk of the County Court of said County do hereby certify that the foregoing is a true Copy of the appeal bond filed May 21, 1854 in the case of Josephine B. Coman by Archibald McDougal her next friend vs Charles A. Duff.

Witness my hand and official Seal at Peoria this 1st day of June A. D. 1854

Charles Rett Clerk
Geo. W. Rett Dep.

78

Josephine R. Eaman
by Archibald
McIlvra her next friend
vs
Charles A. Lucas.

Transcript from
County Court Peoria
County

Filed March 10. 1856
L. Leland
Clerk.

File this Record &
send me Receipt
for $5.00 costs
endorsed
Pantle

Birch
v
Eaman

Grove
2 Bebb 170-80.

Whatever interest the intestate had in the land dev ended to heir.

8 Cow 132

No cause of action lies breach.

Laws of 1855 - 194 § 2

[12481-12]

Buck
v
Eamons.

Buck vs Earnest. Defendants brief.

1. The Court below has jurisdiction

Kembles vs Jackson decided at present term

18 Sec. Article 5 Constitution

Laws of 1855 page 194.

2. The Court properly overruled the demurrer of deft Below.

No Pleadings were required or authorized in said Court by any law of this State The act of 1855 page 194 Sec 2. confers on the Court below the power to regulate the practice proceedings & this Court regulate or alter the practice in said Court unless some law is violated

3. Whatever title or interest Earnest had in the bond or land descended to his heir the plaintiff 2 Bibb 170. Ibid 180 8 Conner 132

4 No Breach of the bond took place in Earnest life time and no suit could be maintained against Buck until a breach

8. Conner 664.

A tenant was made. Besides no tenant was required

5. The heir had the interest of Earnest in the bond land & consideration money at the time of the Breach, & Besides the demurrer admits & the evidence proves a promise made by Buck to pay plaintiff the 175$

S12481-13

6 The Administrator took no interest in the land
13 Ill. 117. 17 Ill. 135.

7. The Plaintiff is not in a position to review the Judgment He entered no motion for a new trial He did not object or except to the final finding or decision of the Court He only excepted to the opinion of the Court
17 Ill 238.

Thos Ewing for Appt

78.

Buck
vs
Daines

Deft's Brief

KATHERINE R. EMON, by her next friend,
ARCHIBALD McILREA,
vs
CHARLES A. BUCK.

IN THE SUPREME COURT.

At the April term of 1856, of the Peoria County Court, the Plaintiff sued the Defendant in assumpsit, and filed as the foundation of his claim a statement in substance: that in June, 1850, Defendant agreed to sell to James Eaman, the W. 1-2, N. W. 1-4, Sec. 14, 7 N. 6 E., on which Eaman paid Buck $175.00, and agreed by bond, to convey the land when Eaman should pay the balance of the purchase money, $125.00.

The bond is as follows:—Know all men by these presents: That I, C. A. Buck of the first part, of the County of Peoria, and State of Illinois, for, and in the consideration of the sum of one hundred and seventy-five dollars to be paid to the said C. A. Buck, or his assigns, as follows: The interest to be paid annually, computed at 6 per centum, on the fourth day of June in each and every year, and the sum of $125,00 may be paid at any time within the five years from the 4th day of June, 1850, with interest of time of payment, or any part of said sum with interest may be paid. Have agreed to sell unto James Eaman, of the County of Peoria and State of Illinois, the following tract of land, to wit: The West half of the Northwest quarter of section fourteen, in Township No. 7, of Range 6, lying and being in the County of Peoria and State of Illinois, containing eighty acres, be the same more or less.

Now, provided the said Eaman shall pay or cause to be paid to the said C. A. Buck, at the time as above specified, the above sums at the time above named; then the said party of the first part firmly binds himself, his heirs, executors and administrators under the penalty of three hundred dollars, to convey by a Quit Claim Deed, all my right, title and intrest in the above described land to the said James Eaman, his heirs or assigns. If, however, the said James Eaman should not punctually pay the sums, then the said C. A. Buck reserves to himself the right to ratify or confirm this agreement or not.

Sealed and delivered, this twelfth day of June A. D. 1850, C. A. BUCK, [L.S.]

James Eaman died in July, A. D. 1850, leaving a widow and Katherine R. Eaman, his only child.—Neither the interest nor the balance of the purchase money on the land was ever paid.

On the 5th of Dec., 1854, Buck sold and conveyed the land to Thomas Bryant.

This suit was brought to recover back the $175,00 and interest, paid by Eaman upon the land.

The defendant moved to dismiss the suit for want of jurisddiction in the court—motion overruled..

The defendant then demurred to the statement or declaration filed.

Demurrer overruled.

Defendent abided by his demurrer.

The court then ordered the trial to proceed, the defendant making no further appearance, except to take a bill of exceptions after the evidence was closed.

The bills of exceptions contain the whole evidence, and all the points are made and saved by said bills.

The plaintiff gave in evidence, the bond and deed to Bryant.

Elizabeth Hoaghtaling testified, that about 20 days after Eaman's death, Buck said that if Mrs. Eaman would deliver the bond to John or William Houghtaling, he would pay back the money Eaman had paid him, within one year.

Mr. Houghtaling testified that about five years ago, he went to defendant's to see if he would pay back the money advanced on the land, and pay Mrs. Eaman $150. Buck refused to let him have the land, unless he would pay the amount Eaman had paid, with interest, $175.00, that about four years since Buck said he had intended to pay Mrs. Eaman the amount Mr. Eaman had paid on the land; but she had stolen some kettles from him, and he would not pay it to her, but that after the five years given on the bond had run out he would deposit the money in the Safety Fund Bank for the use of her child. In the fall of 1850, Buck said if his lawyer would tell him he could pay back the money to Mrs. Eaman he would do so, and Mrs. Eaman gave him the bond; next day Buck returned the bond saying that his lawyer told him that he could not take back the bond for one year, and that he would do so at that time.

George D. Tolland testified that on the last Monday of May, A. D. 1855, he went with Archibald McIlrea to Buck. McIlrea had about $200.00 in gold to tender to Buck, told Buck he had come to pay the balance due on the land, and demanded a deed, as agent for Eaman's child. Buck refused to make any deed. (Witness does not state that any tender was made.)

John Houghtaling testified that the morning after Eaman was buried, at request of Mrs. Eaman, he went to Buck and inquired if he would take back the bond and pay back the money paid by Eaman on the land. He said he would if any lawyer would say he could do so, told me to see a lawyer; that he, witness, saw Judge Peters, and Peters said it could be done; that he told Buck what Peters said, and then Buck refused to pay back the money. In 1852 Buck said if Mrs. Eaman's child lived untill she was 18 years of age, she should have something.

Philips testified that he heard a conversation between Buck and Eaman about the land Eaman was about purchasing. Buck said his price was $300.00; $1.75 cash, balance in five years. Did not see the money paid.

This was all the evidence.

The Court gave judgment for Plaintiff, for $225.36 and costs.

Defendant appealed.

Errors assigned:

1. Overuling defendant's motion to dismiss suit for want of jurisdiction.
2. Overuling defendant's demurrer to plaintiff declaration.
3. Rendering judgment for the plaintiff.

N. H. PURPLE,
Defendant's Attorney.

[12481-15]

Buck
v
Eymon

Abstract

78

Charles A Buck

vs

Josephine R. Eaman

by her next friend J. A. McIlhenny

78

12481

1857