Edelin, Alonzo A. v. Judge, James

36 Mo. 350

514/2

628/11

Oct. 1865

St. Charles Circuit

Sept. 1862

App

Judge

E.A. Lewis

Res

Edelin

Def agreements

lease - contract

Rent agreement - 80 acres

right to sew a reapartment

build a new [illegible] on house

Failed to meet rental agreements

Nate Holmes: reversed & remanded

Wagoner concurs

Lovelace absent

1 State of Missouri }
County of St. Charles } Be it remembered that heretofore, to wit:
on the fifteenth day of August Eighteen Hundred and Sixty
three, a petition was filed in the office of the Clerk of the
Circuit Court of St. Charles County Missouri in the words
and figures following to wit:

Petition

Alonzo A. Edelen Plaintiff
against
James Judge. Defendant. } In the Circuit Court of St. Charles
County Sept term 1863.

Plaintiff states that about the first of August 1862 he entered into an agreement in writing with defendant for the renting of 80 acres of land belonging to him situate in St. Charles County and the same land on which Ignatius Gardner resided during the year of 1863 that by virtue of said agreement he had the right to seed wheat on said land in the fall of 1862 that the agreement aforesaid expired on the first day of March 1864, the said renting being from the first day of March 1863 with the privilege aforesaid of seeding wheat as stated. Plaintiff further states that by vitue of said agreement said defendant had also agreed & bound himself to furnish a sufficient quantity of suitable lumber to build an additional room to the house now on the premises which was to be done by the first day of March 1863 which lumber was only partially furnished & the body of the room put up but not finished for the want of lumber. Plaintiff further states that by virtue of said agreement said Judge was also bound to build a stable of size sufficiently large to keep & stable six horses at least (on the premises leased) & to furnish the necessary lumber for such stable & allow plaintiff thirty five dollars for the

building thereof all of which lumber was to be furnished by defendant or in case defendant build the stable the same was to be completed by the first day of March 1863. Plaintiff further states that under said agreement he proceeded on & put in 45 acres of wheat in the fall of 1862 that during the winter & spring said Judge caused to be driven into said field a large number of horses and cattle which destroyed the whole of said wheat seeded as aforesaid to his damages in the sum of Eight hundred dollars. Plaintiff further states that by virtue of said defendants failing to comply with his agreement as to the furnishing the lumber to build addition to house and his failing to build the stable or to furnish lumber for that purpose he was unable to use & occupy the ballance of said 80 acres of land by virtue of which failure he was damaged to the amount of three hundred dollars for which together with the eight hundred dollars above set out making the total of eleven hundred dollars he asks judgment. Plaintiff says that he has lost or mislaid the written leased aforesaid & therefore cannot produce the same but that he has stated the substance thereof correctly as far as he recollects & alledges that said Judge has a copy thereof which he prays said Judge may be compelled to exhibit to the Court. A Krekel Atty for Plff.

Plaintiff makes oath & says that he believes the above petition & the matters therein as stated to be true.

A. A. Edelen.

Subscribed & sworn to before me this 14th day of August 1863.

[L.S.] Charles E. Hess.
Notary Public.

3. And thereupon the Clerk issued a summons in the words and figures following to wit: State of Missouri,

Summons. To the Sheriff of St. Charles County, Greeting:- We command you to summon the defendant James Judge to appear in the Circuit Court of St. Charles County, at the Court House, in the City and County of St. Charles, on the first Monday of September Eighteen Hundred and sixty three and answer the annexed petition of Alonzo A. Edelen Plaintiff; and have you then and there this writ. Witness, Ben Emmons, Jr., Clerk of said court, with the seal of said court hereto affixed this fifteenth day of August 1863.

[S.S.]

Ben Emmons Jr. Clk.

Sheriffs return And the Sheriffs return thereon is in the words and figures following to wit: Served the within Writ by leaving a true copy thereof and also a copy of the complaint for the defendant James Judge at his usual place of abode in St. Charles County, Missouri, on the 21st day of August 1863 with a white person of the family over the age of fifteen years.

J. W. Gatzweiler, Sheriff.
By A.E. Machens Dpty.

And afterwards in said court on the fifth day of October Eighteen Hundred and sixty three the following proceedings were had in said cause to wit:

Leave to file Answer Alonzo A. Edelin Plaintiff
v.
James Judge. Defendant } Breach of Contract

On motion it is ordered that leave be given defendant to answer ten days from this date.

continued

And afterwards in said Court on the fifteenth day of

October Eighteen Hundred and sixty three the following proceedings were had in said cause to wit:

Alonzo A. Edelen Plaintiff
v.
James Judge. Defendant. } Breach of Contract
Answer filed.

Answer filed

And the said answer is in the words and figures following to wit:

Answer

Alonzo A. Edelen, Plaintiff,
against.
James Judge Defendant } In the St. Charles Circuit Court
September Term 1863.

Defendant, answering, admits that about the first day of August, that is to say, on the 14th day of August, 1862, he entered into an agreement in writing with plaintiff for the renting of eighty acres of land belonging to defendant, but defendant denies all and singular the material allegations in the petition which profess to set forth the terms of said agreement, except in so far as the said allegations may agree with the terms and stipulations of said agreement, as the same are hereinafter set forth. Defendant states that by said agreement in writing defendant rented to plaintiff eighty acres of land bounded as follows, to wit: on the South by a furrow dividing the lands then occupied by Gardner and Peter Koffman, on the West by a small ditch about thirty feet from a willow hedge, on the North, a line running parallel with the South line, at a distance to make eighty acres and East by the road. That by said agreement the plaintiff agreed to work well the whole of the aforesaid land, to take care of the crops and deliver one full third part of all the crops he might raise on the land to defendant, the grain to be delivered in bags in a merchantable manner at defendants landing, or at his house, as he, defendant might

5 direct, the defendant finding sacks for his share, and the corn to be delivered, in the ear, at defendants crib. And it was further thereby stipulated and agreed that if plaintiff did not rent again, defendant was to have possession of all stubble land in time to prepare for wheat for the next season. And it was further thereby agreed that plaintiff was entitled to get dry wood or elm timber for fire wood from defendant's woods. And defendant thereby agreed to supply plaintiff with lumber and nails to build a room to adjoin to the back part of the house, and to supply lumber for repairing fence around the yard and stable. And the plaintiff herein (and not the defendant as stated in the petition) thereby agreed to build a stable in the same manner and size as the one he then occupied, for the price of thirty dollars, to be covered with clapboards - the defendant reserving the privilege of building the stable himself, if he could do it - it being further thereby agreed that if plaintiff built the stable, defendant was to put all the materials on the ground. And it was thereby further agreed that the said lease was to terminate on the first of March. 1864, defendant states that the foregoing were all the terms and stipulations of the said agreement in writing, and herewith files and shows to the Court the said agreement in writing, being the original thereof, marked "Exhibit No 1." Defendant denies that he at any time caused to be driven into plaintiffs field a large number of horses and cattle, and denies that by means of that or any other action on the part of defendant, the plaintiffs wheat, or any part thereof was destroyed, to his damage in the sum of eight hundred dollars, or any other sum. Defendant denies that by virtue of his failing to comply with his agreement

as to lumber for building the addition to the house, or of his failing to build the stable or to furnish lumber for that purpose, the plaintiff was unable to use and occupy the balance of said eighty acres of land, and denies that plaintiff was damaged thereby in the sum of three hundred dollars, or any other sum. And so defendant denies that he is indebted or liable to plaintiff in any sum whatsoever, on account of said agreement or of any alleged breach thereof, or of any fact or facts alleged in plaintiff's petition.

And by way of counter-claim against the said petition, defendant charges as follows: That although defendant did, on his part, put the plaintiff in peaceable possession of the said eighty acres of land, and did also in all other respects, on his part, conform to and fulfill all the terms and stipulations of said agreement, so far as he was permitted so to do by plaintiff, yet the plaintiff did not on his part comply with or fulfill the terms and stipulations of said agreement, but wholly failed and refused so to do in manner following, to wit: The plaintiff did not work well the whole of the aforesaid land, as required by said agreement, nor did he take care of the crops, nor deliver one full third part of said crops to defendant, nor did plaintiff in fact fulfill or perform on his part any of the terms or stipulations of said agreement. But defendant charges that instead thereof, the plaintiff, after having taken possession of said land, on or about the 1st day of March, 1863, without any reasonable or justifiable excuse whatsoever, voluntarily abandoned the said premises, and has not since returned to them, nor has he worked the same or raised any crop thereon. Defendant claims that by plaintiff's failure to cultivate and raise crops on said

land, and thus depriving defendant of the rent agreed upon, he is damaged in the sum of four hundred dollars, for which he asks judgment. Defendant further states that he furnished about two thousand feet of limber for plaintiff to use in building the addition to the house referred to in said agreement, but that plaintiff failed and refused to complete the same as stipulated for in said agreement, to defendants damage in the sum of twenty five dollars, for which also he asks judgment. Defendant further states that by reason of plaintiffs abandonment of said premises, and his failure and refusal to occupy and cultivate the same, according to the terms of said agreement, he is damaged in the further sum of four hundred dollars, for which also he asks judgment, and for costs. Lewis & Alexander

Attorneys for Defendant.

James Judge, defendant, makes oath and states that he believes the foregoing answer and the matters therein as stated, are true.

James Judge.

Subscribed and sworn to before me this 15th day of October 1863.

Ben Emmons Jr. Clerk.

"Exhibit No 1." And the said "Exhibit No 1" is in the words and figures following to wit: An agreement made this 14th day of August 1862 by and between James Judge & A. A. Edelen - James Judge of the first rents to A. A. Edelen, Eighty acres of land bounded as follows on the South by a furrow dividing the land now occupied by Gardner & Peter Koffman on the West by a small ditch about 30 feet from a willow hedge on the North a line running parrellel with the South line a distance to make Eighty acres and East by the road.

8 A. Alonzo Edelen agrees to work well the whole of the aforesaid land take care of the crops and deliver one full third part of all the crops he may raise on the land and deliver the grain in baggs in a merchantable manner to Judges landing or house as he Judge may direct Judge finding sacks for his share the corn to be delivered to Judges crib in ear if A A Edelen does not rent again Judge is to have possession of all stubble land in time to prepare for wheat for the next season A A Edelen is intilled to get dry wood or elm timber for fire wood from Judges woods. Judge agrees to supply Edelen with lumber & nails to build a room to adjoin to the back part of the house and supply lumber for repairing fence around the yard and stable A Alonzo Edelen agrees to build a stable in the same manner & size as the one he now occupies ~~occupies~~ for the prise of thirty dollars to be covered with clabboards Judge reserving the priveledge of building the stable himself if he can do it if Alonzo Edelen builds the stable Judge is to put all the malerials on the ground This lease to terminate on the first of March 1864.

James Judge
Alonzo. A. Edelen

And afterwards in said Court on the thirteenth day of May Eighteen Hundred and sixty four the following proceedings were had in said cause to wit:

Alonzo A. Edelen Plff.
v.
James Judge. Deft. } Breach of Contract. Continued.

continued

And afterwards in said Court on the nineteenth day of May Eighteen Hundred and sixty five the following proceedings were had in said cause to wit:

9. Alonzo A. Edelen Plff.
v. } Breach of Contract.
Replication filed James Judge. Deft. } Replication to Defendants answer filed.

And the said replication is in the words and figures following to wit:

Edelin Plaintiff
agt In the Circuit Court
Replication Judge Defendant St. Charles County } May Term

The plaintiff for answer to the counter claim set up in answer of the defendant denies the allegations in said counter claim of defendant. Denies that defendant did put him in peaceable possession of the said eighty acres of land - or that he conformed on his part to all the terms and stipulations of said agreement so far as he was permitted so to do by plaintiff. The plaintiff further denies that he failed to work well the whole of the aforesaid land except as he was prevented by act of defendant as set forth in plaintiffs petition. He denies that after having taken possession of said land he without any reasonable or justifiable excuse whatsoever voluntarily abandoned the said premises. Plaintiff denies that defendant was damaged by plaintiffs failure to comply with the stipulations of the agreement on his part to be Kept and performed in not cultivating said ground and raising crops on said ground in the sum of four hundred dollars or any other sum. Plaintiff further denies that said defendant furnished about two thousand feet of lumber or that he refused to build and complete the addition to the house as stipulated in said agreement plaintiff denies that defendant was

10 damaged by said alleged failure (in this replication denied) to complete said addition in the sum of twenty five dollars or any other sum. Plaintiff denies that defendant is damaged by reason of the abandonment said premises in the sum of four hundred dollars or in any other sum. Plaintiff alleges that he was excused from complying with the terms of the agreement to be kept and performed on his part by the wrongful acts and omissions of defendant as he has stated in his petition.

King and Kingsbury & Hess.
Attys for Pff.

Alonzo A Edelin makes oath and says that he believes the above replication and the matters therein stated to be true.

A. A. Edelen.

Subscribed and sworn to before me this 19th day of May 1865.

P. B. Kingsbury
Notary Public.

E.S.

And afterwards in said Court on the twentieth day of May Eighteen Hundred and sixty five the following proceedings were had in said cause to wit:

Alonzo A. Edelin Pff.
v. } Breach of Contract.
James Judge. Deft } Continued to the twenty ninth of May

Continued

And afterwards in said Court on the fifth day of June Eighteen Hundred and sixty five the following proceedings were had in said cause to wit:

Alonzo A. Edelin
v. } Breach of Contract
James Judge } Now at this day appears the said

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Leave to withdraw answer and file a demurrer.

Defendant by his attorney and on motion of said plaintiff it is ordered that said defendant have leave to withdraw his answer and file a demurrer. And thereupon said defendant files his demurrer.

And the said demurrer is in the words and figures following to wit:

Alonzo A. Edelen
vs.
James Judge.
} In the St. Charles circuit court. May Term 1865.

Demurrer

Defendant demurs to the petition of plaintiff for the following causes of objection, to wit:

1. There is a misjoinder of causes of action, several causes of action having been improperly united - A suit for breach of contract is coupled with a complaint of trespass in turning horses and cattle into plaintiffs field whereby he sustained damages, as alleged in said petition.

E. A. Lewis, for deft.

And afterwards in said court on said fifth day of June the following proceedings were had in said cause to wit:

Alonzo A. Edelin
v.
James Judge.
} Breach of contract.

Demurrer overruled.

Now at this day appear the said parties by their respective attorneys and the demurrer of said defendant to said petition coming on to be heard and being submitted to the court it is considered by the court that the same be overruled.

And afterwards in said court on said fifth day of June eighteen hundred and sixty five the following proceedings were had in said cause to wit:

12 Alonzo A. Edelin
v. } Breach of Contract.
James Judge

Leave to refile Answer

Now at this day appears the said defendant and moves the Court for leave to refile his answer whereupon it is ordered that leave be given said defendant to refile his answer and the defendant thereupon refiles his answer.

And afterwards on said fifth day of June eighteen hundred and sixty five the following proceedings were had in said Court in said cause to wit:

Alonzo A. Edelin Plaintiff
v. } Breach of Contract
James Judge Defendant

Trial

Now at this day appear the said parties by their respective attorneys and thereupon came a jury to wit: Henry Wolf, Ben H. Payne, Michael Short, Herman Kolloway, Wm. Stallmeyer, Henry Mester, William Meyer, Barton Wells, John Hackman, John B. Kuhlhoff, John H. Kluno and Herman Beumer twelve good and lawful men of the County of St. Charles who were duly elected tried and sworn the issue well and truly to try between the parties aforesaid and for want of time to complete the trial the cause is adjourned till nine oclock Wednesday morning and by consent of parties said jurors are permitted to separate.

And afterwards in said Court on the Seventh day of June eighteen hundred and sixty five the following proceedings were had in said cause to wit:

13. Alonzo A. Edelin. Plff.
v.
James Judge. Defendant. } Breach of Contract.

Now at this day appear the parties aforesaid by their respective attorneys and also the jurors in this behalf impanneled and sworn and said jurors

Verdict upon their oath find for the said plaintiff and assess his damages at $550.00. It is therefore considered by the court that said plaintiff have and recover against the said defendant the sum of five hundred and fifty dollars damages together with six per cent interest per annum thereon and costs and that he have thereof execution.

And afterwards in said court on said Seventh day of June Eighteen hundred and sixty five the following proceedings were had in said cause to wit:

Alonzo A. Edelin
v.
James Judge. } Breach of Contract.

Motion for new trial filed motion for new trial filed.

And the said motion for a new trial is in the words and figures following to wit:

Alonzo A. Edelen
v.
James Judge } In the St. Charles Circuit Court
May Term, 1865.

Motion. Defendant moves the court to set aside the verdict rendered herein and order a new trial, for the reasons following:

1. Because the verdict is contrary to the law and the evidence, and contrary to the instructions of the court.
2. Because the damages assessed by the Jury are excessive.
3. Because the court erroneously instructed the Jury, on plaintiff's application.

14. 4. Because the Jury wholly disregarded the instructions given by the court. E. A. Lewis, Atty. for deft.

And afterwards in said court on the tenth day of June Eighteen Hundred and Sixty five the following proceedings were had in said cause to wit:

Alonzo A. Edelin Deff.
v. } Breach of contract.
James Judge. Deft

Motion for a new trial overruled

Now at this day appear the said parties by their respective attorneys and the motion of said defendant for a new trial coming on to be heard it is considered by the court that the same be overruled.

And afterwards in said court on said tenth day of June Eighteen Hundred and sixty five the following proceedings were had in said cause to wit:

Motion in arrest of judgment filed.

Alonzo A. Edelin
v. } Breach of Contract.
James Judge. } Motion in arrest of judgment filed.

And the said motion in arrest is in the words and figures following to wit:

Motion in arrest.

Alonzo A. Edelen.
vs. } In the St. Charles Circuit Court -
James Judge. } May Term 1865.

Defendant moves the court to arrest the judgment in this cause, because the court erroneously overruled the demurrer filed and submitted by defendant before the trial. E. A. Lewis, Atty. for deft.

And afterwards in said court on said tenth day of June Eighteen Hundred and sixty five the following proceedings were had in said cause to wit:

15.

Motion in arrest overruled

Alonzo A. Edelin, Plff.
v.
James Judge, Deft.
} Breach of Contract.

Now at this day appear the said parties by their respective attorneys and the motion of said defendant in arrest of judgment coming on to be heard it is considered by the Court that the same be overruled, and thereupon said defendant prays an appeal to the Supreme Court at St. Louis and files his affidavit therefor as required by law and thereupon said appeal is granted.

Appeal granted

And the said affidavit is in the words and figures following to wit:

Affidavit for an appeal

Alonzo A. Edelen
v.
James Judge.
} In the St. Charles Circuit Court
May Term. 1865.

Edward A. Lewis, Agent for James Judge, defendant, states on oath that the appeal in this cause is not made for vexation or delay, but because the affiant believes that the appellant is aggrieved by the judgment of the Court.

Edwd A. Lewis

Subscribed and sworn to before me this 10th day of June 1865.

Jo Maher Clerk.

State of Missouri
County of St. Charles
} I, Joseph Maher, Clerk of the Circuit Court of St. Charles County Missouri, certify the foregoing to be a full and true transcript of the record and proceedings in the case of Alonzo A. Edelin v. James Judge as the same remain of record.

In Witness Whereof I hereto set my hand
and affix the seal of said Court at office,
this twenty fifth day of September
Eighteen Hundred and Sixty five.

Jo Maher Clerk.

Oct T. 1865
No 31 (11)

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Alonzo A. Edelin
against Res
James Judge, Apt

Appeal from St Charles Cir Court.

Clerks fee $8,00

Filed Sept 30th 1865
J. N. Willis
Clk

Lewis for Appellants

Filed by Atty Lewis

1865 Oct 23. Submitted on Brief

(1)

Alonzo A. Edelin, Res.
vs.
James Judge, App.

IN SUPREME COURT,
October TERM, 1865.

AND now comes the said Appellants and say, that in the record and proceedings of the Court below, in the above entitled cause, there is manifest error, and for error said Appellants assigns the following, to wit:

1. That said Court admitted improper and illegal testimony offered by ~~Appellants~~ Respondent.
2. That said Court rejected proper and legal testimony offered by Appellants.
3. That the Court gave to the Jury improper and illegal instructions.
4. That the Court refused to give to the Jury proper and legal instructions offered by Appellants.
5. That the verdict was against the evidence.
6. That the verdict was against law.
7. That the verdict was against both law and evidence, and against the law under the evidence.
8. That the verdict was against the weight of evidence.
9. That the judgment was rendered in favor of the Respondents when it should have been rendered for the Appellants.
10. That said Court overruled the motion for a new trial, made by Appellants.
11. That said Court overruled the demurrer filed by Appellants.

C. A. Lewis, for Appts

And now come the ..... and for joinder in error say, that there is no error in the record and proceedings of said ..... in said cause, as assigned by said .....

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Alonzo A. Edelen, Res.

vs.

James Judge, App.

Assignments of Errors

E. A. Lewis, for App.

Filed Oct. 14. 1865

J. A. Willis

Clerk

Alonzo A. Edelen, Res.
vs.
James Judge, App.
} Appeal from the St. Charles Circuit Court.

Statement — For Appellant.

Respondent sued the appellant for sundry breaches of an agreement of lease from defendant to plaintiff, and in the same petition sought to recover damages for the wilfull destruction of his growing wheat by defendant, in turning a large number of horses upon it. Defendant demured for misjoinder of causes of action. The Court overruled the demurrer, (Record, page 11) and, upon trial before a jury, a verdict was rendered for the plaintiff for $550. (Record, page 13). Defendant renewed his objections to the petition by motion in arrest of judgment, which was overruled. (Record, page 14). Defendant appealed.

Points and Authorities.

I. The Court erred in overruling the demurrer and the motion in arrest of judgment. A claim for breach of contract cannot be joined with one for injuries to property. In this case, the two transactions are as much disconnected, as would be an assault and battery committed by a landlord upon his tenant, from a breach of the terms of his lease.

Rev. Stat. 1228, § 2.

Do. 1231, § 6.

E. A. Lewis, for Appellant.

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Alonzo A. Edelen, Res.

vs.

James Judge, App.

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Statement & Brief

by E. A. Lewis,

for App.

Filed Oct 19. 1865

J. A. Willis

clerk

Alonzo A. Edelen
v. Res.
Dames Judge
appt.

In the Supreme Court
Oct. T. 1885.

Opinion of the Court.

The petition united, in the same count, a cause of action founded on contract under a lease, with a cause of action founded on an injury done to the property of the plaintiff. A demurrer for this cause was overruled, and that was a final adverse to the plaintiff. The defendant moved in arrest for the same cause, and the case comes up by appeal.

The statute is express that such causes of action cannot be united in the same petition (Rev. Stat. 1883 p. 1228, § 2); and it is a good ground of demurrer (Ibid, p. 1231, § 6).

Judgment reversed, and cause remanded, with leave to file an amended petition. Judge Wagner concurs.
Judge Lovelace absent.

N. H. Ames.

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Horace A. Edelin
Res.
v.
James Judge
Appt.

Opinion

Reversed & remanded.

Filed Nov 20. 1885
J. A. Wells
Clerk

Holmes.