

NEW YORK SUPREME COURT

Wood v. Walbridge

19 Barb. 136 (N.Y. Sup. Ct. 1854) · Decided December 4, 1854

SUMMARY

The court held that a lease was surrendered by operation of law when the lessors retook possession, rebuilt the destroyed tavern, and leased the premises to another tenant, conduct inconsistent with continuation of the original lease. The court also upheld admission of the plaintiff’s chancery bill and related testimony as evidence of declarations and conduct bearing on surrender, and denied the motion for a new trial.

CASE DETAILS

COURT	New York Supreme Court
WRITING FOR THE COURT	T. R. Strong; Johnson; Welles; T. B. Strong
JURISDICTION	New York
DECIDED	December 4, 1854
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff brought an ejectment action to recover possession of real estate. After the trial court nonsuited the plaintiff, the plaintiff moved for a new trial based on exceptions to the rulings.
STANDARD OF REVIEW	Review of the trial court’s nonsuit and evidentiary rulings on a motion for a new trial.
PRECEDENTIAL VALUE	Published state intermediate appellate opinion
PARTIES	Wood v. Walbridge

TOPICS

- landlord tenant
- ejectment
- contracts
- evidence

PRACTICE AREAS

- landlord-tenant
- real estate
- evidence

QUESTIONS PRESENTED

1. Whether the lessors' retaking possession, construction of a new building, and leasing of the premises to the defendant constituted a surrender of Wood's lease by operation of law.
2. Whether Wood's sworn bill in chancery and testimony concerning his statements and conduct were admissible as evidence bearing on surrender of the lease.
3. Whether Burns and Perrin were incompetent witnesses for the defendant because of an alleged interest in the action.

HOLDINGS

1. The lessors' possession of the premises, construction of a new building, and lease of that building to the defendant were inconsistent with the continued existence of Wood's lease and, taken as occurring with Wood's assent, constituted a valid surrender by operation of law.
2. Wood's sworn bill in chancery was properly admitted as evidence of his declarations and conduct bearing on whether he surrendered the lease.
3. Burns and Perrin were competent witnesses for the defendant because they were not parties to the defendant's lease, had sold their interests before that lease was executed, and had no obligation to the defendant.

KEY QUOTATIONS

“Upon these facts, I am of opinion that the lease to the plaintiff must be regarded as having been surrendered, by operation of law, long before the commencement of this action.” (138)

“They are inconsistent with the continuance in force of the lease to the plaintiff; it would be highly inequitable to allow the plaintiff to assert a title under that lease; and these facts in law constitute a valid surrender of the lease.” (138)

“I think it was properly received in evidence, as proof of important declarations of the plaintiff, bearing upon the question of a surrender of the lease” (139)

FACTUAL BACKGROUND

Wood leased the Mansion House and related structures for eight years beginning April 1, 1844. The building was destroyed by fire before the term began, after which Wood abandoned the premises, sought cancellation of the lease, and asserted an alleged oral agreement that destruction by fire would terminate the lease. The lessors later resumed possession, one acquired the others' interests, built a substantially more valuable tavern, and leased it to Walbridge. Wood made no claim to the premises during construction and did not commence the ejectment action until November 28, 1846.

PROCEDURAL HISTORY

Wood leased the premises for an eight-year term but abandoned them after the leased building was destroyed by fire. The lessors later retook possession, one lessor built a new structure, and the defendant entered under a new lease. Wood then brought ejectment, but the trial court nonsuited him. The New York Supreme Court, Monroe General Term, denied his motion for a new trial.

DISPOSITION

other

CASES CITED

- Bailey v. Delaplaine, 1 Sand. S. C. R. 5
- Whitney v. Meyers, 1 Duer 266
- Schieffelin v. Carpenter, 15 Wend. 400
- Smith v. Niver, 2 Barb. S. C. R. 180

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