

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

OPINION

Wood v. Walbridge

19 Barb. 136

STRONG, J.

By the Court, T. R. Strong, J. The lease from Hubbell, Burns and Perrin, to the plaintiff, under which the latter claims title to the premises in question, was executed the 8th day of November, 1848; and the term was to commence the first day of April, 1844, and continue eight years: The premises consisted of a building known as the “Mansion House,” in the city of Rochester, with bairns and sheds, which had been used for the purpose of a tavern. On the 29th of February, 1844, the said house was destroyed by fire ; and the plaintiff, who had before taken possession of the premises, thereupon abandoned the same ; and, early in March, -requested the lessors to cancel the lease, insisting that it was verbally agreed between him and the lessors, before the lease was drawn, that in case of a destruction of the house by fire, the lease was thereby to be terminated. The lessors refused to cancel the lease, and the premises were unoccupied by any of the parties to it during the first quarter, each disclaiming that he had any thing to do with the premises. In July, 1844, the lessors entered into possession of the prem¹³⁸ises; and by deed dated the 31st of that month, Burns and Perrin conveyed to Huhbell their interest therein. In August following, Huhbell commenced the erection of a new tavern house on the premises, much more valuable than the former one, which was completed in July, 1845, and the defendant, soon thereafter, went into possession under a lease from Huhbell, for three years, at nearly double the annual rent which was to have been paid by the plaintiff. ' Perrin testifies that the plaintiff made no claim to the premises while the new building was in progress of erection; and this action was not commenced until the 28th of November, 1846. 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. The taking possession of the premises by the lessors, the erection of the new building by one of them, and the lease thereof to the defendant, must be taken to have been with the plaintiff's .assent. 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 á valid surrender of the lease. (2 R. S. 134, § 6. *Bailey v. Delaplaine*, 1 Sand. S. C. R. 5, and cases cited. *Whitney v. Meyers*, 1 Duer, 266. *Schieffelin v. Carpenter*, 15 Wend. 400. *Smith v. Niver*, 2 Barb. S. C. R. 180.) Upon the trial the defendant gave in evidence, under an objection by the plaintiff, and an exception to the decision allowing ■ the evidence, a bill of complaint in a suit in chancery in favor of the plaintiff against his lessors, which suit was brought to have the defendants therein enjoined from further proceedings in a suit against him for the first quarter's rent, and to procure the lease to be reformed by inserting the alleged agreement above mentioned in respect to the termination of the lease, in case the house should be destroyed by fire during the term ; and upon the lease being so reformed, to have the same delivered up and canceled. This bill was subscribed and sworn to by the plaintiff; and I think it was properly received in evidence, as proof of important declarations of the plaintiff, bearing upon *139 the question of a surrender of the lease ; as the destruction of the house by fire; his offer to surrender the lease, and his efforts to have the same canceled ; the taking possession of the premises by the lessors at the commencement of the second quarter; the erection of the new building, and some other acts of a similar character. [Monroe General Term, December 4, 1854. *Johnson, Welles and T. B. Strong, Justices.*] The testimony of Daniels, to declarations of the plaintiff in April, 1844, in substance, that he had nothing to do with the premises, was evidence of a like nature; and so also was the testimony of Burns and Perrin to conversations with the plaintiff, in which he expressed a desire to have the lease canceled, and stated he had nothing to do with the premises. I do not perceive that Burns and Perrin were incompetent witnesses in favor of the defendant, from interest in the event of the action. They were not parties to the lease to the defendant, nor under any obligation whatever to him. They had sold out their rights in the premises before that lease was executed. Whatever interest they had was in favor of the plaintiff, and they were called to testify against it. No ground for objection, by the plaintiff, to this existed. It follows, from the foregoing views, that the motion for a new trial must be denied.