PARKER v. KEENAN.

Opinion delivered March 31, 1930.

1. EVIDENCE—PAROL EVIDENCE RULE.—In an action to recover rents due under a written contract, the court properly refused to allow the terms of a written contract, unambiguous in its provisions, to be abrogated, contradicted or varied by parol evidence.
2. LANDOWNER AND TENANT—FRAUD IN LEASE—JURY QUESTION.—In an action to recover rents due under a written lease, evidence that the contract was procured by fraudulent representations as to the land being above overflow *held* insufficient to require submission of the question to the jury.

Appeal from Yell Circuit Court, Dardanelle District; *J. T. Bullock,* Judge; modified and affirmed.

STATEMENT BY THE COURT.

This suit was brought by appellant against the appellees to recover rents alleged to be due her as landlord for 220 acres of land in the Arkansas River bottoms, near Dardanelle, leased to appellees in writing for the year 1928, the rent being stipulated therein.

Appellant contended that on October 1, 1928, the market value of cotton was 19¼c per pound, increasing the amount of rent due the landlord under the terms of the contract $537.50, making in all claimed to be due $2,687.50.

The contract reads: "That for and in consideration of the said lease the said D. Keenan and John Cowger have and do hereby promise, obligate and bind themselves to pay to the said Laura E. Parker, on or before October 1, 1928, as rent for said land for said year 1928, the sum of twenty-one hundred and fifty dollars, and, if cotton raised on said farm is worth on the said 1st day of October, 1928, the sum of fifteen cents per pound, is to pay an additional sum of one hundred and seven dollars and fifty cents ($107.50), if worth sixteen cents then to pay an additional sum of one hundred seven dollars and fifty cents ($107.50), and so on paying fifty cents per acre for every cent that cotton is worth above that price to twenty cents. If not paid before November

1, 1928, to bear interest at the rate of ten per cent. from that date until paid."

Appellant was bound under its terms to accept 24 bales of cotton in full settlement of the rent if delivered to her on or before the 15th day of October, 1928, in good condition, and to allow the appellees 20 cents per pound for said cotton if delivered by October 15, 1928.

The complaint alleged that appellees had refused to deliver the 24 bales of cotton in payment of the rent, or furnish sufficient cotton at 20 cents per pound to pay the rent before the 15th of October, as provided. That appellees had sublet 71 acres of the land to one Sam George, and another 71 acres to W. Tipton, neither of whom had paid any rent on the land cultivated by them or any part of it, although it was long since due. A copy of the contract was exhibited with the complaint. Judgment was prayed against Keenan and Cowger, lessees, for the sum of $2,687.50 with interest, and against the sub-tenants in the sum of $671.87 each, and for a landlord's lien on all the crop raised in 1928, that to be sold to pay the amount of the judgment, etc. Affidavit was filed for a landlord's lien.

Appellees admitted the making of the contract, denied the market value of cotton was on October 1, 1928, 19¼ cents a pound, and by way of cross-complaint alleged that the lease or contract was procured by false and fraudulent representations as to the quality of the land leased, it being represented to be above overflow and well drained, and that because of the overflow and water standing on the lands the crop was damaged in the sum of $1,000 for which judgment was prayed. They also alleged that they had made a different contract with appellant in September, agreeing to pay for rent for 1928 only one-third and one-fourth of the crop raised, instead of the amount of rent stipulated in the written contract.

A demurrer to the cross-complaint was filed and overruled.

The court held that the written contract was unambiguous, and refused to allow its terms abrogated or varied by parol testimony and also that appellees had made default in payment of the 24 bales of cotton for rent in accordance with the terms of the contract, and submitted to the jury the issue of whether the contract was induced or procured by fraudulent representations, and the amount appellant was entitled to recover for rent.

Several instructions given by the court were objected to as indicated and exceptions thereto saved.

The jury returned a verdict for $2,580 in favor of appellant, less $880 deducted for defendants on their counterclaim for damages leaving a balance due of $1,700, and sustained landlord's attachment, and from the judgment thereon the appeal is prosecuted.

Parker & Parker and *W. P. Strait,* for appellant.

Majors & Robinson, for appellees.

KIRBY, J., (after stating the facts). Appellant insists that the court erred in not giving her requested instruction No. 1, directing a verdict in her favor for the amount of rent due, taking into consideration the contract price and adding to that amount, if they found the market price of cotton was 15 cents or more on October 1, 1928, the amounts additional as stipulated in the written contract.

The court properly refused to allow the terms of the written contract, unambiguous in its provisions, abrogated, contradicted or varied by the parol evidence. The undisputed testimony shows that the lessees, Keenan and Cowger, were familiar with the leased premises and had been for sometime, one of them owning lands in the immediate vicinity and both of them traveling the public roads through the lands.

The husband of appellant, her agent who made the contract and prepared the written instrument, testified that there were no terms of the contract other than as included in it, and that no representations whatever

were made about the character of the lands rented or assurances given that they were above overflow, or high and well drained.

Keenan testified that he had only discussed the matter of renting the lands with Mr. Parker, appellant's husband and agent, and that Cowger talked it over with him and did not think they should have to pay 24 bales of cotton as rent, suggested that 21 or 22 would be a reasonable rental, and told him to take up the matter of the price again with Parker, but also to agree to lease the lands if he could not get them for a less price than the 24 bales of cotton.

Keenan owned and cultivated lands within one and one-half miles of the lands leased herein, and Cowger did not dispute having made the statement and agreement with Keenan to rent the lands at the price at which Keenan told him they could be had, 24 bales of cotton, if he could not procure a less price, without ever having seen or discussed the matter of the rental with the landlord or her agent. Keenan was unable to procure it for a less price and agreed to take the lands for 24 bales of cotton rent, and the written contract was prepared and executed by the parties accordingly.

There is nothing in the contract indicating that the landlord gave any assurances about the quality or kind of land as it is now claimed was done, and certainly it was a matter of such great importance as would not have been left out of the contract for rental of the place, if it was agreed on. Keenan did not testify that any such warranty or guaranty of the condition or quality of the land was made before the agreement upon the terms of the contract, and it is shown from the undisputed testimony that there were no terms agreed on or representations made save those provided in the contract as executed.

The court erred in not directing a verdict in accordance with instruction No. 1, as requested, and the judgment will be modified accordingly, and a judgment

will be entered here for the amount the jury found was due appellant without any deduction therefrom of any amount of damages for alleged false warranty made as an inducement to the execution of the contract by appellees, and, as modified, will be affirmed. It is so ordered.