ALFORD *v.* PRINCE.

Opinion delivered October 29, 1928.

1. APPEAL AND ERROR—LAW OF CASE ON SECOND APPEAL.—Where the testimony on a second appeal in a case is substantially the same as on the former appeal, the holdings on the former appeal become the law of the case.
2. LANDLORD AND TENANT—LIABILITY FOR BREACH OF LEASE.—Where a lease provided that, if the lessor should construct a new house on the lot leased, the lessee should have the refusal of renting it for two years from completion at $50 a month, the lessor, breaching the contract, was liable to the lessee for $50 a month for two years; the lessor having sold the premises to another who constructed buildings thereon, which rented for $100 per month.
3. LANDLORD AND TENANT—LIABILITY OF PURCHASER TO LESSEE.—One who purchased leased premises with knowledge of the provisions of the lease is jointly liable with the lessor for a breach of the lease which provided that the lessee could rent all of the premises for $50 per month for two years, where the purchaser leased them to others for $100 per month; the damage being the difference between the agreed rental and the amount actually received for rent of the premises.

Appeal from Mississippi Circuit Court, Chickasawba District; *G. E. Keck,* Judge; affirmed.

STATEMENT OF FACTS.

W. O. Prince sued J. T. Alford and T. E. Reeves to recover damages in the sum of $1,200 for the alleged breach of a lease contract of real estate. The defendants denied that they had committed a breach of the lease contract.

On December 3, 1923, J. T. Alford and B. L. Downs entered into a lease contract in writing as follows:

"This agreement, made and entered into by and between J. T. Alford, as party of the first part, and B. L. Downs, as party of the second part, witnesseth: That first party hereby rents and leases to second party the house located on lot 17, in block 33, of the original survey of Blytheville, Arkansas, for time and upon the terms hereafter set out. Second party is to rent and does hereby rent said premises for a week at a time, be-

ginning on January 1, 1924, and for the rent thereof said second party is to pay to first party, on January 1, 1924, the sum of $6 as the weekly rental thereof, and is to pay to first party each week thereafter, on the first day of each week, the sum of $6. Failure of the second party to pay said rents promptly, when due, shall forfeit his right to longer occupy said premises, and the forbearance of first party in demanding any rent when due shall not be a waiver of his right to carry out the terms hereof. It is further agreed that, when first party gets ready to build a new building upon said lots, he shall give second party a ten-days' notice thereof, and second party hereby agrees to vacate said premises at once and deliver the same to first party. It is further agreed that, if first party constructs a new house upon said lot, then second party shall have the refusal of renting the same for a period of two years from date of completion, at the rental price of $50 per month, payable in advance."

Upon the contract is indorsed the following:

"Lease transferred satisfactorily. When old building is torn out, the rent stops until new building is completed. J. T. Alford, W. O. Prince."

According to the testimony of W. O. Prince, a building about twelve feet wide and twenty-four feet long, which was on the lot in question, was torn down, and T. E. Reeves came to him and tried to get a reduction in the terms of the lease. Prince refused to comply with his request. Subsequently Reeves built two new buildings on lot 17, which buildings occupied the whole lot. The lot was twenty-six feet wide by ninety feet long. The two new buildings rented for $50 each. Reeves and Alford offered Prince one of the buildings for $50 per month. Prince refused to accept their offer, and demanded both buildings at a rental of $50 per month. He was refused possession of the buildings at that price, and Reeves received $100 for the two buildings for two years.

According to the testimony of T. E. Reeves, he first learned that W. O. Prince claimed any right under the

lease after he had purchased the lot in question and received a deed to it on April 19, 1924. This was before the new building had been constructed on said lot 17. No person had told him about Prince having any claim of a lease on the lot prior to the time he purchased it. The testimony of Reeves as to his knowledge of the rights of Prince was corroborated by that of Alford.

The court submitted to the jury the question whether or not Reeves had knowledge of the rights of Prince at the time he purchased the lot in question. The jury was instructed that, if Reeves purchased the lot without any knowledge of the lease contract of Alford and Prince, he would not be liable in damages for the breach of said contract. The court further told the jury that Alford was liable under the undisputed testimony, and that Prince was entitled to recover against him such damages as he sustained by reason of the breach of the contract. There was a verdict and judgment for the plaintiff in the sum of $1,200.

Nelson & Crawford, for appellant.

Frank C. Douglas, for appellee.

HART, C. J., (after stating the facts). This is the second appeal in the case. *Prince* v. *Alford,* 173 Ark. 633, 293 S. W. 36. Upon the former appeal the court said that, while the lease did not require Alford or Reeves to construct a new building, it did convey to Prince the lot upon which the new building was erected for the term of two years, and that he had a right of possession of the whole lot for that period of time, and was entitled to the possession of any new building or buildings erected on the lot upon the payment of a rental of $50 per month. The effect of the decisions upon the former appeal was that Prince was entitled to the whole lot and the building or buildings erected on it by Reeves, regardless of their size. Alford and Reeves could not require him to accept a new building of the same size as the one which had been torn down and relinquish his right of possession of the remainder of the lot.

The testimony upon the present appeal is substantially the same as that upon the former appeal, and what was said upon the former appeal becomes the law of the case. It was there said that, if Reeves took title to the lot with notice of the lease, he was jointly liable with Alford for any damages resulting from the breach of the contract.

Upon the present appeal the court submitted to the jury the question whether or not Reeves took title to the lot without notice of the lease, and the jury found against Reeves on this point. The individual liability of Alford is shown by the undisputed testimony. In other words, according to the interpretation of the terms of the lease upon the former appeal, Prince was entitled to the possession of any new building or buildings upon the lot in question for two years, at a rental of $50 per month. In the present appeal there is no testimony tending to excuse Alford's breach of the lease contract. Hence, under the undisputed evidence, Prince was entitled to recover from him the sum of $100 per month for two years, less the $50 per month which he had agreed to pay as rent. This would amount for two years to the sum of $1,200, as found by the jury.

The jury having found, upon conflicting testimony, that Reeves had actual knowledge of the provisions of the lease at the time he purchased the lot in question, he was jointly liable for the difference between the agreed rental of the lease and the amount that Reeves actually received for the rent of the new building or buildings. This, as we have already seen under the undisputed evidence, amounted to $1,200. Therefore the judgment will be affirmed.