

1929

James Monaghan v. T.G. Alexander : Abstract

Utah Supreme Court

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In the Supreme Court of the State of Utah

OCTOBER TERM, 1929.

•JAMES MONAGHAN,
Plaintiff.

vs.

T. G. ALEXANDER,
Defendant.

ABSTRACT

Appeal from the District Court of Uintah County, State
of Utah, MARTIN M. LARSON, Presiding Judge

WALLACE CALDER,
Attorney for Appellant.

CHARLES DeMOISY,
Attorney for Respondent.

FILED
AUG 22 1929
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In the Supreme Court of the State of Utah

JAMES MONOGHAN,
Plaintiff
vs.
T. G. ALEXANDER,
Defendant.

}

ABSTRACT OF RECORD

COMPLAINT

Trans.

1 The complaint alleges in substance that about February 25, 1922 at Vernal, Uintah County, Utah, plaintiff and defendant made an agreement marked "Exhibit A" and made a part of the complaint; that during the year commencing February 25, 1922, and the year commencing February 25, 1923, plaintiff used the pasturage and received the hay and paid for same as specified in said agreement.

That about April 23, 1924, defendant rescinded said agreement and refused to further comply with the provisions thereof and refused to furnish plaintiff any pasturage or any hay. That plaintiff was compelled during the year commencing February 25, 1924, to purchase 175

tons of hay at a cost of \$1837.50, and was compelled during the year commencing February 25, 1925, to purchase 175 tons of hay at a cost of \$1050.00. That said purchase was made necessary and was for the purpose of supplying the hay agreed by defendant to be furnished, and that said prices which plaintiff was compelled and required to pay for said hay so purchased were the reasonable and market value thereof.

That plaintiff was required during the year commencing February 25, 1924 to expend \$40 for pasturage of his sheep, \$42.25 for fencing pasture, and \$1125.00 for herding expense, and was compelled to expend during the year commencing February 25, 1925, \$76.00 for pasturage and \$425.00 for herding expense; that all said expenditures were made necessary by failure and refusal of defendant to furnish said pasturage as agreed.

“EXHIBIT A”

4 This agreement made and entered into this 25th day of February, A. D. 1922, by and between T. G. Alexander, party of the first part, and James Monaghan, party of the second part, both of Jensen, Utah, WITNESSETH:

That the party of the first part, being the owner of 403 acres, or thereabouts, known as the John T Rasmussen Ranch, located about 2 1-2 miles from Jensen, on Ashley Creek, has agreed and does agree hereby to give the use of an undivided one-half interest in all pasturage on said land, after all crops thereon have been harvested, for the period of four years, the use

thereof being limited to time from completion of harvesting to time frost comes out of the ground in the spring or when the ground is too muddy, and further agrees to sell and deliver to the party of the second part, each year for four years, 175 tons of hay in stacks on Rasmussen Ranch, with exceptions as hereinafter mentioned, for the full sum of Twelve Hundred Dollars to be paid each year as follows: On or about July 1st of each year, \$300.00 and \$900.00 on or about November 15th of each year,—these payments being made in advance on the use of hay and pasturage., The use of corrals and sheds on the Rasmussen Ranch is also hereby granted to the party of the second part for time stock are fed on said premises.

If, however, the Rasmussen Ranch does not produce sufficient hay for the party of the first part to furnish the full tonnage of hay herein contracted to be furnished to the party of the second part, then the difference may be delivered to the party of the second part on or near the Sunshine Ranch, Jensen, Utah. Further, the party of the first part has the option each year to retain on the Rasmussen Ranch twenty-five tons of hay and replace same by hay on or near the Sunshine Ranch in like tonnage as he retains.

The party of the second part has the option to purchase the grain owned by T. G. Alexander, raised on the Rasmussen Ranch at market price each year, and if purchase of all the grain is made by the party of the second part, then the party of the second part has the right to the use of the granary on the ranch.

The tonnage of hay is to be determined by

measurement and number of feet per ton shall be decided on mutually, or by John T. Rasmussen of Jensen, Utah, each year, but the number of feet per ton shall not be less than 420 nor more than 500.

The party of the second part hereby also binds himself to take the hay and pasturage above described for the period herein mentioned and to pay therefor as above stipulated. It is hereby acknowledged, however, that on signing of this agreement the party of the second part has paid to the party of the first part the sum of \$200.00 to apply on hay and pasture raised during 1922 on premises above described. One \$100.00 need be paid on or about July 1st, 1922, to fulfill the conditions of this contract.

Executed this 25th day of February, A. D. 1922.

In case of sale of above premises, this contract then ceases.

T. G. ALEXANDER
J. MONAGHAN

Complaint Filed February 10, 1927.

ANSWER

7 Defendant admits the execution of the agreement and that plaintiff received the pasturage and the hay and paid for same for the years commencing February 25, 1922 (and February 25, 1923, but alleges a breach of said agreement by the plaintiff during said years in permtiting his sheep to remain on said premises during the spring season after frost had come out of the ground and when said premises were muddy and

permitting his said sheep to trample upon and injure and destroy the alfalfa growing on said premises to defendant's irreparable damage. That plaintiff also caused the fences on said premises to be cut and broken down and refused to take precaution necessary to prevent a recurrence of said damage or to compensate defendant when said matters were called to plaintiff's attention.

That defendant on **October 19, 1923** sold 203.68 acres of said land covered by said lease.

That on **April 23, 1924** defendant served notice on **the plaintiff** as follows:

Vernal, Utah, April 23, 1924.

J. Monaghan,

Jensen, Utah.

Dear Sir:

In the matter of lease entered into on February 25, 1922, between yourself and myself, same is herewith terminated and at an end, for the main and principal reason that you have failed to live up to the terms of the lease and the covenants therein contained. in this, that you have failed to remove your sheep as fed upon the premises from the said premises when the frost came out of the ground in the spring, and when the ground was muddy, thereby causing me great injury and damage to the young and tender growing lucerne.

This also notifies you that 203 acres of the land as originally covered in the said lease, was and has been sold.

Dated at Vernal, Utah, this 23rd day of

April, 1924.

T. G. ALEXANDER.

That prior to the service of said notice plaintiff expressed dissatisfaction with the terms of said contract and said that he could buy cheaper hay. Defendant denies generally all allegations of the complaint not admitted.

Answer filed May 3, 1927.

REPLY

11 Plaintiff denies the alleged damages to alfalfa and to the fences. Denies being advised of the sale of part of the land prior to April 23, 1924. Denies having expressed any dissatisfaction as to the terms of the contract.

Reply filed December 10, 1927.

TESTIMONY

14 James Monaghan, the plaintiff, testified in substance that under the contract (Plaintiff's Exhibit 1) dated February 25th, 1928 and running for four years, he received the hay and pasturage for the first two years ending February 25, 1924. That the first time the cancellation of the contract was discussed between
15 plaintiff and defendant was early in April, 1924 at the ranch. That on April 23, 1924 plaintiff
17 made a tender of \$300 due that spring and defendant refused same. That one or two hours thereafter defendant served on plaintiff the notice set forth in defendant's answer. That
18 during the third year of the contract plaintiff

was compelled to buy the amount of hay specified in the contract. That he paid \$1837.50 for it. That other expenses for the third year were \$40 for a field for bucks, \$42.50 for woven fence; \$900 for camp for three months; \$225.00 for hospital camp. That these expenses were necessary to keep his sheep alive. That the last year of the contract the cost for hay was \$1050.00, pasture \$75.00 and a herder, including board, \$425.00.

26 By the Court: Q. "Mr. Monaghan, what was the total amount of your expenditures in 1924 that you claim you made to take the place of this pasturage and hay from the Alexander farm?"

A. "In 1924 and 1925, the third year of the contract?"

Q. "Yes."

A. "The amount, \$3044.75."

Q. "And in 1925, the fourth year?"

A. "The fourth year I did my best to cut that down, get the hay cheaper. My expenses amounted to only 1551.00."

27 Mr. W. N. Preas, the only other witness called before plaintiff rested testified in substance that plaintiff tendered \$300 to defendant as claimed by plaintiff.

30 Plaintiff rests.

DEFENSE

31 T. G. Alexander, the defendant, testified in
 substance that the farm covered by plaintiff's
 lease was well fenced with combination fence.
 That plaintiff cut this fence without permission
 and without properly bracing it. That plain-
 38 tiff left his sheep in the fields during muddy
 weather the first two years of the contract. That
 the alfalfa was damaged so that there was not
 39 quite half a stand straight through. That he
 sold his hay for \$6.00 per ton during the third
 40 and fourth years of the lease and had plenty
 for the contract. That plaintiff would give no
 assurance that he would keep the sheep off the
 alfalfa during the muddy season. Owen Wall,
 (Trans. 57-62) and Fred Wall (Trans. 63-64)
 witnesses for plaintiff, testified substantially
 as did plaintiff. On rebuttal the question of
 market value was brought up but not answered,
 the objection being interposed and sustained,
 that it was part of the plaintiff's case in chief.
 (Trans. 71 and 77).

JUDGMENT

83 The cause was tried to the Court. The Court
 found that defendant rescinded the contract on
 April 23, 1924 and from said date refused to
 perform any part of the agreement. That
 plaintiff was compelled to and did spend for
 hay and pasturage in lieu of the hay and pas-
 turage defendant had agreed to furnish to
 plaintiff the following sums, to wit; For the
 year ended February 25, 1925 the sum of
 \$3044.75, being \$1844.75 over and above the sum
 of \$1200.00 which he had agreed to pay the de-

pendant, for the year ended February 25, 1926, the sum of \$1551.00, being \$351.00 over and above the sum of \$1200 which he had agreed to pay defendant and judgment was entered for \$2195.75.

Judgment filed February 29, 1928.

86 Motion for new trial filed February 29, 1928.

89 Order denying motion for new trial filed March 10, 1928.

ASSIGNMENTS OF ERRORS

92 The court erred in denying defendant's motion for a new trial on account of insufficiency of the evidence to justify the judgment, and said judgment is against the law, in failing to establish market value of the hay in question. Two other grounds recited.

Served and filed September 8, 1928.

STIPULATION

93 "It is hereby stipulated and agreed by and between the respective parties to the above entitled action that the pleadings, transcript of testimony, judgment, motion for a new trial, the affidavits and statements in support of said motion, the denial of said motion, and the assignments of error, heretofore in said cause filed, shall constitute and be the statement and bill of exceptions on appeal, and that the same were served and filed in time.

WALLACE CALDER, Attorney for Plaintiff
CHARLES DeMOISY, Attorney for Defendant."

Approved in Open Court this 8th day of
September, 1928.

MARTIN M. LARSEN, JUDGE.

- 94 Notice of appeal served and filed Sept. 8., 1928.
95 Undertaking served Sept. 19, 1928. Filed
Sept. 22, 1928.

The foregoing is an abstract of the trans-
script insofar as any question raised by the ap-
peal is an issue.

WALLACE CALDER,
Attorney for Appellant.