

J. H. TUBMAN, Appellant, vs. **WESTPHAL, STAVENOW & CO.**, Appellees.

[January Term, A. D. 1900.]

Appeal from the Court of Quarter Sessions and Common Pleas. Maryland County.

Injunction.

Landlord and tenant.

An action for the violation of contract is the proper action to bring against a tenant who has made default in the payment of rent; ejectment will not lie and if brought may be enjoined.

In an action of ejectment brought by the landlord against his tenant for the violation of the covenants and agreements of the lease, in which he sought to eject the lessee, it was held that an action for the violation of contract was the proper action, and an injunction on the ejectment suit was sustained.

This case was tried and determined in the Court of Quarter Sessions and Common Pleas, Maryland County, sitting in equity, at its November term, A. D. 1899. It is brought up to this court upon a bill of exceptions by the appellant, for review and final disposition. The record in the case is most voluminous, and therefore most fatiguing and distressing to review, but the court, after a careful and most laborious reading, has deducted the following summary as the gist of the case, which it will here give before concluding.

It appears that in the year A. D. 1897, J. H. Tubman, appellant, leased by agreement certain premises in the County of Maryland, City of Harper, to Westphal, Stavenow & Co., a German mercantile house doing mercantile business in the said county, for a term of ten years, to end A. D. 1907, for the consideration of three hundred dollars available money per year. It also appears that appellant opened an account business with appellees to a large amount, and was then indebted to appellees in the sum of twenty-five hundred dollars. Appellant applied to appellees for his lease money (three hundred dollars), when appellees informed him that they had placed the sum of three hundred dollars to his credit on their books. To this arrangement appellant dissented, and at once gave notice to appellees to vacate the said premises in question within fifteen days, or he, the appellant, would eject them by law. Appellees, to prevent the ejectment, sued out a writ of injunction against appellant, and in the meantime deposited in the custody of the court three hundred dollars, one year's lease money, and prayed the court to compel appellant to take the said sum of money, which appellant refused to do, alleging that appellees had violated the conditions of the agreement.

The injunction was tried by the court below, sitting in equity, and judgment was rendered in favor of appellees, perpetuating the injunction. To this judgment appellant took exceptions and appealed to the Supreme Court.

After a careful survey of the circumstances in connection with the case, this court says that appellant was wrong to order appellees to vacate the said premises and to give them notice that he would eject them if they failed to comply with the order to vacate said premises within fifteen days; for if appellees had violated the terms of the agreement he, appellant, should have entered an action against appellees for breach of contract. Appellant neglected to enter such an action, which he had a legal right to enter if proof was manifest that the appellees had violated the terms of the agreement; but instead, he took an unjustifiable course. Therefore this court says that to secure themselves against unlawful ejectment appellees were justified in enjoining appellant.

Reviewing all the circumstances that govern the case, this court further says that the court below did not err in rendering judgment to perpetuate the injunction; for it is equitable and just that men should do unto others as they would have others do unto them. The perpetuating of the injunction simply enjoins appellant from further molesting appellees by unlawful ejectment in this particular case, and does not vitiate and make void the terms of the agreement made and subscribed to by the contracting parties. And the court further says that it is unwilling, as the last legal and equitable resort for justice, to lay a precedent on account of technicalities that will prevent all men from enjoying their full rights under the law of the land, be they Liberians or foreigners. The court knows no north, no south ; no rich, no poor ; no Liberian, no foreigner; and it can guarantee no rights or privileges other than what the Constitution and the laws of the land guarantee to each. Its motto is, "Let justice be done to all men." And the court will not lend its aid to men who seek to take advantage of others by evading a righteous and equitable course of conduct, however adroitly they may endeavor to cover their intentions, for equity is righteousness.

The court therefore affirms the judgment of the court below and adjudges that appellant shall pay all legal costs in this action. The clerk is hereby ordered to issue a mandate to the judge of the court from which this action emanated, to the effect of this judgment.