

Mason v Clarke (1955) AC 778

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Facts

- Clarke was a farmer who rented 450 acres of land in England. The land had a problem with rabbits.
- Mason was a professional rabbit catcher. Orally, Mason and Clarke decided that Mason would pay £100 to be allowed to catch rabbits on Clarke's farm for one year.
- Under the relevant English law, this agreement (for a profit a prendre) should have been made by way of a deed, however, Mason and Clarke only had an oral agreement.
- For reasons that were not established at trial (although tax fraud was suspected), Mason wrote out the receipt for "bailiff's wages" rather than mentioning the rabbit catching.
- Mason laid traps for the rabbits and caught a few, but Clarke suddenly changed his mind and would not allow Mason access to his land.
- Mason sued, stating that he had the right to catch rabbits on the property.
- Clarke responded that the agreement was not valid, because it was not in writing, and it was tainted by fraud (accusing Mr Mason of trying to avoid paying tax).

Issue

- Was the oral agreement between Mason and Clarke binding, notwithstanding the lack of written agreement and the possibility of fraud?

Held

- The Court held that there was insufficient evidence to prove that Mason was actually trying to commit fraud. Even if they had a suspicion, it had not been proven, and the agreement itself was not illegal.
- Importantly, the Court also held that the laying of the traps constituted "part performance" which ensured that the contract should be enforceable.
- The Court stated that the rabbit catcher had shown "sufficient possession" to cement his rights, and that the farmer could not take these back.

Quotes

"A profit a prendre is an interest in land, and no legal estate therein can be created or conveyed except by deed ... there had been no grant by deed of the profit a prendre to Mr. Mason, but prima facie he had the benefit of an oral agreement for the grant thereof."

(Lord Meyton of Henryton at page 798)

"I am quite satisfied that the acts of Mr. Mason, already described, were a part performance of the oral agreement of October 11, 1950. Mr. Mason set snares, took rabbits and paid helpers, and, in my view, the work done and the expense incurred were exclusively referable to the oral agreement. Accordingly, at the relevant time Mr. Mason had a contract, specifically enforceable against the appellant company, for the grant of a profit a prendre, and had entered into possession thereof."

(Lord Meyton of Henryton at page 799)

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