

either power might be exercised for any corporate purpose." (Italics ours.)

We are of the opinion that the circuit court was correct in sustaining the motion to strike, and the judgment is therefore affirmed.

Judgment affirmed.

HEBEL, P. J., and DENIS E. SULLIVAN, J., concur.



294 Ill.App. 617

ANTRIM v. PFENDER.

Gen. No. 9231.

Appellate Court of Illinois. Second District.

March 10, 1938.

Evidence ⇨ 236(2)

Witnesses ⇨ 192

In proceeding against the deceased's estate for services rendered by claimant to deceased, provision of deceased's revoked will stating that deceased had been directed by her husband to make bequest to claimant, if he had carefully looked after deceased's business interests, and that deceased, on account of the valuable services rendered, bequeathed to the claimant the sum of \$5,000, was admissible as an admission against interest and was not objectionable on ground that it constituted a privileged communication.

Appeal from Circuit Court, Stephenson County; Harry Edwards, Judge.

Proceeding by H. H. Antrim against Walter C. Pfender, executor of the last will and testament of Margaret Caldwell, deceased, on a claim for services rendered by the claimant to the deceased. At the close of the evidence on the part of the claimant, the jury, in obedience to a peremptory instruction, returned a verdict of not guilty. Thereafter upon motion of the claimant, the verdict of the jury was set aside and a new trial granted. From the order granting a new trial, the executor appeals.

Affirmed.

George F. Korf, of Freeport, and John H. Page, of Rockford, for appellant.

Heard & Heard, of Freeport, and Dixon, Devine, Bracken & Dixon, of Dixon, for appellee.

DOVE, Presiding Justice. (Publish abstract only.)



294 Ill.App. 374

SPROULE v. TAFFE.

Gen. No. 39830.

Appellate Court of Illinois. First District.

First Division.

March 21, 1938.

Rehearing Denied April 4, 1938.

Judgment ⇨ 87

A judgment by confession on a written lease caused to be entered against a tenant by a trustee and/or an insurer was void for failure to designate with any degree of certainty in whose favor judgment was rendered.

Appeal from Municipal Court of Chicago; Thomas A. Green, Judge.

Charles J. R. Sproule, trustee, and/or the Fidelity Life Insurance Company of Philadelphia, caused judgment by confession on a written lease to be entered against Edward J. Taffe, and defendant filed a motion to vacate the judgment. From an order overruling his motion, defendant appeals.

Reversed and remanded.

Rudnick & Wolfe, of Chicago, for appellant.

Ivan Barton Goode, of Chicago (George A. Gordon, of Chicago, of counsel), for appellee.

O'CONNOR, Presiding Justice.

"Charles J. R. Sproule, Trustee and/or The Fidelity Life Insurance Company of Philadelphia, a corporation," caused judgment by confession on a written lease to be entered against Edward J. Taffe. The statement of claim alleged that the lease was attached to it, and that the claim was for "rent accruing on said lease from the 1st day of March, 1937, for the months of all March and April balance, \$8.75 at \$37.50 per month amounting to \$46.25,"

and claim was also made for \$14.44 for attorney's fees, making a total of \$60.69, for which amount judgment was entered; a cognovit having been attached to the statement of claim. Afterward defendant filed a motion to vacate the judgment; the motion was overruled, and he appeals.

The sole ground urged for reversal is that the entire proceeding, including the judgment, is so uncertain and indefinite as to require a reversal of the judgment. The lease which was prepared by the landlord or landlords recites that it is between Charles J. R. Sproule and/or the Fidelity Life Insurance Company of Philadelphia and the tenant Taffe.

We have many times condemned in unmeasured terms the use of "and/or" as a "confusing fad," "accuracy destroying symbol," "pollution of the English language," that "barbarism," "unsightly hieroglyphic," "verbal teratism," and other terms of a similar character that we could think of up to this time. See *Preble v. Architectural Iron Workers' Union*, 260 Ill.App. 435; *Tarjan v. Nat. Surety Co.*, 268 Ill.App. 232; *Thibodeaux v. Uptown Motors Corp.*, 270 Ill.App. 191; *City Nat. Bank v. Davis Hotel Corp.*, 280 Ill.App. 247; *Gallopin v. Cont. Cas. Co.*, 290 Ill. App. 8, 7 N.E.2d 771. Many courts of other jurisdictions have, in like terms, condemned the use of this symbol, a few of which are *Clay County Abstract Co. v. McKay*, 226 Ala. 394, 147 So. 407; *Bell v. Wayne United Gas Co.*, 116 W.Va. 280, 181 S.E. 609; *Employers' Mut. Liability Ins. Co. v. Tollefsen*, 219 Wis. 434, 263 N.W. 376; *Equitable L. Assur. Soc. v. Hemenover*, 100 Colo. 231, 67 P.2d 80, 110 A.L.R. 1270; *State v. Dudley*, 159 La. 872, 106 So. 364; *Putnam v. Industrial Comm.*, 80 Utah 187, 14 P.2d 973.

In the *Dudley Case* the Supreme Court of Louisiana was endeavoring to construe a statute where the confusing symbol was used, and in the course of the opinion discussed the use of it in contracts. In this connection it was said, 159 La. 872, at page 878, 106 So. 364, 365: "In other words such an expression in a contract amounts in effect to a direction to those charged with construing the contract to give it such interpretation as will best accord with the equity of the situation, and for that purpose to use either 'and' or 'or' and be held down to neither."

In the *Putnam Case*, 80 Utah 187, 14 P.2d 973, the Supreme Court of Utah re-

versed a judgment in a workman's compensation case; one of the grounds being that the use of "and/or" in findings and judgments rendered them too uncertain and indefinite to support the award. The court there said, 80 Utah 187, 14 P.2d 973, at page 984: "We think the findings and judgment too uncertain to give effect to them. And, for that and other reasons stated, the award is annulled, and the cause remanded to the commission for further proceedings."

In 11 Ency. Pl. & Prac. 949, it is said: "A judgment not designating in whose favor it is rendered is void for uncertainty."

In the instant case, the judgment does not designate with any degree of certainty in whose favor it is rendered, and under the rule it is void for uncertainty; for that reason the judgment is reversed and the cause is remanded.

We think we ought to say that counsel for plaintiff or plaintiffs state they had no part in drawing the lease.

Reversed and remanded.

McSURELY and MATCHETT, JJ., concur.



294 Ill.App. 605

PUCKETT v. AMERICAN LIFE OF ILLINOIS.

Gen. No. 39899.

Appellate Court of Illinois. First District.
Second Division.
March 11, 1938.

1. Judgment ⇌ 181

The purpose of the summary judgment contemplated by statute is to provide a means to avoid the expense and delay of a trial when no sound defense exists. *Smith-Hurd Stats. c. 110, § 181.*

2. Judgment ⇌ 181

The beneficiary of two life policies upon which, according to the affidavits filed by insurer in opposition to beneficiary's motion for summary judgment, no premiums had been paid, was not entitled to summary judgment notwithstanding that insurer had suggested that beneficiary file proofs of claim