Hochster v. De La Tour

In the Queen's Bench, 1853

2 Ellis & Bl. 678

This was an action for breach of contract. On the trial, before Erle, J., at the London sittings in last Easter Term, it appeared that plaintiff was a courier, who, in April, 1852, was engaged by defendant to accompany him on a tour to commence on June 1st, 1852, on the terms mentioned in the declaration. On May 11th, 1852, defendant wrote to plaintiff that he had changed his mind, and declined his services. He refused to make him any compensation. The action was commenced on May 22d. The plaintiff, between the commencement of the action and June 1st, obtained an engagement with Lord Ashburton, on equally good terms, but not commencing till July 4th. . . .

[What follows is the discussion between the judges and the attorneys, Hugh Hill and Deighton, representing De La Tour.]

Crompton, J. When a party announces his intention not to fulfill the contract, the other side may take him at his word and rescind the contract. That word “rescind” implies that both parties have agreed that the contract shall be at an end as if it had never been. But I am inclined to think that the party may also say: “Since you have announced that you will not go on with the contract, I will consent that it shall be at an end from this time; but I will hold you liable for the damage I have sustained; and I will proceed to make that damage as little as possible by making the best use I can of my liberty.” This is the principle of those cases in which there has been a discussion as to the measure of damages to which a servant is entitled on a wrongful dismissal. . . .

Hugh Hill and Deighton, contra. . . .[T[he defendant's position . . .is . . . that an announcement of an intention to break the contract when the time comes is no more than an offer to rescind. It is evidence, till retracted, of a dispensation with the necessity of readiness and willingness on the other side; and, if not retracted, it is, when the time for performance comes, evidence of a continued refusal; but till then it may be retracted. . .

Crompton, J. May not the plaintiff, on notice that the defendant will not employ him, look out for other employment, so as to diminish the loss?

[Hugh Hill and Deighton] If he adopts the defendant's notice, which is in legal effect an offer to rescind, he must adopt it altogether.

Lord Campbell, C.J. So that you say the plaintiff, to preserve any remedy at all, was bound to remain idle.

Erle, J. Do you go one step further? Suppose the defendant, after the plaintiff's engagement with Lord Ashburton, had retracted his refusal and required the plaintiff to travel with him on the 1st of June, and the plaintiff had refused to do so, and gone with Lord Ashburton instead? Do you say that the now defendant could in that case have sued the now plaintiff for a breach of contract?

[Hugh Hill and Deighton] It would be, in such a case, a question of fact for a jury, whether there had not been an exoneration. . . .

LORD CAMPBELL, C.J., now delivered the judgment of the Court.

On this motion in arrest of judgment, the question arises, whether if there be an agreement between A and B, whereby B engages to employ A on and from a future day for a given period of time, to travel with him into a foreign country as a courier, and to start with him in that capacity on that day, A being to receive a monthly salary during the continuance of such service, B may, before the day, refuse to perform the agreement and break and renounce it, so as to entitle A before the day to commence an action against B to recover damages for breach of the agreement; A having been ready and willing to perform it, till it was broken and renounced by B. The defendant's counsel very powerfully contended that, if the plaintiff was not contented to dissolve the contract and to abandon all remedy upon it, he was bound to remain ready and willing to perform it till the day when the actual employment as courier in the service of the defendant was to begin; and that there could be no breach of the agreement before that day to give a right of action.

. . .

If the plaintiff has no remedy for breach of the contract unless he treats the contract as in force, and acts upon it down to the 1st of June, 1852, it follows that, till then, he must enter into no employment which will interfere with his promise “to start with the defendant on such travels on the day and year,” and that he must then be properly equipped in all respects as a courier for a three months’ tour on the continent of Europe. But it is surely much more rational, and more for the benefit of both parties, that, after the renunciation of the agreement by the defendant, the plaintiff should be at liberty to consider himself absolved from any future performance of it, retaining his right to sue for any damage he has suffered from the breach of it.  Thus, instead of remaining idle and laying out money in preparations which must be useless, he is at liberty to seek service under another employer, which would go in mitigation to the damages to which he would otherwise be entitled for a breach of the contract.

It seems strange that the defendant, after renouncing the contract, and absolutely declaring that he will never act under it, should be permitted to object that faith is given to his assertion, and that an opportunity is not left to him of changing his mind.

If the plaintiff is barred of any remedy by entering into an engagement inconsistent with starting as a courier with the defendant on the 1st of June, he is prejudiced by putting faith in the defendant's assertion: and it would be more consonant with principle, if the defendant were precluded from saying that he had not broken the contract when he declared that he entirely renounced it.

. . . The man who wrongfully renounces a contract into which he has deliberately entered cannot justly complain if he is immediately sued for a compensation in damages by the man whom he has injured; and it seems reasonable to allow an option to the injured party, either to sue immediately, or to wait till the time when the act was to be done, still holding it as prospectively binding for the exercise of this option, which may be advantageous to the innocent party, and cannot be prejudicial to the wrongdoer.

. . .

Judgment for plaintiff.