Hathaway v. Sabin

22 A. 633 (Vt. 1891)

Munson, J.

The plaintiff declares as "George H. Hathaway, doing business under the name of the 'Redpath Lyceum Bureau.'" . . .

The contract required the defendant to furnish a hall for the concert, and to pay $75 after the entertainment. The plaintiff alleged readiness to perform on his part, and assigned as the breach the defendant's failure to furnish a hall. The court directed a verdict for the plaintiff for $75 and interest. . . . The plaintiff was ready to give the concert, and on giving it would have been entitled to the $75, but he was prevented from giving it by the defendant's failure to furnish a hall. . . .

The defendant . . . contends that he was excused from opening and heating the hall by the apparent impossibility of the musicians' reaching the town. During the 36 hours preceding the evening appointed for the concert a snow-storm of unusual violence prevailed in Montpelier and vicinity which early on the day of the concert rendered the streets of that village and the roads from the surrounding country practically impassable. The quartette by which the concert was to be given was in Barre, having gone from Montpelier the evening before, and trains on the spur from Montpelier to Barre were suspended. Late in the afternoon, however, an irregular train went to Barre, and on this the musicians returned to Montpelier, arriving early in the evening, and going to the hall at the time appointed. It is claimed that the defendant's conduct must be tested by the situation as it was at the time when action on his part became necessary, and that he is saved from liability by the doctrine that, when one party ascertains that the other will not be able to perform what he has undertaken, the party ascertaining this is excused from performing the obligations resting upon him.

It is doubtless true that, **[1]** when one party has put it out of his power to perform, the other party can maintain an action without having tendered performance on his part. **[2]** But a party who becomes involved in difficulties for which he is not responsible, if ultimately able to perform, is not to be deprived of the benefits of his contract because of an assumption by the other party that the difficulties would prove insurmountable. Here the defendant was mistaken in supposing that the plaintiff would not be able to perform, and we know of no rule which permits him to plead reasonable cause to believe so in excuse for the failure on his part.  It is apparent, also, that the defendant's course was determined before the time when action on his part became necessary. It was not necessary to commence the heating of the hall until 4 o'clock in the afternoon, but about 10 o'clock in the forenoon the defendant telephoned the manager that, owing to the condition of the streets in Montpelier, it would be impossible to have the entertainment that evening.

It is evident from this that the defendant based his action upon his belief that there would be no audience, rather than upon the supposition that the musicians could not reach the place of entertainment.  He did not wait until it was necessary to take action about the hall before deciding that there could be no concert. But, at the time when action on his part became necessary, there was nothing in the situation which could relieve him from liability. The contract contains no provision for his protection from such a misfortune, and the loss must fall on him.

. . .

Judgment affirmed.