Lewis v. Browning

130 Mass. 173 (1881)

Action for breach of the covenants of a written lease of a tenement in Boston. The defendant admitted that there had been a breach of the conditions of the lease, and agreed that judgment might be entered for the plaintiff in the sum of $2168.22, unless the facts herein stated constituted a defense to this action.

Gray, C. J.

In *M'Culloch v. Eagle Ins. Co.* 1 Pick. 278, this court held that a contract made by mutual letters was not complete until the letter accepting the offer had been received by the person making the offer; and the correctness of the decision is maintained, upon an able and elaborate discussion of reasons and authorities, in *Langdell on Contracts* (2d ed.) 989- 996. In England, New York and New Jersey, and in the Supreme Court of the United States, the opposite view has prevailed, and the contract has been deemed to be completed as soon as the letter of acceptance has been put into the post-office duly addressed. . . .

But this case does not require a consideration of the general question; for, in any view, the person making the offer may always, if he chooses, make the formation of the contract which he proposes dependent upon the actual communication to himself of the acceptance. . . And in the case at bar, the letter written in the plaintiff's behalf by her husband as her agent on July 8, 1878, in California, and addressed to the defendant at Boston, appears to us clearly to manifest such an intention. After proposing the terms of an agreement for a new lease, he says: "If you agree to this plan, and will telegraph me on receipt of this, I will forward power of attorney to Mr. Ware," the plaintiff's attorney in Boston. "Telegraph me 'yes' or 'no.' If 'no', I will go on at once to Boston with my wife, and between us we will try to recover our lost ground. If I do not hear from you by the 18th or 20th, I shall conclude 'no.'"

Taking the whole letter together, the offer is made dependent upon an actual communication to the plaintiff of the defendant's acceptance on or before the 20th of July, and does not discharge the old lease, nor bind the plaintiff to execute a new one, unless the acceptance reaches California within that time. Assuming, therefore, that the defendant's delivery of a dispatch at the telegraph office had the same effect as the mailing of a letter, he has no ground of exception to the ruling at the trial.

Exceptions overruled.