Kock Vs. Emmerling

Kock Vs. Emmerling

SooperKanoon Citation : sooperkanoon.com/80850

Court : US Supreme Court

Decided On : 1859

Appeal No. : 63 U.S. 69

Appellant : Kock

Respondent : Emmerling

Judgement :

Kock v. Emmerling - 63 U.S. 69 (1859)
U.S. Supreme Court Kock v. Emmerling, 63 U.S. 22 How. 69 69 (1859)

Kock v. Emmerling

63 U.S. (22 How.) 69

ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE EASTERN DISTRICT OF LOUISIANA

SYLLABUS

Where an agent was employed to sell an estate in Louisiana, and the owner refused, without sufficient reasons, to fulfill an agreement which the agent had made, a right to demand compensation accrued to the agent, the amount of which

is to be settled by established usage.

The facts are stated in the opinion of the court.

Page 63 U. S. 72

MR. JUSTICE Mc LEAN delivered the opinion of the Court.

An action was brought by Emmerling, an alien, against Kock, a citizen of Louisiana, for the sum of five thousand dollars, on the purchase and sale of real estate.

Emmerling, it seems, being a broker, and engaged in the purchase and sale of real property, was employed by Kock to sell a certain plantation on the Bayou Lafourche, known as the Letory Place, and by his written instructions, the 2d April, 1857, was authorized to sell this plantation above named at two hundred and fifty thousand dollars, payable one-fifth cash and the remainder in four equal installments, bearing eight percent interest.

The petitioner, it is alleged, after visiting the plantation at various times and with different persons, finally, on the 19th of April, 1857, made an agreement with Jacob Denny, a resident of Louisiana, to purchase the plantation at the price fixed, provided the said Kock would so change the terms of payment as to receive forty thousand dollars in cash, and the remainder in six annual installments, bearing seven percent interest.

Kock consented to the terms, and the 29th April he and Denny met at New Orleans to complete the contract. Kock insisted that for the first year's credit a good acceptance for thirty thousand dollars should be given, and agreeing, if this were done, the five thousand dollars remaining on the first term should be equally divided among the other five terms, so that the first year's payment should be thirty thousand dollars and the other five credit terms should be thirty-six thousand dollars each. And he agreed to take as satisfactory the acceptance of Messrs. Fellows & Co., or Messrs. Lavoe & McColl, commission merchants, of New Orleans. Messrs. Fellows

& Co. agreed to accept for the thirty thousand dollars, and Denny offered to advance the forty thousand dollars, and in every other respect to carry out and complete the proposed contract. But Kock refused to comply with his agreement, capriciously, as it would seem, as he assigned no reason for his refusal except that he was going to Europe on a visit with his family, and had no time to execute the title papers. Denny proposed to provide for the payments and receive the title on his return, but he refused to sell the plantation.

The petitioner alleged that the contract was fully executed on his part and on the part of Denny, and he claims a recompense for the service in which he was engaged at the rate of two percent on two hundred and fifty thousand dollars, making the sum of five thousand dollars, said percentage being the usual established rate of broker's commission on the sales of plantations.

The defendant denies the allegations of the bill in the circuit court.

A judgment was entered in the circuit court for the sum claimed by the petitioner, from which judgment the defendant has appealed to this Court.

In his statement of facts, the district judge says:

"It is established by the proof that the price of the plantation was two hundred and fifty thousand dollars, and the rate of commissions of brokers on sales of plantations was two percent."

This is the ordinary mode of bringing before this Court a writ of error on a statement of facts in Louisiana by the district judge. *McGavock v. Woodlief,* 20 How. 225.

There would seem to be no doubt on the merits of this case. The terms of the contract as to the sale were specific and unmistakable, and everything was done that could be done by the purchaser to carry out the contract, but the vendor, without any reason, refused to complete it.

The broad ground is assumed that no contract of this character can be specifically enforced unless it has been fully executed.

In the case of McGavock, above cited, the Court said:

"The terms of the sale, as given by the vendor to the plaintiff, the

Page 63 U. S. 74

broker, were simple and specific &c.;, and Long, the purchaser, agreed to these terms, as averred in the petition, and not questioned in the case; and if he had offered, and was in a condition to consummate the agreement according to its terms, no doubt the commission would have been earned, and the recovery below right."

But a change was proposed by Long, which prevented the arrangement.

Civil Code, 2035, declares, "The condition is considered as fulfilled, when the fulfillment of it has been prevented by the party bound to perform it." In addition to this, the following authorities have been cited: *Righter v. Alamon,* 4 Rob. 45; *Wells v. Smith,* 3 La. 501; *Levistones v. Landreaux,* 6 Ann. 26; *Lestrade v. Perrera,* 6 Ann. 398.

It is not perceived why a contract to sell property, real or personal, on commission should not be governed by the same rules as other sales. If a usage has been established in Louisiana, as seems to be the case, for the sales of plantations, such usage, being reasonable, should govern in the absence of a special agreement.

Nothing is more common in our large cities than to charge brokerage for procuring the loan of money. This varies as the money market rises or falls. One percent, and sometimes two, is charged for this service. The same rule applies as to the sale of property. Where the contract is fair, it is not perceived why such compensation should not be paid, as agreed by the parties or by an established usage.

Where the vendor is satisfied with the terms, made by himself, through the broker, to the purchaser, and no solid objection can be stated in any form to the contract, it would seem to be clear that the commission of the agent was due, and ought to be paid. It would be a novel principle if the vendor might capriciously defeat his own contract with his agent by refusing to pay him when he had done all that he was bound to do. The agent might well undertake to procure the purchaser, but this being done, his labor and expense could not avail him, as he could not coerce a willingness to pay the commission which the vendor had agreed to pay. Such a state of things could only arise from an express understanding

Page 63 U. S. 75

that the vendor was to pay nothing unless he should choose to make the sale.

The judgment of the circuit court is affirmed.

MR. JUSTICE CATRON and MR. JUSTICE GRIER dissented.