

Lyon Vs. Pollard

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Court : US Supreme Court

Decided On : 1874

Appeal No. : 87 U.S. 403

Appellant : Lyon

Respondent : Pollard

Judgement :

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Lyon v. Pollard

87 U.S. (20 Wall.) 403

ERROR TO THE SUPREME COURT

OF THE DISTRICT OF COLUMBIA

SYLLABUS

1. Where a person agreed to serve in superintending a large hotel for another at a compensation specified, either party being at liberty to terminate the contract on thirty days' notice to the other, and the person agreeing to superintend was ejected

by the other on less than thirty days' notice, *held*, in a suit for damages by the party thus ejected -- the general issue being pleaded and notice of special matter given -- that the defendant might prove that the party ejected was unfit to perform his duty by reason of the use of opiates and by reason of unsound mental condition.

2. Where by the terms of a contract a party is bound to give thirty days' notice of an intention to terminate it, and having given the notice afterwards waives it, he may in fact renew the notice, though the form of his communication purport to insist on the notice which he has waived, and at the expiration of the required time, the second document will operate as a notice.

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3. Though where, under a contract of hiring services, a party is bound to give a certain number of days' notice to terminate it, it is not terminated until the full term of days has elapsed, yet where an action has been brought for damages for a dismissal without the proper notice, a notice of termination may be given though the full number of days has not expired when an actual dismissal took place, this to show that the plaintiff had a right now to serve but a portion of the thirty days.

Mrs. E. A. Pollard sued J. E. Lyon in the court below and declared on a written contract by which Lyon agreed to furnish the means of carrying on the St. Cloud Hotel, a hotel of considerable size in the City of Washington, and Mrs. Pollard agreed to superintend and conduct it. For this service she was to receive one-fifth of the net profits, in ascertaining which the rent paid by Lyon for the house was to be excluded. Either party was at liberty to terminate the contract by giving thirty days' notice in writing. The breach alleged was that the defendant ejected the plaintiff from the premises without having given the stipulated notice. Under pleas which amounted to the general issue, the defendant undertook to show that he had given the notice required, and under a special notice of what he would offer in evidence, offered to prove that the plaintiff was unfit to perform her part of the contract by reason of the use of opiates and by reason of her unsound mental

condition. The court refused to receive the evidence, and the defendant excepted.

The defendant then offered evidence of a service of notice on the 11th July on the plaintiff, under the contract to terminate it. Also evidence of service of a notice on the 19th September, in this form:

"September 19th, 1870"

"MRS. E. A. POLLARD."

"MADAM: On the 11th of July last, I caused notice in writing to be served upon you, which notice terminated the agreement between us. I now notify you that the time specified in that notice *has fully expired*, and that *you are no longer superintendent* of this hotel and no longer entitled to the appellation of proprietress."

"Respectfully,"

"J. E. LYON"

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Testimony was also given tending to show that the first notice had been waived or withdrawn.

The plaintiff was dismissed on the 4th of October.

On this testimony, the defendant asked the court to charge that even if the notice of July 11 had been wholly withdrawn, the subsequent notice of September 19 was in legal effect a renewal of it, and of itself operated to terminate the contract at the expiration of thirty days from its date.

This prayer the court refused to grant, and verdict and judgment having been given for the plaintiff, the defendant brought the case here on exceptions to the evidence, and to the refusal to charge as requested.

MR. JUSTICE MILLER delivered the opinion of the Court.

The offers, as to the use of opiates and the unsound mental condition, are the subjects of the first bills of exception.

We do not agree with counsel that, for the insanity of plaintiff or her mental incapacity to perform her part of the contract, whether from natural infirmities or from the use of opium, the only remedy of the defendant is an action against her on the contract. The plaintiff was employed to perform important and specific duties. Her compensation for this was to be one-fifth of the net proceeds of the business which she had agreed to superintend. If she rendered herself or otherwise became incapable of performing these duties, that of itself authorized defendant to rescind or terminate the contract. He was not bound to continue as the superintendent of a large hotel a person who was a lunatic or who was so stupid under the influence of narcotics that her presence was a danger and an injury, and who could render no reasonable service. The contract on her part implied some capability of performing the duties she had assumed, of rendering some service. If she could render none, defendant was not bound to continue it even for the thirty days which the termination of it by notice required. The court below erred in refusing to admit this evidence.

The defendant offered evidence of a service of notice on the 11th July on plaintiff, under the contract, to terminate it. Also evidence of service of a notice on the 19th September of his intention to act on the first notice, and that the time had expired. Testimony was also given tending to show a waiver or withdrawal of the first notice. The plaintiff was dismissed about the 4th of October. On this testimony, the court was asked by defendant to instruct the jury that even if the notice of July 11 had been wholly withdrawn, the subsequent notice of September 19 was in legal

effect a renewal of the former notice, and of itself operated to terminate the said contract at the expiration of thirty days from its date.

Assuming, as the bill of exceptions seems to show, that the date of the notice of September 19 was the date of its service on plaintiff, we think the court erred in refusing this prayer.

The only object or purpose of any notice in the case was to apprise the party on whom it was served that the other party intended to terminate the contract. The contract itself fixed the time when this should take place -- namely thirty days after the service. The fact that the notice refers to a past notice and speaks of the termination of the contract as being already accomplished does not destroy its effect as a notice of present intent to put an end to the arrangement. This notice of intent the contract makes effectual at the end of thirty days, and so the court was asked to instruct the jury. In declining to do this, the court left the jury to infer that it had no effect whatever.

It is probable that if the first notice was wholly waived or abandoned, the defendant had no right to dismiss the plaintiff until the 19th day of October. But even in reference to damages, defendant had a right to show that under the contract and the notice, she had only fifteen days to remain, and was injured only to that extent.

Judgment reversed.