Dingley Vs. Oler

Dingley Vs. Oler

SooperKanoon Citation : sooperkanoon.com/85358

Court : US Supreme Court

Decided On : Apr-05-1886

Appeal No. : 117 U.S. 490

Appellant : Dingley

Respondent : Oler

Judgement :

Dingley v. Oler - 117 U.S. 490 (1886)
U.S. Supreme Court Dingley v. Oler, 117 U.S. 490 (1886)

Dingley v. Oler

Argued March 8-9, 1886

Decided April 5, 1886

117 U.S. 490

ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE DISTRICT OF MAINE

SYLLABUS

D, a dealer in ice, finding himself late in the season of 1879 in possession of a large quantity, which threatened to become a total loss, pressed 0, another dealer, to buy a part of it. 0 declined to purchase, but offered to take a cargo and "return the same to you next year from our houses." D accepted 0's offer, and delivered the cargo of ice to him that season. Early in July of the season of 1880, D verbally requested 0 to deliver the ice. On the 7th of July, 0 wrote to D:

"It is not just or equitable for you to expect us to give you ice now worth $5.00 per ton when we have letters of yours offering the ice that we got at fifty cents per ton. We must therefore decline to ship the ice for you this season, and claim as our right to pay you for the ice in cash at the price you offered it to other parties here, or give you ice when the market reaches that point."

D answered by letter, dated July 10th, that he had sold the ice in advance in expectation of its delivery to him, and it did not seem to him right that O should ask for a postponement in the delivery. To this 0 answered on the 15th of July by letter, in which, after restating facts which made the demand in his opinion inequitable, he

Page 117 U. S. 491

said:

"We cannot, therefore, comply with your request to deliver the ice claimed, and respectfully submit that you ought not to ask this of us in view of the facts stated herein and in ours of the 7th. . . . We will be glad to hear from you in reply, but will be more pleased to have a personal interview, and venture to suggest that you come here for the purpose."

No reply was made to this suggestion, either personally or by letter, and this suit was commenced six days later.

HELD

1. That the contract gave O the option, during the whole shipping season of 1880, of delivering ice to D in return for the cargo received in 187A, he giving D reasonable notice of the time of delivery when filed and an opportunity to prepare for receiving and taking it away from O's houses.

2. That O's answers of the 7th and 15th July were not intended by him to be, and were not a final refusal to perform the contract on his part, and that at the time of the commencement of the action, there had been no breach of the contract, and therefore,

3. That it was unnecessary to discuss or decide whether an absolute refusal by 0, in the middle of the shipping season of 1880, to perform his contract at all would have conferred upon D aright of action for a breach before the expiration of the contract period for performance.

This was an action of assumpsit, brought by Dingley Bros. in the Superior Court of the County of Kennebec, in Maine, against W. M. Oler & Co., of Baltimore, to recover damages for the alleged breach of an agreement whereby it was averred the defendants undertook and promised, in consideration of 3,245.25 tons of ice delivered to them by the plaintiffs in 1879, to return and deliver to the plaintiffs the same quantity of ice from the defendants' ice houses in the year 1880. The case was removed by the defendants into the Circuit Court of the United States for the District of Maine, when the cause was put at issue by a plea of *non assumpsit,* and was submitted to the court by the parties, the intervention of a jury having been duly waived.

The court made a special finding of the facts, and, in pursuance of the conclusions of law based thereon, rendered judgment in favor of the plaintiffs for the sum of $7,335.35.

Exceptions were taken by each party to rulings of the court, on which errors are assigned, the cause being brought here for review on writs of error sued out by the respective parties.

The court found as matter of fact that late in the season of 1879, the plaintiffs, finding themselves in possession of a large quantity of ice undisposed of, and which threatened to be a

Page 117 U. S. 492

total loss, pressed the defendants to buy some or all of it. Both parties were dealers in ice, cutting it upon the Kennebec River and shipping it thence during the season -- that is, while the river is open. The offers of the plaintiffs were rejected, but the defendants, by their letter of 6th September, 1879, made a counter-offer to take a cargo and "return the same to you next year from our houses." The plaintiffs, by their letter of September, 1879, accepted this offer, and several cargoes were delivered upon the same terms. The total delivery was 3,246.25 tons.

In July, 1880, one of the plaintiffs spoke to one of the defendants about delivering the ice, and he replied that he did not know about that -- delivering ice when it was worth five dollars a ton which they had taken when it was worth fifty cents a ton, but he promised to write an answer. July 7, 1880, the defendants wrote, repeating their objections and saying, among other things,

"we must therefore decline to ship the ice for you this season, and claim as our right to pay you for the ice in cash at the price you offered other parties here (that is, fifty cents), or give you ice when the market reaches that point."

The plaintiffs, 10th July, 1880, wrote that they had a right to the ice, and had sold it in expectation of its delivery, to which the defendants answered 15th July, 1880, reciting the circumstances of the case and the hardship of such a demand, and again denying the obligation. The letter contains this sentence: "We cannot therefore comply with your request to deliver the ice claimed, and respectfully submit that you ought not to ask this of us," etc., asking for a reply or a personal interview. Neither appears to have been given, and this action was commenced July 21, 1880. The court further found that ice was worth five dollars a ton in July, 1880, and fell later in the season to two dollars a ton.

Thereupon the court held as matter of law that there was a contract executed by the plaintiffs, and to be executed by the defendants, who were bound to deliver 3,245.25 tons of ice from their houses on the Kennebec River during the year 1880; that the year means the shipping season, and that the

Page 117 U. S. 493

defendants had the whole season, if they chose to demand it, in which to make delivery, and that the letters of July 7th and 15th from the defendants to the plaintiffs contained an unequivocal refusal to deliver any ice during the season; that the defendants having unqualifiedly refused to ship the ice, this action can be maintained, though brought before the close of the season, but that the damages are not to be reckoned by the price of ice in July; that what the plaintiffs lost was 3,245.25 tons of ice sometime during the season; that the price of ice went down after July to two dollars a ton, and the measure of damages must be reckoned at this rate, with interest from the date of the writ.

To these conclusions of law the plaintiffs below excepted, contending that the right to fix the time for delivery under the contract had vested in them; that it was properly exercised by their demand in July, 1880; that the refusal to deliver at that time constituted the breach of the contract by the defendants, and fixed the damages at five dollars per ton, the market value of the ice on that day.

The defendants below excepted, contending on their part that the letters of July 7th and 15th did not constitute an unequivocal refusal to deliver any ice during the season, amounting to a renunciation, and, in that sense, a breach of the contract, and that the action was prematurely brought, the right of action, if any, not accruing until after the expiration of the period within which, by the terms of the contract, they had the option to deliver.

The letter of July 7, 1880, from the defendants to the plaintiffs, is as follows:

"BALTIMORE, MD., seventh July, 1880"

"Messrs. Dingley Bros., Gardiner, Me."

"DEAR SIRS: As per promise of our W. M. O., we write you concerning the ice we got from you last fall. We have before us the whole of the correspondence on that head, and note throughout the same that you promise to stand between us and any loss. We quote from yours of September 9, 1879, on this head, as follows: "

Page 117 U. S. 494

" In fact, we do not propose for you to become losers on account of extending us this accommodation."

"Our W. H. O. does not remember your having spoken to him while at Gardiner about your intention of selling the ice, and was very much surprised when informed that you had done so."

"We are very sorry indeed that this question should have arisen between us, who have been on such friendly terms hitherto, but we feel that it is not just or equitable for you (in consideration of the ice being used by us only upon your earnest solicitation, and upon your representation that you would loose the whole unless we assisted you by taking some) to expect us to give you ice now worth $5.00 per ton when we have letters of yours offering the ice that we got at fifty cents per ton. We must therefore decline to ship the ice for you this season, and claim as our right to pay you for the ice, in cash at the price you offered it to other parties here, or give you ice when the market reaches that point. Again expressing our sincere regret that any complication should arise between us, and assuring you of our innocence in the matter, we are,"

"Yours, truly,"

"W. M. OLER & Co."

The letter was answered by Dingley Bros., on July 10, as follows:

"GARDINER, July 10, 1880"

"Messrs. W. M. Oler & Co., Baltimore:"

"DEAR SIRS: Yours of 7th is in hand, and we must say the conclusion you have come to greatly astonishes us. Our sole object in making this exchange, no one knows better than yourselves, was to tide us over to such a time during this season as the ice could be marketed at some reasonable figure, and in confirmation of this we refer you to your proposition, made under date of September 6th, *viz.,* "

" It would, of course, be more convenient for us to ship this cargo from our own houses, but remembering past favors, we feel inclined to assist you in your present difficulty, and will load this cargo from your house, should our terms be agreeable to you. "

Page 117 U. S. 495

" We, of course, do not entertain the idea of buying, having a superabundance on hand, but will take this cargo, and return same to you next year from our houses."

"Upon this we have acted, and in the utmost good faith made sale of the ice, and now, after all of this, and having refused to buy it yourselves, for you to ask a postponement in the delivery seems to us hardly right."

"Now whatever the final settlement of this matter is to be, we want you to fill our order; otherwise, we cannot tell what the result might be."

"It is not in our minds to do otherwise than right with anyone, and certainly with yourselves, and it is our great desire not to get complicated with the third party in that matter, and assure you that your regrets cannot exceed ours that there should have arisen any difference of opinion concerning this affair, and certain it is that neither of us can afford to do wrong by the other in it, and hoping you will take a more favorable view upon further reflection, we remain,"

"Truly yours,"

"DINGLEY BROS"

The defendants' letter of July 15th was in reply to this, and is as follows:

"BALTIMORE, MD., 15th July, 1880"

"Messrs. Dingley Bros., Gardiner, Me."

"GENTLEMEN: Yours of 10th duly received, and in reply would state that our desire to do right is quite as sincere and earnest as your own, and that we regret our inability to see the matter referred to in the same form in which you state it. The case, briefly stated, appears to us thus, as we think the correspondence of last year will show: being very much troubled with the quantity of ice left on your hands by an unfortunate contract with the Messrs. Barker, you repeatedly urged and importuned us to help you out, and promised us if we would do so that no loss should result to us from the transaction. Under these assurances, we at length agreed, purely for your accommodation and relief, to take one cargo, and later, under the same influences, took more. Now you ask us,

Page 117 U. S. 496

at a time when we are pressed by our sales and by short supply, threatening us and others, to deliver to you the equivalent in tons of the ice taken from you under the circumstances stated. This does not seem to us to be fair, and certainly does not comport or agree in any way with your agreement to protect us from loss by means of the favor we were intending to do you. We are reluctant to have a disagreement or difference of opinion with old friends, but regard it our duty to protect our own interests, always, however, with a proper regard to the dictates of right. We cannot therefore comply with your request to deliver to you the ice claimed, and respectfully submit that you ought not to ask this of us in view of the fact stated herein and in ours of the 7th."

You do not reply to our arguments, but simply ask us to surrender our well formed opinion.

Can you reasonably ask us to do this?

Is not your usually clear and equitable judgment clouded by the manifest considerations of self-interest pressing upon you?

We beg you to consider anew all the circumstances of the transaction and your assurances to us as inducements to make it with you, and cannot doubt that you will be led thereby to admit that your request is not reasonable. We will be glad to hear from you in reply, but would be more pleased to have a personal interview, and venture to suggest that you come here for the purpose. Our business is now more active and confining than ever before. We are deprived of the services of W. Geo., and therefore cannot come to see you.

"With regards, we are,"

"Yours truly,"

"W. M. OLER & Co."

To this letter no answer was returned, and the present suit was brought six days after its date.

Page 117 U. S. 500

MR. JUSTICE MATTHEWS, after stating the case as above reported, delivered the opinion of the Court.

We agree in opinion with the circuit court that, according to the terms of the contract, the defendants had the option of delivering the ice contracted for at any time during the whole shipping season of 1880, giving to the plaintiffs reasonable notice of the time when fixed, and an opportunity to prepare for receiving and taking it away from the defendants' houses. The language of the contract was that the defendants were to "return the same [the ice] to you next year from our houses."

Page 117 U. S. 501

Next year, it is not denied, means the shipping season of 1880, during which navigation was open, and in time for the plaintiffs, on notice, to obtain vessels, send them to the ice houses for loading, and get out of the river before it was

closed to navigation. The defendants were to deliver, and although that, under the circumstances, required nothing on their part but to be ready for the plaintiffs to receive and load on their vessels, that State of readiness might depend upon other engagements of the defendants in respect to ice in the same houses, so that they had the right under the terms of the contract to consult their convenience as to the particular day when they would furnish to the plaintiffs the ice for shipment. The first and principal act to be done under the contract was to be done by the defendants -- that is, the delivery -- and the words of the agreement are fully satisfied when that is done at any reasonable time within the season of 1880, and this confers upon the defendants, bound to make the delivery, the choice of the time within the period permitted by the contract. *Wheeler v. New Brunswick & Canada Railroad Co.,* 115 U. S. 29 .

We differ, however, from the opinion of the circuit court that the defendants are to be considered, from the language of their letters above set out, as having renounced the contract by a refusal to perform within the meaning of the rule which, it is assumed, in such a case confers upon the plaintiffs a right of action before the expiration of the contract period for performance. We do not so construe the correspondence between the parties. In the letter of July 7, the defendants say:

"We must therefore decline to ship the ice for you this season, and claim as our right to pay you for the ice in cash at the price you offered it to other parties here or give you ice when the market reaches that point."

Although in this extract they decline to ship the ice that season, it is accompanied with the expression of alternative intention, and that is to ship it, as must be understood, during that season if and when the market price should reach the point which, in their opinion, the plaintiffs ought to be willing to accept as its fair price between them. It was not intended, we think, as a final

and absolute declaration that the contract must be regarded as altogether off so far as their performance was concerned, and it was not so treated by the plaintiffs, for in their answer of July 10th they repeat their demand for delivery immediately, speak of the letter of the 7th instant as asking "for a postponement of the delivery," urge them "to fill our order," and close with "hoping you [the defendants] will take a more favorable view upon further reflection," etc. Here certainly was a *locus penitentiae* conceded to the defendants by the plaintiffs themselves, and a request for further consideration, based upon a renewed demand instead of abiding by and stamping upon the previous one.

Accordingly, on July 15 the defendants replied to the demand for an immediate delivery to meet the exigency of the plaintiffs' sale of the same ice to others, and the letter is evidently and expressly confined to an answer to the particular demand for a delivery at that time. They accordingly say:

"Now you ask us at a time when we are pressed by our sales and by short supply, threatening us and others, to deliver to you the equivalent in tons of the ice taken from you under the circumstances stated. This does not seem to us to be fair,"

etc.

"We cannot therefore comply with your request to deliver to you the ice claimed, and respectfully submit that you ought not to ask this of us in view of the fact stated herein, and in ours of the 7th."

This, we think, is very far from being a positive, unconditional, and unequivocal declaration of fixed purpose not to perform the contract in any event or at any time. In view of the consequences sought to be deduced and claimed as a matter of law to follow, the defendants have a right to claim that their expressions, sought to be converted into a renunciation of the contract, shall not be enlarged by construction beyond their strict meaning.

The view taken by the circuit court of the correspondence and conduct of the parties, and which we hold to be erroneous, brought the case within the rule laid down by the English courts in *Hochster v. De La Tour,* 2 El. & Bl. 678; *Frost v.*

Knight, L.R. 7 Exch. 111; *Danube & Black Sea Railway Co. v. Xenos,* 11 C.B.N.S. 152, and which in *Roper v. Johnson,*

Page 117 U. S. 503

L.R. 8 C.P. 167, 178, was called a novel doctrine, followed by the courts of several of the states, *Crabtree v. Messersmith,* 19 Ia. 179; *Holloway v. Griffith,* 32 Ia. 409; *Fox v. Kitton,* 19 Ill. 519; *Chamber of Commerce v. Sollitt,* 43 Ill. 519; *Dugan v. Anderson,* 36 Md. 567; *Burtis v. Thompson,* 42 N.Y. 246, but disputed and denied by the Supreme Judicial Court of Massachusetts in *Daniels v. Newton,* 114 Mass. 530, and never applied in this Court. Accordingly, the right to maintain the present action was justified upon the principle supposed to be established by those cases.

The construction we place upon what passed between the parties renders it unnecessary for us to discuss or decide whether the doctrine of these authorities can be maintained as applicable to the class of cases to which the present belongs, for upon that construction, this case does not come within the operation of the rule invoked.

In *Smoot's Case,* 15 Wall. 36, this Court quoted with approval the qualifications stated by Benjamin on Sales 424 that

"A mere assertion that the party will be unable or will refuse to perform his contract is not sufficient. It must be a distinct and unequivocal absolute refusal to perform the promise, and must be treated and acted upon as such by the party to whom the promise was made, for if he afterwards continue to urge or demand a compliance with the contract, it is plain that he does not understand it to be at an end."

We do not find any such refusal to have been given or acted upon in the present case, and the facts are not stronger than those in *Avery v. Bowden,* 5 El. & Bl. 714, and 6 El. & Bl. 953, which were held not to constitute a breach or renunciation of the contract. The most recent English case on the subject is that of *Johnstone v. Milling,* in the Court of Appeal, 16 Q.B.D. 460, decided in January of

the present year, which holds that the words or conduct relied on as a breach of the contract by anticipation must amount to a total refusal to perform it, and that that does not, by itself, amount to a breach of the contract unless so acted upon and adopted by the other party.

The present action was prematurely brought before there had been a breach of the contract even in this sense by the

Page 117 U. S. 504

defendants, for what they said on July 15 amounted merely to a refusal to comply with the particular demand then made for an immediate delivery.

The judgment is accordingly reversed upon the writ of error sued out by the defendants below, and the cause remanded with instructions to take further proceedings therein according to law, and upon the writ of error of plaintiffs below, judgment will be given that they take nothing by their writ of error.