

The Metropolitan Engineering Works Vs. Walter Eugene Debrunner

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Court : Kolkata

Decided On : Jun-01-1917

Reported in : 45Ind.Cas.305

Judge : Greaves, J.

Appellant : The Metropolitan Engineering Works

Respondent : Walter Eugene Debrunner

Judgement :

Greaves, J.

1. The short point which arises for decision in this suit is the meaning of the words 'up to Wednesday' contained in a letter, dated the 12th May 1917, and addressed by the defendant to the plaintiff Company and whereby the defendant offered to sell to the plaintiff Company his Motor Car in these words: 'Nevertheless I am quite willing to hand over the Motor Car to you against a cheque of Rs. 3,120,--Rs. 3,000 being the costs of the Car and Rs. 120 interest. As I intend advertising the Car unless you wish to have it, please understand that my offer only holds good up to Wednesday next, as the time I have is limited.' It is not disputed that the plaintiff Company some time on Wednesday the 16th May tendered Rs. 3,120 in Government Currency Notes to the defendant and asked for delivery of the Car in accordance with the offer contained in the letter of the 12th May. The defendant, however, refused the tender contending that his offer expired at midnight on

Tuesday, May 15th, and that the phrase up to Wednesday' was exclusive and not inclusive of Wednesday. The defendant claimed to give evidence of his meaning and intention when he wrote the letter and of the sense in which the plaintiff Company understood the offer, but I refused to admit this evidence having regard to Section 91 of the Evidence Act. I have not been able to find, nor have Counsel who appeared before me, any authority in which the meaning and effect of the word 'up to' has been judicially considered; but Counsel have referred me to various authorities in which the meaning of the word until', which seems to me to be synonymous with 'up to', has been considered and discussed. These authorities are collected in the late Mr. Stroud's Judicial Dictionary, 2nd Edition, Volume III, 2142, under the heading 'until', and it appears from Rex v. Stevens (1804) 5 East 244 : 102 B.R. 1063 that the word 'until' may be construed either as exclusive or inclusive of the day to which it is applied, according to the context and subject-matter.

2. It appears from the cases cited in Mr. Stroud's book that in a memorandum enlarging the time within which an award may be made 'until' will generally include the whole of the day named, that where a defendant is given 'till' a certain day to plead, judgment signed for want of a plea on that day was bad as the defendant might have delivered a plea during such day.

3. In Bellhouse v. Mellor (1859) 411. and N. 116 : 28 L.J. Ex. 141 : 15 Jur. (N.S.) 175 : 118 R.R. 343 : 157 E.R. 780 a bankrupt was granted protection until the 29th July from all process, and it was held that the protection extended to the whole of the 29th July. In Isaacs v. Eoyal Insurance Co. (1870) 5 Ex. 296 : 39 L.J. Ex. 189 : 22 L.T. 681 : 18 W.R. 982 goods were insured from the 14th February 1868 until the 14 August 1868, and it was held that under the terms of the policy the whole of the 14th August was protected.

4. In The Annual Practice for 1917 at page 1202 in the notes to Rule 1 of Rules of the Supreme Court, Order 54, which deals with time under the heading 'General Rule of Computation' these words occur : all periods of time under Rules of Court in the Supreme Court (including Bankruptcy)' and in the County Court are so computed that the day 'from' or 'after' which the time is fixed is excluded from such

computation; and the day on which the act is to be done or 'until' which some act is prohibited or protection afforded, is included therein (Encyclopaedia of the Laws of England, 2nd Edition, tit. 'Time') and see page 1203 of the Annual Practice under the heading until'. There is an Irish decision to the contrary effect in *Rogtr v. Davis* (1845) 8 Ir. L.R. 899, in which a plea of confession had been given with stay of execution until the first of May next, and on that day execution was issued. The three Judges who formed the Court held that the writ was properly issued, Burton, J. stating that the word until did not mean after. Now these authorities do not appear to me to be conclusive of the case, but I think they show a general tendency of inclusion rather than exclusion of the day up to or until which something is to be done; but of course the context and subject-matter have to be taken into account in determining whether the word 'up to' is to be taken as exclusive or inclusive of the day to which it is applied. I cannot find anything in the context here which really assists in construing the words. It is true that the defendant states that his time is limited, but his anxiety on this score is not so much to limit the period during which the offer is to remain open, as to give him time to advertise the Car in the event of his offer not being accepted, that is to say, his dominating motive is, I should say, not so much to limit the duration of the offer as to have time to dispose of the Car elsewhere if his offer is not accepted. The result is that I have to fall back on the words themselves, and I think that the ordinary meaning which the ordinary person would attach to them is that the offer is to be open during the whole of Wednesday and does not expire at midnight on Tuesday. Having regard then, 1st, to what, I think, is the ordinary meaning of the words, 2nd, to the manner in which similar expressions have ordinarily and generally been construed, and 3rdly to the fact that I think the well-known principle applicable to deeds and I think to other documents that the document should in case of doubt, and where all other rules of construction fail, be construed most strongly against the grantor, Co. Litt. 183a, is applicable here, I am of opinion that upon the true construction of the letter and the words 'up to Wednesday' the offer remained open until midnight on Wednesday. The Car has, I understand, been sold, and, accordingly the defendant, after deducting the sum of Rs. 3,120 from the sale-proceeds (less the sum of Rs. 583-7-0 due from him to the plaintiff Company for repairs to the Car) and the commission on sale of the Car, will pay

over the balance to the plaintiff Company. And the defendant must pay the plaintiff Company's costs, to be taxed on scale No. 2.

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