

Chapter 4

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Hamer v. Sidway

124 N.Y. 538, 27 N.E. 256 (1891)

Parker, J. The question which lies at the foundation of plaintiff's asserted right of recovery, is whether by virtue of a contract defendant's testator William E. Story became indebted to his nephew William E. Story, 2d, on his twenty-first birthday in the sum of five thousand dollars. The trial court found as a fact that "on the 20th day of March, 1869, William E. Story agreed to and with William E. Story, 2d, that if he would refrain from drinking liquor, using tobacco, swearing, and playing cards or billiards for money until he should become 21 years of age then he, the said William E. Story, would at that time pay him, the said William E. Story, 2d, the sum of \$5,000 for such refraining, to which the said William E. Story, 2d, agreed," and that he "in all things fully performed his part of said agreement."

The defendant contends that the contract was without consideration to support it, and, therefore, invalid. He asserts that the promisee by refraining from the use of liquor and tobacco was not harmed but benefited; that that which he did was best for him to do independently of his uncle's promise, and insists that it follows that unless the promisor was benefited, the contract was without consideration. A contention, which if well founded, would seem to leave open for controversy in many cases whether that which the promisee did or omitted to do was, in fact, of such benefit to him as to leave no consideration to support the enforcement of the promisor's agreement. Such a rule could not be tolerated, as is without foundation in the law. The Exchequer Chamber, in 1875, defined consideration as follows: "A valuable consideration in the sense of the law may consist either in some right, profit or benefit accruing to the one party, or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other." Courts "will not ask whether the thing which forms the consideration does in fact benefit the promisee or a third party, or is of any substantial value to anyone. It is enough that something is promised, done, forborne or suffered by the party to whom the promise is made as consideration for the promise made to him."

Now, applying this rule to the facts before us, the promisee used tobacco, occasionally drank liquor, and he had a legal right to do so. That right he abandoned for a period of years upon the strength of the promise of the testator that for such forbearance he would give him \$5,000. We need not speculate on the effort, which may have been required to give up the use of those stimulants. It is sufficient that he restricted his lawful freedom of action within certain prescribed limits upon the faith of the uncle's agreement,

and now having fully performed the conditions imposed, it is of no moment whether such performance actually proved a benefit to the promisor, and the court will not inquire into it, but were it a proper subject of inquiry, we see nothing in this record that would permit a determination that the uncle was not benefited in a legal sense.

Alaska Packers' Assn. v. Domenico et al.

Circuit Court of Appeals, Ninth Circuit

117 F. 99 (1902)

Ross, Circuit Judge. The evidence shows without conflict that on March 26, 1900, at the city and county of San Francisco, the libelants entered into a written contract with the appellant, whereby they agreed to go from San Francisco to Pyramid Harbor, Alaska, and return, on board such vessel as might be designated by the appellant, and to work for the appellant during the fishing season of 1900, at Pyramid Harbor, as sailors and fishermen, agreeing to do "regular ship's duty, both up and down, discharging and loading; and to do any other work, whatsoever when requested to do so by the captain or agent of the Alaska Packers' Association." By the terms of this agreement, the appellant was to pay each of the libelants \$50 for the season, and two cents for each red salmon in the catching of which he took part.

On the 15th day of April, 1900, 21 of the libelants signed shipping articles by which they shipped as seamen on the *Two Brothers*, a vessel chartered by the appellant for the voyage between San Francisco and Pyramid Harbor, and also bound themselves to perform the same work for the appellant provided for by the previous contract of March 26; the appellant agreeing to pay them, therefore, the sum of \$60 for the season, and two cents each for each red salmon in the catching of which they should respectively take part. Under these contracts, the libelants sailed on board the *Two Brothers* for Pyramid Harbor, where the appellant had about \$150,000 invested in the salmon cannery. The libelants arrived there early in April of the year mentioned, and began to unload the vessel and fit up the cannery. A few days thereafter, to wit, May 19th, they stopped work in a body, and demanded of the company's superintendent there in charge \$100 for services in operating the vessel to and from Pyramid Harbor, instead of the sums stipulated for in and by the contracts; stating that unless they were paid this additional wage they would stop work entirely, and return to San Francisco. The evidence showed that it was impossible for the appellant to get other men to take the places of the libelants, the place being remote, the season short and just opening; so that, after endeavoring for several days without success to induce the libelants to proceed with their work in accordance with their contracts, the company's superintendent...yielded to their demands. Upon the return of the libelants to San Francisco at the close of the fishing season, they demanded pay in accordance with the terms of the [new contract], when the company denied its validity, and refused to pay other than as provided [in the original contracts].

Assuming that the appellant's superintendent at Pyramid Harbor was authorized to make the alleged contract, and that he executed it on behalf of the appellant, was it supported by sufficient consideration? From the foregoing statement of the case, it will have been seen that the libelants agreed in writing, for certain stated compensation, to render their services to the appellant in remote waters where the season for conducting fishing operations is extremely short, and in which enterprise the appellant had a large

amount of money invested; and, after having entered upon the discharge of their contract, and at the time when it was impossible for the appellant to secure other men in their places, the libelants, without any valid cause, absolutely refused to continue the services they were under contract to perform unless the appellant would consent to pay them more money. Consent to such a demand, under such circumstances, if given, was, in our opinion, without consideration, for the reason that it was based solely upon the libelants' agreement to render the exact services, and none other, that they were already under contract to render.

Goebel v. Linn

47 Mich. 489, 11 N.W. 284 (1882)

Cooley, J. November 8, 1879, the Belle Isle Ice Company entered into a contact with the defendants below, who are brewers in the city of Detroit, whereby the company undertook to furnish defendants at their brewery all the ice they might need for their business from that date until January 1, 1881. The ice was to be delivered on orders, and the price was to be one dollar and seventy-five cents per ton, and in the case of the scarcity of ice during the season of 1880, two dollars per ton. Ice was furnished under this contract until May, 1880, when the defendants were notified that owing to the failure of the ice crop the preceding winter the company could and would furnish no more ice at the price stipulated. Other brewers in the city who held similar contracts received the like notification. This led to a meeting of several of the brewers with the president of the company and one of his associates, at which the brewers were informed that instructions were given to the teamsters of the company to deliver no more ice until the parties had agreed to pay more for it. Five dollars was at first demanded, but the company finally agreed to deliver for three dollars and a half. Mr. Goebel explained the situation thus: "We had to pay most anything, if they asked \$20; if we had no ice one day or two, if we had been without ice, all our stock would have been spoiled" The consequence was, as he says, that they were forced to assent to the terms imposed upon them. From that time defendants paid \$3.50 per ton for the ice as it was delivered to them.

This statement is a sufficient presentation of the facts for the purposes of a decision. It is very manifest that there is no ground for saying that the note in suit was given without consideration. It was given for ice which was furnished by the payee to the defendants; which was owned by the payee and bought by the defendants, and for which defendants concede their liability to make payment. What the defendants dispute is, the justice of compelling them to pay the sum stipulated in the note when according to their previous contract they ought to have received the ice for a sum much smaller. The defence [sic], therefore, is not that the consideration has failed, but that a note for a sum greater than the contract price has been extorted under circumstances amounting to duress. It is to be observed of these circumstances that if we confine our attention to the very time when the arrangement for an increased price was made the defendants make out a very plausible case. They had a very considerable stock of beer on hand, and the case they make is one in which they must have ice at any cost, or they must fail in business. If the ice company had the ability to perform their contract, but took advantage of the circumstances to extort a higher price from the necessities of the defendants, its conduct was reprehensible. No one disputes that at their option they might have taken that course, and that the ice company would have been responsible for all damages legally attributed to the breach of its contract.

But the defendants did not elect to take that course. They chose for reasons which they must have deemed sufficient at the time to submit to the company's demand and pay the increased price rather than rely upon their strict rights under the existing contract. What these reasons were is not explained to us except as shown above. It is obvious that

there might be reasons that go beyond the immediate injury to the business. Suppose, for example, the defendants had satisfied themselves that the ice company under the very extraordinary circumstances of the entire failure of the local ice crop must be ruined if their existing contracts were to be insisted upon and must be utterly unable to respond in damages; it is plain then, whether they chose to rely upon their contract or not, it could have been of little or no value to them. Unexpected and extraordinary circumstances had rendered the contract worthless; and they must either make a new arrangement, or, in insisting on holding the ice company to the existing contract, they would ruin the ice company and thereby at the same time ruin themselves. It would be very strange if under such a condition of things the existing contract, which unexpected events had rendered of no value, could stand in the way of a new arrangement, and constitute a bar to any new contract which should provide for a price that would enable both parties to save their interests.

Sherwood v. Walker

Supreme Court of Michigan

66 Mich. 568, 33 N.W. 919 (1887)

In the spring of 1886 the plaintiff, learning that the defendants have some “polled Angus cattle” for sale, was desirous of purchasing some of that breed, and, meeting the defendants, or some of them, at Walkerville, inquired about them, and was informed that they had none at Walkerville, “but had a few head left on their farm in Greenfield, and they asked the plaintiff to go and see them, stating that in all probability they were sterile and would not breed.” In accordance with said request, the plaintiff, on the fifth day of May, went out and looked at the defendants’ cattle at Greenfield, and found one called “Rose 2d,” which he wished to purchase, and the terms were finally agreed upon at five and one-half cents per pound, live weight, 50 pounds to be deducted for shrinkage. The sale was in writing, and the defendants gave an order to the plaintiff directing the man in charge of the Greenfield farm to deliver the cow to plaintiff. This was done on the fifteenth of May. On the twenty-first of May, plaintiff went to get his cow, and the defendants refused to let him have her; claiming at the time that the man in charge at the farm thought cow was with calf, and, if such was the case, they would not sell her for the price agreed upon.

Plaintiff tendered \$80 to the defendant for the cow, demanded possession, and upon refusal instituted this action. At the trial, the defendant offered evidence to show that at the time of the alleged sale it was believed by both plaintiff and themselves that the cow was barren and would not breed; that she cost \$850, and if not barren would be worth from \$750 to \$1000. Verdict for plaintiff and defendant appeals.

Morse, J. It appears from the record that both parties supposed this cow was barren and would not breed, and she was sold by the pound for an insignificant sum as compared with her real value if a breeder. She was evidently sold and purchased on the relation of her value for beef, unless the plaintiff had learned of her true condition, and concealed such knowledge from the defendant. Before the plaintiff secured possession of the animal, the defendants learned that she was with calf, and therefore of great value, and undertook to rescind the sale by refusing to deliver her. The question arises whether they had a right to do so.

[I]t must be considered as well settled that a party who has given apparent consent to a contract of sale may refuse to execute it, or he may avoid it after it has been completed, if the assent was founded, or the sale made, upon the mistake of a material fact, such as the subject-matter of the sale, the price, or some collateral fact materially inducing the agreement. And, this can be done when the mistake is mutual.

“The difficulty in every case is to determine whether the mistake or misapprehension is as to the substance of the whole contract, going, as it were, to the root

of the matter, or only to some point, even though a material point, an error as to which does not affect the substance of the whole consideration.”

It seems to me in the case made by this record, that the mistake or misapprehension of the parties went to the whole substance of the agreement. If the cow was a breeder, she was worth at least \$750; if barren, she was worth not over \$80. The parties would not have made the contract of sale except upon the understanding and belief that she was incapable of breeding, and of no use as a cow. [T]he mistake was not of the mere quality of the animal, but went to the very nature of the thing. A barren cow is a substantially different creature than a breeding one.

The court should have instructed the jury that if they found that the cow was sold, or contracted to be sold, upon the understanding of both parties that she was barren, and useless for the purpose of breeding, then the defendants had a right to rescind, and to refuse to deliver, and the verdict should be in their favor.

Sherwood, J. (dissenting). I do not concur with the opinion given by my brethren in this case.

There is no question but that the defendants sold the cow representing her of the breed and quality they believed the cow to be, and that the purchaser so understood it. And the buyer purchased her believing her to be of the breed represented by the sellers, and possessing all the qualities stated, and even more. He believed she would breed. There is no pretense that the plaintiff bought the cow for beef, and there is nothing in the record indicating that he would have bought her at all, only that he thought she might be made to breed. Under the foregoing facts, it is held that because it turned out that the plaintiff was more correct in his judgment as to one quality of the cow than the defendants, and a quality, too, which could not by any possibility be positively known at the time by either party to exist, the contract may be annulled by the defendants at their pleasure. I know of no law, and have not been referred to any, which will justify any such holding.

According to this record, whatever the mistake was, if any, in this case, it was upon the part of the defendants, and while acting upon their own judgment. It is, however, elementary law, and very elementary, too, “that the mistaken party, acting entirely upon his own judgment, without any common understanding with the other party in the premises as to the quality of an animal, is remediless if he is injured through his own mistake.”