Bell v. Walker

50 N.C. 43 (N.C. 1857)
Decided Dec 1, 1857

(December Term, 1857.)

Where a slave, of ordinary capacity, was apprenticed to a ship-carpenter, to learn the trade of a ship-carpenter and caulker, it was *Held* to be no defense in an action for a breach of his covenant, that the apprentice was obstinate and unwilling to learn the trade.

The value that would have been added to the slave by the trade, was *Held* to be the proper measure of damages in this case.

THIS was an action of COVENANT, tried before CALDWELL, J. at the Fall Term 1857, of Washington Superior Court.

Pool, Winston, Jr., and *H. A. Gilliam*, for plaintiff.

Smith and *Garrett* for defendants.

The plaintiff declared for breaches of the following covenant viz: "In pursuance of a contract entered into between Caleb Walker and Jesse Herrington of the one part, and James W. Bell of the other part, all of the said county, I, Said Caleb Walker and Jesse Herrington, jointly and severally agree and promise to take, keep, and employ negroes Peter, Woden and Abbott, treating them well, four years, and learn them the ship-carpenter and caulker's trades, and give annually the said James W. Bell a note for one hundred dollars for each of the negroes, with approved
44 security, specifying *44 that each are not to be employed by water, at steam-mill or fishery, or be worked out of the county, except by permission of owner, and be furnished, c."

The breaches assigned were, that the defendants had failed and refused to teach the said slaves the ship-carpenter's and caulker's trades.

It was proved that the three slaves, mentioned in the covenant were sent to the defendants and remained with them for four years; that the defendants owned a ship-yard at Plymouth, in Washington county, where this business was carried on; that, during the term, the slave Peter was kept at work in the yard, and a part of the time in cutting and hewing timber in the woods, for the use of the yard, and a part of the time in hauling; that the made progress in acquiring skill in the trade of a ship-carpenter, but was not put to the business of caulking at all, and that he was apt and docile, and was properly taught in the ship-carpenters trade. It was in evidence, that the other two slaves were kept at work mostly in the woods, in preparing timber and in hauling it to the yard; that they were put at caulking under other slaves employed in the yard, for two weeks, and at work on ships in the yard; that they were negroes of ordinary capacity; that they repeatedly declared that they would not learn the trade; that they were unwilling to be taught; that repeated efforts were made to instruct them; that they were taken away from several jobs, upon which they had been put, because of their bad work; and that they were kept at such work, relating to the business, as they could do to the best advantage.

It was also in evidence, that the felling, hewing and hauling ship-timber was, in this section of the country, a part of the ship-carpenter's trade, and a preliminary training towards their acquiring the art.

It was in evidence, further, that the two slaves, Woden and Abbott, were but little, if in any degree, improved in the trade, but that Peter was well instructed in the ship-carpenter's craft for the time he had been at work, but that no effort had
45 been made to teach him caulking. *45

It was further proved that this trade would add $300 to the value of the slave.

It was insisted for the defendants. First. That they had only engaged to make reasonable efforts to instruct the plaintiff's slaves in their callings, and if these efforts were made, and the slaves could not, or would not learn, by reason of obstinacy or inaptitude, they were not responsible. Secondly. That if the defendants found that the Slaves Woden and Abbott could not, or would not, after reasonable efforts, learn the more difficult parts of the trade, they were at liberty, if not bound, to keep them at the more easily acquired parts of the trade.

Thirdly. In respect to damages, that if the plaintiff was entitled to recover, the proper measure would be the expense and loss to be incurred in securing to the slaves the instruction which the defendants had failed to give them.

The Court charged the jury, that if the witnesses were to be believed, the defendants had violated their covenant, and that the unwillingness of the slaves Woden and Abbott to learn the trade, did not excuse the defendants. Upon the question of damages, his Honor recurred to the evidence as to the amount added to the value of a slave by the acquisition of these trades, and told the jury that the whole matter was for their consideration. The defendants excepted.

Verdict, $600 for plaintiff. Judgment and appeal.

BATTLE, J.

The covenant of the defendants bound them to use all necessary and reasonable means for giving to the slaves of the plaintiff, faithful, diligent and skilful instruction in the art of a ship-carpenter and caulker; *Clancy* v. *Overman*, 1 Dev. and Bat. Rep. 402. If the slaves were incapable of learning the art, that might be a defense, but a mere unwillingness to learn cannot be allowed to have that effect. It was proved that the slaves Woden and Abbott had ordinary capacity, and it does not appear that if proper measures had been taken to
46 overcome their obstinacy, *46 and to compel the performance of their duty, they might not have made as much progress in learning the art of a ship-carpenter as the other slave, Peter. It was proved, indeed, that "repeated efforts were made to instruct them," but they declared they were unwilling to be taught, and would not learn; under these circumstances, it was the right and the duty of the defendants to coerce them by such means as the law allows to masters, to enforce obedience from their apprentices. And at all events, the least the defendants could have done, was to have notified the plaintiff that his slaves could not, or would not be taught, so that he might have made different arrangements for them.

We are clearly of opinion, then that the covenant was broken, and the plaintiff was entitled to recover some damages for the breach. The question remains, was the proper measure adopted by the jury under the instruction of the court. We are satisfied that it was. It was testified, by some of the witnesses, that a slave instructed in the art of a ship-carpenter and caulker would be increased in value the sum of three hundred dollars. If the defendants had performed their covenant, the plaintiff would have been benefitted to that amount, in the increased value of each of his slaves, and of that he was deprived by their default; so that it seems clear, that in giving six hundred dollars, the jury adopted the proper rule as intimated to them by the Judge. If it be said that the slaves Woden and Abbott had received some though but slight, instruction, and that a deduction ought to have been made from the amount of damages on that account, it may be replied that Peter was not at all instructed in the art of caulking which called for some damages for that default in

respect to him. The rule of damages contended for, on the part of the defendants, is objectionable, because of its uncertainty and the difficulty of its application to the circumstances of the case. The slaves were four years older, with habits of obstinacy increased by indulgence, and it would be almost impossible to ascertain, with any reasonable certainty, how much it would cost the
47 plaintiff to have the slaves taught and *47 made as valuable as they would have been, had the defendants performed faithfully their covenant.

PER CURIAM, Judgment affirmed.