

1929

James Monaghan v. T.G. Alexander : Brief of Respondent

Utah Supreme Court

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4926

In the Supreme Court of the State of Utah

October Term, 1929.

JAMES MONAGHAN,
Plaintiff and Respondent,
vs
T. G. ALEXANDER,
Defendant and Appellant.

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OCT 2

BRIEF

RESPONDENT'S BRIEF

CHARLES DeMOISY,
Attorney for Respondent.

In the Supreme Court of the State of Utah

JAMES MONAGHAN,
Plaintiff and Respondent,
vs
T. G. ALEXANDER,
Defendant and Appellant.

}

RESPONDENT'S BRIEF

This appeal presents but one issue, namely: What is the measure of damages? Appellant contends that the true measure of damage is the difference between the contract price and the market price at the time and place of delivery. Without questioning the soundness of this doctrine as applied to sales when the sale price is fixed by the contract, it is wholly inapplicable and untenable when the contract is silent as to price and the sale price is not explicitly stated and can not be ascertained from the contract, nor from any testimony to be found in the transcript.

This action was not brought to recover damages for failure to sell and deliver hay at any price, fixed or otherwise, for while the contract sued on provides for the delivery of a certain amount of hay, it also provides for the lease of lands for pasturage and other matters. Appellant, by his contract dated February 25, 1922, agreed to furnish to respondent, yearly, for a

period of four years, 175 tons of hay, and an undivided one-half of all pasturage on 403 acres of land owned by appellant, and the use of corrals and sheds on said land, for all of which respondent agreed to pay to appellant, yearly, a LUMP sum of \$1200, \$300 to be paid on or about July 1st and \$900 on or about November 15th, of each year. There was no agreed separate price for the hay, the pasturage, or for the use of the corrals and sheds. There is nothing in the contract from which the separate price of the hay, the pasturage or the use of the corrals and sheds can be determined. (Abs. pp. 2, 3, 4)

The contract remained in force and both parties performed their respective contractual obligations for two years, and until April 23, 1924, at which time appellant repudiated the contract and served notice upon respondent, in writing, that the contract was terminated, and thereafter appellant failed and refused to perform any of the obligations which the contract imposed upon him. At or about the same time appellant refused to accept a tender of \$300 which respondent made in accordance with the terms of the contract. (Abs. p 5)

The trial Court found that appellant wrongfully breached his contract; that as a result of such breach respondent was compelled to and did expend during the third and fourth years of the period covered by the contract certain sums of money which were in excess of the sums of money he was obligated to pay under the terms of the contract; that said sums so expended were necessary to properly care for his sheep; that none of such expenses would have been incurred had appellant not breached his contract; and that respondent purchased his hay and secured his pasturage and the required corrals and sheds at the cheapest possible expense, and judgment was entered accordingly. Appellant has not objected to any of such findings and no

issue is raised thereon.

The fundamental principal of the law of damages is that the injured party shall have compensation for the injury sustained, and the injured party is entitled to recover full indemnity for his loss, and to be placed as near as may be in the condition which he would have occupied had he not suffered the injury complained of. This principle governs in all actions for damages unless, in special cases, the Legislature has declared otherwise, and is so generally accepted that it is unnecessary to cite authorities in support thereof.

Respectfully submitted,

CHARLES DeMOISY,

Attorney for Respondent.