Supreme Court of New Hampshire.

DOW
v.
HARKIN.

March 17, 1893.

Headnotes

***846** Gordon Woodbury, G. W. Prescott, and O. E. Branch, for plaintiff.

W. A. J. Giles and H. G. Sargent, for defendant.

***847** CHASE, J.

The defendant, by accepting the assignment, became bound to perform the agreement set forth in it to be performed by him, although he did not sign the instrument. Burbank v. Pillsbury, 48 N. H. 475; Harriman v. Park, 55 N. H. 471; Association v. Gordon, 63 N. H. 505, 506, 3 Atl. 426. His executory agreement was the sole consideration for the conveyance to him of the patent right. dies, and tools. By repeatedly declining to perform it, he has rescinded the contract so far as his acts could accomplish that result. He has, at least, given the plaintiff an option to consummate a rescission by an acceptance of the offer of rescission necessarily included in his declination. The plaintiff, by bringing this suit, has manifested his assent to the proffered rescission. No prior notice was necessary, under the circumstances. The plaintiff's repeated demands upon the defendant for the performance of his agreement were sufficient notice that the plaintiff did not intend to waive his rights. As the plaintiff received nothing from the defendant, he did not have anything to return before exercising the right of rescission. Upon the defendant's reconveyance of the property received, the parties will be in their former positions. Danforth v. Dewey, 3 N. H. 79; Fuller v. Little, 7 N. H. 535; Luey v. Bundy, 9 N. H. 298; Snow v. Prescott, 12 N. H. 535; Abbot v. Johnson, 32 N. H. 9, 20; Drew v. Claggett, 39 N. H. 431; Smith v. Hatch, 46 N. H. 146; Chamberlain v. Perkins, 55 N. H. 237; Appleton v. Insurance Co., 59 N. H. 541, 546; Foster v. Bartlett, 62 N. H. 617. If the property in the defendant's possession, by virtue of the assignment, were all chattels like the dies and tools, an action at law for its recovery might be an adequate remedy. But it is not. A substantial portion of it is a patent right,--an intangible, incorporeal thing, which cannot be specifically recovered in an action at law. As the plaintiff has not an adequate remedy at law, he is entitled to a remedy in equity. Exceptions sustained. Demurrer overruled.

CLARK, J., did not sit. The others concurred.

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29 A. 846, 67 N.H. 383

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