

Day v caton



**ASSIGN
BUSTER**

Day v. Caton 119 MASS. 513 1876 FACTS: Plaintiff Day built a wall between two adjacent estates in Boston and required defendant Carton to pay for a portion of the wall. On the other hand, defendant Caton claimed that there was no express contract between Plaintiff Day and himself whereas his silence did not insinuate any promise to pay anything for it. In the trial court, the jury found for Plaintiff Day and defendant Caton filed the appeal. ISSUE OR QUESTION:

Was the fact sufficient of itself to establish the existence of a contract? Whether the silence of a party seeing services which actually the party got the benefit DECISION: Upheld REASON OR RULE 1) NO. The fact that the plaintiff expected to be paid for the work would certainly not be sufficient of itself to establish the existence of a contract. Because the plaintiff expected to be paid for the brick wall , though the defendant did not know that the plaintiff was acting with that expectation.) Yes. Although a promise to pay for the wall would not be implied from the fact, which the building of the wall was not in accordance with the request of the defendant, the silence of defendant Caton was treated as evidence of an acceptance of paying for the wall. The defendant had the opportunity to reject the building of the wall , instead, he stood by in silence and saw valuable services rendered upon his real estate by the erection of a structure.

A PERSONAL COMMENT In this case, the jury found for Plaintiff Day. I also agree with the decision. However, I want to emphasize that I think this lawsuit can be avoided. If plaintiff Day and defendant Caton can write down an agreement before building the wall, they will have an express contract.

Plaintiff Day also can acknowledge defendant Caton that he will require a payment. ZHIBO ZHOU 02/03/2012