

disturbed, but the judgment dismissing the plaintiffs' suit is reversed, without the allowance of costs to either party, and the cause is remanded to the circuit court for further proceedings not inconsistent with this opinion.

CONDIT et al. v. BERGMEIER et al.

(Circuit Court, D. Minnesota. December 26, 1891.)

CONTRACT—NUDUM PACTUM.

A contract relating to an agency for the sale of books held not to be nudum pactum.

This was an action by Condit & Co. against Bergmeier & Co. to recover for breach of a contract.

J. B. & E. P. Sanborn, for plaintiffs.

Warner, Richardson & Lawrence, for defendants.

NELSON, District Judge. It is claimed that the complaint does not state facts sufficient to constitute a cause of action, and that the contract set forth therein is void, for want of consideration and lack of mutuality. The contract is designated "Canvassing Agreement and Bond." The defendants F. W. B. & Co., in the agreement, recite that they accept the agency from plaintiffs, Condit & Co., for the sale by subscription of a certain book to be published by Scribner's Sons, and the terms of the agency are stated therein. The plaintiffs allege also that they formed the agency, and appointed the defendants F. W. B. & Co. their exclusive agents for the territory mentioned in the contract for procuring a sale of the book by subscription under the terms thereof, and allege performance on their part. The defendants agreed to take not less than 4,200 copies, and make requisition and remit for the same at a fixed price before June 28, 1891; and the plaintiffs consented to allow them 42½ per cent. as a commission. In case of a breach on the part of the defendants, liquidated damages were to be paid. The plaintiffs allege that the defendants failed to make requisition and remit under the terms of the contract, and that 3,048 copies of the work were not taken, and allege a breach for that and other reasons. The other defendants in the suit guarantied the faithful performance of the contract by F. W. B. & Co., and the punctual payment of the sums that should become due thereon. We think, on examination of the contract, that the point made that it is a nudum pactum is not well taken, and that the complaint sufficiently sets forth a breach of the same.

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CAPITAL BANK OF ST. PAUL v. SCHOOL DIST. NO. 26, BARNES COUNTY.

(Circuit Court of Appeals, Eighth Circuit. October 15, 1904.)

No. 449.

FEDERAL COURTS—FOLLOWING STATE DECISIONS—CONSTRUCTION OF TERRITORIAL STATUTE BY STATE COURT.

A decision of the supreme court of a state construing a statute of the territory from which the state was formed (Laws Dak. 1879, c. 14), on the question of the amount of indebtedness which a school board might contract for the erection and furnishing of a schoolhouse, even if not absolutely binding upon the federal courts within the state, should be followed by them, unless imperative reasons exist for disregarding it.

In Error to the Circuit Court of the United States for the District of North Dakota.

Action by the Capital Bank of St. Paul, Minn., against school district No. 26, Barnes county, N. D. Judgment for defendant, and plaintiff brings error. Affirmed.

William M. Jones (Daniel V. Samuels and W. Irving Culver, on the brief), for plaintiff in error.

George K. Andrus, for defendant in error.

Before CALDWELL, SANBORN, and THAYER, Circuit Judges.

THAYER, Circuit Judge. This is a suit which was brought by the plaintiff in error, the Capital Bank of St. Paul, Minn., against the defendant in error, school district No. 26, Barnes county, N. D., to recover the amount due on nine school warrants, which were alleged to have been duly executed and delivered by said school district in the month of December, 1881, for the building of a school house. The school district pleaded, in substance, and by way of defense to the action, that the warrants were fraudulently issued and put in circulation by certain persons who pretended to be officers of said school district, but who were not such in point of fact; second, that the warrants in suit were barred by the statute of limitations of the state of North Dakota; and, third, that the warrants were void when issued, because each of them amounted to more than 1 per cent. of the taxable value of all the property in said school district for the year 1881; also, because the inhabitants of said district had never authorized the school board to build a school house at any meeting of the inhabitants called for that purpose, and because the inhabitants of the district had never selected a site for a school house. The case was tried to a jury, and at the conclusion of the plaintiff's evidence the court directed a verdict for the defendant, which was accordingly returned.

The facts disclosed by the record, on which the circuit court appears to have predicated its action in directing a verdict for the defendant, are substantially as follows: On the 29th day of November, 1881, the superintendent of schools for the county of Barnes, in the then territory of Dakota, formed a new school district, consisting of township 139 N., of range 59 W., and township 139