AUDSLEY et al. v. MAYOR, ETC., OF CITY OF NEW YORK et al.

(Circuit Court of Appeals, Second Circuit. May 12, 1896.)

CONTRACTS—PREMIUM FOR ARCHITECT'S DESIGNS.

Pursuant to authority given by an act of the legislature, a board of commissioners advertised for plans for a building to be erected in behalf of the city of New York. The advertisement stated that the plans offered would be submitted to a committee of architects, who would select the best six plans; that the designer of the one adjudged by the board of commissioners to be first best would be appointed architect of the building, and the designers of the other five would each receive a premium of $2,000. Plaintiff, among many others, submitted plans. The committee of architects made its report, but, before the board of commissioners had made a decision, the act authorizing the erection of the building was repealed. Plaintiff then sued the city for his services in preparing the plans. No evidence was offered to show that plaintiff's plans were among the best six selected by the committee. *Held*, that plaintiff had no cause of action.

In Error to the Circuit Court of the United States for the Southern District of New York.

Chas. G. F. Wahle (Edward C. Stone on the brief), for plaintiffs in error.

Theodore Connoly, for defendants in error.

Francis M. Scott, for the corporation.

Before WALLACE and SHIPMAN, Circuit Judges, and TOWNSEND, District Judge.

WALLACE, Circuit Judge. Error is assigned of the ruling of the trial judge in directing the jury to find a verdict for the defendants.

The action was brought to recover the value of services rendered by the plaintiffs as architects in preparing plans and designs for a public building to be erected for the city of New York by a board of commissioners, who, by chapter 299 of the Laws of New York of 1890, as amended by chapter 414 of the Laws of 1892, were empowered to select and locate a site and erect the building in behalf of the city. It appeared in evidence that the plans and designs were made pursuant to an advertisement of the board of commissioners inviting plans and specifications of which the following are the material portions:

"In the examination and judgment of the designs, the board of commissioners will be assisted by a committee to be selected by the said board from a list nominated by the New York Chapter of the American Institute of Architects and the Architectural League of New York. This committee will consist of three competent architects who do not take part in the competition. Five equal premiums of $2,000 each shall be awarded to the authors of designs adjudged by the board of commissioners to be the second, third, fourth, fifth, and sixth best of those submitted; and the author of the designs adjudged to be the first best by the said board of commissioners will be appointed architect for the construction of the building, provided his professional standing is such as to guaranty a proper discharge of his duties; and he will be paid a commission on the total cost of the work, viz. 5 per cent. on the first $1,000,000, 4 per cent. on the second $1,000,000, and 3 per cent. on the remainder. The conditions under which this competi-

tion is to be conducted, and the requirements of the board, are described in a paper entitled 'Instructions to Architects,' which may be obtained on application at the comptroller's office, No. 280 Broadway."

The following are the material parts of the conditions contained in the said "Instructions to Architects":

"All architects are invited to present designs for the building. These designs will be submitted to the committee of architects, * * * who will examine them, and select those which they find to be the best, six in number, which they will name to the board, with their comments. The board will then make its decision as to which design is the best, and will appoint the author thereof architect of the building, provided his standing is such as to guaranty a proper discharge of his duties."

The committee of architects mentioned in the advertisement having been duly appointed, plaintiffs, September 1, 1893, prepared and submitted plans and designs. December 23, 1893, the committee of architects made a report to the board of commissioners, stating, in substance, that 134 sets of drawings had been submitted to them in competition for the municipal building, and been examined by them, from which they had selected 6 which seemed most commendable. By an act of the legislature of New York passed May 8, 1894 (chapter 547), chapter 299 of the Laws of 1890, authorizing the erection of the building, was repealed. The board of commissioners had not at that time made any decision or award respecting the plans and designs, nor did they make any previous to the commencement of the present action.

Upon these facts, and without discussing the other questions of law which have been argued at the bar, we are of the opinion that the trial judge properly directed a verdict for the defendants, because no evidence was given by the plaintiffs to show that the plans and designs submitted by them were reported as among the best six selected by the committee of architects. The services of the plaintiffs were rendered under a contract by which they were to receive nothing except in the event of a favorable award by the board of commissioners, based upon the report of the committee of architects, and by which the award was to be confined to the six best plans and designs reported by that committee. There is no presumption that the plans and designs of the plaintiffs were the best and most satisfactory of the large number submitted in competition, or among the best six reported by the committee. Unless they were among the best six, the board of commissioners were under no obligation to make an examination or award. They only undertook by their proposal to act upon the best six. It was incumbent upon the plaintiffs to show that the condition precedent to their right of compensation had happened. Butler v. Tucker, 24 Wend. 447; Smith v. Briggs, 3 Denio, 73; Jones v. Bank, 8 N. Y. 228; Shuey v. U. S., 92 U. S. 73; Hall v. Los Angeles Co. (Cal.) 13 Pac. 854; Wangler v. Swift, 90 N. Y. 38.

The judgment is affirmed.

RIVERSIDE BANK v. FIRST NAT. BANK OF SHENANDOAH.

(Circuit Court of Appeals, Second Circuit. May 12, 1896.)

1. BILLS AND NOTES—CERTIFICATION BY BANK.
   The certification by a bank of a note made payable at such bank, where the maker keeps an account, is an absolute promise by the bank to pay such note, not as the debt of another, but as its own obligation, entitling the holder to suspend any remedy against the maker and relax steps to charge an indorser, and cannot be rescinded by the bank because made under a misapprehension of fact as to the sufficiency of the maker's account to meet the note.

2. SAME—PAYMENT.
   The payment of a note by the bank at which it is made payable, although made under misapprehension of the state of the maker's account with the bank, concludes the bank as against the holder of the paper who has surrendered it, and the payment cannot be recovered back of the holder.

In Error to the Circuit Court of the United States for the Southern District of New York.

Error is assigned of the ruling of the trial judge in directing the jury to find a verdict for the defendant. The facts shown upon the trial were these: The defendant was the owner, through a purchase for value, and in due course of business, of a promissory note dated May 2, 1887, made by Liebler & Co. to the order of and indorsed by Yuengling, and payable four months after date at the banking house of the plaintiff. The note was made merely for the accommodation of Yuengling. Shortly before maturity the defendant forwarded the note for collection to its correspondent at New York City, the National Park Bank, and that bank, through its uptown collecting agent, on September 3, 1887, presented the note to the plaintiff, with a request for certification. Liebler & Co. were customers of the plaintiff, and the plaintiff, supposing the account of the firm to be good for the amount of the note, made the certification. Shortly afterwards the plaintiff discovered that in fact the account of Leibler & Co. was not good for the amount of the note. Thereupon plaintiff endeavored to ascertain what bank was the owner of the note or had caused it to be presented for certification, but was unable to do so until late in the afternoon of September 5th. On the morning of September 6th plaintiff notified the National Park Bank that the note had been certified by mistake, and that at the time plaintiff was not in funds of Liebler & Co. sufficient to pay it, and requested that bank to withhold the note from its exchanges for the clearing house; but that bank refused to withhold the note. The First National Bank was the clearing-house bank for the plaintiff, and by the rules of the clearing house was obligated to pay all items against banks for which it cleared in the exchanges. When the note was sent, with the other exchanges of the National Park Bank, to the clearing house, the First National Bank paid it conformably with the rules. The rules of the clearing house provide that: "Errors of the exchanges, and claims arising from return of checks or from any other cause, are to be adjusted directly between the banks who are parties to them, and not through the clearing house; the association being in no way responsible in respect to them. All checks, drafts, notes, or other items in the exchanges returned as not good or missent shall be returned the same day directly to the bank from whom they were received, and the said bank shall immediately refund to the bank returning the same the amount which it has received through the clearing house for said check, draft, notes, or other items so returned to it, in specie or legal tender notes." The First National Bank did not return the note to the National Park Bank, but on September 6th the plaintiff caused it to be formally presented for payment and protested for nonpayment, giving notice thereof to Yuengling. The plaintiff produced the note, and offered to surrender it to the defendant.