

JUNIOR MOOT COURT

CAUSE NO. 6

William H. Thompson
vs.

Aaron Jones, Alexander Smith, John
D. Person, Samuel Adams and Josua
Simpson

STATEMENT OF FACTS

The United States Government was about to locate a Federal Building in South Bend. There has been rivalry between the advocates to two locations. Ten prominent citizens had purchased the location on the corner of Main and Colfax streets while the plaintiff owned the corner property at Michigan and Jefferson. The owners of the Main and Colfax location were making strong efforts to induce the Government through the Department of Justice officials to locate the Court building at that point. The Plaintiff was an influential politician and his property was really the more desirable for the location of the proposed building. To induce plaintiff to offer his property to the Government at a figure less than he was willing to sell it for, and to secure the location of the building there so as to enhance materially the respective properties of the defendants which were in the vicinity of the plaintiff's property, and to secure the active efforts of plaintiff towards obtaining the recommendation of the officials of the department of justice for the location of the proposed building, the several defendants promised to execute their promissory note to plaintiff in the sum of \$2500 payable one year after the location of the building as proposed.

Plaintiff accepted the proposition of the defendants, offered his property to the Government for \$2500 less

than it was really worth, and exerted his influence with the interested officials and succeeded in securing the location and erection of the building. Plaintiff exerted no improper influence, was guilty of no fraud, and, in fact, merely represented the merits of his location as compared with those of the other location. Plaintiff did nothing to secure the location of the building for himself and his defendants, than the other ten prominent citizens did to secure the location of the building at the other point. The properties of the defendants were materially enhanced in value as a result of the location of the Government Building, each defendant profiting to the extent of at least \$1,000 additional or increased valuation to his respective property.

The note is due and unpaid and plaintiff brings this action to recover thereon.

Eugene J. Payton, and
Charles Robitaille,

Attorneys for Plaintiff.

The plaintiff is entitled to recover on the note of defendant because the note is valid in that it has all the essentials of a valid promissory note, has become due and is unpaid.

The only question presented in this case is the legality of consideration for the note.

In Clark on Contracts, page 358, the author points out that influence brought to bear on public officials, acting in a capacity similar to public officials involved in this case, is not illegal in itself, but becomes so only where corrupt means are to be resorted to. This same principle of the law is upheld in the following cases:

Sedgwick vs. Stanton, 14 N. Y.
467.

Painter vs. Drum, 40 Pa. 467.
 State vs. Johnson, 52 Ind. 197.
 Elkhart Co. vs. Crary, 98 Ind.
 238.

As in the case of contracts to render services in procuring the passage of acts and ordinances, so also in case of contracts to render services in procuring administrative action by governing officials, the services contracted for may be legitimate. If the contract does not tend to induce use of corrupt means, and if corrupt means are not to be resorted to the contract is valid.

Lyon vs. Mitchell, 93 Am.
 Dec. 502.

Winpenny vs. French, 18 Ohio
 469.

Barry vs. Capin, 23 N. E. 735
 (Mass.)

Beal vs. Polkemis, 34 W. 532
 (Mich.)

Angel F. Mercado, and

Rev. S. Woywod,

Attorneys for Defendant.

1. No person can lawfully do that which has a tendency to be injurious to the public or against the public good. And where a contract tends to be injurious to the public or against the public good, it will be declared void, although in the particular instance no injury to the public may have resulted. Contracts, 13 C. J. Sec. 360; Carbondale vs. Brush, 82 N. E. 252; Palmbaum vs. Magulsky, 104 N. E. 746; Peterson vs. Christensen, 4 N. W. 623; Teal vs. Walker, 111 U. S. 242; Cothran vs. Ellis 346.

2. When the general public is interested in the location of a public office, a contract to influence its location at a particular place for individual benefit or personal gain is against public policy.

Contracts, 13 C. J. Sec. 373;
 Spence vs. Harvey, 83 Am. Dec.
 89;

Elkhart County Lodge vs. Crary,
 98 Ind. 238-49 A. R. 746;
 Woodman vs. Innes, 27 A. S. R.
 274;
 Benson vs. Bowden, 113 N. W.
 20.

3. It matters not that nothing improper was done or was expected to be done by the plaintiff. It is not necessary that actual fraud should be shown. Nor is it necessary that any evil was in fact done by or through the contract in order to make the contract void.

State vs. Johnson, 52 Ind. 197;
 The Providence Tool Co. vs.
 Morris, 2 Wal. 45; 17 L. Ed. 868;
 Elkhart County Lodge vs. Crary,
 98 Ind. 238, 49 A. R. 746.

4. A negotiable instrument given upon an illegal transaction is like any other simple contract as between the immediate parties and cannot be enforced. As between the original parties the illegality of the note is a good defense.

Union Collection Co., vs. Buckman, 119 A. S. R. 164;
 Glass vs. Murphy, 4 Ind. App.
 530, 31 N. E. 545;
 Chesbrough vs. Wright, 41
 Barb. (N. Y.) 28.

CAUSE NO. 7

Henry Swartz

vs.

John Coleman

STATEMENT OF FACTS

On March 1, 1921, Coleman wrote to Swartz, offering to sell his house for \$10,000, offering to give a deed in exchange for the purchase price on June 1, 1921.

Coleman concluded his offer in these words: "If I do not hear from you to the contrary by April 15th, I shall consider that you have accepted.

Swartz received the offer in due course and never replied. On March

15 Swartz decided to buy the house, and on April 10 changed his mind, but on June 1st, 1921 he tendered to Coleman the \$10,000 and demanded the deed. Coleman refused.

Swartz brings action for \$500 damages for breach.

George J. Dawson, and
Joseph M. Casey,
Attorneys for Plaintiff.

Here was a complete Contract. There was a continuing offer and an offer of this kind is deemed to continue in force until accepted, rejected or withdrawn. It may be withdrawn at any time before accepted unconditionally. The general rule of law now is that a contract may be specifically enforced even though it originated in an offer which remained open some time before acceptance.

Here, as in other like cases, if both parties meet one prepared to accept and the other to retract, whichever speaks first will have the law with him. An offer is a continuing offer until it is withdrawn and notice thereof given and withdrawn and if it is accepted before withdrawn and notice thereof given and within the time expressed or impliedly limited, the agreement is complete and the offer is no longer revocable. An offer to buy or sell land does not require as prompt an acceptance as an offer to buy or sell chattels, etc.

Cheney vs. Cook, 7 Wis. 413;
Alford vs. Wilson, 20 Fed. 96.
Keller vs. Ybarru 3 Cal. 147;
Cooper vs. Lansing, 54 N. W;
Boston & Main Railroad Case 3
Cush. 224.
Yerkes vs. Richards, 153 Pa.,
646, 9 Cyc. 285;
Quick vs. Wheeler, 78 N. Y. 300.

J. Melvin Rohrbach, and
Joseph E. O'Brien,
Attorneys for Defendant.

ACCEPTANCE—It is immaterial that by the terms of the offer a certain time within which to signify his acceptance is given the party to whom the offer is made. Such offer must be supported by consideration before binding.

Coleman vs. Applegate 11 Atl.,
284.
Eskridge vs. Glover, N. Am.
Dec. 344.
Cooper vs. Wheel Co. 54 N. W.
39.

CONTINUING OFFER—Is terminated automatically by the lapse of a reasonable time. Facts put forth a reasonable time.

Okley vs. Cook, 21 L. R. A. 127.
Stone vs. Harmon, 19 N. W. 188
Ferrier vs. Storn, 19 N. W. 288.

..OPTION—1. No option-lack of consideration. 2. Facts do not put forth an option. Merely a tentative date, (June 1, 1921) in which the final terms of the sale were to be consummated.

6 R. C. L. 663.

ACCEPTANCE—Data on No. 2 clause was merely to have further negotiations. Letter mere proposal to do business.

Cooper vs. Wheel Co. (Mich.)
54 N. W. 39.

Chicago vs. Dane, 43 N. Y. 240.

GENUINENESS OF CONSENT—No genuineness of consent by party, Swartz, when he failed to answer the letter because an acceptance which does not go beyond an uncommunicated mental determination, reason of any form in which the offer is does not create a binding contract either by framed, or because of the intention to accept did exist.

Felthouse vs. Bindley, 11 C. B.
(NS) 869.

Corlis vs. White, 46 N. Y. 142.

MUTUALITY—23 R. C. L. 1284—
Acceptance must be evidenced in

some positive manner. A mental determination not indicated by speech, or put in course of indication by act to the other party, is not acceptance which will bind the other. *Mactier vs. Frich*, 21 Am. Dec. 262.

CAUSE NO. 8.

Samuel Johnson

vs.

Springbrook Park Assn. Inc.

STATEMENT OF FACTS

Springbrook Park Association is a corporation duly incorporated, organized and operating under the laws of the State of Indiana. The Association owns or leases what is known as Springbrook Park, adjoining the City limits of South Bend, Indiana, where it conducts under its auspices, county fairs, races and other general public amusements, charging admission, etc.

At the conduct of the recent Interstate Fair in the Park, among a number of policemen employed by the association to police the grounds, etc., was James Fitzmorris. The plaintiff on Thursday evening, Sept. 1921, along with other lads (young men ranging in age from fifteen years to twenty years) went to the Park to attend the fair. Some of the boys paid their way in, while the plaintiff and Johnny Jones, hopped the fence, the other fellows sought to attract Fitzmorris attention from the plaintiff. The policeman did not see the plaintiff steal his way in the park, but plaintiff, when he saw the policeman, started to run and the policeman, suspecting that plaintiff had beat his way in started after him. When Fitzmorris came near the plaintiff, plaintiff stopped and turned half way around, the policeman strik-

ing him across the side of the face, cutting a gash in the cheek and side of the head. Several stitches were required to properly care for the wound, the plaintiff was in the hospital for a week and will have a scar as a result of the wound inflicted. Fitzmorris intended to eject plaintiff from the park.

Action against the Springbrook Park Association for damages in the sum of two thousand dollars.

Patrick J. O'Connell, and
George J. O'Grady,

Attorneys for Plaintiff.

It is admitted that the relation of master and servant existed between the defendant and Fitzmorris at the time of the assault and battery. To this relation which exists between the Springbrook Park and Fitzmorris applies the Doctrine of *respondet superior*. A master is liable because it is on the whole better that he should suffer than that innocent third persons should bear the loss of such an act. In support of this point we submit the following cases:

Duckson vs. Waldron, 135 Ind. 507;
Schulz vs. Paul, Vol 1, N. D. Sup. Ct. Rep.
Singer vs. Phipps, 49 Ind. App. 116.

The plaintiff alleges that unreasonable and excessive force may not be used in the ejection of a trespasser from the land trespassed upon.

Talmadge vs. Smith, 59 N; W. 656.
Newcome vs. Russell, 22 L. R. A. 724.

James R. Emshwiller, and
John M. Gleason,

Attorneys for Defendant.