

his authority, or with his privity, in bringing about the contract. But as to plans and specifications there is no warranty that they are practicable. A builder before tendering should ascertain if the quantities supplied by the employer are accurate. The acceptance of a tender should be stamped, in order to be sued upon. The tender may be accepted by an authorized agent. But, if so, the acceptance will be void unless such unauthorized act is ratified by the principal, when it will relate back to the time of the unauthorized acceptance. Such ratification must be within a reasonable time, and that reasonable time can never extend after the time at which the contract is to commence.

A contract not to tender is not void, and a bill will lie to restrain the breach of it. Vice-Chancellor Bacon, in Jones v. North (1875, L. R. 19 Eq., 426), said "There is nothing illegal in the owners of commodities agreeing that they will sell as between themselves at a certain price, leaving one of them to make any other profit that he can." In tendering or bidding, an agreement between two or more persons not to bid against each other is valid. An agreement having been made between A and B not to tender in competition with each other for certain gas tar, A, in answer to an advertisement, sent in a mere nominal tender, in consequence of which B obtained the contract. On the expiration of the contract fresh advertisements were issued, and a tender by B was rejected, whereupon A, without communicating with B, sent in a tender on his own account. Held, that the agreement between them was still pending, and A was liable to B for the breach of it.

The language of a contract, where it admits of it, must receive such a construction as is consistent with reason and justice, but where it appears from the whole tenor of the agreement that the parties thereto intended, the one to insist upon and the other to submit to, conditions however unreasonable and oppressive, the Court will in such case give effect to them. An engineer contracted with a corporation by deed to execute works. The deed contained a clause by which it was covenanted that the corporation's own engineer should have power to direct the way in which portions of the work should be done, and if it should appear to him that they were not properly executed and with due expedition, it should be lawful for him to give notice in writing to the plaintiff to alter any improper work and to supply proper and sufficient materials and labour, and with due expedition to proceed therewith, and if the plaintiff should for seven days after such notice fail to comply therewith, then it should be lawful for the engineer to take the work out of

the plaintiff's hands. It appearing to the engineer that the works were not being properly executed and with due expedition, he gave the following written notice to the plaintiff: "I give notice to you to supply all proper and sufficient materials and labour for the due prosecution of the works, and with due expedition to proceed therewith; and, further, that if you shall for seven days after the giving of this notice fail or neglect to comply therewith, I shall, as engineer and on behalf of the corporation, take the works wholly out of your hands." Held, that the notice was sufficiently specific (Pauling v. Dover (Mayor), 10 Ex. 753). A building contract entered into by a burial board contained a clause that it should be lawful for the burial board, in case the contractor should fail in the due performances of any part of his undertaking, or should become bankrupt, or should not, in the opinion and according to the determination of the architect, exercise due diligence and make such progress as would enable the works to be effectually

and efficiently completed at the time and in the manner therein mentioned, to determine the contract by a notice in writing under the hand of clerk of the burial board and to enter upon and take possession of the works and of the plant, tools, and materials of the contractors, and use or sell the same as the absolute property of the burial board. The architect having given a certificate that the contractor was not exercising due diligence, the burial board gave the notice required to determine the contract, and took possession of the works; the certificate was given bona fide, but the delay was in fact occasioned by the act of the board in ordering extra works and otherwise. Held, that the board was, notwithstanding, entitled to act as they did, their right to enter on the works being by the terms of the contract dependent on the opinion and judgment of the architect, and not upon the contractor's failure to exercise due diligence, in fact (Robert v. Bury Improvement Commissioners, 4 L. R., C. P. 755).

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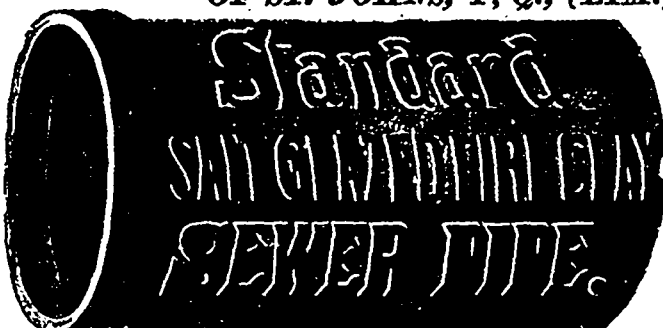
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