

sufficient to raise an implied promise to pay for the work done, notwithstanding the non-performance of the special contract.' See *Munro vs. Butt*, 8 E. and B., 738. I also quote from page 39, as having some bearing, remarks of the learned authors on the case of *Mersey Steel Company vs. Naylor*, 9 A.C., 434: 'Both in the Court of Appeal and in the House of Lords the rule of law laid down by Lord Coleridge in *Freeth vs. Burr*, Law Reports, 9 C.P., 208, as governing cases of this class, is approved of, namely, that the true question is whether the acts and conduct of the party evince an intention no longer to be bound by the contract.' See, too, the case of *Sampter vs. Hedges*, 1898, 1 Q.B.1, 673, which seems to be the latest case on the point, where it is said by A. L. Smith, Lord Justice: 'The law is, where there is a contract to do work for a lump sum, until the work is completed the price of it cannot be recovered * * to entitle the plaintiffs to recover on a quantum meruit in such a case, there must be evidence of a fresh contract to pay for the work already done.' It is to be observed that many of these are cases of building contracts, where the question of whether there is evidence of a fresh contract has special difficulties which do not arise in a case of this character.

"In applying these principles to the facts of the present case, I do not see how it is distinguishable from the case of *Foster vs. Wilson*, to be found in 27 U.C.C.P., page 543. The judgment in that case was delivered by the late Sir Adam Wilson, and seems in its facts more analogous to the present case than any other I have met with. I refer particularly to the 4th, 5th and 6th paragraphs of the judgment on page 547.

"I feel bound to hold that the plaintiffs are entitled to recover whatever is reasonable, that is, whatever the work done was worth to the defendants. On this point the evidence is conflicting, as might be anticipated. Mr. Pullen, the manager of the advertising department of the defendants' business, stated most positively that the way in which the advertising was done by the plaintiffs rendered it absolutely worthless. But the weight of evidence, I think, is the other way. No one is found to support Mr. Pullen in his extreme view, except McGillivray, a witness called by the defendants. The other witness called by the defendants, Mr. Detchon, will not go so far, but rather confirms the plaintiffs' witnesses as to this. The most that he will say in support of Mr. Pullen's view is that he supposes the defendants are the best judges of the value to them of what was done; but this does not commend itself to me as being reasonable.

"The defendants never desired the plaintiffs to discontinue the work, and never found fault, except as shown by the post card, exhibit '33,' dated January 25, 1898, although they could see from the record prints that were furnished to them that the contract was not being literally carried out. I think the proper inference is that the defendants did derive some benefit from the work done by the plaintiffs, and so find accordingly. It might, perhaps, be going too far to apply to this action the language of Sir Adam Wilson in *Foster vs. Wilson*, in the 5th paragraph on page 547, already referred to, yet I think that the latter sentence of that paragraph is very pertinent to the present

case. The defendants paid to the plaintiffs for the advertising done during the first three months the sum of \$227.57, as being what had been fairly earned by the defendants. The defence, put in by agreement of counsel between the parties as to the work done in the last three months, shows that it was not so valuable as that done in the previous three months. I would estimate it on the best opinion I can form as being worth \$205, and I find that that sum is due to the plaintiffs from the defendants, with interest from the date of the issue of the writ."

A VERBAL AGREEMENT UPHOLD.

An Ontario county judge—Judge Morson, of Toronto—has decided a point of interest in connection with small contracts for advertising. John Grimes, who issues the *Rossin House Guide*, took action to recover \$18 against a livery proprietor, whose business was advertised in the *Guide*. It was claimed that there was a written agreement for the first year, and that the insertion was continued for another season by verbal agreement. 'This latter was disputed by the liveryman, who, however, the judge held, had sanctioned the insertion. Judgment was given for Mr. Grimes.

Charles Austin Bates, the noted New York ad writer and specialist, has sent me a reproduction in colors of his tall new building, now in course of construction in Longacre Square, New York, as "something that will interest you." The building is evidently going to be a fine one, and its erection is an indication of the expansion of high-class work in advertising. All the work of constructing, designing and illustrating ads is to be carried on in Mr. Bates' offices in this building, and the complete programme of printing and mailing will also be carried out if the clients desire it. The entire project is creditable to his energy and alertness, and even Mr. Bates' competitors will wish him well. Those who want a copy of this handsome booklet may write to Mr. Bates at his personal address, Lynbrook, Long Island, N. Y.

NEW MONTREAL BUSINESS

The outlook for a good Fall advertising business is bright, as already the number of contracts placed is larger than at the same time last year. The Desbarats Advertising Agency are again placing advertisements of "Kold Stop" in daily and weekly papers, going a little more extensively than they did last year. The Humphreys' Medicine Co. are renewing their contracts through A. McKim & Co., who are now sending out the season's advertisements. This agency are placing advertisements in a large list of dailies for T. A. Slocum Chemical Co., of Toronto, and also have the contracts for placing advertisements in Montreal, Quebec and Eastern Township papers for The Dixon Cure Company. J. E. W. Lecour, druggist, Montreal, has sold his patent medicine business to a syndicate with \$200,000 capital, that is going to manufacture "Dr. Rameau's Antiseptic Pomade" for eczema, scrofula, etc. Mr. Lecour is to be managing-director, and he has given A. McKim & Co. the contract for placing the advertisements in a large list of papers. A. McKim & Co.