

the plaintiff's draftsmen, and were submitted to and approved of by the defendants; but, upon the price at which the plaintiff was prepared to undertake the construction of the building being stated, it was found that it was more than the defendants were willing to expend; suggestions were made that a less expensive building might be erected, and plans of such a building were prepared and submitted to and approved of by the defendants; but again, upon the plaintiff putting before the defendants a statement of the price at which he would undertake to erect it, it was more than the defendants were willing to expend; and the idea of erecting the building was abandoned.

It was conceded by the plaintiff's manager that, if the plaintiff had obtained the contract, no charge would have been made for the plans; and, doubtless, the plaintiff, in making his tender, included an item for overhead expenses, one of which would be the cost of the preparation of the plans.

In the learned Chief Justice's view, there could not, on the facts of the case, be implied an agreement to pay for the plans. What was in the contemplation of both parties was that the plaintiff should be given the contract to erect the building if the price at which he was willing to erect it was satisfactory to the defendants; and what was done in preparing the plans was a necessary, or at all events an important, step towards enabling the plaintiff to get the contract.

It would be a startling proposition that a builder, who, at the request of one who contemplates building a house, makes a sketch of the building and an estimate of the cost, with a view to his getting the contract to build it, is entitled, if he does not succeed in getting the contract, to be paid for the work which he had to do in order to submit his sketch and estimate.

In this case something more elaborate than a sketch was prepared; but that made no difference. What the plaintiff did was to prepare the plans as part of the steps to be taken to obtain the contract; and, unless there was an express agreement that he was to be paid for them if he did not succeed in getting the contract, he was not entitled to be paid for them.

The plaintiff's appeal should be dismissed, the defendants' appeal allowed, and the action dismissed, but there should be no costs to or against either party of the action or of the appeal.

*Plaintiff's appeal dismissed; defendants' appeal allowed.*