

cover the amount subscribed. There was no demurrer to this declaration. It is not necessary to go further than this statement in the declaration to dispose of the question, whether the action is maintainable upon the two simple facts, namely, that the subscription list was signed, and part of the work done with the knowledge and without the objection of the defendant. He clearly notified the contractor that he would not be responsible as a member of the committee; but there is no evidence that he sought to escape from his obligation as a contributor, because the work was not begun as he thought best, or for any other reason.

Elliott v. Hewitt is cited to show that this contract set up is good and could be sued upon at once, irrespective of any other circumstances, and it is conceded that unless this is the case this action must fail. For this view both counsel relied upon the law laid down by the late Sir J. B. Robinson, namely, "that nothing is plainer and better settled than that where a sum is agreed to be paid * * * for certain work to be done, the party may insist upon having the work done before he pays." This view of the law was not disputed, and was admitted to be in perfect accordance with the case of *Cutter v. Powell*. But it is more difficult to say whether these cases do or do not apply. That the mere signature to the subscription list is a *nudum pactum* I have no doubt. Sitting in other courts, I have often decided so and see no reason to change my view. No consideration whatever is expressed, no time is named for payment, and the object of the intended payment is expressly a mere charity. It is simply a voluntary promise, to result in a voluntary payment, or a refusal, which may under some circumstances be a refusal to pay a debt of honor, and under other circumstances a refusal to pay a debt which conscience would not require one to pay. But as a matter of strict law, which is all that I administer here, it does not constitute a binding contract. Hence the well known practice of taking promissory notes at the same time as the subscription, and which, being soon passed off to a contractor, who is an "innocent purchaser," the amounts are recovered. Building committees often adopt this practice in order to avoid such difficulties as present themselves in the case before us. This case is not within *Elliott v. Hewitt*, or any case cited under *Cutter v. Powell*. The defendant is no contractor under Mr. Thomas, or dealer with him, nor in any way connected with him in any such privy as to bring him within those cases. He does, however, promise to pay some money for certain purposes. To those purposes the other part of the fund, subscribed and paid by others, is devoted. This forms an ample consideration for the promise, if it was with his knowledge. This knowledge is proven by the fact that he warned the contractor that he was not one of the acting committee, but only a contributor. True, he does not seem to have been present at the little meetings which the witnesses dignify by the name of committees—which met at a private house where the vestry could not meet, and to which the contributors are not pretended to have been asked, and where many of them would have felt some diffidence about going, even had they been asked, and where the property of the vestry seems to have been subjected to the ordeal of amateur acts of

parliament, to be submitted to the Legislature, I suppose, and which have never been seen by the very corporation that owns the property to be affected, nor by the subscribers, whose money has gone to the very proper purpose of erecting a rectory for the pastor of the oldest congregation in the counties. But there stands the name to the subscription list; there stands the rectory built with the knowledge of the defendant, out of the funds paid by the other contributors. The consideration is ample. The scheme did not break down. A great deal of the work has been done, and in law it does not rest with any one to say but that the rest will be, though some most important work may have to be done by the vestry, under the Temporalities Act, before any other funds can be acquired in the manner spoken of by one of the witnesses. If the scheme did not break down, but was proceeded with, so far that part of the fruits are reaped; then the one subscriber is as liable as the other, and the payments made by the witnesses, together with the work performed, afford the consideration I speak of. The argument as to the incomplete character of the contract, as appearing in the heading and signing only, would only apply if nothing more had been done. It is not sufficient to say that the proceedings of the committees, behind the back of the vestry, were utterly irregular and could be got rid of by a proceeding elsewhere. The disposal of church property by an act of parliament, never submitted to or dealt with by the vestry under the statute, may be a very puerile thing to attempt; but that does not prevent the cashier, as he appears to be, of this very list of contributors, from claiming to be reimbursed that which he would not have expended but for the promise of the contributors, of whom the defendant is one; and the contractor who gave his evidence does not state that he remains unpaid, and if he is, it is most likely that this plaintiff or the committee will pay him.

I think the verdict was right, except as to the issue referred to, and as to that I cannot interfere. The verdict was right on the merits, and the law is with the plaintiff upon all the facts.

Rule discharged.

CORRESPONDENCE.

Division Courts — Jurisdiction — Action for Rent.

TO THE EDITORS OF THE LOCAL COURTS' GAZETTE.

Gentlemen,—Will you oblige a subscriber by answering the following question:—

Can an action for "rent," be entertained in the Division Court, or is it necessary to bring an action in the County Court, on account of rent being an incorporeal hereditament?—See sub-section 4, section 54, D. C. Act.

Yours, &c.,

"ONE IN DOUBT."

Kingston, Jan. 11, 1865.

[An action of assumpsit for use and occupation, or of debt for rent, can no doubt be