

VAUTIER AND ANOTHER V. FEAR.

1916, June 13. Supreme Court, Hamilton. Cooper, J.

Sale of Goods Act, 1908—Action by architects for fees for plans—Work and labour—Not goods.

Architects sued to recover fees for work and labour done by them in the preparation of plans for a building proposed to be erected for the defendant. The defendant among other defences pleaded the Sale of Goods Act, 1908, and contended that the contract was for goods and that, as there was no writing, the plaintiffs ought to be non-suited.

HELD.—Overruling the plea that the action was for work and labour and not for goods sold.

This was an action by a firm of architects to recover fees for work and labour done by them in the preparation of plans for a building proposed to be erected for the defendant.

The defendant, among other defences, pleaded the Sales of Goods Act, 1908.

Rogers for plaintiffs.

Watts for defendant.

Watts contended that the contract was for the supply of "goods" within the meaning of the Sale of Goods Act, 1908, and that, as there was

no written memorandum within that statute signed by the defendant, the plaintiffs ought to be nonsuited. He cited the cases in reference to the painting of a picture, the supply of false teeth, etc., referred to in *Benjamin on Sales*, 5th ed., pp. 153 to 158.

Rogers was not called on.

COOPER, J.—I am of opinion that where an architect is employed to prepare plans, the action is for work and labour and not for goods sold, and the provisions of the Sale of Goods Act do not apply.

It is true that a contract made with an artist for the painting of a picture has been held to be a contract for the sale of goods: *Isaacs v. Hardy* (1 Cab. and El. 287), although there has been a difference of judicial opinion upon this point see *Clay v. Yates* (1 H. and N. 73) and the observations of Martin, B., at p. 76; but the painting and the supply of a picture by an artist and the preparation of plans and specifications by an architect are not on the same footing. It might as well be said that a lawyer who is retained to prepare a deed is selling "goods" within the meaning of the Sale of Goods Act, and on this there is distinct authority to the contrary. There is no instance that I know of, of this defence having been set up in answer to an action by an architect for fees earned in the preparation of plans. In *Grafton v. Armitage* (2 C.B. 336), referred to in *Benjamin on Sales*, it was held that a working engineer could recover his charges for preparing working plans under a count for work and labour, and that the plans were not "goods sold and delivered." The same principle applies to plans prepared by an architect. A picture painted by an artist is quite a different thing. It is a chattel, and has a market value according to the eminence of the artist, so also has a sculpture. They are each works of art. Mr. Watts has also referred to the cases where the supply of false teeth has been held to be a sale of goods. These cases do not apply. False teeth are goods, and they have also a second hand value. Advertisements offering to purchase disused false teeth are not uncommon in England, and I recently noticed a similar advertisement in the Auckland papers.

Plans and specifications prepared by an architect are not "goods" any more than a deed prepared by a solicitor. They have no marketable value, and, under the old system of pleading, the action to recover the cost of their preparation

would have been one for work and labour and not for goods sold and delivered.

In the present case, even if the Sale of Goods Act did apply, tracings of the plans have been supplied to the defendant, and the supply would have been a sufficient compliance with s. 6 of the Act.

Solicitors: for plaintiffs: *Rogers and Stace*, Hamilton; for defendant: *Watts, Hunt and Armstrong*, Hamilton.

T. V. PUBLIC TRUSTEE.

1916, June 6, 30. Supreme Court, Wellington. Hosking, J.

Settlement—Post-nuptial—Trusts for wife and children—Setting aside—Knowledge of contents—Absence of power of revocation.

A married woman aged 25 was entitled to £1,550 invested on mortgage, and also entitled to a further sum on the death of her father. No settlement was executed on her marriage. For a period of six months from the date of the marriage her husband had ceased to work, and about £300 had been drawn from the wife's solicitor for maintenance and furniture, and on one occasion the husband had obtained a sum of money on the wife's order and spent or lost £80 of it while drinking. Subsequently, in the presence of her father, her solicitor advised her that she could protect herself by having the money placed in trust to which she agreed, and thereupon at the same interview a complete declaration of trust was drawn up and signed, providing that her property, both in possession and expectancy, should be held by the defendant upon trust for the wife for life and afterwards for her children. The defendant was authorised in his sole discretion to advance her or for her benefit the whole of the trust fund. The settlement contained no power of revocation. She alleged that she did not understand the settlement and applied to have it set aside.

HELD.—Giving judgment for the defendant, that, on the facts, she had not discharged the onus of proving that she failed to understand the document at the time of execution thereof.

Skelton for plaintiff.
Hay for defendant.

HOSKING, J.—In this action the plaintiff seeks to set aside an instrument or settlement which she executed on the 22nd day of December, 1914, some six months after her marriage. She is one of the daughters of a retired farmer at

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Hosking, J.