

all the parties to the action. If it were true that these offices were essentially and in substance distinct, being the same in nothing except the term by which they are designated, and the person holding or entitled to hold one of them had and could have no interest in the other, and no other person could have any interest in the one to which he was entitled, how came it that there could be such a joinder of plaintiffs, defendants, and causes of action as was attempted in this case.

Judge Zane, from whose court the case comes, retired from the bench during the arguments, which were now submitted.

JOINT COUNTY AND CITY BUILDING

The agreement for the erection of the Joint City and County building was signed by the contracting parties on Friday, June 5th. The signatures appended are Monheim, Bird & Proudfoot, architects; Probate Judge G. W. Barch, and C. E. Allen, county clerk, for the county; George M. Scott, mayor, and J. B. Jack, recorder, for Salt Lake City. The instrument is an important one and is herewith given in full:

Whereas, Salt Lake city and county have heretofore invited architects to submit to them competitive plans and sketches for a joint public building to be erected by said city and county in Salt Lake city, upon the ground commonly known as the Eighth Ward square, and among others the firm of Monheim, Bird & Proudfoot, of Salt Lake city, have submitted such a sketch, which meets the approval of the agents of said city and county.

Now, therefore, This agreement made this.....day of.....by and between the said Salt Lake city and Salt Lake county, as parties of the first part, and Henry Monheim, George W. Bird and Willis T. Proudfoot, partners, carrying on their profession under the firm name and style of Monheim, Bird & Proudfoot, as parties of the second part,

Witnesseth: That said first parties hereby employ said second parties to furnish them plans, drawing and specifications for said building, and said second parties hereby accept said employment and agree to furnish said plans, drawings and specifications upon the following terms and conditions, to wit:

The said plans, drawings and specifications shall show the material to be used and how used and based upon the general specifications hereto attached marked Exhibit "X" and exhibit a building which shall be in design, dimensions, material and architectural effect substantially the same building which is exhibited upon the sketch heretofore offered to said first parties by the said second parties in the completion aforesaid, and shall represent and describe a building which, when erected shall be structurally safe, durable and of the general character described in said sketch and said "Exhibit X."

Said plans, drawings and specifications shall show every part of the building, including all details whatsoever of design, material and construction and the finishing, including all apparatus for the heating, ventilating and lighting by gas and electricity, and the plumbing and sanitation of said building. The building shown upon said plans, drawings and specifications shall be one which may be constructed and completed in accordance therewith in every particular for three hundred and fifty thousand (\$350,000) dollars.

The parties of the first part, however, reserve to themselves the right to submit said plans, drawings and specifications to any expert architect or architects whom they may choose after the same are delivered to them by said second parties for an opinion by such other architect or architects as to whether a building constructed in accordance therewith would be structurally safe and durable; and to reject the same without compensation in case if the opinion of said other architect or architects such building would not be structurally safe and durable.

In case after due publication and advertisement for bids the lowest bid from a responsible bidder for the construction of said building as shown by said plans and specifications shall exceed three hundred and fifty thousand (\$350,000) dollars by more than 5 per cent. thereof, the first parties may, at their option, reject said plans and specifications, and the second parties shall be entitled to no compensation therefor; but in such case the first parties may, at their option, call upon the second parties for such modification of said plans and specifications or such new plans and specifications as will reduce the cost of said building to the sum of three hundred and fifty thousand (\$350,000) dollars, and if after due publication and advertisement for bids as aforesaid, a bid shall be obtained from a responsible bidder, not exceeding three hundred and fifty thousand (\$350,000) dollars and five (5) per cent. thereof for the construction of said building in accordance with the plans and specifications as so modified, the said second parties shall thereupon be entitled to compensation herein provided. Said modified plans and specifications shall be in all respects as complete as those first mentioned, and shall exhibit and describe a building substantially the same as that shown by the sketch and exhibit "X" above referred to, and which shall be safe, durable, complete, convenient, etc., as aforesaid. The plans and specifications shall be such that building contractors of ordinary skill and experience will, by reference to the same, be able to obtain all the data necessary to make exact and intelligent bids for the erection of the whole of the said building or for any particular part of its construction without reference to or without making allowance for "extras."

Parties of the first part agree that upon the reception from the second parties of the said plans, drawings and specifications, and after the submission of the same to another architect or architects upon the question of safety and durability as aforesaid and a report thereon that said building as so planned, drawn and specified would be structurally safe and durable, they, the parties of the first part will proceed forthwith to advert a for bids for the construction of said building in the manner provided by law, and that upon obtaining a bid from a responsible bidder for the construction of said building not exceeding three hundred and fifty thousand (\$350,000) with five (5) per cent. thereof, and upon the awarding of the contract by said first parties for the construction of said building they will forthwith pay to the parties of the second part for the plans and specifications a sum equal to two (2) per cent. of the amount of said bid and an additional one and one-half (1½) per cent. of said bid in the manner and at the times hereinafter provided. In case of the rejection of the said plans and specifications by the first parties for the reasons above mentioned, they shall be forthwith returned to the second parties. In case of their acceptance they shall become the property of the first parties; but the second parties shall be entitled to make copies of the same for the purpose of enabling them to supervise said construction in accordance therewith,

and said second parties agree to make such copies for their use in supervising as aforesaid, and also to make an additional set of the same for the use of the contractor or contractors for the construction of said building. And all such additional copies shall be made without additional compensation; and upon the completion of said building shall be delivered to and become the property of the said first parties. The second parties shall furnish the plans and specifications for the excavation of said building and for the foundation thereof before the 12th day of June, 1891, and the plans, drawings and specifications for the rest of said building on or before the 1st day of August, 1891, and in case of their failure to do so, this contract may, at the option of the first parties, be rescinded. Said first parties reserve to themselves the right to make or order made, however, any changes in the details of said building pertaining to any part thereof which may not have been constructed at the time of such order and which may be safely made consistently with the construction at that time completed. Said changes or any changes in the plans and specifications as originally delivered and accepted shall be made only upon the duly authorized order in writing of the first parties. Plans, drawings and specifications of such changed details shall be made by the second parties without additional compensation, and shall be delivered by them to the first parties, and copies thereof made, as in case of the original plans, drawings and specifications.

Upon the furnishing and acceptance of the plans, drawings and specifications as heretofore provided, said second parties shall be, and subject as aforesaid, they hereby are employed as the supervising architects to superintend the construction of said building.

They hereby accept said employment and hereby agree that they will allow the said building to be constructed only in accordance with the said plans, drawings and specifications subject to such changes in matters of detail as may hereafter be ordered by said first parties; that they will allow only first-class materials to be used and the construction to be done in a skillful and workmanlike manner.

That for the information of said first parties they, the second parties, shall carefully examine the claims for compensation of the contractor or contractors and of all persons claiming compensation for work done or materials furnished for, in or about the construction of said building; and approve or disapprove the same in writing and deliver said approval or disapproval forthwith to the mayor of said city and the chairman of the county court of said county. Said second parties agree to give their daily attention to said supervision, and upon failure of any contractor or workman or person engaged in or about the construction of said building, or the furnishing of materials therefor, to comply with the requirements of said plans and specifications, that they will report the same forthwith to the mayor of said city and the chairman of the county court of said county, and that they, the said second parties, will not endorse or approve any bill or claim by any such contractor or other person for labor performed or materials furnished in or about the construction of said building unless the same has been done or furnished in strict compliance with the requirements of said plans, drawings and specifications. That, they will condemn all work done upon or material furnished for said building, not in compliance with the said plans, drawings and specifications. And in case of a refusal of any such contractors, workman or furnisher of materials to comply with said plans, draw-