

ALLEN v. BRYSON.

SUPREME COURT OF IOWA, DES MOINES

67 Iowa 591; 25 N.W. 820; 1885 Iowa Sup. LEXIS 438

December, 1885, Decided

[BOTH parties are attorneys at law, and this action was brought to recover for professional services performed by the plaintiff for the defendant..... Trial by jury. Verdict and judgment for the plaintiff, and defendant appeals.]

.....

III. The defendant pleaded that he and the plaintiff were brothers-in-law, and, in substance, that each of them was engaged in the practice of the law, and had been in the habit of assisting each other as a matter of mutual accommodation, and that "all and each of the professional services for which plaintiff seeks to recover in this action were rendered by him as matters of mutual accommodation and interchange of courtesies, and without charge or expectation of payment or reward, by one as against the other." The court instructed the jury: "If, however, such services were rendered by the plaintiff without expectation of reward, or intention on his part to charge therefor, or by any agreement or understanding that the services were to be gratuitous, the plaintiff cannot recover unless, after such services were rendered, and in consideration thereof, defendant agreed with or promised plaintiff to pay for the same. In the latter case the valuable character of the service, and the moral obligation to pay for the same, would be a sufficient consideration to support the promise, and enable the plaintiff to recover the reasonable value of such service." We understand this instruction to mean that where one person renders services for another gratuitously, and with no expectation of being paid therefor, a moral obligation is incurred by the latter which will support a subsequent promise to pay. In our opinion, this is not the law. If the services are gratuitous, no obligation, either moral or legal, is incurred by the recipient. No one is bound to pay for that which is a gratuity. No moral obligation is assumed by a person who receives a gift. Suppose the plaintiff had given the defendant a horse, was he morally bound to pay what the horse was reasonably worth? We think not. In such case there never was any liability to pay, and therefore a subsequent promise would be without any consideration to support it. That there are cases which hold that where a liability to pay at one time existed, which, because of the lapse of time, or for other reasons, cannot be enforced, the moral obligation is sufficient to support a subsequent promise, will be conceded.

These cases are distinguishable, because the instructions contemplate a case where an obligation to pay never existed until the promise was made. We do not believe a case can be found where a moral obligation alone has been held to be a sufficient consideration for a subsequent promise. To our minds, however, it is difficult to find a moral obligation to pay anything, in the case contemplated in the instructions, prior to the promise....

REVERSED.