



The Kentucky Law Reporter; A Monthly Magazine, Devoted to the Interests of the Legal Profession at Large and Particularly of the Kentucky Bar Volume 28

Kentucky. Court of Appeals

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This historic book may have numerous typos and missing text. Purchasers can usually download a free scanned copy of the original book (without typos) from the publisher. Not indexed. Not illustrated. 1906 edition. Excerpt: ...to grant the exclusive franchise as above set forth, then by this or-dinance the said P. Arlund & Co. and assigns shall have hereunder a franchise for the purposes herein set forth instead of exclusive franchise, at flrst herein stated." On the face of the ordinance it is apparent that the common council of' New Richmond doubted its right to grant an exclusive franchise. and consequently left the question of whether it was or not exclusive to be determined by the law of that State. It is equally clear from the evidence presented by the record that the laws of Ohio forbade the granting of an exclusive franchise. Indeed, this is admitted by appellants. It was important, therefore, for appellee to prove upon the trial that Arlund and Tevis induced him to enter into the contract providing for the erection of the electric plant by representing the franchise to be exclusive, and that theaction of the municipal authorities and inhabitants of New Richmond, in taking steps to erect a similar plant for the town, prevented appellee and appellants from carrying out the contract between them. On these points the testimony was conflicting, but we think the weight of it was on the side of appellee's contention; at any rate, the questions were properly submitted to the jury, and their decision was and is flnal. The testimony was also cdntlicting as to whether there was an agreement between appellants and appellee after the contract was made to abandon the execution thereof, and while we can not say that the weight of it on this vol. 28-48 754 SHEFFIELD v. DAY, ac. point was in favor oi.' appellee, there was some evidence to support his theory of abandonment, and of the truth of that proposition, as well as the others, the jury...

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