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Evidence: Parol Evidence: Contract

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PARENT AND CHILD—LOCO PARENTIS—EMANCIPATION—Decedent had custody of plaintiff from the age of 10 to 22, thus standing in relation of loco parentis to him; plaintiff suing administrator alleges that because of work he had performed for decedent and others, the proceeds of which decedent had kept, decedent owd him $1,500, and that she had always promised him said amount. Plaintiff sought to recover same from the estate. *Held:* Relation of loco parentis gave decedent the same rights as actual parent to wages of child, that those rights continued after the child attained his majority, the law not presuming any change in existing relations from the mere fact that the child has attained his majority, and that without agreement regarding earnings after majority the right to plaintiff's earnings remained with the decedent. *Sparks* vs. *Hinckley (Utah, 1931) 5 Pac. 2nd Series 570.*

The case follows the practically undisputed rules that one standing 'in loco parentis' to another (standing as parent to one not his child) the rights and liabilities arising out of the relation are the same as between parent and child, and therefore entitled to the earnings of the child until its emancipation. The decision, however, is interesting in that it upholds a doctrine seldom called into use recently, namely, that the law will not presume any change in existing relation of parent and child from the mere fact that the child has attained his majority. The court cites Brown vs. Ramsey, 29 N.J.L. 117, as authority. That case held that attaining the age of 21 years is not ipso facto emancipation of a child from his or her father, although at that age the child may emancipate himself by separation from his father. The doctrine had been previously enunciated in Overseers of the Poor of Alexandria vs. Overseers of the Poor of Bethlehem, 16 N.J.L. 119. Minnesota approached this viewpoint in Thysell vs. McDonald, et al., 134 Minn. 400 (Ann. Cases, 1917C, 1015) in which the court said that a child remaining in the family after becoming of age is not entitled to pay for services rendered unless the services were performed pursuant to a prior agreement for compensation therefor. The same doctrine was repeated in Lovell vs. Beedle, 138 Minn. 12 (163 N.W. 778). The instant case, however, is believed to be the first to squarely accept the holding of Brown vs. Ramsey.

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EVIDENCE: PAROL EVIDENCE: CONTRACT—*Wheelwright* v. *Pure Milk Association*,__Wis.__240, N.W. 769. This is a case relating principally to the interpretation of a contract, and to the propriety of resorting to parol evidence for this purpose.

The plaintiffs are producers of milk in the vicinity of Marshall, Wisconsin, and were associated with the defendant, a co-operative association organized under the laws of the state of Illinois, having a membership of about 20,000 producers.

The dispute arises over an alleged breach by the defendant of the following contract: The member hereby constitutes the association his sole and exclusive agent for the purpose of handling or marketing such milk, together with milk delivered by other members signing similar agreements and the association hereby agrees to market the milk in such a way as it shall deem best for the advantage of all persons signing similar agreements.

The defendant contends this contract expressly constitutes the association a selling agent, and thus undertakes to sell the principal's milk to the best advantage of the principal. The plaintiff contends it is a co-operative contract and clearly indicates an obligation to market all milk together and for the advantage of all. Both parties contend the contract is clear and unambiguous, however, the defendant further argues that, assuming that the contract does not clearly mean what it claims to mean, it is at least ambiguous and open to interpretation by parol evidence.

The rule in Wisconsin with respect to hte admissibility of parol evidence for the purpose of interpretation has been set forth in numerous cases. "If the contract is ambiguous, evidence of the surrounding circumstances, practical construction by the parties, and even the declarations of the parties constituting the negotiations may be resorted to in aid of construction."[1]

In a concurring Wisconsin case the court said: "In answer to the contention of counsel that testimony of the circumstances surrounding and leading up to the making of a written contract are always admissable for the purpose of putting the court in the position of the parties at the time of the contract was made, this court has said: 'Not so, where there is no ambiguity in the contract, either in its literal sense, or when it is applied to the subject there of, it must speak for itself, entirely unaided by extrinsic matters. Where such ambiguity does exist, then evidence of the circumstances under which the contract was made is proper to enable the court, in the light thereof, to read the instrument in the sense the parties intended, if that can be done without violence to the rules of language or of law.'[2] Parties cannot use terms with a fixed and certain meaning, and then disclaim such meaning."[3]

Mr. Williston in commenting upon this rule and cases holding the

[1] Firestone Tire & Rubber Co., __Wis.__ 236 N.W. 118.
[2] Johnson v. Pugh, 110 Wis. 162, 85 N.W. 641.
[3] Zohrlaut v. Mengelberg, 144 Wis. 564, 124 N.W. 247.

same rule states that the court in denying the admissibility of evidence to cary an apparently clear writing, meant no more than that in the particular case the evidence offered would not persuade any reasonable man that the writing meant anything other that the normal meaning of its words would indicate and that therefore it was useless to hear the evidence. He goes on to say that whatever may be the propriety of admitting evidence of extrinsic facts where the meaning of the instrument is apparently clear, there is no question that such evidence is admissible in every jurisdiction where there is no clear apparent meaning. It must be kept in mind, however, that the only purpose for which such evidence is ever admissible in an action on the contract, is to interpret the writing. So far as the evidence tends to show not the meaning of the writing but an intention wholly unexpressed in the writing, it is irrelevant.[4]

It is probably accurate to say that the language of a contract is ambiguous as applicable to the holding of the authorities, when it may reasonably be taken in more than one sense. That is to say, the language must have some stretch in order to authorize the admission of parol evidence without violating the rule against contradicting a writing by parol. Likewise, the parol evidence must establish a sensee or meaning which the language of the contract will reasonably bear.

The court in the case in discussion concludes that the provisions of the contract are ambiguous, that it hasn't a single clear meaning, and htat either contention may be found in its language. Thus either party is entitled to introduce parol evidence for the purpose of interpretation.

In regard to defendant's contention that the court erred in submitting the question of whether the contract was sufficiently ambiguous to permit consideration of plaintiff's evidence to hte jury, the court states: "that whether there is an ambiguity is for the court to determine, but where there is an ambiguity and resort to extrinsic evidence is necessarw and proper, is for the jury."[5]

The dissenting opinion fails to appreciate the ambiguity, and contends that the contract is very clear, and plain—that it appears indisputably that the form of hte contract which is the subject of these cases, was o bring the members into a co-operative enterprise with the purpose of controlling so far as possible the natural milk supply of the city of Chicago. There is no question as to the treatment of the members, or the obligation of the defendant. Thus t he contract is clear, and ambiguous, and the introduction of parol evidence affecting the meaning of a clear, and plain contract would work an injustice on the parties.

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[4] 2 Williston, Contracts, p 1216.
[5] Vilas v. Bundy 106 Wis. 168, 81 N.W. 812.