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## Frauds, Statute of: no quantum meruit recovery on oral real estate contract by broker

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The United States Supreme Court held:

"Though the title to soil under navigable waters within the state is presumptively in state, the nature and extent of the rights of the state and of riparian owners in navigable waters within the state, and to soil beneath such waters, are matters of state law, to be determined by state statutes and judicial decisions."

Also that:

"It is the function of state courts to define rights in land located within the state, and in the absence of an attempt to forestall Supreme Court's review of constitutional questions, the Fourteenth Amendment affords no protection to supposed rights of property which state courts determine to be nonexistent."

This case has done a great deal to reclaim to the people of Wisconsin the valuable water power rights which have been exploited in the past, with other natural resources. Our water power has an enormous potential as well as present value. As the state continues to grow the power rights will become increasingly valuable and now the state has a safety valve with which to protect such a valuable right.

ELMER GOODLAND

**Frauds, Statute of:** no quantum meruit recovery on oral real estate contract by broker.

This is an appeal from a judgment for the reasonable value of services performed by a firm of real estate brokers. The original complaint was on contract for service, but since the contract for performance of such service was not in writing, the complaint was amended to set up a cause of action on quantum meruit. The evidence established the fact that the oral contract between the parties provided for a payment of commission when the purchaser had paid \$5,000 or more on the purchase price. Such amount was never paid, and the purchaser, after a few payments, refused both to make further payments and to take the land in question.

*Held* 240.10 Wis. Stats. extending the statute of frauds to include real estate brokers' contracts, precluded a recovery on quantum meruit.

Where there is no written agreement between the vendor and the broker, the employment and consequent agreement to pay commissions may be implied from the circumstances;<sup>1</sup> such implication being based on the conduct of the parties, as where the principle accepts the broker's services with the knowledge that he expects to be paid, or where he places property in the hands of a broker and a sale is effected through the efforts of the broker.<sup>2</sup> Therefore, in the absence of a statutory provision to the contrary, a contract employing a broker for the purchase or sale of lands need not be in writing and he may accordingly recover for services rendered under an oral contract.<sup>3</sup> Under some statutes, however, written authority is required, and where such statute exists,

\* *Hale v. Kriesel*, — Wis. —; 215 N.W. 227.

<sup>1</sup> 82 Conn. 557; 120 Cal. 551; 52 Colo. 205.

<sup>2</sup> 146 Ky. 439; 48 Wash. 364.

<sup>3</sup> C. J. Vol. IX 558.

a broker who acts under a parol contract of employment, is precluded from recovering for the reasonable value of services performed on the basis of a promise implied by law.<sup>4</sup> The fact that the broker has fully performed does not take the case out of the statute.<sup>5</sup>

Section 240.10 Wisconsin Statutes provides:

That every contract to pay a commission to a real estate agent or broker, or to any other person for selling or buying real estate or negotiating a lease therefore for a term or terms exceeding a period of three years, shall be void, unless such contract or some note or memorandum thereof describing such real estate, expressing the price for which the same may be sold or purchased, or terms of rental, the commission to be paid and the period during which the agent or broker shall procure a buyer or seller or tenant, be in writing and be subscribed by the person agreeing to pay such commission.

Such a provision, precluding a recovery on quantum meruit is in derogation of the common law and should be strictly construed, giving the full effect to the legislative intent expressed in the statute. This section is an enlargement of the statute of frauds and its purpose is to prevent frauds and perjuries. To hold there can be a recovery on quantum meruit in the absence of a written contract or memorandum is to open the door to all the abuses against which the statute was enacted. This section leaves no opportunity for the law to imply a contract. The rule permitting recovery on quantum meruit for services rendered under contracts void under the statute of frauds (the theory on which *Seifert v. Dirk* was decided) does not apply, since the application of such rule would nullify, absolutely, the section declaring brokers' contracts void unless in writing. Therefore, *Seifert v. Dirk*, 175 Wis. 220, is overruled insofar as it holds that one rendering services in the buying and selling of real estate may recover compensation in the nature of commissions which measure the reasonable value of such services when there is no written contract which meets with the requirements of section 240.10 of the statutes.

By this decision, the Wisconsin rule is brought into harmony with the weight of authority throughout the country, on the question involved.

PATRICIA RYAN

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<sup>4</sup> 141 Cal. 109; 175 Ind. 648; 78 N.Y.S. 736.

<sup>5</sup> 43 Ind. A. 519; 97 N.Y.S. 1008.