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an implied promise may arise from its use. *Robbins* v. *Eaton,* 10 N.H. 561 (1840). Besides an express promise, acts which manifest an intention to be bound may constitute ratification. *Edgerly* v. *Shaw,* 25 N.H. 514, 57 Am. Dec. 349 (1852). A mere acknowledgement that a contract was made during infancy is not such a manifestation. *Thompson* v. *Lay, supra.*

There may also be a conditional ratification but, until the condition is fulfilled, no action can be maintained. *State* v. *Binder,* 57 N.J.L. 374, 31 Atl. 215 (1894). And it has been held that the promise must be unconditional. *Bresee* v. *Stanley,* 119 N.C. 76, 25 S.E. 870 (1896).

Part payment of an agreement after reaching majority without any other evidence of an intent to ratify is no ratification. This is true because the part payment is at best an ambiguous manifestation of intent. The payor may regard his part payment as being all which, in fairness, he should pay. *Robbins* v. *Eaton, supra International Accountants Society* v. *Santana,* 166 La. 671, 117 So. 768, 59 A.L.R. 276 (1928).

Therefore, where there was part payment, but the person "wrote nothing, said nothing, and did nothing which bore on the question of intention," there was no ratification. *International Text Book Co.* v. *Connelly,* 206 N.Y. 188, 99 N.E. 722, 42 L.R.A. (N.S.) 1115 (1912); *Hook* v. *Harmon Nat. Real Estate Corp.,* 295 N.Y.S. 249, 250 App. Div. 689 (1937).

Courts are divided on the question whether there must be knowledge on the part of the infant that his contract is voidable. The majority of the courts hold that the infant need not have knowledge of his legal right to disaffirm since such knowledge will be presumed by his acts. *Rubin* v. *Strandberg,* 288 Ill. 64, 122 N.E. 808, 5 A.L.R. 133 (1919); *Clark* v. *Van Court,* 100 Ind. 113, 50 Am. Rep. 774 (1884); *Anderson* v. *Seward,* 40 Ohio St. 325, 48 Am. Rep. 687 (1883); *Bestor* v. *Hickey,* 71 Conn. 181, 41 Atl. 555 (1898). However, some courts hold that the knowledge of the right to repudiate must be shown. *Smith* v. *Mayo,* 9 Mass. 62, 6 Am. Dec. 28 (1812); *Tolar* v. *Marion County Lumber Co.,* 193 S.C. 274, 75 S.E. 545 (1912).

JOHN A. CALLAHAN.

Security—Conditional Sale—Distinction Between Mortgages and Conditional Sale.—*C* advanced money to *A,* an oil prospector. *A* assigned his drilling equipment to *C.* This assignment was not to become operative unless a certain oil well did not produce. It did not produce. *A* died. *B,* a judgment creditor of *A,* levied execution on the drilling equipment. *A's* administrator sued to restrain execution alleging that the judgment was obtained by fraud. *C* intervened and claimed title under the assignment. The court held this assignment to be, in effect, a conditional sale which passed title to *C* upon the failure of the well to produce, not a chattel mortgage as the defendant contended. *Stroup* v. *Meyers,* (Indiana, 1939) 21 N.E. (2d) 75.

There is a difference in form between a conditional sale and a chattel mortgage which becomes important in determining the recording or filing requirements which must be observed. Differences in substantive rights exist also, although it has been argued that since a conditional sale is simply a short cut to a purchase money chattel mortgage and both transactions have the same purpose—security for the vendor—there should be no distinction in substantive rights. Note (1922) 36 HARV. L. REV. 740; note (1929) 14 IOWA L. *Rev.* 329, 337.

The character of the instrument is determined by the intent of the parties as manifested by the instrument itself and the surrounding circumstances. If

there is a debt independent of the security transaction and if it is clear that no sale was intended, the instrument is a chattel mortgage. *Keystone Finance Corp.* v. *Krueger,* 17 F. (2d) 904 (C.C.A. 3d, 1927). A transaction which provided for a deficiency judgment has been held a chattel mortgage even though the parties labelled the instrument a conditional sale contract. The instrument was held to come within the chattel mortgage recording statute. *Weber Showcase and Fixture Co.* v. *Waugh,* 42 F. (2d) 515 (W.D. Wash. 1930). Conversely, a conditional vendor was refused a deficiency judgment. *Mills Novelty Co.* v. *Morett,* 266 Mich. 451, 254 N.W. 164 (1934). But the Uniform Conditional Sales Act which has been adopted in Wisconsin provides that if the proceeds of the resale are not sufficient to pay the balance due on the purchase price the vendor may recover the deficiency from the purchaser. WIS. STAT. (1939), §§ 122.22. *Douglass* v. *Ransom,* 205 Wis. 439, 237 N.W. 260 (1931).

An equity of redemption is an incident of a chattel mortgage but not of a conditional sale. *Panchoff* v. *Heller,* 176 Minn. 493, 223 N.W. 911 (1929). But here also the Uniform Conditional Sales Act narrows the difference between chattel mortgages and conditional sales, since under it the purchaser has an equity of redemption of ten days after retaking the goods if the vendor fails to give at least twenty days notice of his intention to retake the goods. WIS. STAT. (1939) §§ 122.18, 122.19, 122.20.

The transaction in the principal case was hardly the usual type of conditional sale, but it seems clear that a sale rather than a mortgage was intended. Although the transaction was designed to secure a person who had advanced money, it does not appear that a debt had been created. Rather, there was an alternative provision contemplated by the instrument. If the well produced, those who had helped to finance the project were to share in the profits; otherwise, they were to get a certain amount of the equipment which their money had bought. Title was to pass to them on the happening of a certain event. There was no debt. Neither a deficiency judgment nor an equity or redemption was contemplated.

JOSEPH E. TIERNEY, JR.

Wills—Adopted Son as "Lawful Issue."—An appeal was taken from an order denying appellant's claim as the adopted son of the adopted son of the testatrix to take under her will, as the "lawful issue" of the adopted son. The Minnesota statutes defined "issue" as meaning the lineal descendants of an ancestor. The court *held* that adoption gave the adopted child the status of issue under a statute (Mason Minn. St. 1927 § 8630) which provides that "Upon adoption such child shall become the legal child of the persons adopting him, and they shall become his legal parents, with all the rights and duties between them of natural parents and legitimate child. By virtue of such adoption he shall inherit from his adopting parents or their relatives the same as though he were the legitimate child of such parents . . .". The court reasoned that the statute conferred upon the adopted child the status of a natural one and, referring to *In re Sutton's Estate,* 161 Minn. 426, 201 N.W. 925 (1925), added that the adopted child is a "lineal descendant." *In re Holden's Trust,* (Minn. 1940) 291 N.W. 104.

Generally, whenever the question of the rights of adopted children to inherit from their adoptive parents has arisen, the courts have been very liberal and have treated such children as natural children. In *O'Connell* v. *Powers,* 291 Mass. 153, 197 N.E. 162 (1935), the court declared that the word "issue" includes