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Article 13

Contracts - Receipts - Admissibility of Parol Evidence

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CONTRACTS—RECEIPTS—ADMISSIBILITY OF PAROL EVIDENCE.—An employee of the defendant company committed suicide fearing discovery of a shortage in his accounts. His widow, the plaintiff, thereupon became entitled to $2,000 as beneficiary under a group insurance policy carried by the defendant upon its employees. A check payable to the plaintiff for the $2,000 was sent to the defendant by the insurance company; and the plaintiff, being unable to cash it at once and being in urgent need of funds, took the defendant's check for $1,000, deposited the insurance check to the defendant's account, and took a receipt from the defendant for the additional $1,000, as follows: "Received from Mrs. Martha Elizabeth Nimz $1,000 (One Thousand Dollars) to apply on account of H. W. Nimz." The insurance check was paid and credited to defendant's account. The shortage was found to amount to $800. Plaintiff retained the receipt without any question; and upon refusal of the defendant to pay her the additional $1,000, claiming that it was deposited to cover her husband's shortage, she brought this action to recover it. Judgment for plaintiff; appeal. *Held,* judgment affirmed. The instrument given the plaintiff was a mere receipt and therefore could be overcome by parol evidence showing lack of intent to answer for the default of her husband. *Nimz* v. *Fullerton Lumber Co.* (Wis. 1933) 247 N.W. 338.

A mere receipt may be explained, varied, or contradicted by parol evidence; but an instrument in the form of a receipt, which has in itself the elements of a contract, cannot be contradicted or varied as to its contractual provisions by parol testimony. *Jones Evid.,* 3d Ed., § 492; *McKelvey on Evid.,* 4th Ed., p. 490; *Greenleaf on Evid.,* 16th Ed., p. 435, § 305; Page on Contracts, Vol. 4, § 2156. The task of the court in this case was to catalogue the factual situation presented into one of the two rules. Parol evidence is admitted in respect to a receipt because it is merely evidence that money was paid, and not the result of any negotiations; it is usually general in expression, informally and incompletely expressing the intent of the parties as to any agreement. *Seeger* v. *Manitowoc Steam Roller Works,* 120 Wis. 11, 97 N.W. 485 (1903); *Fire Insurance Co.* v. *Wickham,* 141 U.S. 564, 12 Sup. Ct. 84, 35 L.Ed. 860 (1891); *Donovan* v. *Hallowell,* 140 Wash. 312, 248 Pac. 412 (1926); *Twohy Mercantile Co.* v. *Estate of McDonald,* 108 Wis. 21, 83 N.W. 1107 (1900); *Jones Evid.,* 3d Ed., § 491.

That the dividing line between receipts and written contracts is hazy and the law applicable thereto not clearly established is recognized by the courts. In *Jackson* v. *Ely,* 57 Oh. St. 450, 49 N.E. 792 (1898), it is stated that cases can be found which are extremely difficult, if not impossible, to reconcile; this is borne out to some extent by a review of Wisconsin decisions. In *Conant* v. *Estate of Kimball,* 95 Wis. 550, 70 N.W. 74 (1897), an instrument "in full of all demands to date" was held to cover an employment contract and to contain in itself the elements of a contract, so that parol evidence to vary, explain, or contradict it was not admitted. This was clearly against the great weight of authority. 22 C.J. 1140, § 1525. Though followed in one later case, *Kammermeyer* v. *Hilz,* 107 Wis. 101, 82 N.W. 689 (1900), it was in effect overruled by *Seeger* v. *Manitowoc Steam Roller Works,* supra, where a written memorandum "received $200 from Seeger brothers to balance boiler account in full" was held a mere receipt, importing no more than that the amount of money specified was in fact received. The holding of the principal case is clearly a liberal treatment of the problem; the language "to apply to the account of" is not cited as having been before adjudicated.

Cases holding an instrument to be a mere receipt are based on the fact that such is but an admission of the payment of money, not containing language cov-

ering an agreement in addition thereto, nor embodying a new obligation or contract to do something in relation to the thing delivered. *Wigmore on Evid.*, 2d Ed., § 2432; *Greenleaf on Evid.*, 16th Ed., p. 435; *Seeger* v. *Manitowoc Steam Roller Works*, supra. In the principal case much reliance is placed on the rule that, to hold an instrument in the form of a receipt to be contractual in nature, it must be shown that it was drawn with such care and precision that by its terms it represents an agreement between the parties and defines their contractual relations with reference thereto. In view of this rule, the instrument was considered so informal, incomplete, and lacking in language expressing or attempting to express any contract, promise, or agreement, that it could only be a receipt, not a contract; and parol evidence to vary or contradict it admissible.

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EQUITY—CONTRACTS FOR THE SALE OF LAND—VENDEE'S LIEN.—An action was brought by the plaintiff vendee under two contracts for the sale of land to recover damages against the defendant vendor for the breaches of the contracts, and to have said damages declared a lien on the lands. In the original opinion, 243 N.W. 492 (1932), it was held that the damages found by the trial court, together with interest thereon and costs, should be a lien on the lands described in the land contracts. These damages amounted to some $65,000; the plaintiff had paid only $6,885 on the contracts. Motion for rehearing granted. *Held*, former opinion modified. The vendee's lien is limited to the amount paid on the contracts, and does not cover loss of probable profits. The court, however, allowed the plaintiff to elect whether to take judgment for damages without lien or waive every other right and have a lien for the recovery of the payments made. *Miswald-Wilde Co.* v. *Armory Realty Co.* (Wis. 1933) 246 N.W. 305.

The vendee's lien before conveyance under a contract for the sale of land has been held to be the exact counterpart of the vendor's lien after conveyance, or more correctly, the grantor's lien. 3 Pomeroy's Equity Jurisprudence, 3d Ed., p. 2536, § 1263; *Wickman* v. *Robinson*, 14 Wis. 535 (1861); *Flickinger* v. *Glass*, 222 N.Y. 404, 118 N.E. 792 (1918). The grantor's lien is given to secure the payments due him on the purchase price, *De Forest* v. *Holum*, 38 Wis. 516 (1875); *Willard* v. *Reas*, 26 Wis. 540 (1870), and does not extend to damages for breach of contract. 3 Pomeroy's Equity Jurisprudence, 3d Ed., p. 2508, § 1251; *Wright* v. *Buchanan*, 287 Ill. 468, 123 N.E. 53 (1919). Likewise, the vendee's lien before conveyance embraces only payments made to the vendor under the contract, and does not extend to damages for breach of contract, including lost profits. *Holden* v. *Efficient Craftsman Corp.*, 234 N.Y. 437, 138 N.E. 85 (1923); *Elterman* v. *Hyman*, 192 N.Y. 113, 84 N.E. 937 (1908). The vendee's lien has been based upon several different grounds. It has been held that, as the vendee makes payments under the contract, he becomes pro tanto the equitable owner of the land, and the vendor holds so much of the land as trustee for the vendee. From this trust springs the vendee's lien. *Rose* v. *Watson*, 10 H.L. Cas. 672 (1864); *Elterman* v. *Hyman*, 192 N.Y. 113, 84 N.E. 937 (1908). In view of the doctrine of equitable conversion, whereby the vendee becomes equitable owner at the execution of the contract, the reasoning used in these cases seems superfluous. Other courts have held that the basis of the lien is the doctrine of equitable conversion. 3 Pomeroy's Equity Jurisprudence, 3d Ed., p. 2536, §§ 1263, 1261. The lien under these two doctrines depends upon the contract. However, many courts have disregarded these theories, basing the lien