Contracts: Manner in which question whether contract is entire may arise

John A. Meleski
the back of the note under which the payee indorsed at the time of negotiation does not effect the negotiability nor do the words "for value received in one machinery as per contract" render the note non-negotiable. It has been further held that the words "this note is given in accordance with the terms of a certain contract under the same date, between the same parties," also the words "this note is given in accordance with a land contract of even date between B and C" do not destroy the negotiability of the instrument.

The cases referred to in this comment will show that some courts hold that a particular word or number of words destroy the negotiability of an instrument while other courts decide that they do not.

There seems to be no uniform or hard and fast rule of law to follow in construing instruments which have all the essentials of negotiability with some added words. It resolves itself down to a question of construction for the courts. Where the words "subject to" are in the instrument the courts have almost uniformly held that they clearly show the intention of the parties to make the instrument contingent upon some extrinsic document thus rendering the promise to pay dependent and qualified.

The general rule evident from all of the cases reviewed seems to be: Where an instrument otherwise negotiable expressly refers to an extrinsic document so as to indicate that the promise to pay is to be burdened with the terms of such extrinsic document it is notice sufficient to put the holder on inquiry and renders the instrument non-negotiable, but if such extrinsic document is not to effect the instrument until after maturity it will not destroy the negotiability of the instrument.

M. T. L.

Contracts: Manner in which question whether contract is entire may arise.—In the recent case of Fuller v. Ringling, 202 N. W. 183 (Wis.), a real estate broker, who procured a purchaser of a part of land, described in a non-exclusive contract, was held to be entitled to a commission, even though the contract was entire and was not fully performed by the broker, where complete performance was rendered impossible by the owner's sale of another part of the property.

There are at least six different ways in which questions may arise as to whether a contract is entire or severable. (1) Such a question may arise in connection with the sufficiency of a consideration on the one side to support two or more covenants on the other. For example, where a common carrier requires a shipper to pay regular rates and also assent to a limitation of the carrier's common law

14 Doyle v. Considine, 195 Ill. App. 311.

liability, many courts hold that there is no consideration for the separate agreement to the limitation of the carrier's liability. Another example is where there are several covenants in a contract and the consideration, by the terms of the contract, is apportioned to one covenant, the others are not enforceable since they are gratuitous.\(^2\)

(2) One question as to whether a contract is entire may arise in connection with the effect of an illegal covenant upon the remaining valid covenants of the contract. Thus, a contract which consisted of a valid covenant for an ante-nuptial settlement and an illegal covenant to pay alimony in case of divorce, was held to be severable so that upon the death of the husband, the valid covenant could be enforced.\(^3\)

(3) Another question may arise in connection with the effect of the Statute of Frauds. If the contract is oral and some of the covenants are within the Statute of Frauds, the remaining covenants are unenforceable if the contract is severable. Thus, it has been held that a parol agreement to devise and bequeath real and personal property as compensation for services is within the Statute of Frauds as to the real estate and being entire, wholly fails.\(^4\)

(4) The question may arise in connection with an attempt to disaffirm part of a voidable contract and to ratify the rest. This may be done if the contract is severable, but not if it is entire.

(5) The question may arise in cases in which certain covenants have been performed substantially and others have not, and the question is as to the effect of breaches of certain covenants. Thus, a contract of exclusive agency for the sale of certain lands with an option to purchase, was held to be an entire contract and a breach of the agency contract was also a breach of the option provision.\(^5\)

(6) The question may arise in connection with the effect of a judgment upon certain covenants as merging the remaining covenants of the contract.\(^6\)

The difficulty in these cases is to determine whether a given contract is entire or severable. A definition of an entire contract is difficult to formulate. Some courts define an entire contract as one the covenants of which have not been separated by the parties, and which, accordingly, cannot be separated by the court or as one in which the parties intend that each covenant shall be connected with and related to every other covenant.\(^7\) The intention of the parties as manifested in the contract and construed in the light of the situation of the parties, seems to be the turning point of practically every definition.\(^8\)

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\(^2\) Brown v. Wilson, 160 Pac. 94 (Okla.).
\(^3\) Stratton v. Wilson, 185 S.W. 522 (Ky.).
\(^5\) Sixta v. Land Co., 157 Wis. 293, 147 N.W. 1042.
\(^7\) Pac. Timber Co. v. Iowa Windmill etc. Co., 135 Iowa 308, 112 N.W. 308.
\(^8\) See 8 MARQUETTE LAW REVIEW 248 for good discussion on this subject.