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Contracts - Modification and Merger - Effect of Integration Clause

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CONTRACTS—MODIFICATION AND MERGER—EFFECT OF INTEGRATION CLAUSE — Defendant contracted to purchase a new truck from plaintiff. Defendant was given a trade-in allowance of $2500 for his used truck, the possession of which he relinquished to plaintiff. After plaintiff failed to deliver the new truck, the parties orally agreed on the purchase by defendant of a new automobile. Defendant alleged that under this agreement he was allowed $1500 trade-in for the used truck and, to satisfy the prior allowance of $2500, an additional $1000 credit in trade at plaintiff's place of business. However, a conditional sales contract executed by the parties failed to mention the $1000 credit in trade. When defendant's debt reached $993.97, plaintiff brought action on an open account. Defendant asserted that the credit allowance was sufficient to satisfy the debt. The Supreme Court of Oklahoma reversed a judgment for defendant. In denying defendant's second application for a rehearing, the court *held*, three judges dissenting, that it was error to admit parol evidence of the agreement to allow defendant $1000 credit in trade. *Quincy Johnston, Inc. v. Wilson*, 358 P.2d 205 (Okla. 1961).

The majority in the instant case pointed to an integration clause[1] in the conditional sales contract and felt that that provision compelled an application of the Oklahoma statute[2] which established the parol evidence rule.[3] The dissenting opinion, while not attacking specifically the conclusive effect given the integration clause by the majority, argued that the whole of the contract was partly written and partly oral and, accordingly, the lower court was correct in admitting the parol evidence for the jury to interpret.[4] A distinguished line of authority holds that where a contract is partly in writing and partly verbal, all evidence tending to show what the entire contract was, whether parol or in writing, is admisible.[5]

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1. Quincy Johnston, Inc. v. Wilson, 358 P.2d 205, 208 (Okla. 1961) "No representations, promises or statements have been made by seller unless endorsed hereon in writing."

2. Okla. Stat. § 15-137 (1951) "The execution of a contract in writing, whether the law requires it to be written or not, supersedes all the oral negotiations or stipulations concerning its matter, which preceded or accompanied the execution of the instrument."

3. See generally Grubb v. Rockey, 366 Pa. 592, 79 A.2d 255, 258 (1951) (Under parol evidence rule, where parties have deliberately put their engagements in writing, "All preliminary negotiations, conversations and verbal agreements are merged in and superseded by subsequent written contract, and unless fraud, accident, or mistake is averred, the writing constitutes the agreement between the parties, and is the only evidence thereof and its terms cannot be added to or subtracted from by parol evidence."); Grady v. Williams, 70 So. 2d 267 (Ala. 1953); Sonneborn v. S. F. Bowser & Co., 64 Ind. App. 429, 116 N.E. 66 (1917); Furleigh v. Dawson, 62 N.W.2d 174 (Iowa 1954); Di Ponio v. Garden City, 320 Mich. 230, 30 N.W.2d 849 (1948); Colozzi v. Bevko, 17 N.J. 194, 110 A.2d 545 (1955); Hanes v. Mitchell, 49 N.W.2d 606 (N.D. 1951).

4. Quincy Johnston, Inc. v. Wilson, 358 P.2d 205, 209-10 (Okla. 1961).

5. Davis v. Hunter, 79 Ga. App. 624, 54 S.E.2d 725 (1949); Hanley v. Chicago,

An integration clause is a contractual provision by which the parties agree that the writing contains the entire contract and, in effect, that it cannot be altered by parol.[6] This provision is also denominated a merger clause.[7] The majority of cases support the instant case in holding that an integration clause serves to indicate more strongly that the contracting parties did in fact intend the writing to be complete, and that the parol evidence rule is determinative of the decision.[8]

However, this rule that would give a conclusive operative effect of the parol evidence rule to an integration clause has been riddled with exceptions.[9] A frequently cited Maryland decision, *Rinaudo v. Bloom*,[10] held the parol evidence rule inapplicable to exclude evidence of a prior payment toward the purchase price,[11] Other exceptions have been allowed to show the true consideration[12] and to show the relative interests of partners.[13] Parol evidence has been received where there had been no objection to its admission.[14] Inclusion of an intgration clause would not, of course, exclude evidence showing fraud[15] or mistake.[16]

A perusal of the cases seems to indicate that North Dakota, under a statute[17] literally parallel to that of Oklahoma,[18] would obtain the

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M. & St. P. Ry., 154 Iowa 60, 134 N.W. 417 (1912); See generally McCormick, Evidence 432 ann. 2 & 3 (1954).

6. Stracener v. Nunnally Bros. Motor Co., 11 La. App. 541, 121 So. 617, 619 (1929) "No warranties have been made by the vendor, unless endorsed hereon in writing." Brown v. Grow, 249 Mass. 495, 144 N.E. 403, 404 (1924) ". . . this contract embodies all the terms and conditions." Champlin v. Transport Motor Co., 33 P.2d 82, 83 (Wash. 1934) "No . . . agreements have been made by the seller unless specifically set forth herein."

7. See, *e.g.*, Rogers v. J. I. Case Co., 272 S.W.2d 429, 431 (Tex. 1954).

8. See, *e.g.*, Upper Miss. Towing Corp. v. Calmes, 162 F.2d 177 (5th Cir. 1947); Southwestern Packing Co. v. Cincinnati Butcher's Supply Co., 139 F.2d 201 (5th Cir. 1943); Burton v. Burns, 201 Ark. 97, 143 S.W.2d 874 (1940); Kirkland v. John Deere Plow Co., 66 Ga. App. 304, 18 S.E.2d 109 (1941); Ross Seed Co. v. Sturgis Co., 297 Ky. 776, 181 S.W.2d 426 (1944); Valley Refrigeration Co. v. Lange Co., 242 Wis. 466, 8 N.W.2d 294 (1943).

9. See generally 3 Corbin, Contracts § 573-94 (1960); Jackiewicz, *The Parol Evidence Rule: Its Narrow Concept as a Substantive Rule of Law*, 30 Notre Dame Law. 653 (1955).

10. 209 Md. 1, 120 A.2d 184 (1956).

11. In the Rinaudo case, the contract in litigation contained an integration clause which stated that "This contract contains the final agreement between the parties." The Maryland Court stated that such a clause is "not invariably conclusive" and denied its conclusive effect on the ground that it was "untrue."

12. Hawn v. Malone, 188 Iowa 439, 176 N.W.2d 393 (1920); Stuart v. Crowley, 195 Wis. 47, 217 N.W. 719, 721 (1928) (dictum). *But see*, Alsterberg v. Bennett, 14 N.D. 596, 106 N.W. 49 (1905).

13. *In re* Talbott's Estate, 204 Iowa 363, 213 N.W. 779 (1927).

14. Commercial Credit Co. v. Lewis, 59 Ga. App. 144, 200 S.E. 566 (1938).

15. Bates v. Southgate, 308 Mass. 170, 31 N.E.2d 551 (1941).

16. Gross v. Stone, 173 Md. 653, 197 Atl. 137 (1938); Wells v. Niagara Co., 243 Mich. 550, 220 N.W. 667 (1928).

17. N.D. Cent. Code § 9-06-07 (1961).

18. Okla. Stat. § 15-137 (1951).

same result[19] as that reached in the instant case. However, the North Dakota Supreme Court has allowed several exceptions to the rule excluding parol evidence.[20]

It is submitted that, since insertion of an integration clause into a contract has become such a common practice as to lose its distinctive character, its mere inclusion should not bar evidence which might otherwise be admitted. It may be surmised that, had the Oklahoma Court followed this suggestion, it would have held for the defendant.

MAURICE R. HUNKE

CRIMINAL LAW — MURDER — "YEAR AND A DAY" RULE.— Defendant was indicted for murder and manslaughter following the death of an assault victim struck on September 21, 1958, and who died November 1, 1959. From a lower court order overruling defendant's motion to quash the indictment, the defendant appeals. The Supreme Court of Pennsylvania *held,* two judges dissenting, that the common law rule that no one is responsible for a killing where death ensues beyond a year and a day after the stroke is not a part of the definition of murder but only a rule of evidence or procedure; and that the motion to quash was properly overruled. The dissent attacked this decision as being judicial legislation, spurning the law of cause and effect. *Commonwealth v. Ladd,* 402 Pa. 164, 166 A.2d 501 (1960).

At common law a killing does not constitute murder unless the death ensues within a year and a day after the stroke.[1] The inadequacy of medical science to establish beyond peradventure a causal connection between the injury and death which occurred a long period of time later led to the founding of the rule.[2]

Eleven states, including North Dakota, have statutes expressly promulgating the rule.[3] Judicial decisions, holding that legislative

19. See, *e.g.,* Mevorah v. Goodman, 79 N.D. 443, 57 N.W.2d 600 (1953); Hanes v. Mitchell, 78 N.D. 341, 49 N.W.2d 606 (1951); Larson v. Wood, 75 N.D. 9, 25 N.W.2d 100 (1946); Jensen v. Siegfried, 66 N.D. 222, 263 N.W. 715 (1935).

20. See, *e.g.,* Rule v. Connealy, 61 N.D. 57, 237 N.W. 197 (1931) (Allowed to show that delivery was conditional); Carufel v. Kountz, 60 N.D. 91, 232 N.W. 609 (1930) (fraud); Baird v. Divide County, 58 N.D. 867, 228 N.W. 226 (1929) (governmental body exceeded its authority); Erickson v. Wiper, 33 N.D. 193, 157 N.W. 592 (1916) (true consideration for a deed); Citizens' State Bank of Lankin v. Garceau, 22 N.D. 576, 134 N.W. 882 (1912) (defective title).

1. See 4 BLACKSTONE, COMMENTARIES 197 (Lewis's ed. 1897); 3 COKE, INSTITUTES 47 (1817).

2. State v. Huff, 11 Nev. 17 (1876); see 3 HOLDSWORTH, HISTORY OF ENGLISH LAW 315 (3rd ed. 1923).

3. N.D. Cent. Code § 12-27-27 (1961) "To make killing either murder or manslaughter in prosecutions for homicide, it is requisite that the party shall die within a year and a day after the stroke is received or the cause of death is administered. In the