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THE PAROL EVIDENCE RULE IN WEST VIRGINIA —
WHEN IS A WRITING COMPLETE?

When in an action or suit one of the parties to a writing seeks to introduce prior or contemporaneous negotiations into the controversy he is confronted with a general prohibitory rule of law¹ which, as the West Virginia cases commonly put it, excludes parol evidence tending to vary, contradict or add to the terms of a complete and unambiguous written instrument.² It is believed that this rule, however stated, is applicable only when the writing is complete, *i. e.*, integrated into a single memorial by the parties.³ If, therefore, this rule operates to exclude all such extraneous matters only in the single instance of the completeness of the writing or integration, it would seem that the initial inquiry by the court would necessarily be: Is the writing complete or has the extraneous matter been integrated? Whether the extraneous agreement will be given legal effect or declared legally immaterial, will depend upon the test adopted by the court with respect to this fundamental question.⁴

In two recent West Virginia cases it would seem that the court has enunciated two somewhat different tests which, if applied to the same factual situation, might conceivably produce results quite irreconcilable. In *O'Farrell v. Virginia Public Service Company*,⁵ the court in dealing with the question of the integration of a certain alleged contemporaneous oral agreement seemed, in effect, to take the position that if the alleged oral agreement varied the written one and the latter was unambiguous,⁶ legal

¹ 5 WIGMORE, EVIDENCE (2d ed. 1923) § 2400: "First and foremost the rule is in no sense a rule of evidence, but a rule of substantive law. It does not exclude certain data because they are for one or another reason untrustworthy or undesirable means of evidencing some fact to be proved." *Cohn v. Dunn*, 111 Conn. 342, 149 Atl. 851 (1930).

² *O'Farrell v. Virginia Public Service Co.*, 177 S. E. 304 (W. Va. 1934); *Anderson v. Hyman*, 113 W. Va. 760, 169 S. E. 741 (1933); *Capital City Bank v. Foster*, 112 W. Va. 520, 165 S. E. 802 (1932); *Tabler v. Hault*, 110 W. Va. 542, 158 S. E. 782 (1931); *Jones v. Kessler*, 98 W. Va. 1, 126 S. E. 512 (1925); *Long v. Perine*, 41 W. Va. 315, 23 S. E. 611 (1895).

³ Complete in the sense that the integration though not necessarily including all negotiations of the parties, covers or includes the particular utterance which is sought to be introduced. *Corns-Thomas Company v. County Court*, 92 W. Va. 368, 375, 115 S. E. 462 (1922), "When a writing bears evidence of incompleteness on its face, oral evidence is admissible to supply the missing or omitted element or factor;" *Erie City Iron Works v. Miller Supply Co.*, 68 W. Va. 519, 70 S. E. 125 (1911); *Rymer v. South Penn Oil Co.*, 54 W. Va. 530, 46 S. E. 559 (1904); *Johnson v. Burns*, 39 W. Va. 658, 20 S. E. 686 (1894).

⁴ 5 WIGMORE, EVIDENCE n. 1, § 2430.

⁵ *Supra* n. 2.

⁶ It is believed that "unambiguous", as used, is synonymous with complete-

effect could not be given to the extraneous negotiation.⁷ In *City of Wheeling v. Benwood & McMechen Water Company*,⁸ the question at bar was whether or not a prior written agreement of the parties had been merged into or superseded by a subsequent written agreement, *i. e.*, whether the subsequent agreement was a complete integration of the negotiations of the parties. Upon this occasion the court said whether or not integration had taken place depended upon the intent of the parties.⁹

In many jurisdictions the technique of the *O'Farrell* case is employed and the completeness of the writing is determined solely from an inspection of the writing itself.¹⁰ Apart from certain questions which may arise where the law requires a particular legal act to be in writing, it would seem that integration is not legally necessary.¹¹ Hence in such a case the question should be whether the parties intended to integrate in the first instance.¹² Whether the parties intended the writing to embody their entire agreement or only a part thereof, should be determined, it is said, from their conduct and language and the surrounding facts and

ness for in any other connection it would have, it is submitted, no significance as a part of the rule of integration. "If the terms of a written contract imply completeness there is a presumption generally conclusive, that the writing contains the entire agreement." *O'Farrell v. Virginia Public Service Co.*, *supra* n. 2, syl. 1.

⁷ Apparently the court admitted the parol agreement and by comparison with the writing found that there was a variance, then held that the parol stipulation had no legal effect and that the trial court did not err in striking out the testimony as to this matter.

⁸ 176 S. E. 234 (W. Va. 1934).

⁹ "Both parties themselves initially placed this construction on their arrangement . . . Their conduct indicates that they regarded *the subsequent writing* more as a confirmation of their earlier agreement than as an integration of the contract." (Italics supplied.)

¹⁰ In *Baude & McDonnell Co. v. Cohen Co.*, 87 W. Va. 763, 106 S. E. 52 (1921), it was said that where the instrument appears complete on its face there is a presumption that it contains the whole of the agreement and this presumption is generally conclusive; *Jones v. Kessler*, *supra* n. 2, goes even farther (that the test of completeness is the writing itself); *Stephan v. Lagerqvist*, 52 Cal. App. 519, 199 Pac. 52 (1921); *Armstrong Paint & Varnish Works v. Continental Can Co.*, 301 Ill. 102, 133 N. E. 711 (1921); *Thompson v. Libby*, 34 Minn. 374, 26 N. W. 1 (1885); *Brantingham v. Hough*, 174 N. Y. 53, 66 N. E. 620 (1903); *Ruppert v. Singhi*, 243 N. Y. 156, 153 N. E. 33 (1926); *Newark v. Mills*, 35 F. (2d) 110 (C. C. A. 3d, 1929); *Seitz v. Brewers Refrigerating Co.*, 144 U. S. 510, 12 S. Ct. 46 (1891).

¹¹ 5 WIGMORE, EVIDENCE § 2430: "Whether a particular subject of negotiation is embodied by the writing depends wholly upon the intent of the parties thereto. In this respect the contrast is between voluntary integration and integration by law. Hence the parties are not obliged to embody their transaction in a single document; yet they may if they choose. Hence it becomes merely a question whether they have intended to do so."

¹² *Cohn v. Dunn*, *supra* n. 1; *Danielson v. Bank of Scandinavia*, 201 Wis. 392, 230 N. W. 83 (1930); "The admissibility of parol evidence to show terms of a contract other than have been reduced to writing depends upon whether or not the writing was intended by the parties to embody the entire

circumstances,¹³ excluding, as a rule, direct statements by the parties as to what they may or may not have intended.¹⁴

Certain tests have been suggested to determine whether or not the parties intended to make a complete integration.¹⁵ The chief and most reliable appears to be whether or not the particular element of the alleged extrinsic negotiation is dealt with at all in the writing. If it is mentioned, covered or dealt with, then supposedly the writing was meant to include that element. If it is not dealt with in the writing then the instrument was probably not intended to cover that phase of the negotiation. Consequently in the latter event legal effect may in general be given to the extraneous matter, while in the former such matter should be declared legally immaterial.¹⁶ While not an absolute criterion and while subject to an inherent indefiniteness making uniformity of result unlikely,¹⁷ it is only one of perhaps numerous methods of arriving at the intention of the parties. In any event, to repeat, the surrounding facts and circumstances should be considered as indices of what the parties may have intended.

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transaction, and so to constitute the sole evidence of their agreement." 5 WIGMORE, EVIDENCE, § 2430.

¹³ *Danielson v. Bank of Scandinavia*, *supra* n. 12; "In considering whether the parties intended a written contract to be an integration of their entire transaction so as to render inadmissible parol evidence of such additional terms of agreement, the subject matter and surrounding circumstances may and should be taken into consideration." *Accord Cohn v. Dunn*, *supra* n. 12; *J. I. Case Threshing Machine Co., v. Buick Motor Co.*, 39 F. (2d) 305 (C. C. A. 8th, 1930); 5 WIGMORE, EVIDENCE, § 2430.

¹⁴ 5 WIGMORE EVIDENCE, § 2471. Such statements are barred by the rule of integration itself; and quite often by a statutory requirement, as in the case of wills. However there are exceptions wherein such declarations are admissible: (1) to interpret an equivocation, *i. e.*, a term, which upon application to external objects, is found to fit two or more of them equally. *Id.* § 2472, p. 409; *In re Ray. Cant v. Johnstone* (1915) 1 Ch. 461; *In re Crawley. Robertson v. Flynn* (1920) 1 Ir. R. 78. To the effect that the term must fit two or more objects equally accurately, *Doe d. Simon Hiscocks v. John Hiscocks*, 5 M. & W. 363 (1839); *Drake v. Drake*, 8 H. L. Cas. 172 (1860). (2) See *Collins v. Treat*, 108 W. Va. 443, at 446, 152 S. E. 205 (1930). Declarations of intention are admissible to explain a *latent* ambiguity *i. e.*, where the instrument upon its face appears clear, but there is some collateral matter which makes the meaning uncertain; but not admissible where the ambiguity is *patent*.

¹⁵ The criterion of completeness is the writing itself, *Thompson v. Libby*, 34 Minn. 374, 26 N. W. 1 (1885); *Armstrong Paint Works v. Continental Can Co.*, *supra* n. 10; *Dawson County Bank v. Durland*, 114 Neb. 605, 209 N. W. 243 (1926); (stating the test to be how closely the oral contract is bound to the writing) *Roof v. Jerd*, 102 Vt. 129, 146 Atl. 250 (1929); (test of admissibility whether the oral agreement is one which the parties would not ordinarily be expected to embody in the writing) *Mitchell v. Lath*, 247 N. Y. 377, 160 N. E. 646 (1928).

¹⁶ *Cohn v. Dunn*, *supra* n. 1; *Danielson v. Bank of Scandinavia*, *supra* n. 12; 5 WIGMORE, EVIDENCE, § 2430.

¹⁷ Note (1931) 70 A. L. R. 761.