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Contracts--Practical Construction as a Means of Interpretation

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CONTRACTS—Practical Construction as a Means of Interpretation.—In a recent case the plaintiff alleged that the defendant had contracted to sell to it ten carloads of coal at the price of $2. per ton. The defendant contended that it had agreed to sell four carloads and since the date set for shipment it had supplied the plaintiff with seven carloads, therefore in fact doing more than it contracted to do. After making the contract, which was an oral one, the price of coal began to rise and at the time the defendant shipped the last two carloads, coal was selling at $4.10 above the contract price. The plaintiff was allowed to recover damages for the non delivery of the other three carloads. The court in its opinion said:

"It is common sense that a company is not going to continue shipping coal to a purchaser when prices are soaring at a stipulated contract price when it is not bound to do so." Fuel Distributors v. Payne-Barber Coal Co., 148 S. E. 854 (W. Va. 1929).

The case is a striking illustration of a general rule of law that when a contract is ambiguous or of doubtful or uncertain meaning the subsequent conduct of the parties under the contract may be resorted to in determining the proper construction of the agreement. Our court has said in Clark v. Sayers & Lambert, 55 W. Va. 512, 47 S. E. 312; that "practical construction of contracts is that given to the agreements by the parties themselves by acts subsequently done with reference to the contracts." The doctrine finds its application most frequently in written contracts, but as evidenced by the principal case practical construction has been adopted in the interpretation of oral agreements. This seems to be in accord with the rules of construction as laid down in the Restatement of The Law of Contracts, sec. 231, where it is said that the subsequent conduct of the parties under a contract may be used as an aid in the interpretation of both integrated and unintegrated agreements. However the courts have placed certain limitations upon this rule of construction and have said that it is only applicable where the terms of the contract are ambiguous or equivocal and cannot be invoked where to do so would alter the plain intention of the parties. Salisbury v. Brooks, 81 W. Va. 233, 94 S. E. 117.

The question naturally arises as to when a contract may be termed ambiguous and its provisions uncertain so as to render it susceptible to practical construction. In the case of Hall Mining Co. v. Consolidated Fuel Co., 69 W. Va. 47, 70 S. E. 857, there was a contract involving the sale of coal. One clause of the
contract required the purchaser to pay not less than $1.10 per ton for “each and every ton” of coal shipped. The seller, however, accepted without objection a lesser sum for some of the coal sold but received on an average $1.14 per ton. It was contended that since the language was unequivocal and unambiguous, the contract was not subject to practical construction. The court nevertheless held that the parties by subsequent acts had put their own construction upon the agreement and that $1.10 per ton was not a minimum but an average price. Yet few persons with ordinary intelligence would feel themselves at liberty to say that the words “each and every ton” are ambiguous. In reality, they are simple, everyday words, with plain meanings. Thus it would seem that a practical construction of such words would prevail over a literal interpretation.

It is submitted that courts are prone to go far in the interpretation of a contract in order to effectuate the true meaning and intention of the parties, which from a practical standpoint is the only justifiable method of attacking a legal problem involving interpretation. Most words and phrases of ordinary meaning are susceptible of interpretation and although apparently clear in meaning they may be shown to be ambiguous by the surrounding circumstances and the situation of the parties. A word is flexible and is not bound by one definite and unchangeable meaning. It is submitted that the definition of a particular word found in a dictionary is incomparable in value to the meaning of the same word as defined by the subsequent acts of parties who have used the word as a tool in an attempt to manifest their intention. As was said in the principal case “actions speak louder than words.”

Some authorities have considered the acts of parties under a contract as evidence of a subsequent modification, which in reality would bring about the same result, had the doctrine of practical construction been applied. Matgolvs v. Mollevick, 98 N. Y. S. 849 (1906). This view has also been adopted by the American Law Institute in the Restatement of the Law of Contracts. See comment on clause (e), sec. 231. For other cases on practical construction see Headly v. Hoopengarner, 60 W. Va. 626, 5 S. E. 744; Ramage v. South Penn Oil Co., 94 W. Va. 81, 118 S. E. 162; Summit Coal Co. v. Raleigh Smokeless Fuel Co., 99 W. Va. 11, 128 S. E. 298 citing Williston on Contracts, § 623.

—Charles M. Barrickman.