Volume 29 | Issue 2 Article 11

January 1923

Contracts, Specific Performance--Statute of Limitations

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Darby v. *Pierce,* 17 Idaho 697, 107 Pac. 484; *Perry* v. *Salt Lake City,* 7 Utah 143, 25 Pac. 739. An ordinance may be valid on its face, but which if improperly applied, may become unconstitutional. *Yick Wo* v. *Hopkins,* 118 U. S. 356. Where a municipal corporation has authority to regulate pool rooms under the police power, the plaintiff can not be heard to complain of the loss of his property because he will be considered as having knowingly engaged in an occupation without the protection of the Federal Constitution and which lawfully could be regulated out of existence. *Murphey* v. *California, supra.* Social interests demand and authority sanctions the decision in the principal case.

—H. C. H.

CONTRACTS, SPECIFIC PERFORMANCE—STATUTE OF FRAUDS—WRITING NECESSARY TO TAKE CASE OUT OF OPERATION OF STATUTE.—A agrees in writing to accept certain real estate in compromise of a suit at law. B orally agrees to convey. Subsequently thereto A attempts to withdraw and announces intention of continuing his action at law. B tenders deed and brings his bill asking for specific performance and that A's suit be enjoined. *Held,* injunction and specific performance granted. *Ruckman* v. *Hay,* 114 S. E. 514 (W. Va. 1922).

A could not have sued B upon his oral promise to convey, because such suit is expressly excluded by the terms of the STATUTE OF FRAUDS, which in effect provides that no action shall be brought upon any contract for the sale of land unless some note or memorandum thereof be in writing and signed by the party to be charged. See W. VA. CODE, c. 98. The principal case is in accord with the weight of authority, which treats this as a voidable contract allowing the party not signing to enforce the contract against the party signing, thereby extending the privileges and immunities of a class legally incompetent to a party who is legally competent enabling such party to reap the advantages of a profitable bargain and escape the consequences of an unfavorable one. *Penniman* v. *Hartshorn,* 13 Mass. 91; *McCrea* v. *Purmont,* 16 Wend. 460; *Mountain Park Land Co.* v. *Snidow* 77 W. Va. 54, 86 S. E. 915. The courts so holding apparently treat this as a voidable contract because the statute does not in terms preclude recovery by the party not signing against party who has signed. *Don-*

ahue v. *Rafferty,* 82 W. Va. 535, 96 S. E. 535; *Armstrong* v. *Maryland Coal Co.,* 67 W. Va. 589, 69 S. E. 195. The argument of the courts which refuse a recovery to the party not signing against the party signing is not that the statute precludes such recovery in terms but that it robs the promise of the party not signing of the element of enforceability, which makes it consideration for the promise of the opposite party and that there is hence no contract because of lack of consideration. *Willebrant* v. *Sisters of Mercy,* 185 Mich. 366, 152 N. W. 85; *Wilkinson* v. *Havendrick,* 58 Mich. 574, 26 N. W. 139. The case of a party orally agreeing to convey land bears an exact analogy to the case of an illusory promise where it is held that such promise is not sufficient consideration to create a binding contract. *Ellis* v. *Dodge,* 237 Fed. 860; *Eclipse Oil Co.* v. *South Penn Oil Co.,* 47 W. Va. 83, 34 S. E. 923; *Chicago & Great Eastern Ry. Co.* v. *Dane,* 43 N. Y. 240. The sole difference is that an oral promise to convey land becomes defective because of legislative enactment, whereas in the case of an illusory contract the defect is inherent in the promise. The legal effect of the two promises is exactly the same, there being no detriment to the promisor or benefit to the promisee in either case. It may be said that the same objection could be urged with equal force to an infant's or insane person's promise. This objection is easily disposed of on the ground that there the court is dealing with a favored class. Here, there is no reason, the party being legally competent, for extending the privilege. There being no reason for allowing a recovery in the principal case, except the fact that the statute does not expressly deny a recovery, it would seem preferable to refuse a recovery on the grounds laid down by the Michigan Court in *Wilkinson* v. *Havendrick, supra.*

—*W. B. H.*

MASTER AND SERVANT—BONUS—NOT A GIFT—RECOVERABLE ON WRONGFUL DISCHAGE.—Employee was discharged without cause before the specified length of time in which a bonus was to be paid, *Held,* employer was liable for bonus on *quantum meruit.* The offer was for faithful service and makes a supplementary contract for benefit of which the employee could not be deprived without cause. *Roberts et ux* v. *Mays Mills, Inc.,* 114 S. E. 530 (W. Va. 1922).