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Evidence - Admissibility of Parol to Prove a Contemporaneous Collateral Agreement

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tion likewise falls.[18] Thus, emancipation by marriage in France is in effect dependent upon parental consent.

In Louisiana, since parental consent is essential for judicial emancipation, it should also be necessary for emancipation by marriage. The prior Louisiana jurisprudence—which is disregarded by the present decision—is more in harmony with other provisions of the Civil Code, particularly those regarding judicial emancipation. If the refusal of a selfish parent or tutor to consent to the minor's marriage could be considered as "ill-treatment" within the intendment of Article 387, it would be possible to obtain a judicial emancipation. In view of the fact that the present decision was based on the 1908 amendment of Article 382 which refers only to minors who have reached the age of eighteen, it is open to question whether the court meant to leave the rule that, under similar circumstances, a minor under eighteen would not be emancipated.

J. G. C.

EVIDENCE—ADMISSIBILITY OF PAROL TO PROVE A CONTEMPORANEOUS COLLATERAL AGREEMENT—In answer to a suit for the balance due on a written contract of sale of roofing material, defendant contended that the plaintiff orally agreed to supervise the application of the roofing and to guarantee the roof for ten years. The defendant reconvened for damages resulting from faulty application of the roofing. *Held,* that parol evidence may be introduced by defendant to prove such an oral agreement, since it does not contradict the writing and would be in the nature of a contemporaneous collateral agreement to do something in addition to the obligation embodied in the written contract; but that defendant did not discharge her burden of proving the existence of the oral agreement. *Brandin Slate Co., Inc. v. Fornea,* 183 So. 572 (La. App. 1938).

The rule precluding admission of parol evidence to add to, subtract from, contradict or vary the terms of a valid written in-

18. 1 Planiol et Ripert, Traité Pratique de Droit Civil Français (1925) 653-654, nº 618; 2 Marcadé, Explication Théorique et Pratique du Code Napoléon (5 ed. 1852) 267, nº 476; 5 Laurent, Principes de Droit Civil Français (2 ed. 1876) 216-217, nº 195; 3*bis* Beudant, Cours de Droit Civil Français (2 ed. 1936) 301, nº 1716; 1 Aubry et Rau, Cours de Droit Civil Français (5 ed. 1897) 831-832, § 129; 3 Huc, Commentaire Théorique et Pratique du Code Civil (1892) 448, nº 466. See Art. 476, French Civil Code.

strument is found in both civil[1] and common law.[2] Although Article 2276[3] would seem to extend the prohibition to apply to agreements made subsequent to the written contract, it has long been held that the rule in this state is substantially the same as that at common law.[4] Thus in the recent case of *Salley v. Louviere*[5] the Supreme Court said that "The words 'or since' [in Article 2276] have reference to the phrase 'what may have been said,' and not to what may have been agreed to, since the making of the written contract," so "the meaning is that parol evidence as to what the parties to a written contract may have said at any time shall not be admitted for the purpose of proving that they had an antecedent or a contemporaneous agreement contrary to that which was reduced to writing."[6]

That parol may be introduced to prove an independent collateral agreement is a well recognized exception to the general rule.[7] The question presented in the principal case is whether the bond between the two alleged agreements is sufficiently close to prevent proof of the oral agreement.[8] "The test to determine whether the alleged parol agreement comes within the field embraced by the written one is to compare the two and determine 'whether parties, situated as were the ones to the contract, would naturally and normally include the one in the other if it were made.' "[9] Although the general rule is everywhere cited in almost identical terms, it is inconsistently applied to various sets of facts.[10]

In Louisiana parol has been held inadmissible to show that the plaintiff had agreed to give a newspaper advertiser certain

1. See Corbett v. Costello, 8 La. Ann. 427, 428 (1853).

2. 1 Greenleaf, Law of Evidence (15 ed. 1892) 372, § 275.

3. Art. 2276, La. Civil Code of 1870: "Neither shall parol evidence be admitted against or beyond what is contained in the acts, nor on what may have been said before, or at the time of making them, *or since.*" (Italics supplied.)

4. Moore v. Hampton, 3 La. Ann. 192 (1848); Jamison v. Ludlow, 3 La. Ann. 492 (1848).

5. 183 La. 92, 162 So. 811 (1935).

6. 183 La. at 98, 162 So. at 813.

7. 5 Wigmore, Evidence (2 ed. 1923) 306, § 2430.

8. 3 Williston, Contracts (1936) 1832, § 637. Mitchill v. Lath, 247 N.Y. 377, 160 N.E. 646, 68 A.L.R. 239 (1928).

9. Wagner v. Marcus, 288 Pa. 579, 136 Atl. 847, 848 (1927). Cf. 3 Williston, Contracts (1936) 1833, § 638.

10. Wigmore, Evidence (2 ed. 1923) 306, § 2430. The Supreme Court of Louisiana, in referring to Articles 2236 and 2276 in Robinson v. Britton, 137 La. 863, 865, 69 So. 282, 283 (1915), quoted from the court of appeal decision of the same case: " 'These articles, and especially the latter, have been the subject of a vast number of decisions by our Supreme Court, and some of them are quite difficult to reconcile with the plain provisions and obvious purposes of the Code.' "

"write ups" in addition to the space bought;[11] or to show that a vendee by authentic act of sale had agreed to share equally with the vendor any profits from resale of the real estate purchased;[12] or that the vendor of phonographs had agreed verbally to have the merchandise delivered at least two weeks before Christmas, and to send a salesman to Louisiana to assist in demonstrating and selling the instruments.[13] Parol has been admitted, however, to show that the lessor of certain property gave verbal notice to the lessee that no liquor could be sold on the premises, though the restriction was not included in the written instrument;[14] and the vendee of a second hand car was permitted to show that the consideration named for the car included a sum for which the vendor agreed verbally to secure collision insurance for the purchaser.[15]

In accordance with the weight of Louisiana authority and under an application of the accepted criterion, it would seem that the parties in the instant case "naturally and normally" would have included the alleged collateral agreement—an important guaranty—in the written contract; thus the parol proof should have been barred. No harm was done in the principal case, since the evidence offered did not prove the existence of the purported oral agreement, yet this decision should not be taken as a precedent for further relaxation of the rule protecting the integrity of written contracts.

C. O'Q.

SEPARATION FROM BED AND BOARD—"MUTUAL WRONGS" DOCTRINE—A wife sued for separation from bed and board on the grounds of slander, defamation and cruel treatment. In denying these allegations, the husband averred—without making any reconventional demand—that his wife had an ungovernable temper and that, as a result of her cruelty to him, they had been living separate and apart for more than two years. On original hearing the plaintiff was awarded a decree of separation from bed and

11. The Item Company, Ltd., v. Wormington Machinery Power & Equipment Co., Inc., 4 La. App. 519 (1926).

12. Pfeiffer v. Nienaber, 143 La. 601, 78 So. 977 (1918) (O'Niell, J., dissenting).

13. Brenard Mfg. Co. v. M. Levy, Inc., 161 La. 496, 109 So. 43 (1926).

14. New Orleans and Carrollton Railroad Company v. Darms, 39 La. Ann. 766, 2 So. 230 (1887).

15. McConnell v. Harris Chevrolet Co., Inc., 147 So. 827 (La. App. 1933).