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## Contracts—Statute of Frauds

Lowell Grosse

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Judge Dye dissented, and maintained that the plain words of the policy excluded plaintiff from coverage because the judgment was had against the partnership.

An insurer is liable only for those risks which it assumes in the policy<sup>64</sup> and they may limit their liability by the insertion of any exclusion clauses which are thought proper.<sup>65</sup> On the basis of public policy insurers are usually excused from liability for criminal acts of the insured whether or not they are explicitly exempted in the agreement.<sup>66</sup> But, contracts which indemnify an assured for unlawful acts of his agents, and in which he was in no way associated, are lawful.<sup>67</sup>

In finding that the exclusion clause was merely intended to apply to the named assured, the court in the instant case interpreted its meaning in the light of sound public policy. This is the meaning an average policy holder of ordinary intelligence, as well as the insurer, would attach to it.<sup>68</sup>

The Court of Appeals has thus made it clear to insurers that even though there exist very little ambiguity they should spell out explicitly the limits which they intend to place on their obligations. The construction given under such circumstances will be in favor of the assured since the insurer is the draftsman.

### *Statute of Frauds*

The Statute of Frauds set about to remedy the abuse of oral contracts and declared that certain agreements would be void unless some note or memorandum thereof is in writing and signed by the party to be charged.<sup>69</sup> The purpose of the memo is to prevent the enforcement of contracts that were never made.<sup>70</sup>

64. 6 COOLEY, BRIEFS ON INSURANCE 5618 (2d ed. 1928); *Devitt v. Continental Casualty Co.*, 269 N. Y. 474, 199 N. E. 765 (1936); *Gates v. Prudential Ins. Co. of America*, 240 App. Div. 444, 270 N. Y. Supp. 282 (4th Dep't), *appeal denied*, 265 N. Y. 510, 193 N. E. 296 (1934).

65. "The purpose of the exclusion clause is to exclude certain risks or probabilities of injury which the insurer considered too great to cover." *Standard Surety and Casualty Co. v. Maryland Casualty Co.*, 281 App. Div. 446, 119 N. Y. S. 2d 795 (4th Dep't 1953).

66. "Liability insurance does not indemnify the insured for his own wanton assaults, or assaults committed by his agents if directed by him. There are two reasons for this. Firstly, the injuries sustained by a person assaulted by the insured are not accidentally suffered, but result from wilful conduct. Secondly, public policy forbids an agreement indemnifying against wanton and criminal conduct." 1 RICHARDS, INSURANCE § 17.

67. 1 RICHARDS, INSURANCE § 17; *Taricab Motor Co. v. Pacific Coast Cas. Co.*, 73 Wash. 631, 639, 132 P. 393, 396 (1913).

68. See *Burr v. Commercial Traveler Mutual Accident Ass'n.*, 295 N. Y. 294, 301, 67 N. E. 2d 248, 251, 166 A. L. R. 462 (1946).

69. PERS. PROP. LAW § 31.

70. 2 CORBIN, CONTRACTS § 498.

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If the writing lacks formality but adequately proves the existence of a contract it should be admitted.<sup>71</sup> Where only one of two separate documents are signed they will satisfy the Statute,<sup>72</sup> however, this raises the problem of what is required to connect the writings. A theory has been advanced that requires the documents specifically to refer to one another without the aid of parol evidence.<sup>73</sup> The better rule is that the papers need only refer to the same transaction or subject matter,<sup>74</sup> and that parol evidence may be used to show this integration.<sup>75</sup>

In *Crabtree v. Elizabeth Arden Corp.*,<sup>76</sup> the Court of Appeals adopted this rule,<sup>77</sup> when the plaintiff brought suit for the breach of an employment contract he had allegedly negotiated with the defendant. Three separate documents were put into evidence. The first purports to be an "Employment Agreement with Nate Crabtree . . .," transcribed by the defendant's secretary during the negotiations with the plaintiff. The second and third documents were "payroll change" cards which contained the names of the parties and the stipulated salary. Both were signed; the first by the general manager, who was present at the bargaining, and the latter by the comptroller. The defendant refused to approve the latter card. The court allowed oral testimony that the negotiations were to the same effect as the facts presented by the papers. They concluded that all three referred to the same transaction and contained all the necessary terms of the contract. Therefore, the plaintiff was not barred by the Statute of Frauds.

It is evident that an agreement did exist in this case; all the terms of the contract were set forth in writings and at least one of the papers had been signed by the defendant or her agents. The rule which disallows connecting the papers by parol evidence serves no useful purpose. The doors to fraud are not opened by the rule<sup>78</sup> adopted by the court. Rather, it prevents individuals from circumventing their obligations on the basis of mere technicalities.

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71. "It matters not how informal or bunglingly constructed the memorandum may be." *Spiegel v. Lowenstien*, 162 App. Div. 443, 448, 147 N. Y. Supp. 655, 658 (3d Dep't 1914); RESTATEMENT, CONTRACTS § 207.

72. *Marks v. Cowdin*, 226 N. Y. 158, 123 N. E. 139 (1919); *Spiegel v. Lowenstien*, *supra* note 71; 2 WILLISTON, CONTRACTS § 568 (Rev. ed. 1936); RESTATEMENT, CONTRACTS § 208, comment b, (iii).

73. *Wilson v. Lewiston Mill Co.*, 150 N. Y. 314, 44 N. E. 952 (1896); *James Talcott Inc. v. Greenstein*, 210 App. Div. 633, 206 N. Y. Supp. 471 (1st Dep't 1924).

74. *Peck v. Vandermark*, 99 N. Y. 29, 1 N. E. 41 (1885); *Coe v. Tough*, 116 N. Y. 273, 122 N. E. 550 (1889).

75. *Marks v. Cowdin*, *supra* note 72.

76. 305 N. Y. 48, 110 N. E. 2d 551 (1953).

77. "[T]his court has on number of occasions approved the rule, and we now definitely adopt it, permitting the signed and unsigned documents to be read together, provided that they clearly refer to the same subject matter or transaction." *Id.* at 55, 110 N. E. 2d at 113.

78. 2 CORBIN, CONTRACTS § 498.