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Contracts

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CONTRACTS

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PART I. LEGISLATION

In Florida, the interval between the time of the last survey[1] and the present has been good to the lawyer interested in cases involving contracts. This is particularly true with reference to legislative developments. The Motor Vehicle Sales Finance Act,[2] for example, marks the greatest advance in the field of consumer protection in the history of Florida. The Act reflects widespread dissatisfaction with abuses in installment consumer selling and a legislative determination to enact comprehensive legislation protecting the interests of the retail installment buyer. In taking this action, Florida joins at least twenty-four other states in providing statutory regulation on the subject of retail installment financing of motor vehicles.[3]

One of the great evils in installment buying has been the inclusion in the sales contract of excessive service or interest charges, often labeled a "time price differential." The Act curtails this unwholesome practice by limiting such charges to specified rates.[4] These statutory rates are computed on a per annum basis on the cash sale price, less the down payment or trade-in allowance, plus the cost of insurance, other benefits and official fees.[5]

In an effort to protect the retail installment purchaser from contracting away his remedies and rights, the Act specifically prohibits[6] the inclusion of certain provisions in the contract. Aside from that, the main features of the Act are: (1) the requirements as to content of the retail installment

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1. This is the third in the survey of Florida Law series and covers the legislation enacted during the General and Special Session of the 1957 Florida Legislature and the cases contained in volumes 81 So.2d through 95 So.2d as well as the applicable corresponding reports of the federal courts for the past two year period.

2. FLA. STAT. § 520.01-520.13 (1957), added by Fla. Laws 1957, c. 57-799.

3. CAL. CIV. CODE §§ 2981-2982 (1950); COLO. REV. STAT. ANN. § 13-16-1 (1953); CONN. GEN. STAT. vol.3, c. 311 (1949); IOWA CODE c. 322 (1958); KY. REV. STAT. c. 190 (1956); ME. REV. STAT. ANN. c. 60 §§ 305-306 (1954), as amended, H.B. 993, App. May 1957; MD. ANN CODE art. 83, §§ 116-152 (1951); MASS. ANN. Laws c. 255, 11-12A, 13H (1956); MICH. STAT. ANN. § 23.628 (1950); MINN. STAT. ANN. §§ 168.66-168.77; NEB. REV. STAT. c. 60 § 617 (R.R.S. 1943); NEV. STAT. c. 346 (1953); N. J. REV. STAT. tit. 17, c. 16B (supp 1950); N.Y. PERS. PROP. LAW §§ 301-311; OHIO CODE ANN. §§ 6346.15-6346.27 (supp. 1952); ORE. COMP. LAWS ANN. 42.401-42.426 (1940); PA. STAT. ANN. tit. 69 § 601 (supp. 1956); S.D. SESS. LAWS c. 241 (1957); VERNONS TEX. LAWS c. 467 (1951); UTAH CODE ANN. §§ 15-1-2a (1953)); VA. CODE ANN. § 532 (1956); W.S.A. §§ 218.01-218.05 (1957).

4. See note 2 *supra* § 520.08.

5. *Id.* paragraphs (1) (2).

6. *E.g.*, under the act, a retail installment buyer cannot waive a cause of action for an illegal act committed in collecting payment or repossessing the vehicle. FLA. STAT. § 520.11(4)(1957).

contracts; (2) the regulation of insurance practices, finance charges and refund credits; (3) the penalty provisions of the Act. Unfortunately, it does not contain a specific reference to civil remedies available to the seller on a contract executed in violation of the Act. This is a significant ommission and presents a problem that will have to be solved in the future when such a contract is involved in an action by the seller for the return of a motor vehicle, or an action by a buyer for return of the purchase price. However, in light of the Act's obvious purpose to protect installment buyers and in view of the general rule that a party will not be denied recovery, if he is the party for whose protection the statute was enacted,[7] it may well be that the courts will hold that the execution of a contract, not in compliance with the Act, is prohibited, but that the prohibition extends only to the seller. The seller, thus, could neither enforce a non-complying contract nor prevent its enforcement by the buyer.

It is hoped that a subsequent legislature will remedy the fact that the Act, like the New York Law,[8] provides that the buyer's signature shall be conclusive proof of delivery to him of a properly completed writing.[9]

A new arbitration law, known as the Florida Arbitration Code,[10] was enacted in 1957. Under this Code, which was warranted by the impressive industrial development in Florida, two or more parties may agree in writing to submit to arbitration any controversy existing between them at the time of the agreement. They may also include in a contract a provision for the settlement by arbitration of any controversy thereafter arising between them (relating to such contract) for any failure or refusal to perform the agreement. Such a provision is valid, enforceable, and irrevocable without regard to the justiciable character of the controversy. Of course, the Code does not apply to any agreement in which the parties expressly state that the provisions of the Code shall not apply.

The prior Florida arbitration statute[11] was substantially similar to the English arbitration law[12] of over two and a half centuries ago, and involved a procedure far too rigid and much too formal for present-day practicalities. Moreover, Florida's prior arbitration statute had little advantage, from a

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7. 6 CORBIN, CONTRACTS § 1540 (1951).
8. N.Y. PERS. PROP. LAW §§ 30-31, added by N.Y. Laws 1956, c. 633.
9. FLA. STAT. § 520.07(6) (1957).
10. FLA. STAT. § 57.10-57.31 (1957), added by Fla. Laws 1957, c. 57-402.
11. FLA. STAT. § 57.01 (1957). Note, however, that Florida's unicameral Legislative Council in 1828 enacted Florida's first arbitration law. Acts of the Legislative Council, § 9 (1828).
12. 9 & 10 Will, III, c. 15. (Repealed 52 7 53 Vict., c. 49, § 26 (1889).

practical standpoint, over common law arbitration in that future dispute provisions were not enforceable under the statute.[13]

The new Code embodies the fine points of the New York Act[14] without incorporating its questionable[15] features. Compared to it, Florida's Code is more clear and less complicated.

PART II. JUDICIAL DECISIONS

During the period covered by the Survey, no established Florida precedent in the field of contracts has been expressly overruled, nor does any case align itself with outmoded or discredited rules of other states. Every case included in this Survey has been selected because it represents the court's first announcement of Florida's postion on a particular issue, or because the decision clarifies a point of earlier confusion, or because the case provides an excellent illustration of important contract principles.

The case of *Treister v. Pacetly*[16] involved the issue whether or not a duly authorized attorney-in-fact can bind his principal by executing a contract for the sale of realty in the name of the principal alone, without any indication of the fact of agency upon the face of the instrument. On this point, Florida had no precedent, and other jurisdictions are in conflict.

The rule with respect to a slightly different factual situation, where reference to the fact of agency appears in the instrument but execution is accomplished by the agent's signing his principal's name alone, is definitely to the effect that the principal will be bound.[17] These cases, as well as numerous decisions sustaining liability upon negotiable instruments in these circumstances, disclose that their rationale is fully applicable in the *Treister* case, although, such cases may be factually distinguishable.[18] There is no statutory basis for special classification of an instrument involving real property in this type of factual situation[1] Accordingly, the Florida court adopted the modern rule and held that as between the original parties and where the recording acts are not involved, a contract executed in the name of the principal by a duly authorized agent, acting within the scope of his authority, is binding upon the principal even though the fact that the agent acted for the principal is not apparent from the instrument itself. It should be noted that this rule is commendable provided that there is no contention of fraud in the particular case, and that the sole concern is with the validity of the instrument *vel non*, as between the original parties who fully disclosed the

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13. Steinhardt v. Consolidated Gro. Co., 80 Fla. 531, 86 So. 431 (1920).
14. N.Y. CIV. PRAC. ACT. §§ 1451, 1452, 1453, 1458, 1462.
15. *Id.* at §§ 1455, 1460.
16. 85 So.2d 605 (Fla. 1956).
17. 2 AM. JUR. *Agency*, § 247 (1936).
18. Deakin v. Underwood, 37 Minn. 98, 33 N.W. 318 (1887); Tiger v. Britton Land Co., 91 NEB. 433, 136 N.W. 46 (1912).

fact of agency at the time of the execution of the contract, but did not incorporate that fact into the written terms of the contract.

The Florida Statute of Frauds[19] requires a memorandum to be "signed" by the party to be charged or his agent. The general rule in the United States is that the specific location of the signature to satisfy the Statute of Frauds is immaterial and parol evidence is admissible to show the intent to execute the entire memorandum. A recent Fifth Circuit case, *Moritt v. Fine*,[20] departs from this approach.

In the *Moritt* case, the facts involved an instrument, denominated "deposit receipt," which acknowledged receipt of the deposit, and set forth the terms of the sale of real estate. The instrument was signed "by Raymond Asmar," the agent of the seller, in the place where the broker normally signs. Following this, were two provisions: One signed by the buyer which stated that he agreed to purchase the real estate and that he confirmed the contract; the other provision, of a similar nature, followed immediately, but it was not signed by the seller. The plaintiff buyer sought specific performance of the contract. The district court dismissed the suit for failure to state a claim. The court, which was affirmed on appeal, held that the agreement did not satisfy the Florida Statute of Frauds[21] as "Raymond Asmar's" signature merely acknowledged receipt of the money; he did not sign as defendant's agent to sell.

This holding represents a conclusion that the nature of the signature was unequivocal and that it could be determined from the face of the instrument itself that the signature was not intended to authenticate the whole instrument. The unique element in the majority opinion is that although the agent's signature did appear on the instrument, the court disposed of the Statute of Frauds issue on a motion to dismiss. This is the most extreme position possible. However, it is acceptable in one sense, and that is with reference to the theory that in acknowledging receipt of the deposit money, the agent's signature had a separate legal effect—a separate legal effect as to justify a conclusion that the signature was not intended as a matter of law, to execute the entire instrument. The instant case would have been wholly unacceptable had the signature on the instrument not performed some distinct and separate legal function. If the Fifth Circuit must depart from the general approach, let us hope that it notes this distinction and restricts the rule of the instant case to factual situations

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19. FLA. STAT. 725.01 (1957).
20. 242 F.2d 128 (5th Cir. 1957).
21. FLA. STAT. § 725.01 (1957).

where the signature performs a separate legal function. May the Statute of Frauds not be made one of trivial formalism.

The dissenting judge insisted that the statute requires only a "signing," and the signature of the agent did appear. Therefore, the dissenting judge argues, since the nature of the signature was equivocal, parol evidence was admissible to establish whether or not it was intended to authenticate the entire instrument. If such be the situation, the case could not be disposed of on the pleadings.

It is generally held that a contract is not *void on grounds of public policy* unless it is injurious to the public or contravenes some settled social interest. Although, it is fairly well settled in other jurisdictions,[22] until the case of *Russell v. Martin*,[23] Florida had no case directly on point. That is, the majority rule in the United States is that a common carrier is ineffective to save itself contractually harmless fom its negligence when acting as a common carrier, but that the rule is otherwise when a carrier is acting in its private capacity.

The *Russell* case involved an agreement between a railroad and the owner of a trailer park on adjoining premises, under which the railroad authorized the owner to use certain crossings as private crossings, and the owner consented to hold the railroad harmless from claims arising from the use thereof. The Florida court adopted the rule (incorporating the above mentioned distinction) well settled in most jurisdictions, and held the agreement did not contravene public policy.

In two cases,[24] the court clarified questions arising out of previous decisions with reference as to when a document will be considered a release and when it will be labeled a covenant not to sue. The effect of this distinction is especially significant in cases involving joint tort-feasors. A covenant not to sue, as distinguished from an outright release of one tort-feasor, would not have the effect of barring an action against the other joint tort-feasor. Apart from a statutory provision to the contrary, a release is an outright discharge or cancellation as to one or all of the alleged joint wrongdoers. On the other hand, a covenant not to sue recognizes that the liability or obligation continues, but the injured party agrees not to assert any rights grounded thereon against a particular

22. Louisville & N.R. Co. v. Atlantic Co., 66 Ga. App. 791, 19 S.E.2d 364 (1942); McNicholas Transfer Co. v. Penn. R.R., 154 F.2d 265 (6th Cir. 1946).
23. 88 So.2d 315 (Fla. 1956).
24. Alberts Shoes, Inc., v. Crabtree Construction Co., 89 So.2d 491 (Fla. 1956); Atlantic Coast Line Railroad Company v. Boone, 85 So.2d 834 (Fla. 1956).

covenantee. The key to the whole problem is, that if the injured party desires merely to execute a covenant not to sue, he should make the covenant with and for the benefit of the particular joint tort-feasor only.

These above-mentioned distinctions are thoroughly acceptable from a case-law basis in most jurisdictions. These rules would have continued to apply to Florida agreements were it not for Florida Statutes, section 57.28(1) (1957), which provides:

> A release or covenant not to sue as to one tort-feasor for property damage to, personal injury of, or the wrongful death of any person shall not operate to release or discharge the liability of any other tort-feasor who may be liable for the same tort or death.

The statute applies to all such agreements made in Florida after June 19, 1957.

Because of certain language in previous decisions[25] many lawyers deemed it of some consequence if the signers of the documents signed for themselves and "for their heirs and executors." Actually, however, these words are not determinative of whether a specific document is a release or a covenant not to sue, and they might appropriately be used in either document. The pole star that guides the court's course in the interpretation of these documents is the intent of the parties as expressed in the document itself.

Alberts Shoes, Inc. v. Crabtree Construction Co.[26] involved an action for damages to a leasehold as a result of demolition operations conducted on adjoining premises by defendant sub-contractor. In the instrument, the lessee of the adjoining premises agreed not to sue the general contractor or those for whose acts the contractor might be liable (for damages resulting from demolition operations on premises adjacent to the leased building). It was further agreed that in the event the lessee should release its claim against the subcontractor, the lessee would execute a release to the contractor. The court held this document evinced the intent of the parties that the lessee's claim against the subcontractor should remain outstanding after execution of the instrument. Hence, it was a covenant not to sue rather than a release. On the other hand, *Atlantic Coast Line Railroad Company v. Boone*[27] involved a document that stated that "we covenant to forever refrain from instituting, pressing, or in any way aiding any claim, demand, action or cause of action, for damages, cost, loss of service, expenses or compensation for, on account of, or in any way growing out of, or hereafter to grow out of an accident." Thus, the "covenant" was comprehensive and all-inclusive. It was a "covenant to refrain" from suing

25. See, *for example*, Davidow v. Seyfarth, 58 So.2d 865 (Fla. 1952).
26. 89 So.2d 491 (Fla. 1956).
27. 87 So.2d 834 (Fla. 1956).

everybody connected with the particular injury. The court held that the parties made the agreement not with and for the particular joint tort-feasor alone, but with him and for the benefit of everybody involved, and that, therefore, it was a release.

While a release executed pursuant to a mistake, as to a past or present fact, may be set aside, unexpected or unkown consequences of known injuries will not result in invalidating the release. An erroneous opinion respecting future conditions as a result of presently known facts will not justify setting aside the release. The distinction involved here is in accord with the policy of the law favoring amicable settlement of disputes and the avoidance of litigation. If the rules were otherwise, no release could be safely accepted in personal injury matters. This matter of concern to Florida lawyers was involved in *DeWitt v. Miami Transit*.[28] It involved a tort victim who was injured as a result of the negligent operation of a bus. She consulted physicians who after making examinations and x-rays informed her that she had suffered an injury to her lower back. She then executed a general release to the transit company in consideration of a small amount of money to liquidate medical expenses. Her suffering, however, continued. Further examinations showed the first estimate of harm was incorrect. The doctor had failed to evaluate accurately, at the time of the original examination, the ultimate product of the injury received. She argued that a release executed under a mistake of an existing fact is not effective. The court held the release could not be invalidated.

Of course, there had been no mistake as to the injury itself; the mistake related to the ultimate consequences of the injury. If the rule were otherwise, the end result would be that all such claims would be forced into litigation.

Courts of equity as separate tribunals have ceased to exist in Florida. Nevertheless, the demarcation between courts of equity and law and their respective fields of operation are preserved.

In the final analysis, the difference between an action at law and one in equity lies largely in the mode of relief granted. If the purpose of the action is to recover a sum of money or damages, the action is clearly one at law.[29] On the other hand, a case of equitable only when some remedy is sought which equity alone can give, or some right is claimed which equity alone will recognize.[30]

The case of *Alegre v. Marine Motor Sales Corp.*[31] discusses the extent to which distinctions between common law and equity, between legal and

28. 95 So.2d 898(Fla. 1957).
29. Central Florida Lumber v. Taylor-Moore Syndicate, 51 F.2d 1 (5th Cir. 1931).
30. American Cynamid Co. v. Wilson Fertilizer Co., 51 F.2d 665 (5th Cir. 1931).
31. 228 F.2d 713 (5th Cir. 1956).

equitable remedies, and between legal and equitable forms of action are recognized. While the precise question presented by the *Alegre* case had not been passed on by the Florida courts, the courts of other states,[32] which recognize the distinction between law and equity, have enforced in common law actions the right of recission of a contract of sale conditioned on the seller returning to the buyer the part of the purchase price which he had paid. The majority of the court held the debtor "conditionally" rescinded the contract, and that the recission did not become *fait accompli* until two debtors paid the amount adjudged against it. A strong dissenting opinion by Judge Jones insisted that the recission was unconditional and became effective upon the giving of notice of recission and that title to the vessel, if not therefore vested in the seller, then became invested in him.

In a sale "f.o.b. the point of shipment," generally, the title in the goods passes to the purchaser upon their delivery to the carrier. The buyer's right to inspect and reject may be reserved by a specific contractual provision or it may be conferred solely by operation of law, even though the contract is silent on the particular point. In the latter case, the rationale is that delivery to the carrier does not pass such an irrevocable title as to preclude the buyer from refusing to accept the goods if they are not in conformity with the contract. There is not much difference in legal consequence between cases applying the general rule, which passes title subject to the buyer's right to reject, and those cases adopting the doctrine of conditional title. Even a specific reservation to inspect and reject is usually insufficient to overcome the presumption that the parties intend title to pass on delivery to the carrier. The established rule is that such title is conditional on the buyer's right to inspect. Of course, if by the terms of the contract and other evidence it is clear that the parties did not intend title to pass until the buyer has had the opporunity to inspect the goods, and the buyer does reject the goods, title remains in the seller and an action for damages may be maintained against him. Naturally, in this situation, returning the goods does not effect a recission of the contract.

In *McNeill v. Jack*[33] a seller sued for the price of some lumber delivered, and the buyer counterclaimed for damages incurred because of a defect in quality discovered after delivery of the goods. The sales agreement stated the price as "f.o.b. cars at the seller's mill" and reserved the right to inspect and reject the lumber at destination for defective quality. The seller contended that the buyer assumed the risk of defective quality because title passed when the lumber was delivered to the carrier. The court rejected

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32. See Eagen Co. v. Johnson, 82 Ala. 233, 2 So. 302 (1887); Davis v. Ross, 45 So.2d 273 (Miss. 1950); 3 WILLISTON, SALES § 649 (Rev. ed. 1948).
33. 83 So.2d 704 (Fla. 1955).

this argument and held that conditional title in the goods passed to the buyer upon delivery to the carrier; the buyer upon discovering defective quality could retain the goods, and sue for damages. This decision not only protects the seller from unknown risk of loss while the goods are in transit but also affords the buyer a remedy. The court's use of the term "conditional title" adds little to the remedies of the buyer afforded by general warranty principles in cases involving sales f.o.b. the shipping point.

Retention of the subject matter of a contract is not conclusive upon the question where there is such an acceptance as terminates the right to object. Not infrequently, it happens that the subject matter of the contract is retained and used, because, under the exigencies of the case, the buyer has no alternative. Although such retention or use requires him to make compensation to the extent of the benefit actually received, it is not such an acceptance as amounts to a waiver of the damages sustained because of the imperfect performance. The court recently considered two cases[34] on this point. In each of the cases, the buyer had received less than he ordered, but more than nothing, and, therefore, these facts are worthy of comparison with the *McNeill* case.

In *Sax Enterprises v. David and Dash*,[35] a seller sought *quantum meruit* for bedspreads sold to defendant. The defendant denied owing anything on the basis that the bedspreads ordered on specifications did not meet the specification. The defendant having an urgent need for the items, used them on a temporary basis, but promptly notified the plaintiff that they were substandard. The plaintiffs claimed that such usage estopped the defendant from ever denying an obligation to pay the full purchase price thereof. The court held the buyer would not be estopped, but would be liable for the fair value of use. In *Johnson v. Dichiara*[36] the defendant had purchased an ice plant under a specification that it would produce six tons of marketable ice per day, but after installation and testing, the plant would produce only three tons of marketable ice per day. The seller demanded full price and the buyer refused to pay anything. The court held the buyer liable for the fair value of the benefits received by the defendants as of the date of surrender to the defendants less the sum of $4,500 already paid on the contract; by "benefits" is meant what the defendants gained; not what the plaintiff lost.

Although the case of *Cook v. Adams*[37] is not monumental as a rule-making precedent, it is nonetheless a refreshing case judged with sympa-

34. Sax Enterprises v. David and Dash, Inc., 92 So.2d 421 (Fla. 1957); Johnson v. Dichiara, 84 So.2d 537 (Fla. 1955).
35. 92 So.2d 421 (Fla. 1957).
36. 84 So.2d 537 (Fla. 1955).
37. 89 So.2d 6 (Fla. 1956).

thetic kindness toward the plight of people of advanced years. Too often they pledge their belongings and lands to others to take care of them for the balance of life, and when the burden becomes onerous, the pledgee attempts to welch on the bargain. The Florida court, in accordance with the almost universally adopted rule, held that those so wronged may resort to equity to cancel the deed and restore the property to the rightful owner. The following words of Justice Terrell are quotable, and memorable in their sympathetic understanding of the problem:

> [Use of the words "shall provide"] "a home in the resilence on said described premises during her lifetime and shall support and maintain her in a comfortable manner suitable to her station in life and as her needs designate," contemplates more than a few wads of chewing gum and some tag ends of "hand-me-downs." When one the age of appellee, or even younger, deeds to another their valuables for a "home" and support as long as they shall live, it is not satisfied by distant or silent treatment. It contemplates that which is symbolized in the old song, "Home Sweet Home"; it means more than a shelter from the elements; it means more than bread and butter, medicine, doctors' and nurses' care; it contemplates those intangible relationships, such as comfort, a right attitude, wholesome relationships; it may contemplate forbearance, an effort to please, the exercise of patience, and good fellowship not punctured too often with the barking of pet dogs or the romping of rude youngsters.[38]

Mechanics' lien laws find sanction in the dictates of natural justice and in the equitable principle that everyone who, by his labor or materials, has contributed to the preservation or enhancement of some other person's property thereby acquires a right to compensation.[39]

In *Greenblatt v. Goldin*[40] the court considered a home owner's action for a declaratory judgment respecting applicability and constitutionality of a statute forming part of the mechanics' lien laws. The particular provision involved was Florida Statutes, section 84.05 (11) (a) (1955):

> If for any reason the owner fails to comply with the requirements of this section, he shall be liable for, and the property improved shall be subject to, a lien in the full amount of any and all outstanding bills for labor, services, or materials furnished for such improvement regardless of the time elements set forth in this chapter.

This provision made no attempt to establish the "direct lien" theory of mechanics' liens; it imposed a personal and property liability independently

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38. *Id.* at 7.
39. Jones v. Great Southern Fireproof Hotel Co., 86 Fed. 370 (6th Cir. 1898).
40. 94 So.2d 355 (Fla. 1957).

of the Mechanics' Lien Law, for the full amount of all outstanding bills, as a penalty against the unwary owner who failed to comply with the other requirements of the Act. The court held the personal liability and time element clauses void and unjustified under the mandate of section 22 of article XVI of the Florida Constitution, that "The Legislature shall provide for giving to mechanics and laborers an adequate lien on the subject matter of their labor." Moreover, the deletion of the penalty clause carried with it the remainder of section 84.05 (11)(a) (1955), as the clauses were an integral part of the sentence.

The court had a second opportunity to discuss the matter of mechanics' liens in *Anderson v. Sokolik*.[41] As a matter of fact, there was never a case in which the doctrine of the statutory lien could be more appropriately invoked than in the *Anderson* case. In Florida Statutes, chapter 84 (1955), the legislature placed every safeguard to protect the economic security of the "mechanic." The statutory lien was designed to cut off every defense to payment and to provide summary process to convert labor or material into bread and raiment. As Justice Terrell said:[42] "No court should invoke what may be termed the process of judicial alchemy to transmute the bread and raiment of the laborer and materialmen into stones and by the same token transform it into gold for the userers." This attitude resulted in the court holding that the Mechanics' Lien Act provision, "when an improvement is made by a lessee, in accordance with a contract between such lessee and his lessor, liens shall extend also to the interest of the lessor,"[43] must be liberally construed to protect materialmen and laborers, whether the lessee's obligation to build on property is express or implied.

Justice Drew, in a dissent, pointed out that there was no mention in the lease of the size or kind of building to be erected, nor the cost thereof, nor was there the first word in the lease which obligated the lessee to build any structure whatever on the premises. Justice Drew insisted that the statute quoted above requires a contract between the lessor and the lessee to make an improvement. However, the majority opinion by Justice Terrell points out that the very purpose of equity and the statutory mechanics' lien was to prevent hardships, similar to the ones involved in the instant case, of the materialmen.

In yet another mechanics' lien case, *Poranski v. Millings*,[44] the court clearly announced that Florida adopts the "substantial performance rule." The rule is applicable to building contracts where there has been substantial performance by the contractor and the owner refuses to pay the contract price because of the failure of strict performance. Factually, the *Poranski* case involved an action by a landowner to set aside the lien that

41. 88 So.2d 511 (Fla. 1956).
42. *Id.* at 515.
43. FLA. STAT. § 84.03 (7) (1957).
44. 82 So.2d 675 (Fla. 1955).

a dredging company had placed on his land for filling services performed under a contract. The company filed a counterclaim seeking to enforce the lien. There had not been strict performance of the contract due to errors of both parties.

An important procedural aspect of the Mechanics' Lien Law was involved in *Bybee v. Stearn*[45] which held, specifically, that a general contractor was not an indispensable party to a suit by a plumbing subcontractor against the property owner to foreclose a mechanics' lien acquired and perfected under the statute.[46] This holding is reasonable on the basis that if the legislature had intended that a lienor not in privity with the owner should join the contractor as a party defendant, it would have been a simple matter to so provide. It did not do so, and it would be judicial legislation for the court to read into the statute such a legislative intent.

The case of *Board v. Bay Harbour Islands*[47] involved an interpretation of a restriction in a general town subdivision plan "against erection of buildings other than residences, duplexes, and apartments." The question was whether or not such restrictions vest in owners of other lands in the subdivision, a property right for which compensation must be paid if such lots are taken for the public use (such as the erection of a public school building). The court held the owners were not entitled to compensation, even though such public uses were inconsistent with uses to which the lots were restricted by the private agreement.

Restrictions of the type quoted above do not fall within the category of true easements, such as the right of use, passage, or rights of light, air and view. "Easements" such as are involved in the instant case have been defined as negative or equitable easements, and are, basically, not easements in the strict sense of the word. They are more properly classified as rights arising out of contract. The failure of some of the courts to recognize this real difference has led to an "irreconcilable conflict in the decisions."[48] The courts are not in agreement as to whether such restrictions are binding upon the acquiring authority when such lands are acquired for a public use. The Florida Supreme Court in the present case insists that the recent trend and the better view[49] is that such restrictions convey no interest in land, are not true easements, and at best, may be relied upon and enforced between the parties thereto and their successors with notice.

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45. 95 So.2d 529 (Fla. 1957).
46. FLA. STAT. §§ 84.01-84.35 (1957).
47. 81 So.2d 637 (Fla. 1955).
48. See note, 25 A.L.R.2d 904, 916, particularly at 918-919.
49. See 18 AM. JUR., *Eminent Domain*, §§ 156-158; NICHOLS, 2 EMINENT DOMAIN, 573 (3rd ed., 1950).

Were the court to recognize a right to compensation in such instances, it would place upon the public an intolerable burden wholly out of proportion to any conceivable benefits to those who might be entitled to compensation.

When an offer requests an act, and that act is performed, an inference arises out of the offeree's assent to the offer. The assent being necessary to the formation of a contract, however, no such inference is possible when the act was performed without knowledge of the offer. This latter rule was applied in a recent offer of reward case in which the plaintiff furnished the information leading to conviction of the criminal before the offers of reward had been made. In *Sumerel v. Pinder*[50] defendant offered a $5,000 reward for information leading to the arrest and conviction of the murderer of his wife. Earlier, plaintiff had given an F.B.I. agent the serial number of a pistol possessed by X, a criminal, and it was this pistol that X used in the murder. His conviction for the murder resulted from this information. Plaintiff claimed the reward that was subsequently offered. The court held for the defendant.

The decision is in keeping with the landmark case, *Broadnax v. Ledbetter*,[51] although the Florida Supreme Court adds a whimsical requirement of "meeting of the minds."

The court continued to use the nonsensical phrase "meeting of the minds" in *Florida Cartage Co. v. Tyler*,[52] in *Estes v. Moylan*,[53] and in *Hanover Realty Corp. v. Codomo*.[54] As in the past, the court's usage of the phrase was terminologically inexact.[55] It is hoped that one fine day the court will announce with clarity the objective test of manifestation of mutual assent, which, of course, the court impliedly adopts.

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50. 83 So.2d 692 (Fla. 1955).
51. 90 So.2d 692 (Fla. 1955).
52. 94 So.2d 362 (Fla. 1957).
53. 95 So.2d 420 (Fla. 1957).
54. Hausler, *Contracts*, 8 MIAMI L.Q. 283, 287 (1954).