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Contract: A Promise or an Agreement?

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NOTES

CONTRACT: A PROMISE OR AN AGREEMENT?*

While every contract contains one or more promises, a promise cannot be called the essence of a contract. A promise is merely the first step in the formation of a legal contract; it is the offer. Some-

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thing further is necessary before it is binding; it may lapse by passage of time; it may be revoked by the offeror; or may be rejected by the promisee. An offer alone creates no obligation; it must be accepted.

This offer and acceptance constitute the meeting of minds or agreement so essential to a contract. In Stuckert v. Cann (Del. 1921), 111 Atl. 596, the court said: "Agreement is essential to a contract and means a meeting of the minds in the same intention." Reynolds, J., in Michael v. Kennedy (Mo. App. 1912), 148 S. W. 983, went so far as to say that he saw no difference whatever between an agreement and a contract; but the general rule is that a contract is an agreement made *with the intention to form legal obligations.* Probably the most comprehensive definition of agreement (formulated in Black's Law Dictionary) is that it is "a concord of understanding and intention between two parties with respect to their relative rights and duties."

Courts are nearly unanimous as to the importance of agreement in a contract. In Jenness v. Mt. Hope Iron Co. (1864), 53 Me. 20, the court held: "There must be a proposition by one party, accepted without modification by the other." There must be assent to the same thing in the same sense. Holloway v. Wheeler (Tex. 1924), 261 S. W. 467; Garrison v. McGimpsey (N. C. 1924), 122 S. E. 754; and State v. Board of State Prison, 37 Mont. 278.

Until there has been agreement, by acceptance of an offer from one party by the other, and the parties are in accord as to all material elements of the transaction, there can be no contract. Though the parties have drawn up some instrument if it is indefinite or incomplete there is no obligation. Shepard v. Carpenter (1893), 54 Minn. 153. But if there is a complete meeting of minds, nothing further need be done; and even if the parties intend to make a written contract and do not, the agreement is enforceable. Billings v. Wilby (1918), 175 N. C. 571. "The act of acceptance closes the contract and ordinarily nothing further is required." Roch v. Fisher (Okla. 1925), 241 Pac. 496.

In most cases the meeting of minds must be actual and real. In Jones v. Janes (La. 1924), 101 So. 116, the court said that the free mutual assent of parties is necessary to make a contract; anything which destroys the reality of the assent or the meeting of minds to which it leads, destroys also the contract. Mistakes of subject matter ('Peerless' case), mistakes of person dealt with (Jones v. C. B. & Q. R. R. Co., 102 Nebr. 853), any material difference between offer and acceptance (Beaumont v. Prieto, 249 U. S. 554), fraud, duress, and severe pain from injuries (Girard v. St. L. Car Wheel Co. (Mo. 1894),

27 S. W. 648), have been held to prevent any true *aggregatio mentium.* In the last named case the court held: "The element of assent is a necessary part of every contract; without it a mere writing imposes no obligation."

This is the theoretical rule, that there can be no contract without intent to assent. But in practice courts cannot deal with actual intent in all cases. Assent must be inferred from words or acts and if a party has secret intentions, unevidenced by his words he cannot plead his want of intent in avoidance of the contract. Embry v. Hargadine-McKittrick (1907), 127 Mo. App. 383. If words were such that a reasonable person would consider them an offer, the offeror may avoid on the grounds that he was merely jesting. Deitrich v. Sinnot (Iowa 1921), 179 N. W. 424.

Overt acts as well as words may constitute an acceptance and an agreement giving rise to an implied contract. Yawger v. Joseph (Ind. 1915), 108 N. E. 774. In First Nat'l Bank v. Shaw (Tex. 1924), 260 S. W., the court said that the difference between an express and an implied contract is a matter of proof; whether the meeting of minds shall be shown by words or acts. Thus where a party had an offer of an automobile, his keeping it for a year and advertising it for sale was held to be an acceptance. Ostman v. Lee (Conn. 1917), 101 Atl. 23. Even acquiescence, *with full knowledge*, has been held to imply assent. Stresenreuter Bros. v. Bowes (1924), 233 Ill. App. 143.

The doctrine of implied contract cannot, however, be carried too far. In the case of Western Refining Co. v. Underwood (Ind. 1925), 149 N. E. 85, the appellee sued in quantum meruit for services to the Company in aiding her brother who was employed as manager of the appellant's oil station. It was decided that "a true implied contract is an agreement of the parties arrived at from their acts; to recover there must be evidence that the defendant requested the services or assented to receiving the benefit. A somewhat similar case is the Credit Alliance Corp. v. Sheridan Theatre Inc. (N. Y. 1925), 149 N. E. 837. The president of the defendant corporation borrowed money without authority and deposited it to the defendant's account. The action was for money had and received and the court said: "One cannot be made a debtor without his consent any more than he can be made a creditor without his consent."

The first step toward the formation of a contract is a promise; the result of a contract is an obligation; but the essence or criterion of a contractual relationship is the *aggregatio mentium* which is psycho-

logical harmony, inferred from the reasonable interpretation of the words, acts, or acquiescence of the parties.

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THE TEXAS BOND CASE

Probably no other recent decision of the United States Supreme Court has been the source of such widespread discussion among the public generally, as has the Texas Bond Case.[1] Of late, numerous noonhour discussions in financial and legal circles have been devoted to this decision. Much if not all of the adverse criticism seems to be due to a lack of understanding of the powers of administrative tribunals, of the requirements of due process under the Fourteenth Amendment, and to a lack of knowledge of the pertinent facts in the case as set forth in Mr. Justice Butler's opinion.

The suit was filed in the United States District Court, northern district, of Texas, to enjoin the sale of a bond issue of $300,000.00 for the purpose of paving and improving of roads, and to enjoin the levy of taxes on the property of the complainants. The issue presented was the constitutionality of the Texas statute under the Fourteenth Amendment. The act was upheld in the district court[2] and the complainant took an appeal directly to the Supreme Court, under section 238 of the Judicial Code.

The preliminary acts and the levy of taxes on the complainants' land, were had under the Complete Texas Statutes of 1920, articles 627 and 628, which provide, "Any county . . . . or any political subdivision or defined district, now or hereafter to be described and defined, of a county," is authorized to issue bonds, not to exceed one-fourth of the assessed valuation of the real property in the district, for the construction of roads. (Article 627.) "Upon the petition of 50 resident property taxpaying voters of any defined district of any county, it is the duty of the commissioners' court to order an election in the district, as described in the petition to determine whether its bonds shall be issued for such road purposes, and whether a tax shall be levied upon the property of the district for their payment. (Article 628.)

Sections 631, 634, and 637, further provide, "If two-thirds of the

1. Browning et al. vs. Hooper et al., U. S. 46 Sup. Ct. 141.
2. 3 Fed. (2nd) 160.