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Recent Decisions

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the land for some time and "you sell him anything he wants and I will see it paid." This was held to be an original promise and not within the statute.

If the tenant had been already on the land and without present funds to carry on the raising of crops, and rather than lose the tenant, the landlord had made a similar oral promise to the plaintiff for payment of supplies previously sold and others to be delivered in the future, an interesting problem might arise in those jurisdictions following the "Main Purpose" Rule.

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RECENT DECISIONS

BANKS AND BANKING—TRANSFER OF STOCK.—The case of *Kienke v. Kirsch*, 238 N. W. 33, decided by the Supreme Court of Nebraska on October 1, 1931, is interesting for many reasons. In that case the defendants were sued upon a promissory note for $9,867.36 given to plaintiff in payment for 61 shares of the capital stock of a state bank, the entire capital of which was only $10,000. The defendant, Chris Kirsch, was the father of the defendant George J. Kirsch, who was the chief officer of the bank; and, when sued on this note, Chris Kirsch, the father, set up the defense that he was only a surety on the note, which had been extended without his knowledge thereby releasing him; that he had never owned any of the bank's stock and permitted 40 shares of the stock to remain in his name on the books of the bank to get his son started. During 11 years, Chris Kirsch was president of the bank and member of its board of directors, and the minutes of the various meetings of the board of directors, reciting his presence at such meetings, were signed by him, though prepared by his son. Both father and son testified, contrary to the evidence of the minutes, that the father had never been present at any of the meetings and signed the minutes without reading them. The lower court, on this proof, rendered judgment in favor of the defendant, Chris Kirsch, and against plaintiff. The son, George J. Kirsch, made no defense. In reversing the decision of the lower court, the Nebraska Supreme Court, among other things, pointed out that, during all of the eleven years and more that the defendant, Chris Kirsch, was a director of the bank, the law provided that the board of directors should hold at least two meetings each year, at which a thorough examination of the books, records, funds, and securities of the bank should be made. The court, also, quoted with approval language used by the Federal Court in the case of *Gibbons v. Anderson*, 80 Fed. 345 (C. C. W. D. Mich.), which had been approved by the Nebraska court, in the case of *Gerner v. Mosher*, 58 Neb. 135, 78 N. W. 384, 46 L. R. A. 244 (1899), as follows: "'Banks are prone to state and hold out to the public who compose their boards of directors. The idea is not to be tolerated that they serve as mere gilded ornaments of the institution, to enhance its attractiveness, or that their reputations should be used as a lure to customers. What the public suppose, and have the right to suppose is that these men have been selected by reason of their high character for integrity, their sound judgment, and their capacity for conducting the affairs of the bank safely and securely.'"

The court, also, quoted with approval the language of the Supreme Court of Texas in *Seale v. Baker*, 70 Tex. 283, 7 S. W. 742, 8 Am. St. Rep. 592 (1888),

as follows: " 'Directors of banking corporations occupy one of the most important and responsible of all business relations to the general public. By accepting the position, and holding themselves out to the public as such, they assume that they will supervise and give direction to the affairs of the corporation. It is the duty of the directors to know the condition of the corporation whose affairs they voluntarily assume to control, and they are presumed to know that which it is their duty to know, and which they have the means of knowing.' "

And, in disposing of the case before it, the Nebraska Court used this further language: "So, under the facts in the present case, to permit the defendant, Chris Kirsch, to say that he was not the owner of the shares of the capital stock of the Burton State Bank which stood in his name for more than eleven years, and by virtue of his apparent ownership of which he acted as director and as president of said bank for more than eleven years, and without the ownership of which in his own right he could not have lawfully acted as such director, would be 'to award a premium for negligence in the performance of important and almost sacred duties voluntarily assumed, and to license fraud and deception of the most flagrant and pernicious character.' Seale v. Baker, *supra*. It would be against public policy and subversive to the welfare of the state to permit the defendant to plead or prove his own fraudulent, if not criminal acts, which alone, under the present record, could defeat a recovery in this action."

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TRIAL—ATTORNEY'S ARGUMENT TO JURY—WEIGHT AND SUFFICIENCY OF EVIDENCE—UNCONTROVERTED EVIDENCE.—Plaintiff's counsel, in his argument to the jury, read the attorney's oath and appealed to them to adopt the ethical standards of attorney's conduct in determining the weight to be given witness's (lawyer's) testimony. *Held*, to allow such argument was prejudicial error. *Fernberg v. Atlantic Theatres Corp.*, 175 N. E. 293 (Mass. 1931).

There are but few recent cases in which this phase of the law of evidence has even been mentioned, much less discussed. As plaintiff was not bound by all testimony of defendant's engineer, although she called him, her attorney could properly argue that other evidence was more credible. *Central of Georgia Ry. Co. v. Ellison*, 199 Ala. 571 (1917). It was improper for counsel to go outside the record in argument to the jury in regard to weight of expert testimony. *Heineke v. Chicago Rys. Co.*, 279 Ill. 210 (1917). Statements of counsel in arguing a cause as to their belief with regard to the merits of plaintiff's cause of action or defendant's defenses are improper. *Kenna v. Calumet H. & S. E. R. Co.*, 120 N. E. 259 (Ill. 1918). In an action for damages to land by flooding, a remark by plaintiff's counsel that defendant was trying to take his client's land away from him for nothing, held, not reversible error. *Morrison v. Noone*, 103 Atl. 309 (N. H. 1918). See also, *Ft. Worth & D. C. Ry. Co. v. Decatur Cotton Seed Oil Co.*, 193 S. W. 394 (Tex. 1917); *Chicago R. I. & G. Ry. Co. v. Faulkner*, 194 S. W. 651 (Tex. 1917). In a personal injury action, argument by plaintiff's counsel, tending to overthrow the effect of a statement made by plaintiff immediately after the injury, held, warranted. *St. Louis I. M. & S. Ry. Co. v. Brown*, 169 S. W. 940 (Ark. 1914). Plaintiff's counsel could say that he did not see how the testimony could be reconciled, when it was in fact, conflicting. *Fillingham v. Michigan United Rys. Co.*, 154 Mich. 233 (1908). Where the evidence is in sharp conflict, counsel in argument may urge on the jury his view based on the testimony favorable to his client. *Scheer v. Detroit United Rys.*, 155 Mich. 561 (1909); *American Express Co. v. Parcarello*, 162 S. W. 926 (Tex. 1914). Counsel may, in arguing the facts to the jury, affirm that the natural