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Contracts

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CONTRACTS

I. Basic Elements

In *Shirer v. O.W.S. & Associates*[1] the issue presented for the court's consideration concerned the area of offer and acceptance. The facts showed that Jefferson Standard Life Insurance Co., the appellant here and the defendant below, pursuant to loan negotiations, presented an *offer* to the plaintiff on December 6, 1966. The plaintiff replied with a *conditional* acceptance of the offer along with its check for a "liquidated damage deposit."[2] Thereafter, on January 31, 1967, the plaintiff communicated to Jefferson that it sought to terminate any and all preliminary agreements and requested return of its deposit. Relying on these facts, the court affirmed the finding of the trial court holding plaintiff's conditional acceptance to be a mere counter offer[3] which was never accepted by Jefferson prior to the plaintiff's withdrawal.[4]

Tidewater Supply Co. v. Industrial Electric Co.[5] was an action brought by Tidewater for the value of goods furnished to the subcontractor, Industrial Electric Co., which were subsequently used in construction work of the general contractor, Eskridge & Long Construction Co. Tidewater sought recovery from *both* Industrial and Eskridge. The trial court overruled Eskridge's demurrer, and this appeal resulted.

On appeal Eskridge asserted that the complaint[6] did not state a cause of action since it did not sufficiently set out a

1. 253 S.C. 232, 169 S.E.2d 621 (1969).
2. At the trial neither party contested the validity of the provision for liquidated damages.
3. It is a basic requirement that acceptance be positive and unambiguous. Where it is qualified or conditional or introduces a new term, it amounts to no more than a counter offer. Sossamon v. Littlejohn, 241 S.C. 478, 129 S.E.2d 124 (1963). Even more basic is the requirement that a contract be the result of a definitive offer and acceptance. Masonic Temple v. Ebert, 199 S.C. 5, 18 S.E.2d 584 (1942).
4. The only significant question presented by this case was the exclusion from evidence of a carbon copy of an alleged acceptance made by Jefferson on December 22, 1966.
5. 253 S.C. 483, 171 S.E.2d 607 (1969).
6. The only portion of the complaint involving Eskridge was paragraph five. It stated "[t]hat Eskridge & Long Construction Co. . . . has received the benefit of the goods, wares and merchandise . . . which goods were incorporated into and are a part of the Construction work performed . . . ." Record at 3, Tidewater Supply Co. v. Industrial Electric Co., 253 S.C. 483, 171 S.E.2d 607 (1969).

contractual relationship. The supreme court noted that in an action for damages for breach of contract the plaintiff must, of necessity, in his complaint *allege* that a contract was formed and breached in order to recover.[7] Despite Tidewater's reliance on several other theories,[8] the supreme court ruled that the mere fact that Eskridge "received a benefit" from the plaintiff's actions was not sufficient to form a contractual relationship, express or implied, and so reversed the lower court's judgment.[9]

II. Secured Party's Rights on Disposition of Collateral

The comparative rights of a secured party and a subsequent purchaser of collateral were considered in *Stephenson Finance Co. v. Bruce*.[10] The case was a claim and delivery action[11] for the value of thirteen automobiles.

Prior to September 13, 1966, Bruce, a South Carolina partnership, had conducted a number of transactions with a third party, Richmond Motor Sales of Georgia, a Georgia partnership. The sale to Richmond of the thirteen vehicles in question was among these prior transactions. Richmond made payments by check to Bruce at varying intervals following its purchases. After the sale and delivery of the automobiles along with the delivery of all indicia of ownership to Richmond, "floor plan" financing was obtained from Stephenson Finance Co., a Georgia corporation. Richmond surrendered all indicia of ownership to Stephenson. Security agreements were executed by Richmond to Stephenson, and these were properly filed and perfected under Section 9-402[12] of the Uniform Commercial Code (hereinafter UCC). Richmond later became insolvent and sought to convey the automobiles back to Bruce in exchange

7. Peeples v. Orkin Exterminating Co., 244 S.C. 173, 135 S.E.2d 845 (1964); Wharton v. Tolbert, 84 S.C. 197, 65 S.E. 1056 (1909).

8. *See* Brief for Respondent at 5-9, where Tidewater asserts theories based on express contract, unjust enrichment, third party beneficiary contract, and agency to support recovery.

9. *See also* Smith v. Hurley-Mason Co., 67 Wash. 683, 122 P. 361 (1912) which held that no implied contract was formed merely because a contractor used material sold to a subcontractor.

10. 174 S.E.2d 750 (S.C. 1970).

11. The cause was referred to the master in equity rather than a jury, apparently by consent, since a claim and delivery action is an action at law. Middleton v. Robinson, 202 S.C. 418, 25 S.E.2d 474 (1943).

12. It is agreed that under the facts UCC § 9-103 would require application of Georgia law, but the applicable sections are identical in both states. Ga. Code Ann. § 109A-9-402 (1962) and S.C. Code Ann. § 10.9-402 (Supp. 1966).

for two checks[13] which Richmond had originally offered as payment to Bruce. The transaction was consummated, although the only indicia of ownership given to Bruce was the bill of sale.

Bruce's defense to the secured party's claim, that it was a bona fide purchaser and thereby protected, was unsuccessful in the lower court.[14] This resulted in Bruce's relying on UCC section 9-306(2)[15] on appeal, whereby Bruce sought to show that Stephenson had impliedly authorized the questioned sale because of the very nature of "floor plan" financing. After discussing the propriety of Bruce's raising this new defense[16] and expressing hesitancy at construing the statute of another state, the court affirmed the master's ruling in favor of Stephenson, the secured party. The court stated that, since the master's ruling was based on findings of fact,[17] it was not subject to appellate redetermination so long as there was ample evidence to sustain his ruling.

It can only be surmised what the outcome might have been had the defendant been an ordinary consumer purchaser of a single automobile or household appliance — both of which are

13. One of the checks had never been negotiated while the other had repeatedly been presented but never paid because of lack of sufficient funds.

14. S.C. CODE ANN. § 10.9-307(1) (Supp. 1966) provides that "[a] *buyer in ordinary course of business* . . . takes free of a security interest created by his seller even though the security interest is perfected and even though the buyer knows of its existence" (emphasis added). S.C. CODE ANN. § 10.1-201(9) (Supp. 1966) further states:

> *"Buyer in ordinary course of business"* means a person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind . . . . "Buying" . . . does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

Considering the facts, the master ruled that Bruce was not a "buyer in ordinary course of business" and thus could not claim relief under the above statute.

15. "[A] security interest continues in collateral notwithstanding sale . . . by the debtor unless his action was authorized by the secured party in the security agreement or otherwise . . . ." S.C. CODE ANN. § 10.9-306(2) (Supp. 1966).

16. The court stated that it was at best "doubtful" whether the issue had been properly presented as there was no mention of UCC § 9-306(2) in the defendant's pleadings, the master's report, or the defendant's exceptions.

17. The Master stated, "I further find as a fact that Bruce did not buy the vehicles in the ordinary course of business or on any other valid basis . . . . I further find as a fact that from all of the facts and surrounding circumstances there was no authorization by Stephenson to Richmond for such transfer of the thirteen vehicles to Bruce . . . ." 174 S.E.2d at 752.

commonly "floor planned." Existing, pre-UCC, case law[18] would seem to favor recovery by such a purchaser, as would UCC section 9-306(2) if a liberal interpretation of "consent" is adopted. Certainly, when goods have been "floor planned," an implied authorization for future sale has been made, as this is the sole desired result of the arrangement. Even with such implied authorization, the purchaser would still be required to show his "good faith"[19] in order to establish a right paramount to that of the secured party. This would present no problem to the typical consumer who buys without any knowledge of the retailer's financing arrangements and pays the designated price to one whom he thinks is the true owner.

III. Failure of Condition

In *Quality Concrete Products, Inc. v. C.Y. Thomason*[20] the plaintiff, a subcontractor, brought an action to recover on two alleged construction contracts.[21] Certain defects developed in the work covered by the second contract. These defects were admitted by Quality in a letter to Thomason.[22] Thomason contended that the admission of the defects amounted to an abandonment of the contract by Quality which permitted Thomason to make its own corrections. Thus, when suit was brought, the cost of these corrections was claimed as a set-off of $6,668.80. After mutual agreement to certain "back charges" and reductions by and between the parties, the trial judge found that Quality was entitled to a minimum recovery of $3,530.90 upwards to a maximum of $10,199.70. Thomason consented to the maximum amount, but sought to have it reduced by the alleged

18. Clanton's Auto Auction Sales, Inc. v. Young, 239 S.C. 250, 122 S.E.2d 640 (1961) and Atlas Finance Co. v. Credit Co., 216 S.C. 151, 57 S.E.2d 65 (1950). *See also* Cudd v. Rogers, 111 S.C. 507, 98 S.E. 796 (1919) where the court held that, when a mortgagee *impliedly* consents to the sale of mortgaged property, he waives his lien of the mortgage.

19. The drafters of the Code made "good faith" an integral requirement as evidenced by UCC §§ 1-203 and 2-103(b), which goes even further and requires a higher standard for a merchant. The common law rule against fraudulent conveyances found in S.C. Code Ann. § 57-301 (1962) requires *both* sufficiency of consideration and a bona fide intent of the parties.

20. 253 S.C. 579, 172 S.E.2d 297 (1970).

21. Each was for a portion of the precast concrete work on Thomason's job with the former being written and the latter, oral.

22. In the letter the president of Quality stated that he regretted the defects and would attempt to rectify them. He authorized the corrective work discussed in a previous conversation with Thomason. Evidence indicated that the conversation provided for the corrective work to be done by a designated third party and for Quality to be informed of its cost.

set-off. Judgment was rendered below, however, for the maximum amount.[23]

On appeal the court, considering the propriety of the defendant's set-off claim, stated:

> The abandonment of a contract is a matter of intention to be ascertained from the facts and circumstances surrounding the transaction from which the abandonment is claimed to have resulted. An abandonment of a contract need not be express but may be inferred from the conduct of the parties and the attendant circumstances.[24]

Thus, the disposition of the appellant's set-off claim was held properly determined by the jury as a *factual* issue. Also, the appellant's claim that the trial judge should have charged the jury that Quality had abandoned its contract was ruled to be without merit, since such a charge would have unjustly removed a factual issue from the jury.[25]

IV. REMEDIES FOR BREACH

Three cases involving the various remedies for breach of contract arose during this survey period. *Craven v. Williams*[26] was an action for specific performance of an alleged contract for the sale of real property. On October 2, 1963, the plaintiff wrote the defendant and inquired as to the possibility of purchasing her land.[27] Several exchanges by mail subsequently took place; and on August 4, 1964, the defendant wrote the plaintiff and concluded her letter: "I am asking $150.00 per acre and will take back 1st Mort at 6% monthly or quarterly payments and my Lawyer will draw up Contract [sic]."[28] Two days later the

23. The above letter was the only evidence offered by Thomason to show Quality's abandonment. Testimony was given by both sides indicating that Quality itself did certain corrective work *after* the letter.

24. 253 S.C. 579, 589, 172 S.E.2d 297, 302 (1970).

25. Where contrary evidence exists, such a charge would be improper. Hendricks v. American Fire and Cas. Co., 247 S.C. 479, 148 S.E.2d 162 (1966).

26. 302 F. Supp. 885 (D.S.C. 1969).

27. Plaintiff was an attorney who resided in the area where the land in question was located. Defendant was a 72 year old woman (a college graduate) who had lived in New York most of her later life and returned only occasionally to South Carolina. During the 1950's she had been institutionalized in a mental hospital for eight years, but was subsequently released and restored to legal capacity. At the time of the negotiations she had neither visited the property for several years nor consulted anyone regarding its value.

28. 302 F. Supp. 885, 888 (D.S.C. 1969).

plaintiff replied that he "accept[ed] [her] offer of the sale of your [her] land as stated in your letter of August 4th, 1964, for the amount of $150.00 per acre. Please have your lawyer draw the contract."[29] He then added, "[H]owever, *you did not set out the amount of down payment, if any.*"[30] Plaintiff contended that these two letters constituted a contract for the sale of the defendant's land. More correspondence followed with the plaintiff threatening suit unless a completed contract of sale was forwarded. Finally, on August 23, 1965, after conversing with the defendant by telephone, the plaintiff wrote the defendant's New York attorney and claimed that an agreement had been reached. The price per acre remained at $150.00 per acre, but the plaintiff was now to receive only a quitclaim deed. No reply was made to this letter nor to a subsequent inquiry made two months later, whereupon this suit for specific performance followed.

In deciding that specific performance should not be granted, the court noted that it is settled law in South Carolina that a valid contract can be made by exchange of correspondence, so long as the correspondence expresses the true intent of both parties and such exchanges are not merely preliminary negotiations.[31] The court acknowledged that invalidation of a contract for indefiniteness is usually not favored; however, in those cases where specific performance is sought, a more exacting degree of definiteness is required.[32] The court could conceivably have stopped at this point and decided the case on the basis of whether the parties had intended their dealings to be final and, if so, whether the terms were sufficiently definite.[33] The court went on, however, to discuss *all* of the factors to be considered in granting specific performance.[34] In addition to indefiniteness of terms the court, in deciding that specific per-

29. *Id.*
30. *Id.*
31. 302 F. Supp. 885, 890 (D.S.C. 1969), *citing* Holliday v. Pegram, 89 S.C. 73, 71 S.E. 367 (1911).
32. 302 F. Supp. 885, 891 (D.S.C. 1969), *citing* White v. Felkel, 222 S.C. 313, 72 S.E.2d 531 (1952).
33. The facts seem to favor a conclusion that the letters constituted only preliminary negotiations. If final agreement had truly been reached, why would the plaintiff, an attorney, continually try to pin down a specified down payment and also demand a written contract? Also consider, why would he settle for a quitclaim deed at the same price if a contract had already been formed?
34. *See* Adams v. Willis, 225 S.C. 518, 83 S.E.2d 171 (1954) which held that specific performance should be granted only after considering all equitable factors.

formance should not be granted, considered the relative positions of the parties,[35] the adequacy of the consideration,[36] and the greater discretion permitted the court in this area.[37]

The second case in this area was *Hydrick v. Mehlmans, Inc.*[38] which involved the remedies available in a breach of warranty action. The trial judge charged that the measure of damages "would be the differences in the actual value of the stereo in its defective condition at the time of sale and its value if it had been as warranted."[39] This value could vary from zero to $595, which was the original purchase price. The jury found for the plaintiff in the sum of $595, after which the defendant made a motion for the return of the stereo. The motion was granted by the trial judge, and the plaintiff appealed.

It has generally been held in South Carolina that in a breach of warranty action a purchaser of personalty can elect either to return the item and demand refund of the purchase price (rescission) or to retain the item and demand damages.[40] The court found that no election for rescission had been made by the plaintiff in this instance, since there was no mention of rescission and the basic character of the action was *legal.* The only factor relied on by the respondent was one statement in the appellant's original complaint: "Plaintiff herewith tenders to both Defendants, or either of them, the said machine."[41] In spite of this the court stated: "We do not think such an allegation makes the action one for recision [sic] in the light of the entire complaint, the answers and the charge of the law by the judge."[42] On this basis the trial court's order to return was reversed.

35. The plaintiff was a local attorney while the defendant was an elderly lady who had once been declared mentally incompetent and resided a great distance from the disputed property.

36. The court found the minimum value of the land to be $450 per acre. *See* Holly Hill Lumber Co. v. McCoy, 201 S.C. 427, 23 S.E.2d 372 (1942) where it was stated:

> When the accompanying incidents are inequitable and show bad faith, such as concealment . . . *weakness of mind,* sickness, old age, . . . these circumstances combined with *inadequacy of price,* may easily induce a court to grant relief . . . .

Id. at 442, 23 S.E.2d at 378 (emphasis added).

37. *Id.*

38. 172 S.E.2d 824 (S.C. 1970).

39. *Id.* at 826.

40. Ebner v. Haverty Furniture Co., 128 S.C. 151, 122 S.E. 578 (1924). The provisions of the UCC were not considered by the court as the initial transaction took place prior to the enactment of the UCC by South Carolina.

41. Record at 6, Hydrick v. Mehlmans, Inc., 172 S.E.2d 824 (S.C. 1970).

42. 172 S.E.2d 824, 826 (S.C. 1970). Rescission was hardly the proper remedy where the stereo had been kept for nearly two years prior to the

The third and last of the cases dealing with remedies was *Sheppard v. Nienow*.[43] This was an action brought by the plaintiff-tenant on behalf of her child for injuries sustained because of the defendant-landlord's alleged breach of a covenant to repair.[44] The jury found for the plaintiff, and this appeal followed. In reversing, the supreme court stated that the general rule in South Carolina is that a covenant to repair by a landlord gives rise to a cause of action only for the cost of such *repairs* and not for any resulting personal injuries.[45] Thus, it followed that the child had no contractual cause of action if the parent-tenant did not. The court further stated:

> Since the injury to the respondent was incurred on premises in the exclusive possession and control of the tenant, the landlord was not liable in tort under the law applicable to this relationship.[46]

After finding no cause of action under either theory, the court concluded that the defendant's request for a directed verdict should have been granted.

It is significant to note that the court here declined to change South Carolina case law in this area in spite of the growing minority view and the rather close factual circumstances.[47] In an increasing number of jurisdictions the older doctrines which have traditionally protected the landlord have given way to the more modern concepts of social policy which impose liability on the landlord—the more financially able party. Several states and municipalities have accomplished this by statute.[48] The

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action being brought. Undoubtedly, the defendant favored an action for damages and made no objection to the trial judge's charge since he expected a lesser judgment. If he was then dissatisfied with the verdict, he should have moved for a new trial nisi.

43. 173 S.E.2d 343 (S.C. 1970).

44. Plaintiff rented a trailer and a lot from the defendant. The covenant to repair was allegedly formed when the defendant promised to replace certain burned out exterior lights and to remove metal stakes from the plaintiff's lot. The plaintiff asserted that failure to perform this promise caused the accident wherein her child was injured.

45. Sheppard v. Nienow, 173 S.E.2d 343 (S.C. 1970), *citing* Conner v. Farmers and Merchants Bank, 243 S.C. 132, 132 S.E.2d 385 (1963) and Timmons v. Williams Wood Products Corp., 164 S.C. 361, 162 S.E. 329 (1932). This is still the majority rule as recognized in the United States. *See generally* Annot., 78 A.L.R.2d 1238 (1961).

46. 173 S.E.2d 343, 345 (S.C. 1970).

47. The plaintiff had called the defect to the defendant's attention; it seems questionable to find the lights "solely in plaintiff's control" merely because she had agreed to pay the electric bill for them.

48. *See* W. PROSSER, HANDBOOK OF THE LAW OF TORTS § 63, at 412-13 (3d ed. 1964).

Restatement (Second) of Torts[49] also favors this minority position.

V. STATUTE OF FRAUDS

Daniels v. Coleman[50] was a combined trespass and fraud action in which the plaintiffs recovered in both areas below; the defendant thereafter appealed. The basis of the controversy involved the true ownership of certain realty. On October 26, 1964, L.L. Rogers, by written instrument, conveyed this realty —his farm, worth an estimated $75,000 - $100,000 — to his daughter and her husband, the plaintiffs here, for five dollars and "love and affection." The farm was subject to a $40,000 lien in which the defendant had an interest. Then, according to the defendant, the plaintiffs *orally* reconveyed the farm to Rogers in the form of either a life estate or an estate at will. Rogers and his wife continued to reside on the farm after the written conveyance and were in physical possession at the time of the alleged trespass by the defendant, who had come upon the land to collect a disputed debt.

Answering the charge of trespass, the appellant denied that his actions amounted to a trespass and contended that Rogers, rather than the plaintiffs, should have been the one to bring such an action. This contention was countered by the plaintiffs who sought to employ the Statute of Frauds to show that there had been no effective oral reconveyance to Rogers. While holding that there was, in fact, no trespass, the court stated: "Since there has been *full* performance by L.L. Rogers, the Statute of Frauds has no application."[51] The facts as previously given concerning the oral reconveyance were substantially admitted in open testimony at the trial by one of the plaintiffs.[52] The court's statement would thus not seem to conflict with existing case law, so long as the performance was full and complete.[53] However, mere physical possession without more, as here, has not previously been considered to be *full* performance. At best, in certain partition cases, it has been held merely a sufficient element of *part* performance to preclude the use of the Statute

49. RESTATEMENT (SECOND) OF TORTS § 357 (1965).
50. 253 S.C. 218, 169 S.E.2d 593 (1969).
51. *Id.* at 231, 169 S.E.2d at 599 (emphasis added).
52. Record at 149, Daniels v. Coleman, 253 S.C. 218, 169 S.E.2d 593 (1969). Were this an action dealing with the sale of goods, such admission in court would itself prevent the plaintiff from pleading the Statute of Frauds. *See* S.C. CODE ANN. § 10.2-201(3)(b) (Supp. 1966).
53. White v. McKnight, 146 S.C. 59, 143 S.E. 552 (1928).

of Frauds as a defense.[54] The broad interpretation implicit in the court's statement would thus seem to mark a departure from prior case law; but its value as precedent must be viewed circumspectly, since the court's statement was only dictum.

VI. CONSTRUCTION OF CONTRACTS

In *American Motorists Insurance Co. v. Murphy*[55] the plaintiff appealed, after the trial court granted the defendant's motion for a non-suit. The dispute concerned the interpretation to be given certain parts of a written agency agreement[56] between the plaintiff, an insurance company, and the defendant, an individual agent. Upon termination of the agency agreement, the insurance company sought payment of *subsequent* premiums on policies sold by the agent. No evidence was presented which indicated that the agent actually collected any of the disputed premiums or that he prevented the insurance company from collecting them.

The court found that the title to any unpaid premiums was specifically reserved in the insurance company and that there was no provision in the agreement which gave the defendant the right to collect the premiums after termination of the agreement. "In the absence of a right to collect the premiums which accrued after the termination of the agency, defendant could not be held liable for their payment."[57] The court refused to consider another portion of the agency agreement[58] which allegedly directly concerned the collection of the disputed premiums, since it determined that this portion had not properly been presented as evidence. This clause, which apparently required the agent to collect all subsequent premiums, *was* con-

54. *See* Wilson v. Cooper, 226 S.C. 538, 86 S.E.2d 59 (1955) and Carson v. Coleman, 208 S.C. 406, 38 S.E.2d 147 (1945). *See also* Hollowoa v. Buck, 174 Ark. 497, 296 S.W. 74 (1927) which held that possession under a parol *family* settlement was sufficient part performance to remove it from the Statute of Frauds.

55. 253 S.C. 346, 170 S.E.2d 663 (1969).

56. One clause stated: *"Agent shall pay company . . . all premiums arising out of insurance written under this agreement, whether or not collected by agent . . . ."* *Id.* at 348, 170 S.E.2d at 664.

57. *Id.* at 349, 170 S.E.2d at 665.

58. The following clause was set out in Appellant's Brief at 4:
> After notice of suspension, revocation or termination of the said authority of the Agent or of cancellation or termination of this agreement, the Agent shall complete the collection and account to the company for all premiums . . . .

sidered by the lower court, but was struck as violative of public policy.[59]

Lyerly v. Evans[60] involved a conveyance of property rights by the defendant to the plaintiff. The plaintiff asserted that the conveyance was a valid 99 year lease of the three acres in question, while the defendant contended that it was merely a transfer of his (the defendant's) tobacco allotments. The trial court, finding for the defendant, held that the instrument, regardless of its appearance, had been *intended* merely as a transfer of the tobacco allotments. It reached such a holding by admitting oral testimony, over plaintiff's objections, on the premise that such was competent to show the purpose of the writing.[61] The supreme court affirmed the lower court's finding for the defendant. It, too, admitted the disputed testimony, but only after finding that an ambiguity existed in the agreement.[62] Once such an ambiguity was found, the court was free to look not only at the written language, but also outside it to the surrounding circumstances in order to determine the true agreement made by the parties.[63]

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59. The trial court considered this clause in making its decision but struck it as violative of public policy, since it required the defendant to perform acts prohibited by statutes. *See* S.C. CODE ANN. §§ 37-231, 37-245(1) (1962). The trial court recognized that such statutes were legislated for the protection of policy holders rather than agents but concluded: "I believe the contract in that regard would be void and against public policy." Record at 29, American Motorists Ins. Co. v. Murphy, 253 S.C. 346, 170 S.E.2d 663 (1969).

60. 172 S.E.2d 555 (S.C. 1970).

61. By admitting the testimony, the lower court apparently gave recognition to an exception to the *parol evidence* rule which had previously not been considered in South Carolina. *See generally* 32 C.J.S. *Evidence* § 1015 (1964).

62. While one portion of the instrument evidently referred to itself as a general 99 year lease, another specified that the intention of the parties was merely to give the plaintiff the tobacco allotments. The plaintiff's actions from 1960 to 1963 would appear to support the latter interpretation, since during this period he utilized the allotments on his *own* land.

63. Herndon v. Wardlaw, 100 S.C. 1, 84 S.E. 112 (1914).