South Carolina Law Review

Volume 22 | Issue 4 Article 4

1970

Damages

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DAMAGES

I. Personal Injury

A. *Future Medical Expenses*

In *Kelly v. Brazell*[1] the plaintiff sued to recover damages for personal injuries sustained in an automobile collision with the defendant. The trial resulted in a general verdict for the plaintiff. On appeal the defendant contended that the trial judge's instructions allowing an award for future medical expenses were not warranted by the evidence. The only evidence pertaining to future medical expenses was the plaintiff's doctor's testimony to the effect that the plaintiff had suffered a mild but permanent disability of five percent and would require certain medication from time to time for the alleviation of pain. No evidence was given concerning the amount or the cost of such medication.

In affirming the award, the court stated:

> We think that the evidence as a whole warrants an inference that some future medical expense would most probably be incurred by this plaintiff . . . .
>
> It must be conceded that there is perhaps a minimum of certainty as to the amount of medical expense which might be required in the future, and it would have been helpful to the jury if estimates relative to the amount of medication and the cost thereof had been included. At the same time this court appreciates the fact that estimates might have been difficult.[2]

As in a majority of jurisdictions,[3] early South Carolina case law established that a party could recover future medical expenses, but only those reasonably certain to be incurred as a proximate result of the wrongful act.[4] The reason for requiring such certainty was the danger of a verdict based

1. 253 S.C. 564, 172 S.E.2d 304 (1970).
2. *Id.* at 567, 172 S.E.2d at 305.
3. 15 Am. Jur. 2d *Damages* § 139 (1964).
4. The leading South Carolina case to this effect is *Green v. Catawba Power Co.*, 75 S.C. 102, 55 S.E. 125 (1906), where the court held that an injured party is not entitled to recover damages for expenses which may or may not be incurred in the future. *See also* Brewer v. Northwestern R.R., 151 S.C. 415, 149 S.E. 124 (1929); Lockhart Power Co. v. Askew, 110 S.C. 449, 96 S.E. 685 (1918).

solely on speculation. The general trend, however, as reflected by *Kelly*, is to allow the question to go to the jury rather than to deprive the plaintiff of any possibility of recovery.[5]

B. *Punitive Damages*

The practice of awarding punitive damages, thus effecting a punishment upon the defendant, is of comparatively recent origin, as it departs from the traditional notion that damages are awarded only for the purpose of making the injured party whole.[6] In *Turner v. Sinclair Refining Co.*[7] the defendant was assessed punitive as well as compensatory damages for his negligence in maintaining a dangerous loading platform. The platform, used for loading oil tankers, was not high enough to permit the drivers to park their tankers partially beneath it. Thus, in order to load, the driver had to swing by a rope for a distance of several feet from the platform to the top of the tanker. In addition, oil had accumulated on the deck of the platform because of inadequate drainage. The plaintiff was injured when he slipped on the oil and fell as he attempted to swing over onto his tanker. At the trial the defendant's agent admitted that the platform would have been safer if higher and that the oil might have seeped through the drainage plates, though he did not know that it had done so.

On appeal the defendant argued that such testimony was not sufficient evidence of willfulness to support a verdict for punitive damages. The court, in rejecting the defendant's contention, stated:

> It is clearly inferable that appellant had full knowledge of not only the obvious perils, but the latent peril. *Willfulness is the conscious failure to use due care* . . . there was abundant evidence here of conscious failure on the part of the appellant to exercise due care for the safety of the various drivers . . . .[8]

While not resolving any new points of law, the court in *Turner* clarified established law which has caused much confusion, not only in South Carolina but also in many other jurisdictions.[9] In South Carolina it was early established that,

5. *See* 25 C.J.S. *Damages* § 91(3) (1966).
6. Shuler v. Heitley, 209 S.C. 198, 39 S.E.2d 360 (1946); C. MCCORMICK, HANDBOOK OF THE LAW OF DAMAGES § 77 (1935).
7. 254 S.C. 36, 173 S.E.2d 356 (1970).
8. *Id.* at 44, 173 S.E.2d at 360 (emphasis added).
9. For a review of other jurisdictions, *see* 25 C.J.S. *Damages* § 123 (1966).

in order to recover punitive damages, it was unnecessary to show that the defendant's act was done intentionally with the express purpose of harming the plaintiff.[10] The court's use of the language such as "willful tort"[11] or "actionable willfulness"[12] led, however, to seemingly conflicting decisions. It now seems clear that the key to the recovery of punitive damages is the defendant's "conscious wrongdoing" which creates the hazardous condition without regard to his willfulness or intent to harm the plaintiff. It does not appear necessary to show that the defendant had actual knowledge, but rather, in accord with the standard of the reasonable man, that he should have been aware of the danger created.[13] The court will not, however, hold the defendant to the same standard of care in every case, but will proceed on a case by case analysis and will look at the relationship of the parties and the duties owed by each.[14]

C. *Landlord and Tenant*

In *Sheppard v. Nienow*[15] an infant, by her mother as *guardian ad litem*, brought an action against the defendant landlord to recover damages for personal injury. During the night the mother, carrying the child, was returning to her rented trailer and tripped over a metal stake in the yard, the result of which was an injury to the child. The cause of action was based upon negligence. The complaint alleged that the defendant had promised to replace the burned out yard light and to remove the stakes, that he had not done as he had promised, and that his failure to do so was the proximate cause of the child's injury.

The trial court rendered a judgment in favor of the plaintiff for actual and punitive damages. The supreme court, reversing, followed the well established precedent[16] that a

10. Anderson v. Atlantic Coast Line R.R., 179 S.C. 367, 184 S.E. 164 (1936); Thomasson v. Southern Ry., 72 S.C. 1, 51 S.E. 443 (1905).
11. Dobson v. Postal Telegraph-Cable Co., 79 S.C. 429, 60 S.E. 948 (1908).
12. Hallman v. Cushman, 196 S.C. 402, 13 S.E.2d 498 (1941).
13. Note that in *Turner* it was only "inferable" that the defendant had knowledge of the danger. *Accord,* Hinson v. A.T. Sistare Const. Co., 236 S.C. 125, 113 S.E.2d 341 (1960).
14. Eaddy v. Greensboro-Fayetteville Bus Lines, Inc., 191 S.C. 538, 5 S.E.2d 281 (1939). In *Turner* the plaintiff was considered a business invitee.
15. 254 S.C. 44, 173 S.E.2d 343 (1970).
16. *E.g.,* Connor v. Farmers and Merchants Bank, 243 S.C. 132, 132 S.E.2d 385 (1963); Pendarvis v. Wannamaker, 173 S.C. 299, 175 S.E. 531 (1934); Timmons v. Williams Wood Products Corp., 164 S.C. 361, 162 S.E. 329 (1932).

breach of a promise by a landlord to make repairs gives rise merely to a right of action for breach of contract.[17] An action *ex contractu* has several disadvantages, the more noteable being an award limited to the cost of repair or the loss of the rental value of the property.[18]

An increasing number of jurisdictions find the necessary duty to repair arising by operation of law out of the contractual relationship, hold the landlord liable in tort, and award the injured tenant both actual and punitive damages.[19] This view has found support in the Restatement of Torts[20] in which it is clearly stated that the landlord's duty, although founded upon contract, is not merely contractual, but is also a duty grounded in tort.[21] The Restatement reasons that as a result of the contractual relationship the lessee is induced to forego efforts to remedy the dangerous condition[22]; thus, the landlord's failure to repair becomes the legal cause of the tenant's injury.

In *Sheppard* the court noted that the tenant has a number of options in the event of the landlord's failure to repair:

> (1) [R]escind the contract and abandon the premises; (2) make the repairs himself and deduct the expense thereof from the rent or recover the same upon a counterclaim in an action for rent; (3) occupy without repair, and recoup such damages as are ordinarily incident to a breach of contract by a counterclaim in the landlord's action for rent; or (4) sue for damages for breach of contract.[23]

Certainly, none of these options are adequate after an injury occurs, as the result in *Sheppard* clearly indicates. And what

17. Recovery for personal injury is denied as such a result is deemed not within the contemplation of the parties at the time of entering into the contract. Timmons v. Williams Wood Products Corp., 164 S.C. 361, 162 S.E. 329 (1932).

18. *E.g.*, Leavitt v. Twin County Rental Co., 222 N.C. 81, 21 S.E.2d 890 (1942).

19. *See* Dean v. Hershowitz, 119 Conn. 398, 177 A. 262 (1935); Williams v. Davis, 188 Kan. 385, 362 P.2d 641 (1961); Merchants' Cotton Press and Storage Co. v. Miller, 135 Tenn. 187, 186 S.W. 87 (1916).

20. RESTATEMENT (SECOND) OF TORTS § 357 (1965).

21. Comment 4c to the RESTATEMENT (SECOND) OF TORTS § 357 (1965), plainly provides: "The lessor's duty . . . is not merely contractual, although it is founded upon a contract. It is a tort duty. It extends to persons on the land with the consent of the lessee, with whom the lessor has made no contract."

22. RESTATEMENT (SECOND) OF TORTS § 357, comment 2 (1965).

23. 254 S.C. 44, 49, 173 S.E.2d 343, 345, *quoting from* Timmons v. Williams Wood Products Corp., 164 S.C. 361, 367, 162 S.E. 329, 331 (1932).

option is there for an indigent tenant who cannot afford to repair, appear in court, or abandon the premises for lack of a better place to go? It has been said of a rule similar to that of South Carolina's: "More may be said of the logical exactness of this doctrine than of its inherent justice."[24]

D. *Instructions to the Jury*

In *Phillips v. K-Mart*[25] the plaintiff sought to recover damages for injuries sustained as a result of her fall in the defendant's store. During the trial the plaintiff testified that, following the accident, she had to hire a maid to help with the housework. Her testimony was conflicting as to the length of time during which the maid was employed, and it was not shown how much the maid was actually paid. The defendant requested that the trial judge charge the jury that an award could not be made for the maid expense on the ground that any such award would be based on mere speculation. The trial judge failed so to charge, and the jury returned a general verdict for the plaintiff.

On appeal the supreme court reversed, finding the trial judge's omission erroneous and prejudicial. While it is established that a judge is not required to charge a jury using the exact language of the request,[26] the charge in the present case made no reference to the maid expense, nor did it specifically limit the jury to the areas warranted by the evidence.[27] The court's decision is in accord with the accepted rule that, while such expense may be recovered, the amount will not be presumed nor will the jury be allowed to speculate thereon.[28]

E. *Evidence*

Young v. Martin[29] concerned a plaintiff who was involved in two automobile collisions, one occurring on October 25, 1967, and the other on December 14, 1967. At the time of the trial the plaintiff had received compensation from the defendant involved in the first collision for injuries identical to those

24. Merchants' Cotton Press and Storage Co. v. Miller, 135 Tenn. 187, 188, 186 S.W. 87, 88 (1916).
25. 173 S.E.2d 916 (S.C. 1970).
26. Wade v. Columbia Elec. St.-Ry., Light and Power Co., 51 S.C. 296, 29 S.E. 233 (1898).
27. The court also noted that the record did not indicate that the plaintiff had actually incurred any expense for which she, as opposed to her husband, was entitled to recover.
28. 25A C.J.S. *Damages* § 144 (1966).
29. 173 S.E.2d 361 (S.C. 1970).

alleged in the instant case. The plaintiff denied this under oath. The defendant attempted to rebut this denial using testimony by the attorney representing the previous defendant, medical information introduced by the plaintiff in the first suit, and the plaintiff's prior complaint (which alleged identical injuries). The trial judge sustained the plaintiff's objection to such evidence on the ground that it was irrelevant and prejudicial.

The supreme court granted a new trial. The court thus followed *Jackson v. Banks Construction Co.*,[30] a case involving similar facts, where the court held that the defendant was entitled to show the full nature and extent of the injuries received by the plaintiff in the prior accident.[31] The present case, however, went further than *Jackson*: the court allowed the defendant to show the amount of the settlement received as a result of the first collision. The court noted that, although this was not the normal practice, it was proper in light of the facts and circumstances that developed during the course of the trial.[32]

F. *Survival and Wrongful Death Statutes*

In *Griffin v. Planters Chemical Corp.*[33] the plaintiff, widow of the deceased, brought an action to recover damages for injuries suffered by the deceased before his death and for his wrongful death. Plaintiff's intestate was twenty-eight years old, was the father of three children, and was earning an annual salary of $7,000.00 at the time of his death. The defendant pesticide manufacturer was found negligent in that it failed to provide proper warning of the highly toxic effects of parathion dust, a product which it manufactured, which absorbed into the body of the deceased and caused his death.

30. 229 S.C. 461, 93 S.E.2d 604 (1956). *See also* Mullinax v. Great Atl. and Pac. Tea Co., 221 S.C. 433, 70 S.E.2d 911 (1952).

31. While largely within the discretion of the trial court, the majority of jurisdictions have allowed the introduction of such evidence. *E.g.*, Bentley v. Ayers, 102 Ga. App. 733, 117 S.E.2d 633 (1960); Burlington Hotel Corp. v. Dixon, 196 N.C. 265, 145 S.E. 244 (1928).

32. Although the court did not specifically enumerate the particular facts and circumstances that prompted this facet of the decision, the amount received would be relevant on retrial as the jury would have to determine the extent of the injuries received in each accident and award damages accordingly; this is in accord with the theory that the plaintiff should not be made more than whole.

33. 302 F. Supp. 937 (D.S.C. 1969).

The court awarded the plaintiff $2,000.00 for the deceased's pain and suffering as provided for by the Survival Statute.[34] As compensation for the wrongful death[35] the plaintiff was awarded $77,220.00 for pecuniary loss based on the deceased's expected contribution to the plaintiff and the children; this award was based on the decedent's work life expectancy. Although the deceased had a remaining life expectancy of 38 years, the court recognized that because of current retirement plans he would not have worked this entire time.[36] The plaintiff was also awarded $20,000.00 for loss of companionship and $10,000.00 for her mental shock and suffering.

II. EMINENT DOMAIN

In *South Carolina Highway Department v. Smith*[37] the court was faced with a question of novel impression: Is a landowner entitled to compensation for depreciation in the value of business equipment which has become useless to him as a result of condemnation proceedings against his land? The plaintiff operated a grocery store-filling station on the condemned property. The store contained the normal items of equipment, i.e., meat case, scale, meat slicer, cash register, etc. The plaintiff maintained that, as there was no ready market for such equipment, it had become a liability for which she was entitled to compensation. The trial judge instructed the jury that, if depreciation was found, compensation could be awarded.

In a three-to-two decision the supreme court reversed. A majority of the court reasoned that, as the property was not attached to the land, it could not be classified as a fixture and that it was not, therefore, included in the "taking". (In fact the property had been removed by the plaintiff prior to the condemnation.) The court thus sided with the clear weight

34. S. C. CODE ANN. § 10-209 (1962) provides in part:
> Causes of action for and in respect to any and all injuries and trespasses to and upon real estate and any and all injuries to the person or to personal property shall survive both to and against the personal or real representative . . . of a deceased person . . . .

The deceased suffered from the effects of the poison for approximately two hours before his death.

35. S. C. CODE ANN. §§ 10-1951 to -1956 (1962). The question is not the value of the human life but rather the damages sustained by the beneficiaries. Zorn v. Crawford, 252 S.C. 127, 165 S.E.2d 640 (1969).

36. *Accord,* Brooks v. United States, 273 F. Supp. 619 (D.S.C. 1967).

37. 172 S.E.2d 827 (S.C. 1970).

of authority in this area.[38] At least two jurisdictions, however, have reacted more favorably to the plaintiff's despair. In *In re City of New York (Seward Park Slum Clearance Project)*[39] the Appellate Division of the New York Supreme Court said:

> [A]n award in condemnation may also be made for property, albeit readily removable without damage to the freehold, if such property were used for business purposes and would lose substantially all its value after severance.[40]

Michigan recognizes three general classifications of fixtures: those actually or constructively annexed to the realty; those adapted or applied to the particular use or purpose of the realty; and those intended to become a permanent accession to the freehold.[41] Thus, in *Colton v. Michigan Lafayette Building Co.*[42] the court said that, when such items as repair parts to elevators, entrance mats, clocks, mirrors, etc., were purchased by the owner, the intention was to consider such articles as fixtures and improvements. And, in the case of *In re Slum Clearance, City of Detroit*,[43] under the concept of constructive annexation the court concluded that a liquid was a fixture for which the owner must be compensated.

The dissenting opinion[44] in *Smith* regarded the plaintiff's loss as "special damages" for which he should have been compensated by law.[45] Although the "special damages" provision has not been applied to personal property, the dissent reasoned:

> Special damages should include any damages or decrease in actual value in the remainder of the landowner's property, whether real or personal, which are the direct and proximate consequence of the acquisition of the right of way.[46]

38. The court relied on *Williams v. State Highway Comm'n*, 252 N.C. 141, 113 S.E.2d 263 (1960), which dealt only with the recovery of removal and breakage expenses. *See also* 27 AM. JUR. 2D *Eminent Domain* § 293 (1966); Annot., 90 A.L.R. 159 (1934) (both cited by the court).

39. 10 App. Div. 2d 498, 200 N.Y.S.2d 802 (1960).

40. *Id.* at 500, 200 N.Y.S.2d at 804.

41. Morris v. Alexander, 208 Mich. 387, 175 N.W. 264 (1919).

42. 267 Mich. 122, 255 N.W. 433 (1934).

43. 332 Mich. 485, 52 N.W.2d 195 (1952).

44. 172 S.E.2d 827, 829 (S.C. 1970) (dissenting opinion). The dissent was by Justice Bussey with Justice Lewis concurring.

45. S. C. CODE ANN. § 33-135 (1962) provides:

> In assessing compensation and damages for rights of way, only the actual value of the land to be taken therefor and any *special damages* resulting therefrom shall be considered (emphasis added).

46. 172 S.E.2d at 830 (dissenting opinion).

South Carolina State Highway Department v. Wilson[47] was a condemnation case involving the distinction between the exercise of the state's police power, for which no compensation is required, and the exercise of the power of eminent domain, for which just compensation is required.[48] The trial resulted in a verdict in favor of the condemnees for a total of $30,200.00. In determining the award, the jury was allowed to consider diminution in the value of the remaining property resulting from the construction of a median which cut off access to an adjacent highway.

On appeal the highway department maintained that the construction of the median was a valid exercise of the state's police power and that damages resulting from such construction were thus not compensable.[49] The court, disagreeing, stated:

> While the construction of a median, with nothing more, may very well be an exercise of the police power with no resulting compensable damage to an abutting property owner, in the instant case the proposed median is only an incidental part of the overall Department plans and contemplated construction. It logically follows . . . that any damage attributable to the planned median is an incidental result of the exercise of the power of eminent domain . . . .[50]

III. BREACH OF WARRANTY

In *Hydrick v. Mehlman's Inc.*[51] the plaintiff, purchaser of a stereo, brought an action for breach of express warranty against the retail dealer and the manufacturer. The trial resulted in a verdict in favor of the plaintiff for $595.00, the actual purchase price. Upon the defendants' motion the trial judge ordered that the machine be returned to the defendants, such return properly being required in an action for rescission. The supreme court, reversing, treated the plaintiff's

47. 175 S.E.2d 391 (S.C. 1970).
48. Edens v. City of Columbia, 228 S.C. 563, 91 S.E.2d 280 (1956); Richards v. City of Columbia, 227 S.C. 538, 88 S.E.2d 683 (1955).
49. The court, recognizing authority to this effect, cited Barnes v. North Carolina State Highway Comm'n, 257 N.C. 507, 126 S.E.2d 732 (1962).
50. 175 S.E.2d 391, 396 (S.C. 1970).
51. 172 S.E.2d 824 (S.C. 1970). This case was commenced prior to the effective date of the Uniform Commercial Code; therefore, the Code was not applicable. The reader should, however, refer to S. C. CODE ANN. §§ 10.2-313 and 10.2-714 (Supp. 1966).

cause of action as one for damages instead of rescission. Therefore, the plaintiff was entitled to the property and to the difference between its value in a defective condition and its value if it had been as warranted. The fact that the verdict was equal to the price paid was found to be of no consequence. (The court stated that the defendants should have moved for a new trial *nisi* on the ground of an excessive verdict if they felt that the machine had some value.) The plaintiff's complaint in effect tendered the machine to the defendants in accordance with an action for rescission. The court, however, looked to the entire complaint, the answers, and the instructions to the jury in determining the nature of the action. The court also based its decision on the fact that the plaintiff had not brought his action within a reasonable time after paying the purchase price and discovering the defect and that he was not able to return the machine in substantially the same condition as he received it, both actions being prerequisite to an action for rescission.[52]

IV. Conversion

In *Long v. Gibbs Auto Wrecking Co.*[53] the plaintiff brought an action for conversion against the defendant Boatwright, operator of an automobile wrecker service, and the defendant Gibbs, who operated a salvage company. The plaintiff's 1960 Ford Falcon station wagon was involved in a collision and was subsequently stored at Boatwright's place of business. Thereafter, the car was removed by Gibbs under a mistaken belief that it was the car upon which he had made a successful salvage bid.[54] Upon discovering the mistake, Boatwright, together with the plaintiff, made repeated efforts to regain possession of the car; however, Gibbs, with knowledge of the mistake, sold the car to a third person and refused to make an accounting to the plaintiff. The trial resulted in a verdict for the plaintiff against Gibbs for $1,885.00, actual damages, and $2,615.00, punitive damages.[55] On appeal Gibbs maintained

52. Ebner v. Haverty Furniture Co., 128 S.C. 151, 122 S.E. 578 (1924).
53. 253 S.C. 370, 171 S.E.2d 155 (1969).
54. Prior to the accident Gibbs received an invitation to bid on a 1960 two-door Falcon also stored on Boatwright's premises. Gibbs alleged that his agent had relied on a statement made by one of Boatwright's employees to the effect that the plaintiff's car was the only Falcon on the premises.
55. Boatwright, on a cross-action, also received a verdict against Gibbs for $500.00 for actual damages, including loss of good will. This portion of the verdict was not considered by the court because of Gibbs' failure to give notice of appeal.

that there was insufficient evidence to support the amount awarded for actual damages and that punitive damages were not appropriate.

The supreme court affirmed both awards. In regard to actual damages the court followed the general rule established in *Mims v. Bennett*,[56] that the measure of damages for the conversion of personal property is the value of the property with interest thereon from the date of the conversion to the date of the trial.[57] The value of the automobile after the collision was determined by figuring the initial cost of the automobile, minus depreciation, minus the cost of repairs.

The court also found ample evidence to support the verdict for punitive damages. Gibbs' initial act of acquiring possession of the car was the result of an honest mistake, for which Boatwright's employee was partly responsible. However, when Gibbs sold the car with knowledge of the mistake, there was obviously a conscious indifference to or reckless disregard for the plaintiff's rights, which justified the award of punitive damages.[58]

V. FRAUD AND DECEIT

Unlike torts involving direct injuries for which the plaintiff is normally entitled to at least nominal damages without proving actual damages, the measure of damages for fraud is the actual pecuniary loss sustained.[59] In *Daniels v. Coleman*[60] it was alleged that the defendant fraudulently acquired possession of a note and mortgage on certain land owned by the plaintiff. The supreme court, reversing the lower court's judgment for the plaintiff, found that the plaintiff had suffered no pecuniary loss since the instruments had not been hypothecated, passed into the hands of a bona fide purchaser, or acted upon by the defendant. The court thus rejected the lower court's finding that damage was inherent in a promis-

56. 160 S.C. 39, 158 S.E. 124 (1931). *See also* Young v. Corbitt Motor Truck Co., 148 S.C. 511, 146 S.E. 534 (1929); Carter v. DuPre, 18 S.C. 179 (1882).

57. This rule is generally followed by a majority of jurisdictions; *see* Annot., 36 A.L.R.2D 377 (1954). There are, however, numerous variations in the length of time for which interest is recoverable; *see* 18 AM. JUR. 2D *Conversion* § 100 (1965).

58. See discussion of punitive damages in Section I-B, of the text.

59. Fudge v. Physicians Ins. Co., 125 F. Supp. 653 (D.S.C. 1954); Thomas v. American Workmen, 197 S.C. 178, 14 S.E.2d 886 (1941); 37 AM. JUR. 2D *Fraud and Deceit* §§ 283, 346 (1968).

60. 253 S.C. 218, 169 S.E.2d 503 (1969).

sory note obtained by fraudulent representations.[61] In addition, the court refused to recognize the plaintiff's expenses for telephone calls and automobile trips, incurred as a result of the litigation, as damages in a legal sense. The court regarded such expenses only as an inevitable inconvenience.[62]

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61. The court, however, recognized the general rule that fraud could be set up as a defense without proving actual damages; the court cited 37 C.J.S. *Fraud* § 103 (1943).

62. *Accord*, Rimer v. State Farm Mut. Auto. Ins. Co., 248 S.C. 18, 148 S.E.2d 742 (1966); Aaron v. Hampton Motors Inc., 240 S.C. 26, 124 S.E.2d 585 (1962).