LEADBETTER CLAIMS REJECTED BY COURT

Suit to Regain Ownership of Paper Stock Fails.

EVERY CONTENTION LOST

Alleged Oral Contract With Mr. Pittock Providing for Transfer Is Held Inadequate.

Through an opinion handed down by Circuit Judge Tucker yesterday, Fred W. Leadbetter loses every contention in his recent suit in equity for the recovery of $1,000,000 worth of Crown-Willamette Pulp & Paper company stock from the estate of the late Henry L. Pittock, the court holding that the terms of the will, governing the disposal of these securities, specifically abrogate the indeterminate oral contract claimed by Mr. Leadbetter.

Suit was instituted late in November, against O. L. Price as executor of the estate, with Judge Tucker presiding at the subsequent hearings in equity. As counsel for Mr. Leadbetter appeared Cake & Cake, and L. A. Liljequist. The Pittock estate and Executor Price were represented by Charles H. Carey, James B. Kerr and D. P. Price.

Right Held Forfeited.

It was the contention of the plaintiff that the valuable holdings of the estate in Crown-Willamette stock, aggregating a purchase value of $755,000 and accrued dividends of $333,000, were subject to re-purchase by himself, in conformance with an oral agreement of 10 years ago. Though the original agreement relating to one block of stock, was not denied, the defense set forth testimony and evidence to support the counter-contention that this right was long since forfeited, and that it was not recognized by Mr. Pittock for some years prior to his death.

Judge Tucker held that parties seeking specific performance of contracts should bring into court contracts specific enough and sufficient to serve as a foundation for a decree. He called attention to the lapse of a period considered by Mr. Pittock to have been "a reasonable length of time" in which the contract might have been fulfilled, and to that paragraph in the will which provides that the paper company stock may not be sold, but must be held intact during the entire period of trust.

Verbal Contract Inadequate.

In treating of the personality and character of Mr. Pittock, as bearing upon the controversy, Judge Tucker sets forth as undeniable the fact that "his word was as good as his bond," and the additional fact that, despite the allegations of the plaintiff, respecting an unremittent continuance of the alleged understanding, no memoranda appear in Mr. Pittock's private journal regarding such an agreement—indicating that the matter was considered definitely disposed of and the stock a portion of the Pittock properties, subject to no claim.

Terming the account of the verbal contract an "incoherent arrangement," Judge Tucker held, in denying the plaintiff's suit, that "it would be asking the court in a large measure to establish the contractural relations between the parties, and, as stated before, the nature of the remedy sought precludes the chancellor from entering into these fields of uncertainty."

Judge's Decision Given.

Judge Tucker's opinion is as follows:

Plaintiff seeks specific performance of an oral contract and asks the court to determine the amount due and fix the time when same should be paid, and for other equitable relief.

The amended complaint, after setting forth preliminary and jurisdictional matters, alleges the oral contract to be substantially as follows: That on April 1, 1910, plaintiff and H. L. Pittock, deceased, entered into an oral contract wherein the latter agreed to buy certain shares of the capital stock of the Crown Columbia Pulp & Paper company, and all accretions and additions thereto, and that at any time thereafter (no time being fixed) upon plaintiff's request would resell to plaintiff said stock for the amount paid therefor, together with interest, allowing a credit of dividends received.

Claims Are Set Out.

Plaintiff claims that in pursuance of this oral contract, on April 1, 1910, he transferred to the said H. L. Pittock 2000 shares of said stock; on May 24, 1913, 500 shares, and on August 24, 1914, 450 shares, for the sum of $490,000. Plaintiff further alleges that the said H. L. Pittock by reason of being an owner of record of the capital stock of said company was permitted to subscribe for other shares of the corporation and that on July 6, 1910, he so acquired 1000 shares, and that thereafter he subscribed for 450 shares. Later stock dividends were declared, and by reason of the said Pittock's record ownership of stock in the company he acquired additional capital stock. This stock was both common and preferred in character.

Plaintiff claims that the said H. L. Pittock acquired and held the same for and on behalf of plaintiff, and by virtue of the oral contract he is entitled to have the same transferred to him by the executor of the estate of the said H. L. Pittock, deceased; that the said H. L. Pittock paid for his entire stock holdings the sum of $755,000, and that the interest on the same approximated at the beginning of this suit $330,583; that cash dividends have been heretofore received on the stock in the amount of $333,316.

Amended Complaint Cited.

The amended complaint sets forth other matters relating to the administration of the estate, the demand for the transfer of the stock and the allegations of tender.

In the reply plaintiff alleges that the decedent paid taxes, income and otherwise, on the stock, and that the plaintiff is willing to have such sums of money so paid to the government ascertained by the court and deducted from the dividends, which the defendant should be required to return and pay to him under the oral contract between the plaintiff and the said decedent.

Plaintiff further alleges that the said H. L. Pittock at no time became the absolute owner of the stock, but that it was the intention and desire of both parties that "whenever and as soon as the said plaintiff and the said decedent would be enabled to sell and liquidate some of the large real property interests which they held in common and as co-partners that plaintiff exercise and it was his intention to exercise his right for a transfer of the stock and dividends to pay the sums of money agreed upon to be paid to the said decedent; that due to various causes affecting the real estate market the parties were not enabled prior to the death of the said H. L. Pittock to sell any of their joint property without great loss, and that said condition still continues."

Executor Denies Oral Contract.

The executor in his answer denies the oral contract and alleges and sets up in the defense the statute of fraud, and sets up the further fact of the payment by the said H. L. Pittock of excess income taxes; the further fact that no payment or tender was ever made to the said H. L. Pittock, and claims if such verbal contract existed it has been abrogated and discharged by lapse of time, and that the laches of the plaintiff precludes his recovering; that the stock has greatly appreciated in value and is now worth more than double its original value.

The foregoing summary of the pleadings shows that the plaintiff and the decedent were jointly interested in many large transactions under a partnership arrangement; in fact had a separate set of books relating to their partnership ventures, and, as stated in the pleadings, although no time was fixed for the exercise of the option by plaintiff, yet it is alleged that the stock was to be transferred to plaintiff when plaintiff had sold some of the joint real estate holdings.

It appears from the record that prior to the stock transaction all the real estate holdings had been segregated and deeds exchanged, so that if plaintiff was to be permitted to marshal his funds from the sale of joint properties it would have been necessary for the decedent to have not only agreed to the terms of proposed sales, but to have executed deeds of conveyance. If that is the theory of the plaintiff, then it would have been necessary that the said H. L. Pittock during his lifetime have an opportunity to be consulted. As stated in the case of Pierce vs. Wilson, 34 Ala.

"In suits for specific performance the rule which exacts a correspondence between allegations and proof of the terms of the contract is adhered to with great strictness."

Contracts Should Be Specific.

Parties seeking specific performance of contracts should bring into court contracts specific enough and sufficient to serve as a foundation for a decree. The chancellor ought not to be obliged at any stage of the proceeding, or in any part of the record, to be in doubt as to the contract. The record should disclose the contract in all its details, leaving nothing to inference or conjecture, but every detail planned and agreed upon by the parties themselves should be apparent.

As is said by the court in the case of Keenaughty vs. Beall, 91 Ore., page 667:

The court cannot be wiser than the parties themselves, or go more into detail than they have marked out for their conduct or make a new contract for them. In every case that has come under our observation where the court enjoined the parties from transacting a similar business the agreement was so specific that no one could mistake what was within the contemplation of the parties and as stated by the United States supreme court in the case of Colson vs. Thompson, 2 Wheat. 336; and as stated by the United States supreme court in the case of Colson versus Thompson, 2 Wheat, 336:

The contract which is sought to be specifically executed ought not only to be proved, but the terms of it should be so precise as that neither party could reasonably misunderstand them. If the contract was vague or uncertain or the evidence to establish it be insufficient, a court of equity will not exercise its extraordinary jurisdiction to enforce it, but will leave the party to his legal remedy.

Justice McBride in the case of Hawkins versus Doe, 60 Ore. 437, pertinently remarks:

Where the contract rests wholly in parol and the alleged promisor is dead, courts should demand clear and satisfactory proof of the terms of the agreement and its strict performance by the promisee. Such cases furnish abundant opportunity for the perpetration of those frauds which it was the object of the statute to prevent by requiring the contract to be reduced to writing.

In the case of Tucker versus Kirkpatrick, 86 Ore., 677, the court say:

So far as the making of the agreement is concerned, appellant's case rests wholly on his own testimony. . . . Appellant contends that a parol agreement of this character is void. Plaintiff admits that the agreement is within the statute of fraud but relies on part performance to take it out of the operation of the statute. In order that a parol agreement creating an interest in real property may be enforced it 'must be clear, definite, just, reasonable and mutual in all its parts.'

In the case of Mechanics bank versus Seton, 1st Peter, 299, the court say:

A specific performance of a contract relating to personalty can be enforced in chancery, but courts will weigh with a greater nicety contracts of this kind than such as relate to lands.

Judge Hensaw in 113 Cal. 444 says:

Where a contract such as this resting in parol sought to be enforced after the death and the other party to it comes before a court of equity for review, it is scrutinized and should be scrutinized with particular care and only upon a satisfactory showing that it is definite, certain and just will it be enforced.

See 25, R. C. L. 218; 6 R. C. L. 644-896.

At the threshold of this case we are met with a state of the record which shows that the defenses set up all are more or less directed to this one question of the existence of the contract. It is contended the alleged contract is void for want of mutuality; that it is uncertain, and that it contravenes the statute of fraud and that the delay and laches of the plaintiff show that plaintiff's own idea of the contract was more or less hazy.

Mr. Pittock's Word Good.

One fact stands out in the record upon which all agree, namely, that "Mr Pittock's word was as good as his bond." Although a man of few words, yet he had a strong, controlling personality. He seems to have been most careful in details, and there are several items in the record which stand out as showing his clean-cut methods of thinking. One of these is his journal and ledger, in the exact part entered in his own handwriting. The entry of April 1, 1910, the date when the alleged contract was entered into, shows (referring to defendant's exhibit No. 4) that at that time a settlement between the plaintiff and the decedent was had, and with great accuracy the details are set forth, charging plaintiff with the various items relating to real estate holdings and mortgages, interest computed to the day, and then showing a credit in settlement of the $300,000 agregate by two thousand shares of the Crown Columbia Pulp & Paper Company stock, value $300,000.

At this time the Court is fully convinced that the decedent had great confidence in the business sagacity of the plaintiff and as a member of the family treated him most affectionately; however, the conclusion is irresistible that Mr. Pittock was dissatisfied with the condition of the joint holdings. He wanted to get the atmosphere cleared up and insisted upon a settlement; and the Court is fully convinced that at this time he had not acquired that "fondness for the stock" which the record shows he afterwards had, as the same had demonstrated that it was a "consistent dividend payer" and that at that time by reason of the relationship of the parties and their mutual interests he would have been glad to have resold to plaintiff the stock if he could have realized the amount of money invested and interest.

"Gentlemen's Agreement" at Best.

The entire setting at this time shows that at best it was a sort of a "gentlemen's agreement," and had Mr. Pittock considered it seriously no doubt there would have been a characteristic memorandum made on page 80 of his journal showing the transactions of April 1, 1910. This would have been the natural thing for a man of detail to have done, but there is nothing whatsoever on this record of the transaction to show this arrangement for the retransfer. Although it was contended by plaintiff that none of the dealings were reduced to writing, nevertheless we have in evidence some transactions of less moment than the one in question where both parties considered it wise to make a permanent record.

It seems that Mr. Pittock at one time called attention of witness Price to what he considered a reasonable time for plaintiff to repurchase the stock, and this was at a time when the plaintiff had inserted a two-year period in a written contract. Mr. Price had likewise obtained information that plaintiff desired to repurchase the stock and that Mr. Pittock had made the statement accredited to him that he would sell upon being reimbursed and Mr. Price recognized the necessity of a permanent record of the transaction.

Time goes on: The decedent not only acquires additional stock but he purchases stock directly from the corporation for himself and recommends the purchase by the Oregonian Publishing company. Stock dividends later are declared; cash dividends are declared and paid, and there is a growing fondness cultivated for this "consistent dividend-paying stock."

Stock Situation Set Out.

It is not claimed by the plaintiff that on April 1, 1910, that the parties anticipated the extent of the decedent's holdings of the paper company's stock. It was impossible at that time to have determined such an interest, so that plaintiff is obliged to have supplemental agreements from time to time as the decedent became record holder of the stock. A large block of stock was purchased directly by the decedent from the corporation, and this it is claimed was purchased at the request of and was held by decedent for the plaintiff's use and benefit. There is no consideration whatsoever for this moving from the plaintiff. The little journal of the decedent speaks volumes. It shows every transfer including the transfer for the Diblee tract, original purchases, accretions, and all the dividends but not one scratch of the pen relating to any trust or agreement to re-transfer to plaintiff.

A significant piece of evidence is found in the last will and testament of the decedent as shown in defendant's exhibit 6, paragraph "C":

None of my stock in the Crown Willamette Paper company shall be sold, but shall be held intact during the entire period of this trust.

This was executed on the 23d day of August, 1916, six years after the alleged oral contract and in a most solemn instrument. There was also introduced in evidence a memorandum found in the strong box of the decedent (defendant's exhibit 13) in which there is a summary of capital stock holdings where he designates the same as his ownership of stock on July 1, 1917, by "my holdings."

No Mention of Any Contract.

There are many other exhibits in the record which would have furnished an opportunity for some evidence of this contract for the resale of the stock and would have naturally embodied the same, but we find no mention, whatsoever, of such a contract, and it rests substantially upon the statement of plaintiff. There may have been an original arrangement as is stated by plaintiff, but the entire setting, the relationship of the parties, the strong personality of Mr. Pittock, all lead the court to conclude that Mr. Pittock's wish and will dominated the entire transaction and that he would have been pleased to have retransferred the stock as a gentlemen's agreement when he first acquired it, but that the plaintiff not having seen fit to exercise it within a reasonable time, and there being no property susceptible of being turned into cash to take up the stock, as pleaded, the matter was allowed and permitted to drift for years.

There does not seem to have been a meeting of the minds upon a definite arrangement as to the re-transfer of this stock, and it seems to the court that the plaintiff left the situation to be handled just as Mr. Pittock wished to handle it without attempting to fix any enforceable legal relation on the subject. Mr. Pittock was the master mind in the transaction, and, as stated before, although he had a very high regard for plaintiff as a member of his family, in fact leaned upon him in business transactions, nevertheless as shown in the Olmstead Pittock Block stock when it came to business he desired to have the matters handled at arms' length even with the plaintiff and he insisted upon his rights at every juncture.

Other Questions Passed By.

With this view of the situation it is unnecessary to go into the other questions of laches, the statute of limitations, tender, statute of fraud, as they become academical in the solution of this problem before the court. If such a contract existed it is unfortunate that the plaintiff did not have some memoranda. It was a duty he owed the decedent and other interests that have subsequently attached, and it was a duty he owed the chancellor upon whom he might call for the protection of his rights. To set about to enforce this incoherent arrangement would impose upon the court the necessity of finding a contract, of April 10, 1910, for the first purchase of two thousand shares; the finding of a contract in subsequent years at several different times for purchases of stock; all of the different transactions embodying different details and different terms. In fact, it would be asking the court to in a large measure establish the contractual relations between the parties, and, as stated before, the nature of the remedy sought precludes the chancellor from entering into these fields of uncertainty.

With this view of the situation the court is of the opinion that the defendant should prevail and an order may be entered in accordance with this holding.

ROBERT TUCKER,
Dec. 28, 1920. Judge.

Experts have estimated that 20,000,000 tons of paper pulp can be produced each year from India's bamboos and grasses.

HOOD MARKET IS STRONG

GROSS PROFITS ON PRODUCTS THIS YEAR $2,500,000.

Apples and Strawberries Lead List While Creamery Business Shows Increase of 50 Per Cent.

HOOD RIVER, Or., Dec. 29.—(Special.)—The gross returns of Hood River county on fruits and farm products and from the Hood River creamery will approach $2,500,000. Apples, of course, form the biggest single item. The Applegrowers' association has received from growers a total of 340,972 boxes of apples, of which 575,312 boxes have been shipped. It is estimated that other sales organizations and independent shippers have handled slightly in excess of 400,000 boxes of apples for the year.

The total receipts of the valley from the 1920 apple crop may be placed roughly at $2,000,000. While the strawberry crop of 1920, reaching 55,470 crates, was smaller by 7530 crates than in 1919, the crop brought in a total of $243,916, more by $5843 than was realized for the heavier crop of a year ago. The county will ship an estimated 100 carloads of potatoes this year, bringing growers more than $80,000.

The Hood River creamery shows a flattering increase with a production of 126,000 pounds of butter, which was sold at an average price of 60 cents a pound. The creamery's business has increased about 50 per cent over that of 1919.

Most County Officials Remain.

KELSO, Wash., Dec. 29.—(Special.)—When the newly-elected county officers take over their duties January 10, the Cowlitz county courthouse will see few changes. R. A. Davis, auditor; Hite Imus, clerk; L. P. Brown, treasurer; J. W. Hoggatt, sheriff; William Stuart, attorney; Joseph Gardner, superintendent, and W. M. McCoy, assessor, were re-elected and will have the same deputies as heretofore. E. A. Middlebrook, who has been deputy county engineer, will become county engineer, succeeding Fred C. Cramer, who is completing his second term. Albert Maurer is the holdover commissioner, and the new commissioners will be J. C. Ferguson of Woodland and P. A. Parker of Castle Rock.

Engineer-elect Operated Upon.

KELSO, Wash., Dec. 29.—(Special.)—E. A. Middlebrook, county engineer-elect, was operated on for appendicitis at the Kelso hospital the first of the week and is getting along nicely. He will be able to resume his duties some time in January. Fred C. Cramer, county engineer, will continue in charge until Mr. Middlebrook is completely recovered.

Phosphate to Be Developed.

BOISE, Idaho, Dec. 29.—(Special.)—The southeastern Idaho phosphate fields are to be developed with a view of determining their extent, Robert N. Bell, state mine inspector, said on his return to Boise from Washington, D. C., where he had a conference with officials of the federal bureau of mines. Mr. Bell asked that a government experimental station be installed at Montpelier for a study of the immense phosphate deposits in the southeast.

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Large assortment ladies' beautiful Hand Bags	½ Off
All Desk Sets	ONE-HALF OFF
Large assortment Vanity Bags. Regular $10 to $15—special	$8.50
Assortment Children's Hand Bags. Regular $1.40, special	75c
All "LIKLY" Brief Cases	25% OFF
Genuine Cowhide Traveling Bags, Regular $10.00, special	$7.50

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Commercial Chocolates, special, lb	39¢
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Fancy Coated Almonds, special, lb	59¢
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