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Criminal Law—Prostitution—Placing Female in House of Prostitution; Criminal Law—Escape—Rem. Rev. Stat. § 2342; Real Estate Brokers—Termination of Agency; Statute of Frauds—Requisites and Sufficiency of a Written Description of Land by Street and Number; Veterans—Contracts for the Purchase of Real Estate; Labor Law—Nonenjoinable Picketing

M. D. A.

C. L. S.

J. R. L.

S. C. R.

RECENT CASES

Criminal Law—Prostitution—Placing Female in House of Prostitution. *D*, the operator of a brothel, was charged with wilfully and unlawfully placing a female in a house of prostitution with intent that such female should live a life of prostitution. Such act is specifically made a felony punishable by imprisonment for not less than one year, nor more than five years, by REM REV. STAT. § 2440-(1) [P P C. § 118-191-(1)]. No evidence was introduced at the trial as to how the female in question came to reside in *D*'s establishment, although it was clear she was a common prostitute, practicing her "profession" there to *D*'s knowledge. Conviction in the trial court. *Held*. Reversed. It was not the purpose of REM. REV. STAT. § 2440-(1), *supra*, to make the operation of a house of prostitution illegal. Rather, it was directed against procurers and panders, and to constitute the crime of "placing" a female there must be a finding that the defendant did more than merely furnish a place and opportunity to a female to practice her trade. Further, there are other statutes in this state operating directly against houses of prostitution, so the use of Section 2440-(1) is not necessary for this purpose. *State v. Basden*, 131 Wash. Dec. 61, 196 P.(2d) 308 (1948).

The other statutes mentioned by the court are REM. REV. STAT. § 2688, subd. 3 [P P C. § 118-269], REM. REV. STAT. § 9924 [P P C. § 81-47], and REM. REV. STAT. § 9925 [P P. C. § 81-49]. However, as pointed out by the dissent, Sections 9924 and 9925 are not part of the criminal code, but provide for the abatement of houses of prostitution as nuisances and for a fine not to exceed $1,000 which may be levied against anyone erecting, causing, or contriving such nuisances. The other section, REM. REV. STAT. § 2688, *supra*, is the vagrancy statute, and includes as one of its offenses the keeping of a house of prostitution. The maximum penalty under this statute is six months in the county jail, or a fine of $500.

The court seems correct in interpreting the word "place" in REM. REV. STAT. § 2440-(1) to mean that the person charged thereunder must perform some affirmative act. However, Section 2440 is the only statute in this state making acts connected with prostitution felonies. Since operation of a house of prostitution is not within this statute, our code does not provide an adequate deterrent.

The instant decision criticizes and overrules the contrary construction placed on this section in *State v. Hanes*, 84 Wash. 601, 147 Pac. 193 (1915) and the unlikelihood of a return to the former position would seem to indicate the appropriateness of legislative action to fill the gap.

M.D.A.

Criminal Law—Escape—Rem. Rev. Stat. § 2342. *D* was convicted under REM. REV. STAT. § 2342 (P P C. § 114-109) making it a crime to "escape or attempt to escape from.. prison ..by force or fraud." By conjecture, it appeared that *D* had hidden in the prison yard and had later scaled the wall with the aid of a basketball backstop post which (in a manner unknown) had been broken off at its base and placed against the wall. On appeal, the court reversed the conviction (stating that penal statutes must be strictly construed) and *held:* the word "force" connotes common law prison breach and, by way of analogy to burglary breaking, there must be a removal of some obstacle to exit which, if left untouched, would prevent such exit. *State v. Hoffman*, 130 Wash. Dec. 439, 191 P.(2d) 865 (1948).

The state's case was weakened by an absence of "direct evidence" as to the precise manner in which *D* had effected his escape. But even if it could have shown that *D had* broken off the post and leaned it against the wall, the result would probably have been the same. As pointed out in the appellant's brief, the post never constituted an "obstacle to exit."

The technical construction given the statute has ample authority from the common law. The presence or absence of the element of "force" distinguished the crimes of "prison breach" and "escape." *Rex v. Haswell,* Russ. & Ry. C. C. 458, 168 Eng. Rep. 896 (1821). To constitute "prison breach," it is necessary that an actual breaking occur. *State v. King,* 114 Iowa 413, 87 N. W 282 (1901). In the case last cited, the prisoner concealed himself in the prison work quarry outside the wall and later escaped when the other prisoners were being returned to their cells. The court said that "escape by strategem" was not sufficient to constitute a prison breach. *Query:* Did the Washington Legislature, in its use of the word "fraud," mean to include "escape by strategem" (which would seem to be the only common law counterpart) or must resort be had to the several elements constituting actionable "fraud" in this state? One cannot but feel that the Legislature reasonably believed that, aside from a wide open prison gate, the ords "force or fraud" would cover all manner of improper egress.

C.L.S.

Real Estate Brokers—Termination of Agency. *D* signed a listing contract with *P,* a licensed real estate broker, by which *P* was appointed exclusive agent until July 1 for the sale of realty owned by *D* By a letter written April 16, *D* stated that he would like to withdraw the listing until a later date, and asked that he be notified when this was done. On May 13, *D* refused to sell to a prospective purchaser presented by *P* In the trial court, *P* recovered the broker's commission. Appeal. *Held:* Affirmed. The letter of April 16 was only an expression of a *desire* to terminate the contract, and there was no breach until *D* refused to pay the commission after a purchaser had been procured. *McGillivray v. Neilson,* 130 Wash. Dec. 549, 192 P (2d) 369 (1948).

In the usual real estate broker's contract, the broker's authority may be revoked by the owner at any time, provided the revocation is in good faith. *Arcweld Mfg. Co. v. Burney,* 12 Wn.(2d) 212, 121 P.(2d) 350 (1942), *Robertson v. Wilson,* 121 Wash. 358, 209 Pac. 841 (1922). The general rule is that the authority of an agent is revoked by words or other conduct reasonably indicating that the principal no longer consents to have the agent act for him. *Santangelo v. Midlesex Theatre,* 125 Conn. 572, 7 A.(2d) 430 (1939), *War Finance Corp. v. Ready,* 2 Tenn. App. 61 (1925)

However, a listing agreement is at least a revocable continuing offer, which becomes a valid contract upon performance of its terms. *Higgins v. Egbert,* 28 Wn. (2d) 313, 182 P.(2d) 58 (1947), *Lasswell v. Anderson,* 127 Wash. 591, 221 Pac. 300 (1923). The Washington court has said that the renunciation of an offer to contract should be in substance as explicit and definite as a renunciation of the contract after the acceptance. *Victor Safe & Lock Co. v. O'Neil,* 48 Wash. 176, 93 Pac. 214 (1908). The principal case follows *Victor Safe & Lock Co.,* but would seem to be contrary to the general rule that an agency may be revoked by any indication of intention to discontinue the relationship.

The cases might be reconciled by differentiating between the exclusive agency for a limited period of time and the ordinary agency. Where an owner gives a broker an exclusive agency for a fixed period of time in consideration of the broker's devoting time and money to the sale, there is a valid bilateral contract. *Hunter v. Wenatchee*

Land Co., 50 Wash. 438, 97 Pac. 494 (1908). In such a contract, the agent's agreement to faithfully perform is sufficient consideration for the principal's implied agreement not to revoke. *State* ex rel. *Everett Trust & Sav. Bank v. Pacific Waxed Paper Co.*, 22 Wn. (2d) 844, 157 P (2d) 707 (1945). If a revocation of such a contract amounts to a breach of contract, it should be governed by the usual contract principles requiring an explicit statement. The principle that renunciation, *i.e.*, an unqualified and positive refusal to perform before performance is due, is a breach of contract is applied in cases of contracts to act as agent. *Casey v. Murphy*, 143 Wash. 17, 253 Pac. 1078 (1927). On the other hand, it could be argued that the ordinary revocable listing agreement, involving a special relationship as it does, should not be governed by the *Victor Safe & Lock Co.* rule, which applies generally to offers and contracts. The relation of principal and agent is essentially a personal relation, and the principal, if he so desires, may revoke the authority of the agent at any time, as it is contrary to the policy of the law to compel him to employ another against his will, although he may, of course, be liable in damages for any breach of contract. *Gibson v. Green*, 174 Ark. 1010, S. W 209 (1927).

J.R.L.

Statute of Frauds—Requisites and Sufficiency of a Written Description of Land by Street and Number. In an action for unpaid rent, *D* set up, *inter alia*, the plea of statute of frauds. *D* and owner of house had signed a document, properly acknowledged by the owner, designated as a "real estate lease," which provided in part that *D* should occupy the home for a period beginning June 1, 1941, and ending August 20, 1942, with an option to purchase during that time. The property was described as "a house at 2622 W Fairview." *Held*. affirming judgment for *D*, the description is insufficient to designate the location of the premises without the use of parol evidence, hence the lease agreement is invalid under the statute of frauds. *Bonded Adjustment Co. v. Edmunds*, 28 Wn.(2d) 110, 182 P.(2d) 17 (1948).

It is generally regarded as sufficient if the writing identifies the property when it is read in the light of the circumstances of possession or ownership and of the situation of the parties when the negotiations took place and the writing was made. *Garden City Sand Co. v. Miller*, 157 Ill. 225, 41 N.E. 753 (1895), *Matherly v. Wright*, 171 Ky. 264, 188 S.W 385 (1916), *Flegel v. Dowling*, 54 Ore. 40 ,102 Pac. 178, 135 Am. St. Rep. 812, 19 Ann. Cas. 1159 (1909), *McDermott v. Reiter*, 279 P 545, 124 Atl. 187 (1924), *Sholovitz v. Noorigan*, 42 R. I. 282, 107 Atl. 94 (1919), *Maxwell v. Maxwell*, 12 Wn.(2d) 589, 123 P.(2d) 335 (1942), *Heller v. Baird*, 191 Wis. 288, 210 N.W 680 (1926). It seems to be practically unquestioned that in addition to the street and number the city or town must be identified by the writing, *Broadway Hospital v. Decker*, 47 Wash. 586, 102 Pac. 178 (1907), and considerable controversy has been had as to what constitutes a sufficient designation of the name of the place where the street is located. Reference in the writing to the property by street and number is usually considered sufficient where the city or town is stated either in the caption or body of the instrument or may be ascertained from the writing. *Engler v. Garrett*, 100 Md. 387, 59 Atl. 648 (1905), *Mead v. Parker*, 115 Mass. 413, 20 Am. Rep. 110 (1874), *Sanders v. McNutt*, 147 Ohio St. 408, 72 N.E.(2d) 72 (1947). An acknowledgment of the deed by the vendor would be particularly suitable for this purpose and has been so used. *Easterling v. Simmons*, 293 S. W 690 (Tex. Civ. App. 1927), *Gage v. Cameron*, 212 Ill. 146, 72 N. E. 204 (1904). The fact of ownership by the grantor has been emphasized by other courts in the ascertainment of the property. *Gendelman v. Mongillo*, 96 Conn. 541, 114 Atl. 914 (1921), *Hayden v. Perkins*,

119 Ky. 188, 83 S. W 128 (1904). Also as illustrative that the omission of the name of the city or state is immaterial in view of ownership where description is made by street and number see RESTATEMENT, CONTRACTS § 207 (b) and illustration (1932).

In reaching the result of the principal case, the court relied chiefly on the earlier case of *Broadway Hospital v. Decker, supra,* involving as the present case the sufficiency of the description of urban property by street and number. In that opinion the court said, "We think a description which may be referred to any city in the world a street of the name may exist is too indefinite to satisfy even the most liberal view of the statute of frauds." Eight other Washington cases are then cited in the instant case as following the rule of the *Decker* case. It is to be noted that in all either the *extent* of the property involved was attempted to be shown by parol evidence or that REM. REV. STAT. 5825 (1905) (the Broker's Commission Statute) was applied. Obviously, parol evidence would be inadmissible in the former type of case under the rule forbidding extrinsic evidence which seeks to add to or vary the terms of a written agreement concerning land. In the latter cases, the Washington court has been inclined to adhere to a strict interpretation of the statute, *supra.* See *Roger v. Lippy,* 99 Wash. 312, 169 Pac. 858, (1918), where the court reaffirming the strict application of the earlier case of *Thompson v. English,* 76 Wash. 23, 135 Pac. 664 (1913) states: "There are, we think, no decisions of this court dealing with the sufficiency of land descriptions in commission contracts out of harmony with the views expressed in *Thompson v. English* [*supra*], or those decisions following the one rendered in that case."

Where, as in the principal case, there is no dispute as to the extent of the property involved, parol evidence should be admissible to show the situation and relation of the parties and the surrounding circumstances, to identify the property referred to in the agreement. *Cushing v. Monarch Timber Co.,* 75 Wash. 678, 135 Pac. 660, ANN. CAS. 1914C, 1239 (1913) Actually, the question in such a situation would seem to be one concerning the right to resort to parol evidence to aid the writing rather than the adequacy of an instrument under the statute of frauds. *Mead v. Parker, supra.* The statute of frauds requires only that the writing itself afford a means by which the property sold can be identified, and while parol evidence is not admissible to add or to vary the writing, it is admissible to designate the subject matter already identified in the minds of the parties. That the Washington court recognizes the rule admitting parol evidence to identify the property the grantor intended to convey see *Thompson v. Stack,* 21 Wn.(2d) 193, 150 P.(2d) 387 (1944), and cases there cited. In *Wetzler v. Nichols,* 53 Wash. 285, 101 Pac. 867 (1909), the court (citing an Illinois case) said, "A devise or grant will only be held void for uncertainty where, after resort to oral proof, it still remains a matter of mere conjecture what was intended by the instrument." For a reaffirmation of this view see *Martinson v. Cruikshank.* 3 Wn. (2d) 565, 123 P.(2d) 335 (1940).

In view of these decisions, the admissibility of parol evidence in Washington, as in the great majority of jurisdictions, is dependent upon a recognition of the difference between oral testimony seeking to prove *quantum* and that attempting to show *location* of the premises. The collective impression gained from the cases is that the broad language found in the *Decker* case has never been given the unqualified application contended for it in the *Edmunds* case. It is suggested that the refusal of the court in the latter case to apply the distinction above noted is a departure from precedent of long standing in this jurisdiction.

S.C.R.

Veterans—Contracts for the Purchase of Real Estate—The "G. I. Bill." *D*, a veteran, entered into an earnest money contract with *X* to purchase property for $6,450. The funds were to be obtained through a "G. I. Loan," a fact known to all parties, although the agreement made no mention of it. Federal appraisers determined that the reasonable value of the property was $6,300. The Servicemen's Readjustment Act of 1944, 38 U.S.C.A. 694a, provides that loans thereunder are guaranteed only if the price of the property does not exceed the value determined by the appraiser. *D*'s application for a loan was denied and he was unable to raise funds elsewhere to complete the transaction. *P*, *X*'s real estate agent, in good faith, told *D* his earnest money was liable to forfeiture, but to consummate the deal offered to reduce his commission so that the price would meet the appraised value, in return for which *D* was to make an additional purchase of an adjoining lot owned by *P*. *D* acquiesced, but after completing the purchase of the main lot, attempted to rescind the collateral agreement. *P* sued for money still due and *D* cross-complained for recission and return of money already paid, asking that the contract be declared illegal and void as a violation of the policy of the Servicemen's Readjustment Act. The trial court gave relief to neither party.

On appeal, *held* Reversed. The Supreme Cour held for *P*, refusing to find the agreement void as contravening the policy of the "G. I. Bill." *Ewing v. Ford,* 131 Wash. Dec. 103, 195 P.(2d) 650 (1948).

The exact question presented here seems to have arisen only in Washington. In *Bryant v. Stablem,* 28 Wn.(2d) 739, 184 P.(2d) 45 (1947), relied on by the court, the issue was almost identical. There a payment of "side money" by a veteran was employed to bring the apparent purchase price below the appraised value. The seller attempted to rescind on the ground of illegality, but the court enforced the agreement, saying, "the act relates simply to the conditions under which the government will guarantee the loan to the veteran in the first instance, not to contracts, pending or concluded between the veteran and third persons."

These holdings are not in accord with the spirit of prior decisions by the Washington court and by the majority in the United States, where private contracts contrary to the policy of federal statutes have been declared void.

Analogous cases are those which involve the Home Owners' Loan Act of 1933, 12 U. S. C. A. 1461 *et seq.*, and the National Housing Act of 1934, 12 U. S. C. A. § 1709b. In *Jones v. Curtis,* 20 Wash. (2d) 470, 147 P (2d) 912, (1944) a secret second mortgage, taken by a mortgage to reimburse him for loss suffered by his acceptance of an offer of H.O.L.C. bonds in full settlement of the original mortgage debt, was declared illegal as being at variance with the purpose and policy of the Home Owners' Loan Act. Accord, cases cited in 110 A.L.R. 250, 121 A.L.R. 119, 125 A.L.R. 800 and Bridewell, *Validity of Second Mortgage Taken by Former Mortgagees in HOLC Refinancing Operations,* 5 JOHN MARSHALL L. Q. 373 (1940). Similarly in New York and Oklahoma, courts have refused to help sellers enforce collateral agreements with purchasers which are violations of the policy of the Federal Housing Administration as set up in the National Housing Act. *Miller v. Walters,* Mun. Ct. 34 N. Y. S.(2d) 341 (1942) and *Nichols Bldg. Co. v. Fowler,* 197 Okla. 476, 172 P.(2d) 636 (1946).

The policy announced in the cited cases of affording the protection of law to those whom the federal loan statutes intended to benefit is a sound one, and it would seem that there should be even greater pressure on the judiciary to protect the veteran beneficiary of the Servicemen's Readjustment Act. Section 694a, requiring that the price to be paid by a veteran shall not exceed the reasonable value as established by a federal appraiser was obviously enacted to protect veterans from acquiring property at exorbitant prices. That this was the purpose of the legislators is manifest from the

congressional discussions which occurred at the time S. 1767 (the "G. I. Bill") was being considered. *Congressional Record,* Vol. 90, Pt. 4, Pp. 4649 for the period from May 12, 1944 to June 12, 1944. The pronouncements of the *Ewing* and *Bryant* cases do little to extend the intended protection to the veteran, rather they invite sellers in the future to exact similar collateral promises from the veteran with the assurance that they will be upheld.

W.A.H.

Labor Law—Nonenjoinable Picketing. The freight ship M. S. *Garland* was picketed by the Sailors' Union of the Pacific. It operated under a limited partnership agreement with the general partner controlling and managing the ship and with the limited partners acting as crew. Berger, the general partner, brought suit to enjoin the union. Trial court refused injunction. Berger appealed. *Held* Affirmed. Notwithstanding the limited partnership agreement, the employer-employee relationship was here present and three of the employees were union members. A labor dispute, therefore, existed under Washington's anti-injunction statute. REM. REV. STAT. (1945 Supp.) 7612-1, [P P C. 695-1]. *Berger v. Sailors' Union of the Pacific,* 29 Wn.(2d) 810, 189 P.(2d) 473 (1948).

This decision represents the latest case of the Supreme Court with regard to injunctions against picketing. While the decision stays within the limitations laid down in *Safeway Stores, Inc. v. Retail Clerks Union,* 184 Wash. 322, 51 P.(2d) 372 (1935), which was held to be the law in this state by a previous case handed down in this same term, *Gazzam v. Building Service Employees Union,* 29 Wn.(2d) 488, 188 P.(2d) 97 (1947), this case reflects an attitude toward labor union picketing different in at least two respects from the previous cases: (1) the requirements to which the court refers in refusing an injunction are more liberal, (2) it adds doubt to the scope, if not the validity, of *Blanchard v. Golden Age Brewing Co.,* 188 Wash. 396, 63 P.(2d) 397 (1936), which declares three sections of Washington's anti-injunction statute unconstitutional.

The *Safeway* case and the cases following it seem to lay down two requirements for nonenjoinable picketing: that the objective be lawful, and that an employer-employee relationship exist between the strikers and the struck shop. This latter requirement is satisfied if the controversy is between the employer and the employees and at least some of the employees are members of the picketing union. Here the objective was lawful, and an employee-employer relationship was found in which three members of the crew were union men. These crew members, however, were not working as de facto members of the union. There was evidence that the union threatened to expel them if they did not withdraw from this employment. In addition, it was not shown that there was any disagreement between the employer and his employees. The court said, "the purpose of the picketing was to persuade appellants to enter into an agreement with the respondent union. " As to the employer-employee relationship, four members of the court in a special concurring opinion seemed to indicate that, so far as they were concerned, a labor dispute existed regardless of the character of the limited partnership, because some of the limited partners were members of the picketing union. The decision seems to indicate that although stranger picketing will not be allowed, the court will be liberal in finding that there is a proximate employer-employee relationship, that there are employees who are members of the picketing union, and that the controversy is between the employer and his employees.

The majority opinion also cited Section 1 of the Washington anti-injunction statute, REM. REV. STAT. (1945 Supp.) 7612-1, [P P C. 695-1], as binding law. The dissenting judges felt that this overruled *Blanchard v. Golden Age Brewing Co.,* 188 Wash. 396, 63 P.(2d) 397 (1936). While Section 1, by implication of the *Blanchard* case, might be considered unconstitutional, that case expressly declared only Sections 7 8, and 9

unconstitutional. Sections 7, 8, and 9 set up procedural requirements which must be met by a court sitting in equity prior to issuance of injunctive relief in a case arising out of a labor dispute. The same reasoning used in that case to declare Sections 7, 8, and 9 unconstitutional, *i.e.*, unlawful legislative encroachment upon the court's inherent equity powers, would remove the force of law from the remainder of this statute. Cases subsequent to the *Blanchard* case, however, have treated the remainder of the act at least as a declaration of public policy to be followed by the court, if not as binding law. *Yakima v. Gocham,* 200 Wash. 564, 94 P.(2d) 180 (1939). Section 1 has been cited several times and is at least treated as law. *Weyerhaeuser Timber Co. v. Everett District Council of Lumber and Sawmill Workers,* 11 Wn.(2d) 503, 119 P.(2d) 643 (1941), *Shiveley v. Garage Employees Labor Union No. 44,* 6 Wn.(2d) 560, 108 P.(2d) 354 (1940). The majority opinion is further evidence of the disposition of the court to treat the *Blanchard* case as very limited in its effect, thus permitting some sections of the state anti-injunction statute to be effective.

S.R.B.