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Creditor's Rights

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Contrary to first appearance therefore, this opinion cannot be taken as case authority for what would be the very unorthodox position of no acceptance by conduct of the offeree. It merely indicates the refusal of the appellate court, without an assignment of error,[10] to upset the trial court's assessment of the adequacy of the acceptance in the full circumstances of the case. However, the record does present a quantum of behaviour on the part of the acceptor which if not contemplated with considerable caution might be a distracting parameter in future cases involving the formation of contracts.

IVOR LUSTY

Advances to Commission Salesmen—Duty to Repay. *Selig v. Bergman*, 143 Wash. Dec. 188, 260 P.2d 883 (1953), was an action to recover those advances made to the defendant, plaintiff's salesman employee, which were in excess of commissions earned. In accordance with the general rule, the court held that where advances made to a salesman are charged against his commissions, he is not required to repay any excess of advances over commissions earned, unless it has been expressly or impliedly agreed that he do so.

CREDITOR'S RIGHTS

Declaration of Homestead—Effect on Existing Judgment Lien. In *Locke v. Collins*,[1] the court stated that when a judgment lien has attached to the judgment debtor's property,[2] and the debtor later declares a homestead exemption,[3] the lien while unenforceable under the general execution statutes, is not extinguished but is rather superseded and suspended. Therefore it was held that such a lien on the judgment debtor's property survived his subsequent discharge in bankruptcy, although the underlying debt was extinguished by the discharge.

While previous cases had been uniform in holding that the declaration of a homestead exemption rendered outstanding judgment liens unenforceable,[4] the question of whether the lien was completely extinguished or merely suspended during the life of the homestead exemption, was heretofore undetermined. The present holding would appear to indicate that the lien would be revived if the homestead were abandoned, and could thereafter be enforced by the judgment creditor.

Viewing the reverse situation where the judgment comes *after* the

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[10] Rule on appeal 43, 34A Wn.2d. 47.
[1] 42 Wn.2d 532, 256 P.2d 832 (1953).
[2] RCW 4.56.190; RCW 4.56.200.
[3] RCW 6.12.010; RCW 6.12.040.
[4] Brown v. Manos, 140 Wash. 525, 250 Pac. 36 (1926); Kenyon v. Erskine, 69 Wash. 110, 124 Pac. 392 (1912); Snelling v. Butler, 66 Wash. 165, 119 Pac. 3 (1911).

homestead is declared, the cases without exception have held that no judgment lien can attach to the property.[5]

MYRON J. CARLSON

Mortgage Acceleration Clause. Courts are divided as to the degree of rigor with which acceleration clauses operate upon default of the mortgagor in an element of his performance. Under what circumstances will a court of equity suspend the operation of the clause?

The basic rule is that if default be shown in any degree, and if no waiver has been established by the conduct of the mortgagee, the provisions will be enforced. It is upon the circumstances justifying relief from the harshness of this basic rule that the courts are divided. In the "strict" jurisdictions relief will only be given when the mortgagee, by fraud or otherwise, hinders the mortgagor's performance, while in the more "liberal" jurisdiction relief will be given if payment becomes delinquent by reason of the debtor's mistake in good faith and where hardship would result from precipitant foreclosure.

In the annotation at 70 A.L.R. 993 (1930), the writer has designated Washington as belonging to the former group based upon the decision of the court in *Tibbetts v. Bush and Lane Piano Co.*[6] In that case relief was given to a good-faith debtor who failed to make timely payments to an evasive creditor. Such a result, it is submitted, is not sufficient to support the annotator's position, for a "liberal" jurisdiction also would have granted relief in those circumstances. However his presentient classification has now been vindicated by the recent case of *Jacobson v. McClanahan*[7] in which relief was denied to a good-faith debtor who failed to make timely payments to a willing creditor.

It is now safe to say, therefore, that Washington adheres to the majority or "strict" rule that, to quote from the *Johnson* opinion, relief can be expected *only* "when default is attributable to the unconscionable or inequitable conduct of the mortgagee."

IVOR LUSTY

Garnishment—Garnishee Liable For Double Payment. In *Portland Association of Credit Men, Inc. v. Early*, 42 Wn.2d 273, 254 P.2d 758 (1953), the court pointed out that unless the garnishee who pays the amount of his indebtedness into court does so

[5] In re Shelton, 102 F. Supp. 629 (1952); Lyon v. Herboth, 133 Wash. 15, 233 Pac. 24 (1925); Security National Bank v. Mason, 117 Wash. 95, 200 Pac. 1097 (1921); Meikle v. Cloquet, 44 Wash. 513, 87 Pac. 841 (1906); Trader's National Bank v. Schorr, 20 Wash. 1, 54 Pac. 543 (1898).

[6] 111 Wash. 165, 189 P. 996 (1920).

[7] 143 Wash. Dec. 692, 264 P.2d 253 (1953).

under compulsion of judgment as provided by RCW 71.32.300, or after interpleading conflicting claimants as provided by RCW 4.08.150, the garnishee may be later required to pay a second time to a claimant of the debt who was not made a party to the garnishment proceeding. "When a writ of garnishment is served upon a garnishee, it casts upon him the responsibility of protecting his interests." He can do this only if he pays under compulsion of judgment or interpleads conflicting claimants as provided by the statutes.

CRIMINAL LAW

Equivocal Plea of Guilty. In *State v. Rose*[1] the defendant, charged with first degree assault, entered a plea of guilty, but when asked, some minutes later, if he had anything to say on his behalf, replied, "I would like to make it clear I didn't fire the pistol at anybody with intentions to hit them." While noting that intent is an element of the crime charged, the court held the plea was a bona fide plea of guilty. *State v. Stacy*[2] came up to the court later in the year. The defendant, also charged with first degree assault, answered the court's question of plea, saying, "I plead guilty to that charge. . . . I would like to make a statement to that charge. Even though I am pleading guilty to that charge it is a lie on my part. I am doing so on advice of counsel." He made a similar statement a few moments later, adding that he was so pleading "on the advice of my wife." The court held that the trial court erred in accepting the plea without first eliminating the equivocation.

All guilty pleas should be considered against the background of certain general principles. The plea entered by the defendant must be guilty *or* not guilty *or* former jeopardy or acquittal.[3] The plea of guilty should be entirely voluntary by one competent to know the consequences and not induced by fear, apprehension, persuasion, promises, inadvertance or ignorance.[4] A plea of guilty admits all the elements of the crime charged.[5] One of the maxims resulting from an amalgamation of these general principles is that the crucial test of a trial court's action in accepting a plea of guilty is whether the defendant entered his plea of guilty *freely and understandingly,* whether he readily understood that he was admitting *the commission of the acts consti-*

[1] 42 Wn.2d 509, 256 P.2d 497 (1953).
[2] 143 Wash. Dec. 331, 261 P.2d 400 (1953).
[3] RCW 10.40.150
[4] Ortigas v. State, 140 Fla. 671, 192 So. 795 (1940); Bennett v. State, 75 Okl. Cr. 42 (1942); Pennington v. Smith, 35 Wn.2d 267, 212 P.2d 811 (1949).
[5] People v. Mendietta, 100 Cal. App.2d 763, 226 P.2d 812 (1951); Cummings v. Perry, 194 Ga. 424, 21 S.E. 2d 847 (1942); Brandon v. Webb, 23 Wn.2d 155, 160 P.2d 529 (1945).