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Recent Statutes

RECENT STATUTES

CONDITIONAL SALES—REASONABLE VALUE IN DETERMINING THE AMOUNT OF VENDOR'S DEFICIENCY JUDGMENT.—In an effort to improve the condition of the defaulting conditional vendee of personal property the legislature has amended Section 80-b of the Personal Property Law.[1] In the case of a resale, upon default by the buyer, the vendor was, under the old law,[2] entitled to a deficiency judgment. He is still entitled to it, under the present amendment. However, the law now provides (1) that in determining the amount of the deficiency judgment, the reasonable value or the sale price of the chattel, whichever is the higher, is to be used.[3] The amendment further provides (2) that if the buyer has paid at least 80 per centum of the sale price, and if the buyer surrenders the goods to the seller at the seller's request, the seller shall elect either to keep the chattel in full satisfaction or to return the chattel and be limited to an action to recover the balance. The provision is limited to chattels not to be used for business purposes and where the contract price is less than $1,500.

The reasonable value test provided for by the first part of the amendment is not new. It is being used at present to determine the amount of the deficiency judgment to which a mortgagee of real property is entitled;[4] and as a practical matter it seems much to be desired over the older method,[5] where the price bid at auction was used to determine the amount of the deficiency judgment.

The situation which led to the introduction of the reasonable value test in the case of the real property mortgage deficiency judgments was quite peculiar. During the depression not only did real property values decline (as did values of personalty) but the number of persons willing to buy realty was so small as to be practically nonexistent.[6] For this reason, the auction sale was no longer an adequate index of the value of the property. The mortgagee was almost inevitably the sole bidder.[7] Acquiring the property at a nominal sum, the mortgagee could still hold the mortgagor for a huge deficiency judgment. If the amount bid at the auction sale was so inadequate as to "shock the conscience" of the court, some courts exercising their equitable powers refused to enter a deficiency judgment.[8] But this practice does not seem to have been uniform with all courts.[9]

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1. N. Y. Laws 1941, c. 860, effective January 1, 1941.

2. N. Y. PERS. PROP. LAW, former section 80-b.

3. New Jersey has enacted a statute which is in substance similar to this provision. See N. J. S. A. 46: 32-28 (1935).

4. N. Y. CIV. PRAC. ACT § 1083.

5. See (1941) 10 FORDHAM L. REV. 315, 318.

6. "Current history, of which courts take judicial knowledge, shows that our credit system had collapsed . . .; it shows that market values had diminished, to the extent that it was far below the measure of the intrinsic value. . . ." Lingo Lumber Co. v. Hayes, 64 S. W. (2d) 835, 840 (Tex. Civ. App. 1933).

7. Obiter, (1936) 5 FORDHAM L. REV. 378.

8. Monaghan v. May, 242 App. Div. 64, 273 N. Y. Supp. 475 (2d Dep't 1934); Guaranteed Title and Mortgage Co. v. Scheffres, 247 App. Div. 294, 285 N. Y. Supp. 464 (2d Dep't 1936); Home Owners' Loan Corp. v. Wood, 164 Misc. 215, 298 N. Y. Supp. 427 (1937).

9. Just what the state of the law in New York is, on this point is not clear. The

In New York, a statute was enacted making the amount of the deficiency judgment the difference between the contract price and the reasonable value of the property as determined by the court.[10] The net result of this statute was to treat the mortgagor fairly and equitably.

The legislature in passing the instant statute was evidently desirous of extending the practical advantages of the reasonable value test to conditional sales contracts, i.e., to give to the conditional vendee, the same benefits that have been given to the real property mortgagor.

But it may be doubted whether relief was quite as necessary in this case. While it is true that the values of chattels as well as of realty are apt to decline during periods of economic stress, the outstanding fact about realty during the recent depression is that it was impossible to find anyone who wanted to buy at any price. The auction sale produced the single bid and single bidder.[11] In the case of chattels, however, it is not always true that buyers at the right price cannot be found. There is competitive bidding at auction sales of personal property. The price bid at auction sales of personalty, therefore, will not be so depressed as that in auction sales of realty.[12] It will more closely approach the actual value of the property.[13] Practically, therefore, the option given by the instant statute of using either the sale value or reasonable value, whichever is higher, in determining the amount of the deficiency judgment is not of too great importance.

As to the second part of the amendment, the proper interpretation does not seem to be, as has been suggested,[14] that the purpose of the legislature was to prevent the seller from obtaining possession of the goods in cases where the buyer has paid eighty per centum of the purchase price. The proper interpretation seems rather to be that the amendment eliminates the seller's deficiency judgment under certain specified conditions, where the buyer has paid eighty per centum of the purchase price and has surrendered the goods to the seller.[15]

Appellate Division has held that the court has inherent power to place limitations upon the remedies available to a mortgagee in accordance with the fundamental principles of equity. See note 8 *supra*. However, the Court of Appeals has disapproved of this doctrine by way of dictum. Emigrant Industrial Savings Bank v. Van Bokkelen, 269 N. Y. 110, 116, 199 N. E. 23, 25 (1935). Again in the recent case of National City Bank v. Gelfert, 284 N. Y. 13, 20, 29 N. E. (2d) 449 (1940) the Court of Appeals repudiated the doctrine stating that it "did not accurately represent the New York Law." However, the U. S. Supreme Court has since reversed the Gelfert case, 313 U. S. 221 (1941).

10. N. Y. Civ. Prac. Act § 1083, N. Y. Laws 1938, c. 510.

11. See note 7 *supra*.

12. Conferences with auctioneers in New York City indicate that at properly advertised sales, competitive bidding brings prices which reflect the reasonable value.

13. Of course, it may happen that in the case of some chattels there will be no market just as in the case of realty. In such cases the amendment will really help the vendee, but in that event it will be taking care of the exception rather than the rule.

14. Editorial, N. Y. L. J., June 25, 1941, p. 2840, col. 1.

15. It is readily seen that this enactment falls short of accomplishing what was recommended by the Attorney-General, i.e., that there should be no repossession, or levy or sale under execution, of goods purchased on the installment plan when more than seventy-five per centum of the purchase price has been paid. See Memorandum for

Once again there may be considerable doubt as to whether the change effected by this part of the amendment is very necessary. After the buyer has already paid eighty per centum of the purchase price, the highest possible amount for which a deficiency judgment could be rendered, if a deficiency judgment were allowed, would be approximately twenty per centum of the purchase price. If the goods are sold at auction, only a small bid would be required to make the seller whole and eliminate a deficiency. Furthermore, under the first part of this amendment, as has been pointed out, the reasonable value would be used if it were higher than the auction price. Certainly the reasonable value of the chattel would very frequently be at least equal to twenty per centum of the sale price. Therefore, neither under the law as it has existed up to now, nor under the law as changed by the first part of the present amendment, is there any great need for the second part of the amendment.

CONTRACTS—INFANT'S RIGHT OF DISAFFIRMANCE.—By reason of a recent amendment to the Debtor and Creditor Law,[1] the statutes of New York relative to infancy as a defense to an action for breach of contract have undergone substantial change. The new amendment provides, that an infant's contract cannot be disaffirmed by the infant, where the infant was over eighteen years of age, at the time the contract was effected, provided it was made in connection with a business in which the infant was engaged and was reasonable and provident.[2]

In the common law, the word "infant" means a person, who has not reached the age of twenty-one.[3] An infant may validly contract (a) for necessaries,[4] (b) for the support and burial of any member of his family, (c) in fulfillment of a legal duty, (d) and in certain cases expressly permitted by statute. All other contracts are voidable at the infant's option.[5] He may ratify[6] them and assume

Legislative Consideration submitted by Attorney-General John J. Bennett, Jr., to the Senate and Assembly, March 4, 1940.

1. N. Y. Laws 1941, c. 327, effective April 13, 1941, amending the Debtor and Creditor Law by inserting a new section, 260.

2. N. Y. DEBTOR and CREDITOR LAW § 260 reads: "1. A contract hereafter made by an infant after he has attained the age of eighteen years may not be disaffirmed by him on the ground of infancy, where the contract was made in connection with a business in which the infant was engaged and was reasonable and provident when made. 2. In any action or proceeding in which the right to disaffirm on the ground of infancy a contract made by an infant after he has obtained the age of eighteen years, is in issue, the burden of proof on the question whether the contract was made in connection with a business in which the infant was engaged, and also on the question whether the contract was reasonable and provident when made, shall be upon the person seeking to deny or defeat such disaffirmance or to enforce the contract."

3. In New York a person under twenty-one is designated by the statute as a "minor". N. Y. DOMESTIC RELATIONS LAW § 2.

4. For a good discussion of an infant's liability for necessaries, see 1 WILLISTON, CONTRACTS (rev. ed. 1936) §§ 240-244; CLARK, NEW YORK LAW OF CONTRACTS (1922) §§ 740-747.

5. The right to disaffirm is personal to the infant alone. The other party to the

thereby all the rights and liabilities arising from the contract, or disaffirm[7] them and generally avoid liability thereunder.[8]

The theory underlying the doctrine of infancy, is that an infant lacks the judgment and discretion necessary to make contracts. The object of the common law is to protect infants from their own folly and improvidence and to save them from the frauds practiced upon them by the unscrupulous.[9] Many states, realizing that some persons under twenty-one are by no means devoid of judgment and intelligence, have passed special legislation changing the common-law liability of infants.[10] Since 1934, proposals have been made to every session of the New York Legislature to change the rules governing infants' contracts.[11] Finally, upon the recommendation of the Law Revision Commission, the legislature passed the statute under consideration.[12]

A reading of the statute does not clearly reveal its meaning and extent. The statute states that the right of disaffirmance may not be exercised by the infant "where the contract was made *in connection with a business* in which *the infant was engaged* and was *reasonable and provident* when made." These words may mean many things. The word "business" is a very comprehensive term.[13] The

contract cannot disaffirm. Beardsley v. Hotchkiss, 96 N. Y. 201 (1884); 1 WILLISTON, CONTRACTS (rev. ed. 1936) § 232.

6. An infant cannot effectively ratify his contract before reaching his majority as this could have no greater effect than his original contract. The rule which precludes him from making a contract precludes him from ratifying it. Sanger v. Hibbard, 104 Fed. 455, 456 (C. C. A. 8th, 1900); 1 WILLISTON, CONTRACTS (rev. ed. 1936) § 239. For a good discussion of ratification by infants, see CLARK, N. Y. LAW OF CONTRACTS (1922) §§ 713-722.

7. During his minority an infant can disaffirm any voidable contract except contracts executed for the conveyance of real estate, which latter can be disaffirmed only after he reaches his majority. The repudiation puts an end to the existence of the contract, both as to the infant and as to the adult with whom he contracted. Aborn v. Janis, 62 Misc. 95, 113 N. Y. Supp. 309 (1907); Rice v. Boyer, 198 Ind. 472, 9 N. E. 420 (1886); Sanford v. Roof, 9 Cow. 626 (N. Y. 1827).

8. An infant cannot ratify such part of a contract as he deems beneficial to himself and repudiate the part that is detrimental. Kincaid v. Kincaid, 85 Hun. 141, 32 N. Y. Supp. 476 (N. Y. 1895).

9. Henry v. Root, 33 N. Y. 526 (1865); 3 PAGE, CONTRACTS (2d ed. 1920) § 1570.

10. 1 WILLISTON, CONTRACTS (rev. ed. 1936) § 230; 3 PAGE, CONTRACTS (2d ed. 1920) § 1574. For a comprehensive study of the legislative changes by the several states under contract liability of infants, see LAW REVISION COMMISSION, LEGIS. DOC. (1938) No. 65 (I). Other instances where legal liability is imposed on a minor are: (a) eighteen is the age of consent for marriage, N. Y. DOMESTIC RELATIONS LAW § 7; (b) eighteen is the age at which a minor may dispose of his personal property by will, N. Y. DECEDENTS ESTATE LAW § 15; (c) a minor may contract for life insurance at the age of fifteen; N. Y. INSURANCE LAW § 145.

11. LAW REVISION COMMISSION, LEGIS. DOC. (1938) No. 65 (I). LAW REVISION COMMISSION, LEGIS. DOC. (1939) No. 65 (B).

12. LAW REVISION COMMISSION, LEGIS. DOC. (1941) No. 65 (B).

13. *In re* Booth, 18 Fed. Supp. 79, 81 (N. D. Okl. 1937). It has been construed to include: (1) Agriculture or farming, Wilson v. Eisner, 282 Fed. 38, 41 (C. C. A. 2d,

phrase "in connection with" means about the same as "in and about".[14] The word "engage" means to take a part in; to devote attention and effort to; to employ one's self; to enlist; to carry on; to conduct; be busied; to occupy one's self.[15] "Engaged in business" is defined as following employment or occupation which occupies time, attention and labor for purposes of livelihood.[16] "Reasonable" has been construed to mean (1) advantageous,[17] (2) average,[18] (3) customary or usual,[19] (4) fit and appropriate,[20] (5) just, fair, equitable and honest.[21] "Provident" is defined as exercising foresight or providing care; anticipating and making ready for future wants or emergencies; frugal; economical.[22] The legislature could not well have used more general language. Thus, it is evident that the meaning of the statute cannot be determined by noting the legal definitions of the words used, and they leave open many problems for the New York courts, to be solved as cases arise.

One of the problems that will confront New York courts in construing the statute is: When is an infant's contract made "in connection with a *business*"? Suppose D, an infant of nineteen, who is employed as an apprentice-butcher and who incidentally delivers orders, buys a bicycle on credit from P for $75.00. D intends to use this bicycle for his own pleasure on Sundays, and to ride to and from the store in order to save carfare, and to deliver orders. D, not having lived up to his payments, is being sued by P and sets up the defense of infancy. Was his purchase a contract made in connection with a *business* in which the infant was engaged? Will a purchase of a bicycle for purposes of pleasure as well as business prevent its being a "business" contract? Perhaps, if the use for business was the primary intended purpose and the use for pleasure only incidental, the statute will apply. The time that the machine is to be used for business as contrasted with pleasure may become important here.

Another question might be: is the infant *"engaged"* in business? Is it necessary that he have a proprietary interest in the business? Must he actually operate and control the business? Is it sufficient that he be an employee working for a livelihood? It seems, from the particular wording of the statute that the infant must have at least a proprietary interest in the business. Thus, in the above example, the infant, as employee is not *engaged* in business.

1922); (2) Abstracting, Ragsdale v. Nagle, 106 Cal. 332, 39 Pac. 628 (1895); (3) Any calling pursued for livelihood, Easterbrook v. Hebrew Ladies' Orphan Society, 85 Conn. 289, 82 Atl. 561 (1912); (4) Care and management of real estate, Bennett v. Hebbard, 74 N. H. 411, 68 Atl. 537 (1907); (5) Commerce, City of Topeka v. Jones, 74 Kan. 164, 86 Pac. 162 (1906); (6) Hotel Keeping, Thompson v. Langan, 172 Mo. App. 64, 154 S. W. 808 (1913).

14. Finley v. Pew, 28 Wyo. 342, 205 Pac. 310, 318 (1922).

15. Graves v. Knights, 128 App. Div. 660, 112 N. Y. Supp. 948, 950 (3rd Dep't 1938).

16. Massachusetts Protective Ass'n v. Lewis, 72 F. (2d) 952, 956 (C. C. A. 3d, 1934).

17. Berglund v. American Multigraph Sales Co., 135 Miss. 67, 160 N. W. 191, 193 (1916).

18. Sim v. Weeks, 7 Cal. App. (2d) 28, 45 P. (2d) 350, 357 (1935).

19. Martin v. Fletcher, 77 Ore. 408, 149 Pac. 895, 897 (1915).

20. Rexroth v. Holloway, 45 Ind. App. 36, 90 N. E. 87, 88 (1909).

21. People v. Rosenber, 59 Misc. 342, 112 N. Y. Supp. 316, 318 (1919).

22. Standard Dictionary.

When is a contract *"made in connection with* a business"? Must the contract be directly connected with the business, or is it enough that the contract be indirectly or collaterally connected with the business? The answer, perhaps, is that the contract must be *directly* connected with the business. For example: A, an infant of 20, buys a one-third interest in a retail drug store from X, a licensed pharmacist. According to the articles of co-partnership, X is to be in attendance at all times to fill prescriptions (in accordance with the New York State Law), and A is to attend to the cosmetics and patent medicines counters from nine A.M. to five P.M. daily. A, deciding to become a pharmacist, enrolls in the evening division of Y School of Pharmacy but later changes his mind and drops the course. Upon being sued on his contract, by the Y School of Pharmacy, the question presents itself: Was this contract made *in connection* with A's business? Adopting the view that in order that the contract be in connection with the business it must be directly connected therewith, it seems that this contract was not so directly connected with the business. It did not affect its operation or profit immediately.

Another confusing problem is found in the terms "reasonable" and "provident". How is the court going to apply the tests of reasonableness and providence in connection with infants' contracts? Does reasonable and provident have reference to the contract price, the position of the adult contracting party, or the economic position of the infant, taking into consideration the character of the infant's business? It seems that the intended test of reasonableness and providence to be applied under this statute applies to the economic position of the infant, as well as to the contract price. In other words, a contract under this statute would be reasonable and provident, if an average, ordinary, prudent man in the economic position of the infant would have made the same contract. For example: a minor of twenty is the sole proprietor of a machine shop, which is operated by him. Being rushed with defense orders, he deems it necessary to enlarge his plant. He contracts to buy certain new machinery for $15,000. This contract is reasonable and provident under the statute, if the average, ordinary, prudent machine shop owner would have expanded his plant under the circumstances, and would have paid $15,000 for the same machinery. If the "reasonable man" would not have expanded the plant under the circumstances, then the contract would not be reasonable and provident, and the statute would not be applicable. Also, if a "reasonable man" would enlarge the plant under the circumstances, but would only pay $10,000 and not $15,000 for the same machinery, the contract would not be provident under the statute. If the statute is so construed as to make the above-mentioned test applicable, does it not place too great a burden on the adult contracting party before he can take advantage of it? In other words, the statute seems to make it necessary for an adult party, contracting with an infant, to know all the circumstances of the infant's business in order to be sure the infant is making a reasonable contract on which he can ultimately bind the infant. Many factors in a business such as internal labor strife, cannot be known to a party outside the plant. Such factors may make business expansion unreasonable and a contract to buy machinery improvident, looking at it from the point of view of the infant in business. It is possible, then, for an adult dealing with an infant to think that the infant is making a reasonable contract, but to discover later that because of some fact peculiarly within the knowledge of the infant, the contract was not a reasonable one.

Problems coming out of this section are thus seen to be numerous and per-

plexing. It is evident that the framers of the statute were mindful of this fact and intentionally worded the statute in such a way as to vest the court with wide discretion in applying it.

CONTRACTS—OFFEROR'S POWER TO REVOKE WHERE TIME LIMIT IS STATED IN OFFER.—Amendments have been made to Section 279 of the Real Property Law and Section 33 of the Personal Property Law relating to so-called "irrevocable offers".[1] The effect of these amendments is to prevent an effective revocation of a written offer, which states that it is irrevocable during a period set forth, or until a time fixed in the offer. If the offer states that it is irrevocable but does not state any period of time of irrevocability, then it is to be construed as irrevocable for a reasonable time. The question arises as to how strictly this section will be interpreted.

In order to be covered by the statute, must the offer contain the specific word "irrevocable"? There are few clues to the intent of the legislature on this point. Unfortunately the report of the Law Revision Commission, which suggested the change, is of little aid.[2] It may help to consider the situation at common law. Not infrequently a collateral promise was made by an offeror that he would leave the offer open for a specified time, and this collateral promise was supported by consideration, or by a seal. It has been suggested that in such cases the offeror has the power to revoke his offer, but that by doing so he renders himself liable in damages for breach of the subsidiary promise to leave his offer open.[3] On the other hand, it has been maintained by no less an authority than Williston, that since the agreement on the part of the offeror that his offer should remain open could be readily enforced, and the intention of the parties carried out, by simply regarding the offer as irrevocable during the agreed period, there was no reason why the law should not specifically enforce the main contract.[4] Under either of the above two viewpoints, it was not necessary for the offeror to use the exact word "irrevocable" in his offer.[5] But any word or group of words sufficient to indicate an intention to be bound for the time stipulated was enough. As the whole trend of the Law Revision Commission's work seems to be away from the formalism of the common law, it seems probable that it did not intend to

1. N. Y. Laws 1941, c. 328; "When hereafter an offer to enter into a contract is made in a writing signed by the offeror, which states that the offer is irrevocable during a period set forth or until a time fixed, the offer shall not be revocable during such period or until such time because of the absence of consideration for the assurance of irrevocability. When such a writing states that the offer is irrevocable but does not state any period of time of irrevocability, it shall be construed to state that the offer is irrevocable for a reasonable time."

2. See LAW REVISION COMMISSION, LEGIS. DOC. (1941) No. 65 (M) p. 52.

3. ASHLEY, LAW OF CONTRACTS (1911) § 13 d.

4. 1 WILLISTON, CONTRACTS (rev. ed. 1936) § 61 at p. 177.

5. For comments on cases involving irrevocable offers, see Corbin, *Option Contracts* (1914) 23 YALE L. J. 641; McGovney, *Irrevocable Offers* (1914) 27 HARV. L. REV. 644, See also RESTATEMENT, CONTRACTS (1932) § 46 (Illustration) as indication of what form of words the offeror must use.

prescribe a particular form of words as requisite to the irrevocability of a written offer.[6]

It might be argued, however, that the language of the recent change which contains the phrase "assurance of irrevocability", shows an intent by the legislature that the offeror must use the precise word "irrevocable" in order to bring the offer within the terms of the act. In addition, a statute in derogation of the common law should be strictly construed, especially since in this case, consideration is no longer required as an incident to the creation of an irrevocable offer. In accord with this last theory, the offeror would have to incorporate the magic word "irrevocable" in his offer if he is to be deprived of his power to revoke. Thus, if the offeror writes: "This offer will be open for ten days," the offer would still be revocable.

Of the two theories of construction discussed above, the more liberal one seems both more desirable and logical than the strict interpretation. All through the law great stress is laid upon the intention of the parties entering into a contract, as seen through the eyes of the "reasonable man". Therefore, where a reasonable man would infer that an offeror intended to be bound for the time stated in his offer, the offer should be deemed irrevocable for that time, despite the lack of the talismanic word "irrevocable" in the offer.

Under either theory of construction, it seems that the legislature, in line with Section 46 of the Restatement of Contracts, has intended that the offeror be deprived of his power to revoke, and not to render him liable in damages merely for breach of his subsidiary promise to keep the main offer open; thereby adopting the view of Williston.[7]

Other questions arise, among them, the effect of the changes under discussion upon the strict conception of unilateral contracts. In a unilateral contract there can be no acceptance by the offeree until the act called for by the offeror has been executed. In some instances, however, the offeree cannot perform unless the offeror will coöperate.[8] Suppose an offeror states: "I will give you a discount if you pay off your mortgage any time within ten days." If the offeror should sell his mortgage on the second day, we would then have the anomalous situation of an offer deemed to continue by operation of the new amendment and an offeree willing to accept, but who cannot do so because the offeror will not now take the

6. The work of the Law Revision Commission in abolishing the effect of the seal is one indication of this trend away from the formalism of the common law, as are the recent statutes dispensing with the need of consideration for written modifications of a contract and providing for the validity of written promises based on part consideration.

7. See note 4, *supra*. This view is also in accord with RESTATEMENT, CONTRACTS (1932) § 46. It is interesting to note that at the Civil Law an offer was revocable even if the offeror had named in his offer a definite period during which acceptance could be made. The GERMAN CODE § 145 put an end to this difficulty by providing that an offeror could not revoke his offer for a reasonable time or for the time determined by himself, unless he had provided against the irrevocability. 1 WILLISTON, CONTRACTS (1936) § 63 A at pp. 185, 186.

8. Petterson v. Pattberg, 248 N. Y. 86, 161 N. E. 428 (1928) contains a fact situation where offeree could not perform without the offeror's coöperation. It should be noted that the result in *Petterson v. Pattberg*, on its exact facts, has been affected by PERS. PROP. LAW, § 33-b (effective 1937).

money since he no longer holds the mortgage. An obvious solution would be to hold that the tender was performance, but strictly, this was not the act called for.[9]

There is also the question as to how this section will affect the means of terminating offers other than by revocation.[10] The Restatement of Contracts, Section 35, states that an offer may be terminated by rejection. Under the new sections, where the offer is stated to be irrevocable for five days[11] and is rejected by the offeree on the third day, may it be effectively accepted by him on the fourth? Probably not; the language of the amendment in question seems to imply that it was only meant to apply to voluntary revocations by an offeror,[12] and not to prevent the final termination of an offer by such means as a rejection or counter-offer[13] by offeree, or supervening death or insanity of the offeror. It should be noted that as to supervening death or insanity of the offeror, this theory is not in accord with the Restatement of the Law of Contracts.[14]

In the case of the destruction of the subject-matter of a contract, which is another means of terminating an offer suggested by the Restatement,[15] it would seem that the common law rules would still apply, because the voluntary act of the offeror would not be involved.

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9. This appears to be the dissenting view in Petterson v. Pattberg, *ibid.*

10. RESTATEMENT, CONTRACTS (1932) § 35, lists the various means of terminating offers, only one of which is by revocation.

11. The following example is given by RESTATEMENT, CONTRACTS (1932) § 35. "A makes an offer to B and adds: 'This offer will remain open for a week.' B rejects the offer the following day, but within a week from the making of the offer accepts it. There is no contract." Would this illustration be applicable under the amendments discussed?

12. The language referred to is as follows: ". . . the offer shall not be revocable during such period . . . *because of the absence of consideration* for the assurance of irrevocability." This would seem to indicate that the statute was only intended to apply to cases where the offeror attempts to withdraw of his own volition.

13. RESTATEMENT, CONTRACTS (1932) § 38: "A counter-offer by the offeree, relating to the same matter as the original offer, is a rejection of the original offer, unless the offeror in his offer, or the offeree in his counter-offer states that in spite of the counter-offer the original offer shall not be terminated." See Vogt v. Longfellow, 123 Misc. 498, 205 N. Y. Supp. 719 (1924) ". . . when a counter-offer is made it amounts to rejection and thereafter acceptance is of no avail. There is no reason why the same rule should not apply to a case where a time limit is prescribed by the offer."

14. RESTATEMENT, CONTRACTS (1932) § 46 specifically provides that an offer shall not be terminated by the death or insanity of the offeror for the time fixed in the offer.

15. RESTATEMENT, CONTRACTS (1932) § 35; another means of terminating an offer is advanced, *id.* at § 42. "A offers Blackacre to B at a stated price, and gives B a week within which to consider this proposal. Within a week B learns that A has contracted to sell Blackacre to C, but, nevertheless, sends a formal acceptance, which is received by A within the week. There is no contract between A and B." If the new section was meant to deprive the offeror of the power to voluntarily revoke, it would seem that a contract would result from a similar situation under the new statute, if the sections discussed are applied. This fact situation should be distinguished from Dickinson v. Dodds, 2 Ch. D. 463 (1876) which did not contain an "irrevocable offer", in that there was no consideration for the promise to hold the offer open, which was necessary at common law.

As has been pointed out above, where no time is fixed in the offer, it is to be irrevocable for a "reasonable" time. What is a "reasonable" time will involve no greater problem here, than it did at common law.[16]

The adoption of the changes discussed above should prove to be a great step forward in the law of contracts. However, as has been indicated, there are many vexatious questions that can and no doubt will arise under these new sections. A mere reading of these changes does not give any certain indication as to how these problems will be disposed of, and their final disposition will rest with the courts.

16. RESTATEMENT, CONTRACTS (1932) § 40 (2) "What is a reasonable time is a question of fact, depending on the nature of the contract proposed, the usages of the business and other circumstances of the case which the offeree at the time of his acceptance either knows or has reason to know."