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CONTRACTS—ASSIGNMENT—PARTIAL ASSIGNMENT AND EFFECT OF AN AGREEMENT TO REFRAIN FROM ASSIGNING—The agreement between the defendant, a building contractor, and a sub-contractor provided that the latter would not "sublet any portion of the work of his contract or hypothecate, pledge, or assign any payments thereunder except by and in accordance with the consent of. [the] contractor." Nevertheless, after substantial performance, the sub-contractor made an assignment to plaintiff of a part of his claim. Responding to a letter from the assignee requesting an acknowledgment thereof and giving notice of the assignment, defendant acknowledged receipt of the letter, and informed plaintiff that the amount of the indebtedness had not yet been settled, nor all the work approved. Subsequently, defendant paid the assignor. The assignor became insolvent. Plaintiff sued defendant at law. The court, denying recovery, *held* that mere notice of a partial assignment was insufficient to bind the

debtor, and there having been a prohibition against assignment, which was for the benefit of the obligor, any waiver thereof would have to be clear, distinct, and unequivocal, and was not so in the instant case. *Concrete Form Co., Inc. for Use of Blairsville Savings & Trust Co. v. W. T. Grange Construction Co.*, (Pa. 1935) 181 A. 589.

That an entire demand or chose in action may be assigned is recognized law.[1] So long as the contract is not personal in its nature, its assignability is uniformly sustained although there be no express stipulation permitting it.[2] Courts, generally, however, will not give effect at law to a partial assignment to which the promisor has not consented.[3] That such partial assignment is enforceable in equity is the view of the majority.[4] When confronted with an express prohibition or restriction of assignment in the contract, the courts have given it varied effect. As has been sufficiently demonstrated in a previous article in this Review,[5] a close scrutiny of the form of the clause may greatly aid in the interpretation to be given thereto. In this manner, a seeming conflict between two opposing policies, namely, freedom of alienation and freedom of parties to contract, may be given rational effect. Thus, the stipulation may be an express denial of the power to assign, or it may be intended merely as a promise not to assign, for breach of which a counterclaim for damages might be available for the promisor, the assignment per se not being nugatory.[6] The stipulation in the instant case might well have been construed to be of this promissory character.[7] The court, however, refused to give it this effect. Courts in construing prohibitions of assignment in building contracts have sometimes found that the effect was to prevent the assignment of personal duties, but that the restriction was not applicable to claims for money, due or to become due. The language

[1] See 4 PAGE, CONTRACTS, § 2241 (1920), for citation of numerous authorities; CONTRACTS RESTATEMENT, § 151 (1932); 2 R. C. L. 598, § 6 (1914); 56 A. L. R. 1391 (1928), for collected cases on assignability of proper insurance policies.

[2] 4 PAGE, CONTRACTS, § 2248 (1920). Cf. with this the early common-law attitude regarding as a vital part of every contract the relation between the original obligor and obligee, which was fixed and unchangeable except in exceptional cases. 1 WILLISTON, CONTRACTS, §§ 405, 406 (1927).

[3] See Mandeville v. Welch, 5 Wheat. (18 U. S.) 277 at 288, 5 L. Ed. 87 (1820), for the opinion of Story, J., in the leading American case on this proposition: "a creditor shall not be permitted to split up a single cause of action into many actions, without the assent of his debtor, since it may subject him [the debtor] to many embarrassments and responsibilities not contemplated in his original contract." Cotton v. Roberts Bros., 83 Colo. 505, 266 P. 1116 (1928); Joint School District v. Marathon County Bank, 187 Wis. 416, 204 N. W. 471 (1925).

[4] WILLISTON, CONTRACTS, § 443 (1927), and cases cited in footnotes thereto.

[5] Grismore, "Effect of a Restriction on Assignment in a Contract," 31 MICH. L. REV. 299 (1933).

[6] Thus, Professor Grismore, supra note 5, points out that the stipulation may take one of three forms: (1) A promise to refrain from assigning, (2) Declaration that an assignment shall be void, and (3) Non-assignment on express condition precedent to performance.

[7] The agreement was that the sub-contractor *would* not "sublet," as contrasted with a stipulation framed in terms of "proviso" and, consequently, seeming to be conditional.

of the stipulations in these contracts, has, however, usually been of a more general nature, namely, that the builder would not assign "the contract."[8] Such language might permissibly be given this restricted interpretation. It will be noted, however, that in the instant case, the restriction expressly referred to the "hypothecating, pledging, or assignment of any payments," and this may have justified the difference in result reached by the Pennsylvania court. That this court could be expected to take a strict view of assignments is well evidenced by its remarks in the instant case with reference to partial assignments.[9] In any view, the court would require "consent" of the debtor before giving effect to such an assignment even in equity.[10] There has, however, been a more liberal view expressed by other courts which give notice of such partial assignments a more substantial effect, and make payment to the assignor after such notice an act which is at the promisor's own risk.[11]

J. A. R.

[8] See Ann. Cas. 1918D 613 for collected cases; Norton v. W. C. Whitehead, 84 Cal. 263, 24 P. 154, 18 Am. St. Rep. 172 (1890); Butler v. San Francisco Gas & Elec. Co., 168 Cal. 32, 141 P. 818 (1914); Dickson v. City of St. Paul, 97 Minn. 258, 106 N. W. 1053 (1906); Bank of Harlem v. Bayonne, 48 N. J. Eq. 246, 21 A. 478 (1891); *contra*: City of Omaha v. Standard Oil Co., 55 Neb. 337, 75 N. W. 859 (1898).

[9] "In the case of a partial assignment, we have repeatedly held that notice alone is not enough, and that the debtor is not bound thereby unless he gives his consent." Concrete Form Co., Inc., for Use of Blairsville Savings & Trust Co. v. W. T. Grange Const. Co., (Pa. 1935) 181 A. 589 at 590.

[10] Jermyn v. Moffitt, 75 Pa. 399 (1847); Geist's Appeal, 104 Pa. 351 (1883); Vetter v. Meadville, 236 Pa. 563, 85 A. 19 (1912); Gordon v. Hartford Sterling Co., 319 Pa. 174, 179 A. 234 (1935). But see 80 A. L. R. 413 at 428 (1932) to the effect that this view, followed also in Missouri [Bland v. Robinson, 148 Mo. App. 164, 127 S. W. 614 (1910)] and Wisconsin [Joint School Dist. v. Marathon County Bank, 187 Wis. 416, 204 N. W. 471 (1925)], is the minority view, it being pointed out and supported by numerous authorities that the majority view is that although unassented to by the debtor, the partial assignment is enforceable against him in equity.

[11] Palmer v. Palmer, 112 Me. 149, 91 A. 281 (1914); Graham v. Southern Ry., 173 Ga. 573, 161 S. E. 125, 80 A. L. R. 407 (1931); and see 1 WILLISTON, CONTRACTS, § 444 at p. 848 (1920); also 13 CORN. L. Q. 129 (1927).