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## REAL PROPERTY-LICENSES-REVOCABILITY OF PAROL LICENSES WHICH HAVE BEEN ACTED UPON

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REAL PROPERTY—LICENSES—REVOCABILITY OF PAROL LICENSES WHICH HAVE BEEN ACTED UPON—Plaintiff, operator of a boat company, owned land adjoining a river. X held land between that of the plaintiff and a county road. Plaintiff, seeking to secure a way from his property to the county road, offered by letter to purchase forty acres from X, and upon refusal, attempted to buy a forty foot strip, which was again refused. There was further correspondence, in which the parties referred to an "easement" or a "right of way," which terminated in a letter from X saying: "From the standpoint of this company, there will be no objection to you building a road. . . ," and directing plaintiff to proceed with construction, and saying that any further arrangements would be made at a later time. Plaintiff spent \$1,000 in developing the road and used it for two years. X sold the property to defendant Cooley, who was fully aware of the arrangements with the plaintiff. Shortly thereafter, defendant Slater, plaintiff's competitor, dynamited the road without defendant Cooley's permission. Plaintiff's action was to enjoin further interference with his use of the road. On appeal by Cooley from a lower court judgment for plaintiff, *held*, affirmed. The court said that it would be a fraud upon the plaintiff to allow the license to be revoked, and called the interest a "permanent license."<sup>1</sup> *Hunter v. Slater*, 331 Mich. 1, 49 N. W. (2d) 33 (1951).

Courts considering this problem<sup>2</sup> face two basic canons of law: (a) the statute of frauds, which requires transfers of interest in land to be by written conveyance,<sup>3</sup> and (b) the equitable principle of preventing fraud. It is clear

<sup>1</sup> Courts often call the protected interest an irrevocable license. See *Clark v. Glidden*, 60 Vt. 702, 15 A. 358 (1888). The interest is in effect an easement, regardless of what label the court gives to it. *Stoner v. Zucker*, 148 Cal. 516, 83 P. 808 (1906).

<sup>2</sup> For discussion of the general topic see: Conard, "Unwritten Agreements for Use of Land," 14 ROCKY MT. L. REV. 153, 294 (1942); CLARK, REAL COVENANTS AND OTHER INTERESTS WHICH RUN WITH THE LAND, 2d ed., 15-64 (1947).

<sup>3</sup> The plaintiff did not urge that the letter from X satisfied the statute of frauds so as

from the decided cases that there is no uniform rule as to when a court will set aside the statute of frauds in order to declare the license irrevocable. It is likewise clear that most courts will, in what they consider a proper case, grant equitable relief to the licensee, regardless of what they consider the general rule to be.<sup>4</sup> The answer to the problem would seem to lie in a realization that each decision must rest on its own peculiar operative facts, rather than upon some broad general rule or exception.<sup>5</sup> Once the court concedes that the statute of frauds should not be used to perpetrate fraud, it must decide from the facts presented whether revocation of the license would be a fraud upon the licensee. In doing this it is immaterial whether the court utilizes the equitable theory of estoppel,<sup>6</sup> or of specific performance of parol contracts partly performed,<sup>7</sup> or merely says that upon the facts it would or would not be conscionable to allow revocation. What facts, then, are necessary to justify a refusal to invoke the statute of frauds? Although there is some conflict, it is clear that a promise, express or implied,<sup>8</sup> by the licensor authorizing the user, reliance by the licensee in the form of expenditure of money or labor, and an actual user are required.<sup>9</sup> In the principal case the court found a promise by the licensor of something in the nature of an easement or permanent right of way, an expenditure of \$1,000 by the licensee in developing the road, and an actual use thereof for two years. If the negotiations between the parties had concerned a temporary user, or one for a definite period which had elapsed, the result should have been the opposite, as there would be no fraud upon the licensee by revocation under these circumstances.<sup>10</sup> The court in the principal case recognized this when it distinguished an earlier Michigan case<sup>11</sup> in which only a temporary use was contemplated by the parties. It would seem that the relative value of the road to the licensee as compared with the corresponding detriment to the licensor

to create an easement, nor did the court discuss this possibility. From the portion of the correspondence included in the opinion, this position would seem warranted. The letter merely gives the plaintiff permission to start construction of the road and states that other arrangements will be made later. There are no appropriate words of grant which would constitute the letter a "deed or conveyance in writing" as is required by the Michigan statute of frauds to create an easement or other interest in land. Mich. Comp. Laws (1948) §566.106, Mich. Stat. Ann. §26.906.

<sup>4</sup> See annotations in 49 L.R.A. 497 (1900); 19 L.R.A. (n.s.) 700 (1909); 25 L.R.A. (n.s.) 727 (1910). For more recent citations see notes in 53 C.J.S. 816 to 818 (1948).

<sup>5</sup> *Page v. Lydic*, 123 Kan. 122, 254 P. 316 (1927).

<sup>6</sup> *Baum v. Denn*, 187 Ore. 401, 211 P. (2d) 478 (1949).

<sup>7</sup> *Rerick v. Kern*, (Pa. 1826) 14 S. & R. 267. This doctrine is an application of the equitable principle that an oral contract for the sale of land is enforceable in equity by a grantee who has made improvement in reliance on the grant. *Seavy v. Drake*, 62 N.H. 393 (1882).

<sup>8</sup> Promise may not be implied from mere acquiescence of the owner: *Leininger v. Goodman*, 277 Pa. 75, 120 A. 772 (1923).

<sup>9</sup> Some courts hold that there must be consideration or benefit to the licensor: *Shaw v. Profitt*, 57 Ore. 192, 109 P. 584 (1910).

<sup>10</sup> *Davis v. Tway*, 16 Ariz. 566, 147 P. 750 (1915).

<sup>11</sup> *Nowlin Lumber Co. v. Wilson*, 119 Mich. 406, 78 N.W. 338 (1899).

would be an influential factor in an equitable proceeding, but neither this court nor other decided cases in point outwardly appear to give consideration to this fact. In the instant case the licensee seemed to have a real need for the road, while there was no showing of substantial detriment to the servient landowner. These facts would appear to be a sufficient basis upon which to grant equitable relief in a controversy between the licensor and licensee, but in the principal case defendant Cooley was the grantee of the licensor. The court logically held that Cooley was bound just as the licensor because he took with notice<sup>12</sup> of the plaintiff's claim. This is in accord with equitable principles and the decided cases.<sup>13</sup>

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<sup>12</sup> As to what constitutes notice: *Campbell v. Indianapolis & Vincennes R.R. Co.*, 110 Ind. 490, 11 N.E. 482 (1886).

<sup>13</sup> *Leininger v. Goodman*, supra note 8; *Shaw v. Profitt*, supra note 9.