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CONTRACTS IN IOWA REVISITED—STATUTE OF FRAUDS

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The contrast in attitudes as to the requirements for dispensing with the necessity for a writing under the lands section of the Iowa Statute of Frauds[1] between the 1954 case of *Miller v. Lawlor*[2] and the 1957 case of *Vrba v. Mason City Production Credit Association*[3] is the stimulus for this attempt to collect and analyze the cases in Iowa decided since the publication of the Iowa Annotations to the Restatement of Contracts[4] on various facets of the Statute of Frauds.[5] In *Miller v. Lawlor* the Court enforced an oral promise of a lower property owner not to interfere with the view, because of the reliance thereon in purchasing a house on a higher vantage point, and stated that "promissory estoppel" is sufficient to dispense with a writing under the Iowa statute. In the *Vrba* case the Court refused to enforce an alleged oral promise of defendant to convey to the plaintiff property as to which the defendant then held a sheriff's certificate after foreclosure of its mortgage, on payment of defendant's investment in the property, even though allegedly there was reliance in refraining from redeeming the property, and from selling it to others. There was no reference in the opinion to the "promissory estoppel" (detrimental reliance) test for dispensing with a writing, as announced in *Miller v. Lawlor*.[6]

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1 IOWA CODE §§ 622.32(3), 622.33 (1954).

2 245 Iowa 1144, 66 N.W.2d 267 (1954).

3 80 N.W.2d 495 (Iowa 1957).

4 IOWA ANNOTATIONS TO THE RESTATEMENT OF THE LAW OF CONTRACTS (1934). This will be subsequently referred to as IOWA ANNOTATIONS. Comprehensive discussion of the Statute of Frauds is contained in CORBIN, CONTRACTS §§ 275 *et seq.* (1950); and WILLISTON, CONTRACTS §§ 448 *et seq.* (Rev. ed. 1936). These will be subsequently referred to as CORBIN and WILLISTON.

5 Discussion herein is limited to those categories commonly referred to as Statute of Frauds, the descendants of the 4th and 17th sections of the original English Statute of Frauds. There will be no reference, for instance, to evidence of agreements concerning party walls [IOWA CODE § 563.12 (1954)], declaration of trusts [IOWA CODE § 557.10 (1954)], or revival of debt barred by Statute of Limitations [IOWA CODE § 614.11 (1954); see discussion of this subject in Hudson, *Doctrine of Consideration in Iowa Revisited—The Bargain Element*, 5 DRAKE L. REV. 67, 72 (1956)].

6 Examination of the briefs and arguments on appeal, in the *Vrba* case, discloses no reference to *Miller v. Lawlor*.

Preliminarily it should be observed that the Iowa Statute of Frauds contains some unique features. First, it is specifically labelled as evidentiary because most of the categories appear in the Evidence chapter of the Code, it states merely that "no evidence of the following enumerated contracts is competent"[7] and refers to "regulations relating merely to the proof of contracts".[8] In one case it was held that for purposes of the Bankruptcy Act there was a valid transfer of title to personal property at the time of the oral agreement.[9] Second, the Statute specifically provides that it does not apply unless the contract is denied in the pleadings.[10] This particular phrase together with the evidentiary character suggests that the only appropriate way to raise the question of noncompliance with the Statute of Frauds is to deny the agreement and then to object on the trial to introduction of oral testimony.[11] Third, the oral evidence of the maker of the contract is competent to establish the agreement.[12] A difficult problem is involved here, though, in that it has been held that, if the opposing party is used as a witness the proponent of the evidence is bound by his testimony and may not contradict or supplement it.[13] Fourth, the necessity for a writing in land cases is dispensed with by specific statutory exceptions that are apparently the broadest in the country, particularly in the reference to satisfaction of the need for a writing by purchase money or pos-

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7 IOWA CODE § 622.32 (1954).

8 IOWA CODE § 622.34 (1954). See IOWA ANNOTATIONS § 178-II.

9 Tipton v. Miller, 79 F.2d 298 (8th Cir. 1935). See CORBIN, § 288.

10 IOWA CODE § 622.34 (1954). Stevens, *Ethics and the Statute of Frauds*, 37 CORNELL L. Q. 355, 373, 381 (1952), refers to the Iowa legislative treatment with approval. See CORBIN, § 317. In § 277 CORBIN cites early English cases for the proposition that a defendant could be held for perjury if he falsely denied making the contract, in an answer to a bill for specific performance.

11 *How to Raise the Statute of Frauds as a Defense to an Unwritten Contract Under the Rules of Civil Procedure*, 1 DRAKE L. REV. 27 (1951). There does not appear to have been any definite discussion of this matter in Supreme Court cases. In *Carmichael v. Stone*, 243 Iowa 904, 54 N.W.2d 454 (1954), the opinion indicates there was an objection to the oral evidence, the trial court reserved ruling and then later directed a verdict for defendant. In *Schroeder v. Cedar Rapids Lodge*, 242 Iowa 1297, 49 N.W.2d 880 (1951), the opinion discloses that the answer denied the agreement and raised the issue of the Statute of Frauds, and that the court at the conclusion of the testimony withdrew the issue of the Statute of Frauds from the jury.

A related proposition is that the unenforceability may not be raised by one a stranger to the agreement. Lennert v. Cross, 215 Iowa 551, 241 N.W. 787, 244 N.W. 693 (1932) [claim by creditor that homestead was not acquired before debt; converse problem of time of contracting debt is discussed in *Invading the Homestead Exemption*, 2 DRAKE L. REV. 3 (1952)]; IOWA ANNOTATIONS § 218; CORBIN, §§ 289, 290; WILLISTON, § 530.

12 IOWA CODE § 622.35 (1954); Hardy v. Daum, 219 Iowa 982, 259 N.W. 561 (1935).

13 McCutchan v. Iowa State Bank, 232 Iowa 550, 5 N.W.2d 813 (1942); Thomas v. Peoples' Gas & Electric Co., 220 Iowa 850, 263 N.W. 499 (1935); IOWA ANNOTATIONS § 178-II.

session.[14] There will be further reference to this in a subsequent portion of this article.

The broad categories of contracts covered in usual text treatment under the heading of Statute of Frauds are land contracts, promises to answer for the debt of another, contracts made in consideration of marriage, those not to be performed within one year, and sales of goods, the latter found in a different Code chapter. Most of the appellate court action has been in the area of land contracts and sales of goods. However, there have been a few cases in the other areas. It has been pointed out that the need for a writing, where there is a promise to answer for the debts of another, is not met by proving only reliance on the promise.[15] This particular section is not applicable, though, if the promise is original, that is, if no credit is extended to another person,[16] or, even if there is another debt, if the main purpose of the promise is to serve the interests of the promisor such as where a seller of a service station and book accounts orally guaranteed the transferred book accounts.[17] Two cases pointed out that antenuptial agreements must be in writing as having been made "in consideration of marriage."[18] The clause as to "contracts not to be performed within the space of one year from the making thereof" was referred to in one case.[19]

The regulations as to the need for a writing in connection with the sales of goods are found in the Uniform Sales Act, apart from the other categories referred to, and state that "a contract to sell or a sale of any goods or choses in action shall not be enforceable"[20] instead of merely that "no evidence is competent", but by special statutory amendment the provisions referred to above about "regulations relating merely to the proof of contracts",

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[14] IOWA CODE § 622.33 (1954). See CORBIN, §§ 420 *et seq.*; WILLISTON, § 494; IOWA ANNOTATIONS § 197.

[15] Lindburg v. Engster, 220 Iowa 1073, 264 N.W. 31, 116 A.L.R. 591 (1935).

[16] Reichart v. Downs, 226 Iowa 870, 285 N.W. 256 (1939); In re Davis' Estate, 217 Iowa 509, 248 N.W. 497 (1933); Samuels Bros. v. Farwell, 215 Iowa 650, 246 N.W. 657 (1933), 19 IOWA L. REV. 379 (1934). See IOWA ANNOTATIONS § 180-III; CORBIN, §§ 348, 349, 352, 353; WILLISTON, §§ 454, 463-465.

[17] Miller v. Pound, 226 Iowa 628, 284 N.W. 449 (1939). See IOWA ANNOTATIONS § 184; CORBIN, §§ 366 *et seq.* WILLISTON, § 472.

[18] Wilder v. Conlon, 239 Iowa 187, 30 N.W.2d 764 (1948); McMinimee v. McMinimee, 238 Iowa 126, 30 N.W.2d 106 (1947). See IOWA ANNOTATIONS § 192; CORBIN, §§ 460 *et seq.*; WILLISTON, §§ 485, 486.

[19] Tremon v. Sheaffer Pen Co., 111 F.Supp. 39 (S.D. Iowa 1953), *aff'd* in 209 F.2d 627 (8th Cir. 1954), without discussion of Statute of Frauds. See IOWA ANNOTATIONS § 198; CORBIN, §§ 444 *et seq.*; WILLISTON, §§ 495 *et seq.*

[20] IOWA CODE § 554.4 (1954). *In re Estate of Karr*, 235 Iowa 351, 16 N.W.2d 634 (1944), avoided passing on the question whether a contract to bequeath personal property was within the sales of goods section. *Freeseman v. Henrichs*, 233 Iowa 27, 6 N.W.2d 138 (1942), involving an alleged oral promise to bequeath personal property, did not even mention the statute of frauds problem but turned on absence of "clear, satisfactory and convincing evidence". See CORBIN, § 472.

"denial in the pleadings" and "maker as a witness" were made applicable to the sales of goods provision.[21] There is no minimum value in the Iowa sales of goods section. In one case during this period, surprisingly, the Court was required to reverse a trial court which had supported in favor of the buyer a replevin action for a used refrigerator when there was apparently only an oral agreement with no writing, payment, or delivery of the merchandise.[22]

Not every contract involving a sale of personal property need be in writing to be enforceable. For example, the Court decided that a contract for remodeling and repair, including a specially built motor operated dimmer procured by the seller from another and to be installed in the quarters of the defendant (a lodge), was a contract for "work, labor, and materials" so that there need be no writing even though there apparently was neither payment nor delivery as to the dimmer, and allowed recovery for it.[23] The Court was apparently applying that portion of the Uniform Sales Act, in force in Iowa, which was intended to resolve the controversies in former cases where work and labor was to be applied to chattels as to whether the contract should be treated as a sale of goods.[24] The Uniform Sales Act provisions are:

> "The provisions of this section apply to every such contract or sale, notwithstanding that the goods may be intended to be delivered at some future time or may not at the time of such contract or sale be actually made, procured, or provided, or fit or ready for delivery, or some act may be requisite for the making or completing thereof, or rendering the same fit for delivery; but if the goods are to be manufactured by the seller especially for the buyer and are not suitable for sale to others in the ordinary course of the seller's business, the provisions of this section shall not apply."[25]

The Court apparently overlooked the fact that the dimmer was not manufactured by this seller but was procured from another and that the Sales Act provisions exclude only those cases where the article is manufactured by the *seller* especially for the buyer.[26]

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[21] IOWA CODE § 554.5 (1954); Carmichael v. Stone, 243 Iowa 904, 54 N.W.2d 454 (1952); Thomas v. Peoples' Gas & Electric Co., 220 Iowa 850, 263 N.W. 499 (1935); Tipton v. Miller, 79 F.2d 298 (8th Cir. 1935); IOWA ANNOTATIONS § 199-I.

[22] Lockie v. McKee, 221 Iowa 95, 264 N.W. 918 (1936).

[23] Schroeder v. Cedar Rapids Lodge, 242 Iowa 1297, 49 N.W.2d 880 (1951). There was apparently payment for every other item except the dimmer; the action essentially was only for the dimmer.

[24] CORBIN, §§ 476, 477; WILLISTON, §§ 508, 509, 509A; IOWA ANNOTATIONS § 199-III (specially referring to the former, different, provision in Iowa).

[25] IOWA CODE § 554.4(2) (1954).

[26] See collection of cases in Annotation in 25 A.L.R.2d 672 "Construction and Effect of Exception Making the Statute of Frauds Provisions Inapplicable Where Goods Are Manufactured by Seller for Buyer", particularly IIc, at page 693, on articles procured by seller from manufacturer.

Attention to these factors might have produced a different result.[27]

The Statute of Frauds requirements of the Sales Act may be satisfied by a signed memorandum, acceptance and receipt of a portion of the goods, something in earnest, or part payment.[28] The memorandum must be more than just an acknowledgment that an agreement was made.[29] However, even if there is a sufficient reference to terms it will not be a sufficient memorandum if it denies such an agreement was made.[30] The part payment method is not complied with by mere reliance, such as resigning a position and making arrangements to move in reliance upon a promise to sell a business,[31] or by the sending of a check which was returned.[32] In two cases involving oral promises, given as a part of the transaction of sale, to repurchase corporate securities, where there was apparently acceptance and receipt of the securities and payment therefor, the Court concluded that the promise was enforceable if given by a promisor selling its own securities,[33] but

[27] Examination of briefs and arguments on appeal in the case in note 23, *supra*, does not disclose any specific emphasis on the wording of the Sales Act as to being manufactured by the *seller*. The Court, in its opinion, referred to the sentence in 37 C.J.S., Frauds, Statute of, § 141c: "A contract for work, labor, and materials is not a contract of sale within the statute of frauds." It did not quote the subsequent sentence in the same sub-section that: "Moreover, if the goods are not to be manufactured by the seller, but are to be procured by him from another, the agreement must be in writing to be enforceable."

The Court stated that the "contract must be construed as a whole. Plaintiff's suit is based on an oral contract to furnish all labor and materials for an electrical improvement job according to the plans, specifications, and directions furnished and given to plaintiff by defendant's designing engineer, of which contract the furnishing and installing the dimmer was but one part", 242 Iowa 1297, 1302, 49 N.W.2d 880, 882 (1951). Assuming there is one contract does not settle the question, for the unenforceability of one part may permeate the entire contract, or it may be divisible for purposes of the Statute of Frauds, thus requiring a writing as to a part, and not as to another. See CORBIN, §§ 313, 315; WILLISTON, § 532; RESTATEMENT, CONTRACTS § 221. If treated as one contract and not divisible, acceptance and receipt of a portion of the goods, or part payment, apparently present in this case, might remove the need for a writing even if not treated as "work, labor, and materials", but as a "sale of goods". See text and notes, at note 28 *et seq.*, *infra*.

[28] IOWA CODE § 554.4(1) (1954).

[29] Patterson v. Beard, 227 Iowa 401, 288 N.W. 414, 125 A.L.R. 393 (1939) (also a reference to rule that to connect several writings there must be at least some internal reference). See IOWA ANNOTATIONS §§ 207, 208; CORBIN, §§ 498 *et seq.*; WILLISTON, §§ 567 *et seq.*

[30] Carmichael v. Stone, 243 Iowa 904, 54 N.W.2d 454 (1952). This is stated in the concurring opinion, in which six judges concurred; only five judges joined in the principal opinion. See IOWA ANNOTATIONS § 209; CORBIN, § 511; WILLISTON, § 579.

[31] Patterson v. Beard, 227 Iowa 401, 288 N. W. 414, 125 A.L.R. 393 (1939).

[32] Carmichael v. Stone, 243 Iowa 904, 54 N.W.2d 454 (1952) (in concurring opinion of six judges). See IOWA ANNOTATIONS § 205; CORBIN, § 495; WILLISTON, § 565.

[33] Calvert v. Mason City Loan & Investment Co., 219 Iowa 963, 259 N.W. 452 (1935). The oral promises to repurchase, in *Smith v. Middle States Utilities Co.*, 228 Iowa 686, 293 N.W. 59 (1940); *Wilson v. Iowa Southern Utilities Co.*, 228 Iowa 724, 293 N.W. 77 (1940), and *Gregg v. Middle States Utilities Co.*, 228 Iowa 933, 293 N.W. 66 (1940), would be

that it was not enforceable if given by a promisor selling securities as an agent.[34] This distinction apparently proceeds on some idea that the promise by the non-owner is entirely separate from the rest of the agreement. Such a distinction has been questioned; the same payment that supports the contract of purchase should support the option to resell.[35]

The first inquiry in connection with contracts relating to land would be as to which are within the purview of the phrase "[t]hose for the creation or transfer of any interest in lands except leases for a term not exceeding one year". There has not been much attention during this period to this aspect of the problem but the Court did reiterate that an oral one year lease is valid even though it is to begin in the future,[36] and held that a partnership agreement to acquire, hold and operate real estate,[37] and an agreement to settle and compromise a condemnation suit award[38] were not within this section. In *Miller v. Lawlor*,[39] referred to in the first paragraph, enforcing the promise not to obstruct a view, the Court considered this was an interest in land, a restrictive or negative easement.

As indicated earlier in this article, the Iowa statutory provisions for dispensing with the need for a writing in land cases are very broad and appear to go beyond the commonly accepted requirements in other states under the doctrine of "part perform-

within this rule although the Statute of Frauds was not mentioned and the decisions went off on other points.

[34] Thomas v. Peoples' Gas & Electric Co., 220 Iowa 850, 263 N.W. 499 (1935). Principal reliance in this case was placed on the announcement of the distinction in the first case in note 33, *supra*. In the *Calvert* case reliance was placed upon a rather dogmatic assertion of the distinction, in 27 C.J., Frauds, Statute of, § 253, p. 237. It is interesting to note that there is a shift in manner of expression in 37 C.J.S., Frauds, Statute of, § 141b, where it now states: "The decisions are conflicting as to the enforceability of the parol promise to repurchase where it is made by the seller's agent in his individual capacity."

[35] CORBIN, § 497. See IOWA ANNOTATIONS § 206; WILLISTON, § 540; Annotations, "Statute of Frauds as Applied to Agreements of Repurchase or Repayment on Sale of Corporate Stock or Other Personal Property", 121 A.L.R. 312.

[36] Baie v. Nordstrom, 238 Iowa 866, 29 N.W.2d 211 (1947); see IOWA ANNOTATIONS §§ 195-III-E, 198-II-A; CORBIN, § 402.

[37] Nelson v. Barnick, 245 Iowa 982, 63 N.W.2d 911 (1954). See IOWA ANNOTATIONS § 195-III-A; CORBIN, § 411; WILLISTON, § 489.

[38] Cunningham v. Iowa-Illinois Gas & Electric Co., 243 Iowa 1377, 55 N.W.2d 552 (1952). See IOWA ANNOTATIONS § 195-III-G; CORBIN, § 415; WILLISTON, § 493.

[39] 245 Iowa 1144, 66 N.W.2d 267 (1954), commented on in 24 U. OF CIN. L. REV. 394 (1955). See IOWA ANNOTATIONS § 195-II-A; CORBIN, §§ 404-406; WILLISTON, §§ 491, 493A. In *Thodos v. Shirk*, 79 N.W.2d 733 (Iowa 1956), among other things the Court concluded, for purposes of enforcing an equitable servitude, a restriction against commercial use of property, that acceptance by the grantee of a deed, containing the restriction, signed by the grantor, bound the grantee as a promisor as if he had signed the deed himself, thus satisfying the requirements of the Statute of Frauds as to signature. See 2 AMERICAN LAW OF PROPERTY §§ 9.9, 9.25 (1952).

ance" for enforcing in equity an oral promise.[40] The Iowa statutory provision is:

> "The provisions of subsection 3 of section 622.32 do not apply where the purchase money, or any part thereof, has been received by the vendor, or when the vendee, with the actual or implied consent of the vendor, has taken and held possession of the premises under and by virtue of the contract, or when there is any other circumstance which, by the law heretofore in force, would have taken the case out of the statute of frauds."[41]

In spite of the apparently generous treatment of such a section in favor of enforcing oral promises in land cases, there are formidable hurdles. The recent case of *Vrba v. Mason City Production Credit Association*,[42] referred to in the first paragraph, illustrates these difficulties. That case was an action for specific performance of an alleged oral promise by the defendant, which then held a sheriff's certificate obtained by it after foreclosure of its second mortgage upon the property, to convey the property to the plaintiff, the minor son of the mortgagor, or someone designated by him, upon payment by the next board meeting of the amount the defendant had invested in the property. This promise was allegedly made about ten days before the redemption period expired. There was allegedly reliance by the Vrbas on this alleged promise, in refraining from redeeming the property and from selling it to others; there also was some evidence that arrangements to make the payments had been made by the next board meeting. The

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[40] IOWA ANNOTATIONS, § 197; Wright, *The Iowa 'Purchase Money' Doctrine*, 19 IOWA L. REV. 54 (1933); CORBIN, §§ 420 *et seq.*; WILLISTON, § 494; Kepner, *Part Performance in Sale of Lands*, 35 MINN. L. REV. 1, 431 (1950, 1951); Annotation, 101 A.L.R. 923.

[41] IOWA CODE § 622.33 (1954). It has been held that where a transfer of the land has been made, the oral promise may be enforced, even at law, and even when a deed is delivered with the name of the grantee blank. Gilbert v. Plowman, 218 Iowa 1345, 256 N.W. 746 (1934). See IOWA ANNOTATIONS § 193-IV; CORBIN, § 419.

A similar idea may be expressed in *Luthy v. Seaburn*, 242 Iowa 184, 46 N.W.2d 44 (1951), which decided that a mutual will arrangement was not within the Statute, at least when fully performed by the death of the maker of one of the wills, and suggested it may not have been within the Statute when a will was executed. See Sparks, *Problems in the Formation of Contracts to Devise or Bequeath*, 40 CORNELL L. Q. 60, 73 (1954), suggesting doubt as to the latter part of the statement.

A promise to accept the result of a survey on boundary followed by possession and improvements was enforced in *Johnston v. McFerren*, 232 Iowa 305, 3 N.W.2d 136 (1942). Although there is reference to estoppel and "possession and improvement" in the opinion, apparently in Iowa either possession or improvement is necessary and sufficient in the cases of oral agreements as to disputed boundary lines: IOWA ANNOTATIONS § 196; see CORBIN, § 412; WILLISTON, § 490. A related proposition to this is the one that a boundary line recognized for a period of ten years is established by mutual acquiescence. There have been numerous cases during this period involving this proposition. See, for examples: Trimpl v. Meyer, 246 Iowa 1245, 71 N.W.2d 437 (1955); Concannon v. Blackman, 232 Iowa 722, 6 N.W.2d 116 (1942); and IOWA CODE § 650.6 (1954).

[42] 80 N.W.2d 495 (1957).

trial court was affirmed in its holding that there was insufficient evidence of the promise and also that evidence of the claimed agreement was within the Statute of Frauds.

One proposition announced in the *Vrba* case as support for its conclusion was the oft repeated statement that, at least in equity, proof of the oral contract to convey realty must be "clear, satisfactory, and convincing," or some variant of the same idea, thus requiring more than a mere preponderance of evidence.[43]

In addition to the foregoing obstacle as to the weight of evidence of the oral promise, there is an illustration in the case of further requirements as to the character of the acts offered as a reason for doing away with the need for a writing in land cases. The Court stated that "not redeeming" and "not selling" did not come within the statutory definition of "purchase money" and that, in any event, they were not "exclusively referable" to the claimed contract. Support was placed in the opinion for this restricted definition of "purchase money" on *Fairall v. Arnold*[44] which had held that forbearance to file a claim against an estate and thus discharge an indebtedness was not "purchase money" unless there was written evidence or other tangible acts or circumstances, and on *In re Estate of Hayer*,[45] which followed the *Fairall* case, as to an extension of time to pay a bequest and forgiveness of interest on the bequest. Solely from the point of view of definition of the phrases "purchase money" and "received by the vendor", and apart from the fact that mere payment is seldom considered to be sufficient reason in other states for enforcement of oral promises in land cases, it is difficult to accept the idea that "not doing something" is not also "purchase money" in view of the fact that, both before and after *Fairall v. Arnold,* the Iowa Court

[43] Nelson v. Nelson, 245 Iowa 1225, 65 N.W.2d 154 (1954); Bell v. Piersbocher, 245 Iowa 436, 62 N.W.2d 784 (1954); Vanston v. Rupe, 244 Iowa 609, 57 N.W.2d 546 (1953); Hatcher v. Sawyer, 243 Iowa 858, 52 N.W.2d 490 (1952); Peddicord v. Peddicord, 242 Iowa 555, 47 N.W.2d 264 (1951); Williams v. Chapman, 242 Iowa 294, 46 N.W.2d 56 (1951); Carlson v. Carlson, 233 Iowa 1133, 11 N.W.2d 383 (1943); Gerdts v. Mulford, 230 Iowa 647, 298 N.W. 873 (1941) (for oral grant of easement); Swan v. Johnson, 229 Iowa 1144, 296 N.W. 214 (1941); Moore v. Olson, 229 Iowa 182, 294 N.W. 305 (1940); Williams v. Harrison, 228 Iowa 715, 293 N.W. 41 (1940) (extensive citation of cases); Blezek v. Blezek, 226 Iowa 237, 284 N.W. 180 (1939); Ford v. Young, 225 Iowa 956, 282 N.W. 324 (1936); Long v. Kline, 222 Iowa 81, 268 N.W. 150 (1936); Baker v. Fowler, 215 Iowa 1157, 247 N.W. 676 (1933). See IOWA ANNOTATIONS § 197-VIII; CORBIN, § 442. See the suggestion in *Carlson v. Bankers Trust Co.*, 242 Iowa 1214, 50 N.W.2d 1 (1951) (involving an alleged gift of personal property), and cases cited, that such a rule prevails only in equity.

[44] 226 Iowa 977, 285 N.W. 664 (1939), 25 IOWA L. REV. 172 (1939). *Northwestern Mut. Life Ins. Co. v. Steckel,* 216 Iowa 1189, 250 N.W. 416 (1933), holding that an oral agreement to convey property in satisfaction of an antecedent indebtedness need not be in writing because prior indebtedness was payment, was overruled, and prior Iowa cases were discussed and reconciled. See IOWA ANNOTATIONS §§ 197-IV-C, 205; CORBIN, § 496.

[45] 234 Iowa 299, 12 N.W.2d 520 (1944).

in other ways has expanded the idea of "purchase money" beyond money to include other forms of consideration such as services.[46]

Furthermore, concentration on the definition of "purchase money" overlooks the fact that the inaction was apparently bargained for in the *Fairall* case whereas it was apparently not bargained for in the *Vrba* case, and also overlooks the latter part of the statutory exception, "when there is any other circumstance which, by the law heretofore in force, would have taken the case out of the statute of frauds," relied on in *Miller v. Lawlor*,[47] the 1954 Iowa case referred to in the first paragraph, emphasizing reliance elements, which was not cited in the *Vrba* case although there seems to be a similarity between the two cases in terms of features of reliance present, in the *Vrba* case permitting the redemption period to expire, in the *Miller* case buying a house. The Court, in the *Miller* opinion, stated significantly:

> "There was no 'purchase money' to be received by defendant nor any taking of 'possession of premises' by plaintiffs. . . . The acts described in Code section 622.33 as creating the exception, i.e., payment of 'purchase money' and taking 'possession of the premises', are usually spoken of as 'part performance'; but speaking literally and technically there was here no 'part performance.' . . . We conclude a determination here is unnecessary as to the relative applicability of the doctrine of part performance of contract or the doctrine of estoppel. They need not be distinguished. ' "Promissory estoppel" is now a recognized species of consideration (Restatement of Contracts, § 90).'[48] Porter v. Commissioner of Internal Revenue, 2 Cir., 60 F. 2d 673, 675. And in Fairall v. Arnold, supra (226 Iowa at page 986) this court quoted with apparent approval from the commentator in 101 A.L.R. 935: 'The true basis of the doctrine of part performance, according to the overwhelming weight of authority, lies in the principles of equitable estoppel and fraud.' The statement is undoubtedly sound. See also annotation 75 A.L.R. 650. The trial court, recognizing the close relationship between part

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[46] Vanston v. Rupe, 244 Iowa 609, 57 N.W.2d 546 (1953) (services); Hatcher v. Sawyer, 243 Iowa 858, 52 N.W.2d 490 (1952) (oral promise of husband to make will in favor of certain plaintiffs removed from Statute of Frauds by deed by wife as promised; note this case is an example of action by third party beneficiary, as discussed in Hudson, *Contracts in Iowa Revisited—Third Party Beneficiaries and Assignments*, 6 DRAKE L. REV. 3 (1956), although there is no discussion of this aspect in the case); Peddicord v. Peddicord, 242 Iowa 555, 47 N.W.2d 264 (1951) (services or possession sufficient); Williams v. Chapman, 242 Iowa 294, 46 N.W.2d 56 (1951) (stated "purchase money" is consideration received in any form, as moving from another location, making improvements, and making a home for plaintiff); York v. York, 238 Iowa 1174, 29 N.W.2d 408 (1947) (possession of land and surrender of personal property); IOWA ANNOTATIONS § 197-IV-B, D.

[47] 245 Iowa 1144, 66 N.W.2d 267 (1954).

[48] The use of the doctrine of "promissory estoppel" (detrimental reliance) as an alternative to the requirement of consideration for the enforcement of promises is discussed with reference to *Miller v. Lawlor* in Hudson, *Doctrine of Consideration in Iowa Revisited—The Bargain Element*, 5 DRAKE L. REV. 67, 76 (1956). Analysis of the various elements of "promissory estoppel" with reference to Iowa cases is attempted there.

> performance (as a form of consideration) and promissory estoppel, pointed out that Code section 622.33 not only names specific acts of part performance as an exception but also specifies 'any other circumstance which, by the law heretofore in force, would have taken the case out of the statute of frauds.' We deem that language sufficient to include what is now called 'promissory estoppel'."[49]

Attention to the doctrine of "promissory estoppel", which is, as announced in Restatement of Contracts, Section 90, and accepted in *Miller v. Lawlor,* that,

> "A promise which the promisor should reasonably expect to induce action or forbearance of a definite and substantial character on the part of the promisee and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise."

might remove the necessity of concern for a definition of "purchase money" and whether it has been received by the vendor, particularly in a case as the *Vrba* case where the inaction was apparently not bargained for.[50] Attention then could be paid to the aspects of the "promissory estoppel" doctrine such as whether there was reliance of a definite and substantial character, or whether there was, as characterized in *Miller v. Lawlor,* "irreparable injury".[51]

Further, as to the character of what the vendee did and in further support of its decision not to enforce the oral promise, the Court in the *Vrba* case referred to a commonly stated rule that the acts must be "exclusively referable" to the contract, or, as sometimes phrased, the acts themselves must not be explainable on any other rational hypothesis than the existence of a contract.[52]

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[49] 245 Iowa 1144, 1151, 66 N.W.2d 267, 272 (1954).

[50] There has been some disagreement as to whether the doctrine of "promissory estoppel" (detrimental reliance) should apply to cases which start out as bargain situations, such as in the *Vrba* case of an offer to sell, but fail as it did in the *Vrba* case because of revocation. See discussion of this point in Hudson, *Doctrine of Consideration in Iowa Revisited—The Bargain Element,* 5 DRAKE L. REV. 67, 80 (1956).

[51] The estoppel element is emphasized in other cases, such as one involving an oral agreement for easement of drainage followed by time and money expended: Stouder v. Dashner, 242 Iowa 1340, 49 N.W.2d 859 (1951); and those sustaining oral gifts of land where followed by possession and improvements: Lynch v. Lynch, 239 Iowa 1245, 34 N.W.2d 485 (1948) (see note 53, *infra*); *cf.* Long v. Kline, 222 Iowa 81, 268 N.W. 150 (1936) (insufficient evidence of a completed gift); Rapp v. Losee, 215 Iowa 356, 245 N.W. 317 (1932) (executed gift where continued possession plus improvements, deed to grantee held by grantor, and abstract of title delivered to grantee); and Lennert v. Cross, 215 Iowa 551, 241 N.W. 787 (1932) (homestead, acquired before indebtedness, where oral gift, followed by possession and improvements and legal title devised by will of father-grantor). See CORBIN, § 441. Although the statute refers to contracts for the creation or transfer of interest in lands, the Iowa Court has apparently considered that section applies to attempts to make oral gifts of land which, if requirements are met, are treated as valid conveyances, executed gifts: IOWA ANNOTATIONS §§ 90-II-A, 197-I, VII; 178-I.

[52] Vanston v. Rupe, 244 Iowa 609, 57 N.W.2d 546 (1953); Peddicord v. Peddicord, 242 Iowa 555, 47 N.W.2d 264 (1951) (this does not mean

Application of such a rule where there is arguably reliance present seems to involve a further implicit recession from the position taken in *Miller v. Lawlor*, where the Court did not mention any "exclusively referable" test, but stated that sole reliance was not needed, that "it is sufficient that without it plaintiffs would not have acted".[53] Although the action involved in *Miller v. Lawlor* was affirmative, buying a house, whereas the acts in *Vrba* were negative, as not redeeming, both support possible arguments of reliance, and it is believed that the acts in *Miller v. Lawlor* could not have been said any more to be "exclusively referable" to the claimed contract than the acts in *Vrba*. Yet in the *Miller* case the Court permitted oral evidence of the promise and the reliance, including explanations as to reasons for buying the house, but apparently would not do so in the *Vrba* case.

Arguments have raged for many years, and probably will continue, as to the mischief prevented or caused by the Statute of Frauds. Regardless of the explanation for the decision in the *Vrba* case by other reasons, such as insufficiency of evidence of the promise, the reannouncement of ideas of attempting to fit reliance elements into a mold of "purchase money" and "exclusively referable" concepts, apparently abandoned in the *Miller* case,[54] is a discouraging sign to those who believe the Statute does more harm than good.

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complete absence of conflict); Carlson v. Carlson, 233 Iowa 1133, 11 N.W.2d 383 (1943); In re Estate of Hayer, 234 Iowa 299, 12 N.W.2d 520 (1944) (applies to action at law as well as in equity); Fairall v. Arnold, 226 Iowa 977, 285 N.W. 664 (1939); IOWA ANNOTATIONS § 197-VIII; CORBIN, § 430.

[53] 245 Iowa 1144, 1155, 66 N.W.2d 267, 274 (1954).

In Lynch v. Lynch, 239 Iowa 1245, 1253, 34 N.W.2d 485, 489 (1948), referred to in note 51, *supra*, involving argument of executed oral gift of land, the Court used the following test: "Nor is it necessary that there be any actual change of possession where the donee is in possession at the time of the gift, the change in the character of possession being sufficient. . . Such gifts may be established provided the facts and circumstances fairly tend to show the alleged gift. Lembke v. Lembke, supra [194 Iowa 808, 187 N.W. 863 (1922)]. The degree of proof need not be to an absolute certainty but only a reasonable certainty." This does not read like an "exclusively referable" test.

It should be observed that, in other states without a statute such as in Iowa, the "part performance" doctrine is based upon underlying concepts, in varying proportions, of substitute evidence of a contract and the injustice or "equities" involved: CORBIN, §§ 421 *et seq.*; WILLISTON, § 494.

Of course the Court might conclude, in the *Vrba* case, as in *Swift v. Petersen*, 240 Iowa 715, 37 N.W.2d 258 (1949), even if the "promissory estoppel" test were used, that the inaction did not follow in reliance on, or because of, the promise.

[54] The writer of the recent case note on *Miller v. Lawlor*, in 24 U. OF CIN. L. REV. 394 (1955), thought that the need for unequivocal reference would eventually be eliminated in Iowa.

MICROFILMING OF BUSINESS RECORDS

DONALD C. BYERS*

For many businesses of today the space and cost problems presented by the necessity for preservation of their records could be reduced drastically by microfilming these records and destroying the originals.[1] But what legal problems arise if microfilming is undertaken? The records may be needed in dealings with tax and other governmental agencies, and in litigation with customers, creditors, debtors, and others. The principal legal problem is, if a business be required to produce evidence of a transaction, to what extent would microphotographic reproductions be admissible in evidence as proof, either in court or before an administrative tribunal, where the original records have intentionally been destroyed. This problem is intensified because many businesses have multi-state operations, and must be concerned with possible variance in rules of admissibility from state to state.[2]

Answering the basic inquiry calls for a brief analysis of the common law approach to the problem, and its statutory modifications, which in many states culminated in express statutory authority for admission of photographic copies of business records. Jurisdictions within the United States can today be divided into three major classifications: those having no statutory provision on the subject; those having adopted the Uniform Photographic Copies of Business and Public Records as Evidence Act; and those having statutes which differ from the Uniform Act. Consideration will be given to the varying admissibility requirements in each classification. Ordinarily, however, no reference will be made to statutes pertaining to limited classes of activities, such as banks, or public records.[3]

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[1] Cost of microfilming may be much less than the value of the filing cabinets released. This and other examples of space and cost savings have been described in various articles including: Note, *Photographic Copies of Business and Public Records as Evidence*, 34 IOWA L. REV. 83, 85 (1948); Note, *Evidence—Status of Microfilmed Business Records*, 48 MICH. L. REV. 489 (1950). In some systems originals of sales tickets are not destroyed after microfilming, but are returned to the customer.

Unless otherwise indicated by context, the term "microfilming" as used herein should be interpreted to cover any process of reproduction of original records by photographic techniques.

[2] Discussions of the problem may be found in the two law review notes cited in the preceding footnote, and: Noll, *The Present Legal Status of Microphotographed Business Records*, 86 J. ACCOUNTANCY 28 (1948); Annotation, 142 A.L.R. 1270 (1943). See also the latest pocket part to 4 WIGMORE, EVIDENCE § 1223 (3d ed. 1940).

[3] For an example of such a statute, see IOWA CODE § 528A.3 (1954) (bank records may be photostated and are admissible).