

The court in a very well written opinion delivered by Mr. Justice Pitney decided that bankruptcy petitions, whether voluntary or involuntary, resulting in an adjudication of bankruptcy are the equivalent of an anticipatory breach of an executory contract so as to entitle the promisee to prove his claim in the bankruptcy proceedings.

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**CONTRACT—BUILDING CONTRACT—LANGUAGE TO BE CONSTRUED IN ITS PLAIN ORDINARY MEANING.**

In the case of *Wright-Dalton-Bell-Anchor Store Co. v. Barton*, 232 S. W. 1088, (Mo.) involving the construction of a lease a decision is handed down by the Springfield Court of Appeals contrary to the view taken by the St. Louis Court of Appeals on the same point. In that case a Mrs. Knight leased a lot in Poplar Bluff, Missouri, to plaintiff for sixteen years, nine months and eight days at \$40.00 per month plus general and special taxes. Later defendant purchased the lot from Mrs. Knight thus becoming responsible under the lease contract as she had been. Plaintiff erected a building on said leased lot and occupied the same under the contract until the expiration of the lease. It was for the value of this building, as limited by the lease contract for which this suit was brought.

The provision of the lease upon which plaintiff relied was to the effect that any buildings or improvements placed on said leased premises were to remain its property, and at expiration of lease *may* be sold to person owning lot (present defendant) if parties could agree upon the amount. *If not*, then the plaintiff is to have the right (1) to remove property from premises (2) to sell to some other person or (3) to release anew upon agreeable terms. Plaintiff construed this to mean that if he at the expiration of the lease elected to sell to defendant, defendant would be compelled to buy the improvements.

In the case of *Knight v. Orchard*, 92 Mo. App. 466, in which a provision similar to above was contained in a lease the St. Louis Court of Appeals used language which would seem to support plaintiff's contention in the case at bar. While it did not directly hold that defendant is bound to buy regardless of his wishes some such principle must have been in mind from the conclusion arrived at in the case. This decision did not, however, affect the decision in the case at bar for altho the plaintiff recovered in the court below, the Springfield Court of Appeals reversed the decision, holding that there was no absolute obligation on the lessor's successor to take and pay for the buildings at the lessee's election.

In the construction of a contract all of its provisions must be considered together and not mere fragmentary parts. The true intention of a contract is expressed by every term or provision so construed as to be consistent with every other part. 2 Elliott on Contracts, Secs. 1514 and 1510. It is ordinarily presumed that the intention of the parties is expressed by the words of the whole contract and the court cannot import words into a contract which would make it materially different in a vital particular from what it is. In *Haysler*

v. Owen, 60 Mo. 270, the general proposition is found that "Courts have no rights to make contracts for the parties, and they cannot compel a man to pay for a building for which he did not contract and which he does not want, and which he would rather have removed from his premises." In *Roy v. Boteler*, 40 Mo. App. 213, we find the statement that the language of a building contract is to be taken in its plain ordinary meaning, and such an interpretation given as fairly appears to have been intended. Considering the language in this lease in its plain ordinary meaning it cannot be seen how the plaintiff hoped to recover upon the particular part of the lease set forth by him. The decision of the Springfield Court of Appeals seems more in keeping with sound legal principles.

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#### CORPORATIONS—LACHES, AS APPLIED TO.

In the recent case of *Virginia C. Mining, Milling and Smelting Co. v. Clayton*, 233 S. W. 215 (Mo.) it was held that an officer of the mining company could invoke the doctrine of laches against the corporation which was seeking to enjoin him from disposing of certain stock held by him as security for a loan he had made to the company, even tho the loan were validly negotiated by officers of the company.

The plaintiff was a mining company with mines in Mexico and incorporated under the laws of that country; but had its general offices in St. Louis. The company, soon after incorporation being in need of money, pledged six of its ten shares of capital stock with the defendant Clayton, who was an officer of the company, as security for a loan from him. The loan was not paid at maturity and the defendant took possession of the six shares in accordance with the agreement. Up to the time Clayton took control the enterprise had not been a paying one; but he soon had it on a firm basis and was shortly able to declare a dividend. The plaintiff corporation, acting thru its board of directors, then brought this action to recover the capital stock held by the defendant.

It was admitted that the loan had been negotiated by one Chews, president facts, i. e., (1) As to the ratification of the pledge, and (2) as to the conduct of the plaintiff, without authority from the board of directors and that the board had never ratified his action, altho the defendant was permitted to act and spend money in the interest of the company as tho he were the rightful owner of the six shares. It was also admitted that under the Mexican law it was necessary to comply with certain formalities and procedures in order to pass a valid title to the stock and that these procedures had not been followed.

The court held that the doctrine of laches was dependent upon two lines of facts, i. e. (1) As to the ratification of the pledge, and (2) as to the conduct of the plaintiff after the defendant obtained the shares. The court points out that there was sufficient evidence to justify the finding that the directors had impliedly ratified the pledge, and as to number two; the company was guilty of such laches in its relations with the defendant that the latter could properly invoke the doctrine of laches.