THE ADMISSION OF PAROL EVIDENCE
TO AFFECT WRITINGS.—THE RULE AS APPLIED IN ILLINOIS.

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THESIS.
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The general rule concerning parol evidence and its relation to writings is that such evidence is not admissible for the purpose of varying the terms of a written instrument, or as expressed by the courts "for the purpose of varying, adding to or taking from" the terms of any written contract. This being entirely a practical question there are of course many rulings in the reports, and considering the extent of the subject, and the method of our court in assigning cases one is naturally surprised at the paucity of conflicting opinions. In fact one finds, from Breese throughout one hundred and seventy volumes of reported cases, but few opinions apparently irreconcilable to the principle laid down in the earlier decisions and so far as I could find, but one instance when it has been necessary expressly to overrule a former decision.

In an early case decided in 1842 the court lays down the general rule that, "where a contract is reduced to writing the writing affords the only evidence of the terms and conditions of the contract. All antecedent and contemporaneous parol agreements are merged in the written contract. The law will not allow that an agreement will rest partly in writing and partly in parol; it is equally inadmissible to add to, take from, or specifically change the terms of a written agreement by parol. Matter collateral to a written contract may be proved by parol but it must not change its terms or increase or diminish the liability of the parties."

Lane v. Sharpe 3 Scam. 566.

The following cases may be cited in support of this statement: Abrams v. Pomeroy 13 Ill. 133; Cook v. Whitney 16 Ill. 480; Stookey v. Hughes 18 Ill. 55; Harris v. Galbraith 43 Ill. 309; Miller v. Wells 46 Ill. 46; Ennor v. Thompson 46 Ill. 297; Hutton v. Arnett 51 Ill. 198; Ball v. Benjamin 56 Ill. 105; Lighthall v. Colwell 56 Ill. 108; Gibbons v. Bressler 61 Ill. 110; Ins. Co. v. Morrison 62 Ill. 242; McCormick v. Huse 66 Ill. 315; Bank v. Whitman 66 Ill. 331; Kirkham v. Barton 67 Ill. 599.

In the case of Ennor v. Mohler the rule is restated and though without material variations from the real import of the case of Lane v. Sharpe, still in such a way as to let in parol to explain ambiguities. McAllister J. says: "It is a general rule of law that where parties have deliberately put their engagement in writing in such terms as import a legal obligation without any uncertainty as to the object or the extent of such engagement,
it is conclusively presumed that the whole engagement of the parties and the extent and manner of the understanding was reduced to writing."

69 Ill. 221.

Hence if the writing import a legal obligation and is certain parol is not admissible to show it has a larger or smaller extention.

Ins. Co. v. Webster 69 Ill. 392; Hollida & Ball v. Hunt 70 Ill. 107; Gautzert v. Hoze 73 Ill. 30; Mann v. Smyser 76 Ill. 365; Cease v. Cockle 76 Ill. 484; Conwell v. R.R. Co. 81 Ill. 232; R.R. Co. v. Parker 84 Ill. 613; Weaver v. Fries 85 Ill. 356; Lucas v. Beebe 88 Ill. 427; Wood v. Surrell 89 Ill. 107; Andrews v. Mann 92 Ill. 40; Stetman v. Hamlin 97 Ill. 312; Kershaw v. Kershaw 102 Ill. 307.

In Borsan v. Ford is added the writing "should be given effect according to the plain and obvious import of the language used unless to do so will lead to unreasonable or absurd consequences."

108 Ill. 16.


The following cases illustrate more especially the principle that where the contract has been reduced to writing and is clear and unambiguous, any parol agreement or understanding had either previous to or contemporaneous with the contract in writing, is not admissible to vary in any way the writing. The idea of the merger of such agreements is insisted upon and explained in Webster v. Enfield 5 Gilm. 298; Fay v. Blackstone 31 Ill. 533; Smith v. Price 39 Ill. 28; Harris v. Galbraith 43 Ill. 309; Miller v. Wells 46 Ill. 46; Wood v. Price 46 Ill. 439; Packard v. Vanschoeick 58 Ill. 79; Gibbon v. Fressler 61 Ill. 110; McCormick v. hose 66 Ill. 315; Ins. Co. v. Webster 69 Ill. 392; Weaver v. Fries 85 Ill. 356; Bristow v. Catlett 92 Ill. 17; In Brant v. Gallup the court apparently modified the statement with regard to contemoran-
eous agreements, saying that, "a verbal agreement made at the
time, and consistent with the writing is admissible", but not
so if any way inconsistent.

Ill Ill. 487; Mumford v. Tolman 157 Ill. 258;
Graham v. Eisner 28 Ill. App. 269; May v. May 36 App. 77;
Whiskey Co. v. Distilling Co. 45 App. 432; Cooney v. Murray
45 App. 463.

Perhaps a better way to obtain a clear understanding of the rule is to observe by way of illustration some
of the groups of facts to which it has been applied and thus,
though we know a writing can not be "specifically changed" by
parol, to learn what does and what does not, in the eyes of the
court, constitute a "specific" change.

In the sale of a mill house, wheel, iron bolts,
etc. "attached to said house" it was held that parol evidence
was incompetent to show the writing meant to embrace bolting
cloths removed before the sale.

O'Perr v. Strong 13 Ill. 688.

It is not admissible to show by parol what fixtures on the estate at the time of its conveyance passed by the
deed. The deed must settle that.

McLaughlin v. Johnson 46 Ill. 163.

And so for the purpose of showing that other
property not answering the written description in a mortgage was
intended to be included by the mortgage.

Hutton v. Arnett 51 Ill. 198.

Where at the time of a sale of book accounts a
written contract was executed specifying the terms of the assign-
ment and the instrument contained no warranty that such accounts
were collectible, parol evidence will not be heard to aid to the
terms of the writing by proving there was such a warranty.

Robinson v. McNeil 51 Ill. 225.

Where parties covenant personally to pay rent and
execute the obligation in their individual names, evidence den-
ors the writing is inadmissible to show that they intended to
bind an incorporated lodge, though in the body of the obligation
they are described as trustees for such lodge.

Stobie v. Dills 62 Ill. 432.

A party agreeing to release the right of way for
a railroad over any of his land in a county can not show that it
was expected the road would be located by a different route, from
the one taken, over other lands of the party.

Conwell v. R.R. Co. 81 Ill. 232.

The provisions of a trust deed for a release of
part of the premises upon certain payments can not be varied by
parol evidence that the lots to be released were to be sold to bona fide purchasers.

Lane v. Allen 162 Ill. 426.
In a composition deed with creditors which is an absolute release a creditor can not show that a particular debt was not included.

A verbal agreement to furnish water during the term of a lease, where the contract is under seal, is not admissible.

Cooney v. Murray 45 App. 463.
Where the plaintiff undertook to prove that only a portion of the land described in the deed was intended to be conveyed it was held the description in the deed must prevail and parol was not admissible to vary it. If it was a case of mistake the party must resort to equity.

Wear v. Parish 26 Ill. 240.
Where an award has been made by arbitrators it can not be altered by parol.

Schmidt v. Glade 126 Ill. 485.
( Glade v. Schmidt 20 App. 157 Affirmed )
A bill of sale is the agreement of the parties and must speak for itself, so where the bill of sale provided for the sale of certain property "and all other moveable effects now in the pork house" it can not be contradicted by evidence to show that it was intended that fifty other barrels of pork then in the house should not be included.

McCloskey v. McCormick 37 Ill. 66.
A bill of sale of grain given by the warehouseman can not be varied by parol.

Lonergon v. Stewart 55 Ill. 44.
Parol evidence is not competent to prove, vary or explain the acknowledgements of deeds. The acknowledgement can not rest partly in writing and partly in parol; it must all appear on the certificate.

Enner v. Thompson 46 Ill. 214.
Nor can a defective certificate of acknowledgement be remedied by parol.

Lindley v. Smith 46 Ill. 523.
Facts admitted in the pleadings of a party can not be contradicted by parol.

The statute provides that all wills of land be in writing and in such cases extrinsic evidence is not admissible to alter the terms of the will. It can not be shown that the testator intended to convey land other than that named and that
the land was so named by mistake of the draughtsman.
Kurtz v. Hibner 55 Ill. 514.

Ballots properly preserved are the best evidence of election; they are better evidence than the count of the judges and clerks of election.
Kingery v. Berry 94 Ill. 515.
Catron v. Crow 164 Ill. 20.
But ballots not properly preserved, though admissible are not the best evidence.
Catron v. Crow Supra.

Parol is not competent to fix the time a written contract is to be performed.
Driver v. Ford 90 Ill. 595.
Defects or omission in an affidavit can not be supplied nor the affidavit contradicted by parol.
Hughes v. Corne 135 Ill. 519.
Esker v. Hefferman 159 Ill. 38.
Parol is not competent to show that a certificate of naturalization was improperly granted or obtained by false or perjured testimony. It is competent to show such paper was fraudulently issued, if issued by the clerk alone, and not by judgment of the court.
Behrensmeyer v. Kreitz 135 Ill. 591.

But where a certificate of naturalization recites the personas Patrick W. Dolon whose real name is Patrick Peter William Doron, he may prove by his own oath that it was issued to him and that he is the person naturalized thereby.
City of Beardstown v. City of Virginia 81 Ill. 541.

Evidence touching a parol contract is not admissible when the effect thereof would be to vary one in writing between the same parties. This case however differs but little from that of an ordinary contemporaneous agreement. The facts were that R executed a contract in writing with F to paint F's barn for $100, giving three coats and acknowledging the receipt of $70 the balance to be paid on completion of the job. F alleged a parol contract entered into at the same time by which F was to pay R $70 with which R was to buy paint etc. and place the same in F's barn and there to leave all paint etc. left over from painting F's barn. F took the writing as a receipt for the $70. R refused to deliver the paint and other articles at F's barn and in the subsequent suit of repudian brought by F he was not allowed to show the parol contract on the ground that it varied the written one.
Fowler v. Richardson 32 App. 252.
The statute of frauds provides that certain
contracts must be evidenced by a note or memorandum of the same, in writing and signed; when such contracts have been reduced to writing the general rule applies to them with equal force as to other writings.

But as the statute provides a special defense the court has held that the party seeking to benefit by its terms must insist upon it, and in an action on a contract within the statute of frauds the statute must be pleaded in order to be taken advantage of as a defense and unless pleaded, parol will be admitted to prove the contract.


Where there are two writings alleged to contain the contract if they do not connect themselves parol is not admissible to show that they constitute the contract.

Stookey v. Hughes 18 Ill. 55.

But where a writing is executed which refers to and makes the conditions of another instrument a part of the two they may be connected by parol.

Home Ins. Co. v. Favorite 46 Ill. 263.

A promissory note being a contract between the parties the rule applies to it as well as any other writings.

Moore v. Prussing 62 App. 496.

Kriz v. Rad 46 App. 418.

It is not competent to change the terms of a note so as to show the maker was not to pay absolutely but only on certain conditions.

Walters v. Smith 23 Ill. 283.

May v. May 36 App. 77.

Fay v. Blackstone 31 Ill. 538.

Walker v. Crawford 56 Ill. 444.

Nor can it be shown that the note though on its face was given for one purpose was in reality given for another.

Fay v. Blackstone (supra)

In an action on a promissory note the defendant pleaded a verbal agreement made with the payee, the plaintiff, at the time the note was made that the payee himself would pay it at maturity. The plea was held bad as its proof would vary the terms of the note.

Miller v. Wells 46 Ill. 46.

In an action on a promissory note payable twelve months after date parol evidence was held not admissible to show that a second surety signed it on condition that the payee would extend the time of payment and would bring no suit thereon within that period.
A contemporaneous parol agreement that a note is to be paid only from dividends realized from certain stock cannot be shown to vary the terms of the note.

Mumford v. Tolman 157 Ill. 258.

Murchie v. Peck Bros. & Co. 160 Ill. 175.

Parol is not admissible to show that interest was to be paid at the rate of $6%$ as against a note drawing interest at the rate of $10\%$, in an action to recover the difference between $6\%$ and $10\%$ after it has been paid.

Reiden v. Inman 6 App. 55.

The parol declaration of the parties at and before the execution of a writing occupy the same position as any other parol evidence. A plea seeking to vary the terms of a writing by the oral declarations of the parties made before or at the time of the execution of the writing, is bad.

Harlow v. Boswell 15 Ill. 56.

The parol declaration of a testator as to the contents of his will is not competent evidence.

Dickie v. Carter 42 Ill. 376.

When the parties have once embodied their agreement in writing they are bound by the terms as expressed and in the absence of any ambiguities or technical terms must look to the writing alone for the full meaning of such agreement. They cannot agree upon any definitions, arbitrary or otherwise, of the terms expressed in the writing nor can they show what they intended to embody in the writing. The instrument must answer that.

In the case of the B.& O.R.R.Co. v. I.C.R.R.Co., A had executed a lease to B of certain property in which the term "Lake front" was used and in a subsequent action it was contended that the term had no prescribed meaning and that "whatever the meaning usage had given to the term, the acts of the parties themselves should be looked to, in order to discover what was the meaning of the term and that the parties had construed for themselves the clause now in dispute."

The court by Baker J. said: "The words and terms used in the contract mean just what the parties mutually understood and intended them to mean when they executed such contract. It is not competent to modify or change them by proof of a subsequent parol understanding or agreement. This would exclude any theory that the parties by their conduct gave an authoritative interpretation to the clause now in dispute."

137 Ill. 9.

To the same purpose that the parties can not show
There are some terms and forms to which the law has attached a definite and well understood meaning, both as to the nature of the thing itself and as to its meaning when used in certain connections. A writing may on its face raise one of these implications of the law and in such case the implied nature and effect will govern. "No alteration of an implication of law arising upon a writing is permissible by parol evidence any more than to alter the other terms of the writing "for the implied meaning amounts to a term" in the writing."

When a check is drawn for a given number of dollars it is payable in coin or current money and parol evidence is not competent to show that by verbal agreement or custom or merchantile usage any other meaning was intended. This is so because the word "dollars" as used in an ordinary check has in law its definite meaning and that it is dollars in the lawful money of the United States; it can have no other significance when used in this way.

Letters on which one is to act come within the rule and can not be varied by parol. It is competent however to show the circumstances under which they were written, but this is for the purpose of construction only and perhaps true of all writings.

The positive statement of an official record can not be altered or contradicted by parol evidence. This includes the records of all courts, those of county commissioners those of a corporation and in fact any official record.
The record of a court of foreign jurisdiction is also included under the rule.

It is not competent to prove by parol who was the administrator of an estate, such fact being a matter of record.

The fact that a judgment was ordered at a previous term of court by a judge can not be shown by parol nor established from the judge's memory. Where the petition and judgment for the adoption of a child were never entered upon the records as required by law, parol evidence can not be received to prove their existence and to procure the entry of such judgment nunc pro tunc at a subsequent term.

It is not competent to show by parol that erasures and alterations in a Justice's docket were improperly made.

Questions in the record as to the time when it was made, on what authority, and whether true or not must be settled by the record and not by parol.

In a suit on a certificate of membership in a corporation, parol was held incompetent to show that a member was "in bad standing" at the time of his death. The order being a corporate body its attitude towards a member can be known only through its actions as such corporation and then must be shown by the record, minutes etc. (The constitution of the corporation provided for trial and expulsion of offending members.)

Where service is by summons and it is insufficient to confer jurisdiction, parol evidence will not be heard to aid it: but where the service is by publication, parol is admissible to prove due publication.

In an action on a judgment from a Justice's court it can not be shown by evidence dehors the record that the defendant in the original suit was never served with summons.

The date of a judgment is material and can not be altered by parol evidence.

A conveyance of land can not be established by
parol unless the deeds are lost or stolen.
Slate v. Eisenmeyer 94 Ill. 96.
Shreve v. Town of Cicero 129 Ill. 226.
Kirkpatrick v. Clark 132 Ill. 342.
Lavery v. Brooke 37 App. 51.

In an action to remove cloud on title, parol evidence by an attorney that his client was the owner of the land involved, is inadmissible if objected to, but if admitted without objection it will be sufficient in connection with a deed of trust and the trustee's deed to the client in due form, to make a prima facie case of ownership.
Glas v. Randolph 138 Ill. 268.
An express trust in lands can, by statutes, be created only by a writing, and the fact that an absolute deed was given to create an express trust can not be shown by parol.
Lantry v. Lantry 51 Ill. 458.
Walter v. Klock 55 Ill. 362.
Rogers v. Simmons 55 Ill. 76.
Biggins v. Biggins 133 Ill. 211.
Champlin v. Champlin 136 Ill. 309.

In an action to set aside a conveyance from daughter to mother, an allegation in the answer, that defendant was induced to take absolute title to the property through fear that the daughter's lack of experience would enable some fortune-hunter to rob her of her inheritance is not sufficient to establish an express trust and can not be aided by parol.
White v. Ross 160 Ill. 56.

Where the writing is ambiguous if the ambiguity is patent, i.e. appearing on the face of the writing parol evidence is not admissible to explain or alter it.
Paton v. Tefft 22 Ill. 366; Edbee v. Woodbury 8 App. 336 (and cases cited under "Latent Ambiguities" page 26)
Thus where land was described by an impossible description parol was not admitted to aid the description.
Ritchie v. Pease 114 Ill. 353.

An in an action on a note reading "one day after date we promise to pay D.P. or order $465.75 for value received, ten per cent." It was held the words "ten per cent." do not mean "with interest at the rate of ten per cent per annum." that this was a patent ambiguity and not explainable by parol.
Griffith v. Furry 30 Ill. 251.
The ownership of land can not be shown by the affidavit of one who has examined the record and found conveyance to him.
Shreve v. Town of Cicero 129 Ill. 226.

But in proving insolvency, you may ask the bank-
rupt if he owns property, real and personal and it is not necessary to show the deeds and records.

Cargan v. Frew 39 Ill. 37.

If the writing clearly contemplates a legal object the court will not go outside the writing for the parties intention.

Broadwell v. Broadwell 1 Gilm. 599.
Howhe v. R.R.Co. 165 Ill. 561.
Blanchard v. Maynard 103 Ill. 60.
Wentworth v. Reed 61 App. 539 (S.C. 166 Ill. 139)
Packer v. Roberts 29 N.E. (Ill.) 668.

Whether or not an endorsement on a promissory note can be explained by parol is a question which has been decided both ways in the earlier decisions. It seems to be the one point concerning which there is a direct conflict in this state though the rule is pretty well settled now. Just what the rule is may be determined from a few illustrations in some of which parol was admitted and in others excluded. Thus in an action by assignee of a promissory note against the assignor it is not competent for the latter to prove a parol agreement made at the time of endorsement to the effect that he should not be responsible as endorser. The legal effect of the written endorsement cannot be impaired by proof of a different parol agreement.

This the principle otherwise stated under the head Implication of Law, page 7.

Masson v. Burton 54 Ill. 349.
Jones v. Albee 70 Ill. 34.

But parol evidence is admissible to show the real intention of the party in endorsing a promissory note. It may be shown whether the party indorsed as endorser or as guarantor.

Cobb v. McCoy 3 Scam. 437.
Cushman v. Dement Id. 497.

It is apparent however that what is here meant is the indorsement of one not the payee. In Boynton v. Pierce, it is said: "The presumption that a party not the payee, who places his name on the back of a note, is a guarantor, may be rebutted by parol evidence. The real character of the liability assumed may be explained. But not if he himself writes out the contract of guaranty over his name."

79 Ill. 145.

also Eberhart v. Page 89 Ill. 550.


Though the payee write his name twice on the back of the note he is still an endorser and not guarantor.
Hatley v. Pike 162 Ill. 241.

An endorser when sued may show that he received the note as agent and in that capacity indorsed it to his principal and though it is doubtful whether this would be a good defense at law, the party could get relief in equity.

 Seammon v. Adams 111 Ill. 575.

It is always admissible to show that the indorser held as agent or in trust or for collection or that the note was sold without recourse and the indorsement afterwards made merely to transfer the legal title.

Jones v. Albee 70 Ill. 34.

And when a written guaranty is denied under oath, parol evidence is admissible to prove the contract. This however is generally true of all writings.

Lennon v. Goodspeed 89 Ill. 438.

An endorsement seemingly being an extension of time of the note may be shown to have a different meaning.

Wing v. Beach 31 App. 78.

An indorser may show the consideration for his contract and that it has failed.

Kirkham v. Boston 67 Ill. 599.

It may be shown that an indorsement for collection was really for a consideration.

Bank v. McCann 4 App. 250.

It is apparent from these decisions that a distinction exists between the endorsement of the third parties and that of the payee. The earlier cases did not, expressly, make any such distinction although indicating it by the general trend of their opinions. But in the case of Boynton v. Pierce (Supra (c.c.) page #) the distinction is practically expressed in the words, "the presumption that a party not the payee!" All the more surprising is it then to find in the later case of Worden v. Salter decided in 1878, that the blank endorsement of the payee of a note is subject to explanation by parol evidence, but it was so held here and parol admitted to show whether the payee endorsed as endorser or guarantor.

90 Ill. 160.

This decision however was plainly an oversight on the part of the court as it expressed what is directly in conflict not merely with the principle of evidence but with the reason and implied meanings of its own former decisions. The case of Worden v. Salter however is not followed in any of the later decisions and in the case of Johnson v. Glover is expressly overruled, the court here holding that the endorsement of the
pays® is a full written contract and can not be varied by parol. This on the ground, as stated above, that the law implies a definite and well known liability for such an act, and that such implication must govern.

The case of Johnson v. Glover contains what is now considered to be the true rule in this state on this point. 121 Ill. 283.

In a subsequent case however the distinction between the payee's indorsement and that of a third party is more clearly stated. In Kingsland v. Koepepe while considering the admissibility of parol to explain the nature of indorsements, Craig J. says: "where the payee of a note indorses it by placing his name on the back of the instrument a contract of indorsement is created. The liability of the payee being established by the writing, parol evidence to change or vary the terms or conditions of the contract is not admissible. But where a person who is not the payee of a promissory note, but a third party, places his name on the back thereof a different question arises. In such case the rule long established in this state is that it may be shown by parol what liability was intended to be assumed." 137 Ill. 344.

See also Skelton v. Dustin 92 Ill. 49.
White v. Weaver 41 Ill. 409.

So, to summarize, the endorsement of the payee can not be varied or explained by parol. But a signing in blank by a third party may be shown to be or not to be an endorsement. However this fact being established it can not be shown that the endorser by agreement was to be held differently than the law implies. Farther if the signature appears to have been made after that of the payee, and the third party is the holder and passes the note to another his liability as endorser is fixed. Thus in a note by A to B as payee, the endorsement of B can not be explained. If D takes the note from B and C's name is on the back C's endorsement is explainable; if D takes the note from C then C can not explain his endorsement.

The rule that parol evidence will not be heard to vary a writing, though not inflexible, is still rather strict and there are but few real exceptions. The rule is based upon the fact that a writing made at the time is more durable and accurate than human memory. The doctrine of estoppel is not applied; the party is not estopped to allege that the contract was different from that expressed in the writing simply because he has put it in writing, but it is supposed that at the time of execution of the instrument each party had opportunity to embody his real intent and purpose in the writing and when subsequent
events have changed the interest of each it would be manifestly unfair to allow either to show his contract to be other than what the writing shows it to be. Such a course would allow the writings to be construed by those whose memories were most liable to be clouded with self interest, and even the the most charitable view of man's honesty, where his interest is concerned, must still yield to the fallibility of his memory. The rule then is not an arbitrary one, laid down by the courts, but it is one based upon knowledge of human frailty and the experience of courts in investigating the truth of the contested points. The aim of the court to arrive at true conclusions and do justice to all parties however would preclude the idea that the rule excluding parol to vary, would also exclude parol to affect a written instrument. For there are many instances in which parol evidence may be admitted to affect a contract in writing and these cases do not fall within the general rule so long as the purpose of introducing the evidence is not to "add to, take from or specifically change" the terms of the writing. People then are inclined to denominate such cases "exceptions" to the general rule, but in doing so they lose sight of the real nature of the rule. For it is nowhere expressed that parol evidence is repugnant from nature, to written evidence, on the contrary though the one is higher evidence than the other it is often necessary that they be used together to further the ends of justice, and in allowing them to be so used the courts violate no established principle. Instances where parol is introduced to affect a writing can not with proper regard for accuracy in speech be classed as exceptions to the rule under consideration. In order to be such it must first clearly appear that in affecting the writing, the evidence has the effect of varying it.

We have seen from the cases given above what the court regards as constituting a variation of the writing, and it will be equally beneficial to a comprehension of the rule, to observe the cases in which parol is admitted, and instances where the evidence though affecting does not in the opinion of the court, alter the writing.

In the case of Scott v. Bennet the court says: "If there is doubt and uncertainty, not about what the substance of the contract is, but as to its particular application, it may be explained and properly directed. If a note is made payable to one person when another was intended the holder may sue on it in his real name alleging the mistake and prove it on the trial."

3 Gilm. 243.

In this case Scott had executed a writing intended as a release of his claim on certain lands, the writing was as follows "This is to certify that I, J. Scott, administrator of
S. Scott deceased, do relinquish all claims by virtue of a judgment obtained against R.M. LaCroix to a certain tract of land formerly belonging to H. Stout and now belonging to R.M. LaCroix and about to be traded to Joseph Bennet." (Signed) J. Scott administrator.

On the trial it was contended that this instrument was not a valid release as it was without a consideration, without seal, and did not designate the parties to it. The court said that this was not, technically, a release but parol evidence was allowed to correct its defects. In the course of the opinion it was said in justification of this holding: "The writing was not made for the benefit of any particular person by name, it was not under seal and does not therefore upon its face import a consideration. But does it follow as a consequence that it may not be averred and proved that it was made for the benefit of someone and that there was a consideration. We think this may be done without the slightest encroachment upon even a technical rule of law." The court admitting the general rule as to the admission of parol evidence says however that such evidence is admissible for the purpose of explaining the contract and further: "no rule of law is violated in allowing Bennett to allege and show that this release or writing was intended for his benefit and that it was given for a consideration. Such evidence does not change the nature of the contract. It only shows the reason of its execution and points out its use and application."

Scott v. Bennett (supra)

Again it was held that a letter written by the lessee to his agent, giving directions as to the use of the property though signed by the lessor, does not constitute the contract and parol is admissible to show that the letting was on condition and that the condition was not performed.

Bernhard v. Trimble 45 App. 56.

Under a contract in writing to furnish "hardware", an oral agreement to pay additional for tinware, was held admissible on the ground that tinware was not included under the first term.


Where the written instrument is executed only in part performance of a verbal contract parol is admissible to show that fact and that it itself is not the contract.


There are, sometimes, cases in which the connected circumstances are such that the evidence offered tends to prove two things, one proper and the other improper; whenever such conditions arise within the rule under consideration the evidence
is admissible and must go to the jury with an explanation from the court of its legitimate bearing.

Webster v. Enfield 5 Gilm. 298.
Parol evidence is competent to show the performance of a condition of a written contract.
Plumb v. Campbell 129 Ill. 101.
In a composition deed with creditors the creditor may show a non compliance with the terms of the deed by the debtor.
Parol is also admissible to show the date of execution of a writing.
Abrams v. Pomeroy 13 Ill. 133.
Hunter v. Harris 29 App. 200.
And to establish any fact about which the writing is silent.
Ball v. Benjamin 73 Ill. 39.
R.R.Co. v. Walsh 35 Ill. 58.
Storey v. Carter 27 App. 287.
Ragor v. Ragor 39 App. 527.
Thus a bill of sale of ice, did not state to whom the sale was made, the quantity sold, nor the price per ton; but simply that the ice was sold by J., describing its location and that it was sold for $3340 and was to be removed by a certain date.

A note was given by defendants to J. and an action brought on the note, the plea interposed was partial failure of consideration because the quantity of ice for which the note was given was warranted to be a certain number of tons, and it was short a considerable number of tons. The trial judge refused to allow such parol warranty to be shown and there was a verdict and judgment for the plaintiff, J.

The supreme court reversed the judgment on the ground that their bill of sale could not be regarded as a contract between the parties without the aid of extrinsic evidence and added that if evidence may be introduced to prove who was the purchaser and to give effect to the bill of sale there could be no reason why they should not be permitted to give evidence of the warranty. The court says: "To render it an agreement governing this transaction a material portion of its terms had to be supplied by parol. If such omitted portion may be then supplied, surely no well founded reason can be urged why the entire omitted portion of the agreement may not be then proved."

Ruff v. Jarret 94 Ill. 475.
In the case of Robinson v. McNeil (cited page 3) a parol warranty was not allowed to be shown but there is in reality no conflict between these two cases, in that case the
action was also upon a promissory note, which had been given in
condition of an assignment of book accounts and the defense was
that Robinson warranted the accounts unpaid and collectible, and
they were not collectible. The court held that there was an
implied warranty that the accounts were unpaid, since R. would
have been guilty of fraud if they were not, but that there was no
implied warranty that the accounts were collectible. At the time
of the sale a written contract was executed by R. specifying the
terms of the assignment. It contained no such warranty, but it
was sought to show the warranty by showing what R. said at the
time of execution of the writing. But this, it was held, would
clearly amount to an addition to the terms of the writing and
hence was improper. (See page 3)

In the case of Ruff v. Jarrett the argument of the court in support of its position was "suppose this incomplete
instrument had not been produced in evidence and the same proof
had been made in regard to the guaranty or warranty can it be
contended that the evidence would not have been admissible. If
such is not the rule then a person purchasing and relying on a
warranty would never be protected by it if he gave his note or
took a bill of sale or particulars in writing unless it contained
a written warranty. We have never known such a rule contended
for nor are we referred to any such authority."

94 Ill. 475.

The distinction seems to be that in one case the
whole contract was apparently in writing and in the other it was
not. This class of cases will be treated of farther on. Following
the same idea as the above, parol is competent to show defects
in the contract as to the quantity of work where the terms are
of a general nature.

Donlin v. Doeghing 80 Ill. 603.

Where one insurance company consolidated with
another which assumed its liabilities and the stockholders of
the first executed a guaranty to pay all debts of the former but
the undertaking was to no one by name, it was held parol was
competent to show the guaranty was to indemnify the latter company
against liability for the former and was not intended for the
benefit of its policy holders.


Although in this case the decision is based apparently on the holdings that where the contract is silent concerning
material matter, necessary parts may be shown by parol, still at bottom it involves the same principle as that promulgated in
the case of Scott v. Bennett (supra page 14) that the application
of the contract may be shown by parol when there is doubt upon
that point. To me these seem the same and are but two different statements of the rule that the law will not allow a contract to rest partly in writing and partly in parol, a contract in such condition being on the same footing as a purely oral contract. Parol evidence is always admissible to show the circumstances under which a writing was made, in order to impeach its validity.

Black v. R.R.Co. Ill Ill. 351.

And so it is to prove that a contract in writing is in existence.

Black v. R.R.Co. (supra)
Spencer v. Boardman Ill Ill. 553.

A collateral parol agreement relating to the same subject matter, but not interfering with the written contract may be proved.


When a contract of land was sold for a certain sum per acre, as containing 140 acres, and it was verbally agreed that if there were more than 140 acres in the tract the vendee would pay for the excess, and if less the vendor should pay for the deficit, at the same rate per acre, it was held that the vendor could recover for any excess and that parol evidence was admissible to establish the agreement, it being a supplementary agreement and not inconsistent with the writing.

Ludeke v. Sutherland Ill Ill. 481.

An executed parol agreement may always be shown to defeat a recovery on a written instrument even, as here, if under seal. This is so on the ground that the agreement being executed and the one party having received the benefit therefrom it would amount to a fraud on the other party if he were not allowed to prove it.

Worrel v. Forsyth 141 Ill 22.
Alschuler v. Schiff 164 Ill 298.

In an action to recover subscription money parol is competent to show that an instrument executed in furtherance of the purpose for which the subscription was made was accepted and was satisfactory.


Where a memorandum under the Statute of Frauds stated only a proposal, an acceptance was permitted to be shown by parol. The court said that such a memorandum did not constitute the contract of the parties, but was merely evidence that the contract was made. An offer signed by the party, so stating the proposal that its mere acceptance would fix the terms of the bargain will satisfy the Statute and the acceptance may be shown by parol.
Lasher v. Gardner 124 Ill. 441.
Because the proposal contains all the terms and
proving acceptance does not vary or change or add to them.
Farwell v. Lowther 18 Ill. 252.
The parties may waive, dissolve, annul, or modify
the terms of a writing by a subsequent parol agreement and oral
evidence is competent to prove such an agreement.
Robinson v. Hardy 22 App. 512.
Storey v. Carter 27 App. 287.
McCarter v. Ridgway 160 Ill. 129.
When the written agreement showed a certain price
was to be paid for certain work and the contractor in the same
writing agreed to do certain other work no price being named in
the instrument, parol evidence was admitted to prove a subsequent
oral agreement as to price of the latter. This evidence could
have gone in under the rule that where the contract is silent it
may be aided, or that the whole contract was not in writing, but
the court admitted it because of the right to alter by subsequent
agreement.
Sharkey v. Miller 69 Ill. 560.
But it is unquestionably the rule in Illinois that
a written contract may be altered in any way by a subsequent oral
agreement, provided the writing is not under seal.
In theory the court still adheres to the old rule
that a writing under seal is a more solemn obligation than one
not under seal and more formality is required to release it. The
old rule that such a writing could be released only by another
writing under seal, though not adhered to here, still in spirit
pervades the decision of our court.
The rule is that a writing under seal can not be
varied by a subsequent oral agreement unless such agreement is
upon a new consideration, or perhaps is executed which amounts to
the same thing.
In the case of Alschuler v. Shiff it was held that
proof of a subsequent parol agreement to terminate a lease under
seal contrary to its terms is not competent.
59 App. 51.
And it was also said that an executory contract
under seal can not be modified by a subsequent oral
agreement so as to authorize either party to sue upon it as then
modified. A new and additional agreement whether it be a sub-
stitute for the old or in addition to or beyond it, must be upon
a new consideration.
And a contract under seal for the delivery of
2000 hogs of a certain weight and quality at a price and day named cannot be changed by a subsequent oral agreement for the delivery of a less number of hogs founded upon new consideration.

Hume Bros. v. Taylor & Mann 63 Ill. 43.

And an indorsement in writing on a lease under seal agreeing to reduce the rent and the acceptance of monthly rent in accordance therewith, such indorsement not being under seal can not be admitted in evidence to vary the terms of the lease as to the rent to be paid. This is a stranger case than the other for there is a part execution of the oral agreement.

Loach v. Farmem 90 Ill. 368.

also Barnett v. Barnes 73 Ill. 216.

There does not seem to be entire uniformity upon this question however and there are instances in which writings under seal are allowed to be discharged by parol.

In fact in the case of White v. Walker which was an action on a lease that the parties had once attempted to release other than by a writing under seal. Breese J. says in regard to this rule: "Technically this may be the rule of modern times but practically it is not enforced" and further maintains that the courts frequently permit discharge of sealed instruments by parol by allowing parol proof of facts amounting to a discharge and gives among other instances the payment of a mortgage debt, which is allowed to be shown by parol to discharge the mortgage.

In order to exclude parol evidence of the terms of a written contract it must appear that the whole contract was put in the writing otherwise the contract has no better standing than a purely oral agreement. A person may prove the existence of a separate oral agreement as to matters upon which the writing is silent and which is not inconsistent therewith if it can be inferred that the parties did not intend the writing to be a complete and final statement of a given transaction. And this rule applies to parol agreements as to how a written contract is to be performed.

Razor v. Razor 39 App. 527. (S.C. 142 Ill. 375)

Parol is competent to show that part only of the contract was in writing and of course then, to supply the remainder.


Where pending negotiations a writing is executed, relating to some few particulars of the contract as afterwards consummated by parol agreement, which clearly appeared not to be the contract of the parties, parol is competent to show the whole contract.
A contract partly in writing and partly oral is in effect an oral contract.

Memory v. Niepert 131 Ill. 623.
Conductors Ass'n v. Loomis 142 Ill. 560.
Benevolent Society v. Fietsam 6 App. 151.
Brass v. R.R. Co. 9 App. 363.

Where a new contract is alleged avoiding the old one parol is competent to show there was no meeting of minds in the second contract.

Stone v. Daggett 73 Ill. 367.
Where a writing merely acknowledges the existence of a fact it may be explained or contradicted. Thus a statement in a letter introduced as an admission of the defendant's liability, under the contract sued upon, for the amount due the plaintiff, may be explained or contradicted by parol evidence, where the letter was no part of the contract.

Smith v. Mayfield 163 Ill. 447.
Grain tickets are not contracts and may be altered by parol.

An agreement to extend the time of a note may be shown by parol.

When one party alleges that the contract was a written one and the other denies and claims the work was done under an oral agreement, parol evidence as to the real contract is admissible. It is admissible however only to show whether or not a written contract is in existence and if so whether the work done was done under it or under another agreement. The fact that the existence of a writing is denied, or that it is alleged it does not apply to the given facts, is of course no ground for admitting extrinsic evidence as to the terms of the writing.

Hess v. Board of Education 33 App. 440.
A note which upon its face appears to be the individual obligation of one or more of the partners of a firm may be shown by parol to have been given for a firm debt.

Howell v. Meores 127 Ill. 67.
A recital in a contract for the sale of an interest in a lot, that the vendor does thereby put the purchaser into possession may be explained or contradicted. It may be shown by parol that the purchaser was put in possession under a subsequent agreement.

Burgett v. Taliaferro 118 Ill. 503.
Parol evidence that a purchase of land was made by a firm rather than by its members as individuals, and that the
notes given therefor were for partnership debts, does not vary or contradict the terms of such notes where they do not appear on their face not to be firm obligations otherwise than by the fact that they were signed by the members individually and not in the firm name.

Dreyfus & Co. v. Bank 164 Ill. 83.

Where the language in a writing is of such a character as to show that the parties had a fixed and definite meaning which they intended to express and used language adequate to convey that idea to persons possessed of all the facts which they had in view at the time they used the language, the facts may be shown by parol in order to ascertain the sense in which the language was used. This apart from any idea of ambiguity.

Doyle v. Teas 4 Scam. 202; Thomas v. Wiggers 41 Ill. 470; McLennon v. Johnston 60 Ill. 306; Brand v. Henderson 107 Ill. 141; Jordan v. Davis 108 Ill. 336; McKinnon v. People 110 Ill. 305; Gerd t v. Brown 113 Ill. 475; Wood v. Clark 121 I 121 Ill. 359; Fowler v. Black 136 Ill. 363; Razor v. Razor 142 Ill. 375; Perry v. Bowman 151 Ill. 26; Benevolent Society v. Fietsom 6 App. 151.


Parol is admissible to show the condition of the property with a view to arrive at the true intent of the parties in the terms used by them.

Cook v. Whiting 16 Ill. 480.

Thomas v. Wiggers 41 Ill. 470.

The condition a will was in as regards attached papers at the time of execution of a codicil and the intention of testator as to what should constitute his will may be shown by parol.

Shaw v. Camp 163 Ill. 144.

And where a will is not ambiguous though the intention of the testator can not be shown by parol, still it is competent to prove the condition of the testators mind at the time of execution of the will whether he lived with his family, how much family he had, etc. in order to show the court the testators situation.

Howhe v. R.R.Co. 165 Ill. 561.

A person may show the circumstances under which a writing was made but he can not testify generally as to his intention or purpose in writing the instrument, and thereby avoid their effect as a statement of the facts therein contained.

Brant v. Gallup Ill Ill. 487.

Where there was an agreement to put a roof on a building owned by the plaintiff, parol evidence was held admissible to show whether it was intended to embrace a one story rear
part of said building. Barrett v. Stow 15 Ill. 423.
Barrett v. Stow 15 Ill. 423.

A husband and wife joined in a bond and mortgage
upon an estate of the wife to secure a loan recited as being made
to the husband and subsequently the wife having died, the husband
procured an assignment of the mortgage to himself and brought
foreclosure proceedings against the administrator and heirs of
his wife, it was held that parol was admissible to prove that the
loan was made to his wife instead of to himself. The recitals
estop the parties thereto but they do not form the contract and
are not covenants between the grantors or parties to the obliga-
tion on the one side. They are not conclusive evidence of the
facts recited as between them.
The date of an endorsement may be shown.
White v. Weaver 41 Ill. 409.

In the sale of "entire stock" of goods parol is
admissible to show of what the stock consisted.
Knight v. Parker 25 Ill. 593.

Where a lease contains a general description of
lands demised it may be shown that the lessor had no other lands
than those in controversy.
Prettyman v. Walston 34 Ill. 175.
The locality of land in a deed may be shown by
parol.
Bowman v. Wettig 39 Ill. 416.
Cornwell v. Cornwell 91 Ill. 414.
The admissibility of oral evidence to identify the
subject matter of a writing does not depend upon the distinction
between latent and patent ambiguities in the writing.
The identity of parties to a writing may be shown
by parol.
McConnell v. Brillhart 17 Ill. 354.
Paulson v. Mauske 126 Ill. 72.
Missionary Society v. Mead 131 Ill. 338.
Conductors Ass'n. v. Loomis 142 Ill. 560.

Parol is competent to show the person whose name
should have been inserted in a blank in a written deed of trust.
Past v. McPherson 98 Ill. 496.

Boundaries to land may be ascertained by parol,
which may be used to identify, explain or establish the objects
of the call in the deed. All monuments, objects and things referred
to in a deed for the purpose of locating a tract of land may be
established and identified by parol.
Williamson v. Warren 21 Ill. 541.
Kleiner v. Bowen 166 Ill. 537
The property or subject matter of a deed, mortgage
or other writing may be identified by parol.

Mattingly v. Darwin 23 Ill. 567; Marshall v.
Grilely 46 Ill. 247; Cassitt v. Hobbs 56 Ill. 233; Colcord v.
Alexander 57 Ill. 581; Reed v. Mann 68 Ill. 206; Smith v. Stevens
82 Ill. 554; Chicago Dock & Canal Co. v. Kinzie 93 Ill. 415;
St. Louis Bridge Co. v. Curtis 103 Ill. 410; Smith v. Dennison
112 Ill. 367; Bowen v. Allen 113 Ill. 53; Wilson v. Roots
119 Ill. 379; R.R. Co. v. Beach 29 App. 157;

The rule where official records are concerned, is
applied with somewhat more strictness than in the case of contract
and other writings, but in spite of this there are numerous
instances in which parol is admitted to answer questions regarding records.

Thus where the cause of action or ground of defense
in a suit appears on the face of the record no evidence dehors
the record is admissible to contradict or explain it, but where
they do not so appear, witnesses may be admitted to identify the
parties, the cause of action or defense or other matter litigated.
Gray v. Gilliion 15 Ill. 453.

Harvey v. Drew 82 Ill. 606.
An execution issued for a much larger sum than
that expressed by the judgment can be amended by it and parol
proof by the keeper of the records may be received to show its
identity.

Durham v. Heaton 28 Ill. 264.
Parol is admissible to show that an execution
issued and was in the officer's hands before entry of judgment.

In a suit where it is sought to prove notice to a
judgment creditor, of a prior sale of land held under an unrecorded
deed—the facts, of the number of terms of a circuit court in a
certain year, what judge presided, and whether juries were in
attendance, though facts which might appear from the record, are
in the nature of matter in pais and may be proved by parol.
Massey v. Westcott 40 Ill. 160.
Where a former recovery is relied upon and it
appears prima facie from the record that a question has been
adjudicated, it may be shown by parol that such question was not
in fact decided in the former suit.
Borger v. Hobbs 67 Ill. 592.
Where the officer is willing and desirous of
correcting his return to process so as to show a legal service, parol is competent for the purpose of showing the propriety of amending his return.

Spellinger v. Gaff 112 Ill. 29.
It is competent to show that execution issued and was in the sheriff's hands before the judgment was actually written up. This would not contradict the record. But it can not be shown that the judgment was written up on a day different from issuing of execution.

Knight v. Martin 155 Ill. 486.
A general judgment rendered upon a declaration of three counts, two only of which state causes of action of which malice is the gist, and not showing on its face which count or counts judgment was rendered upon, leaves the question of malice at large and open to proof by parol evidence.

It is competent to show by parol that at the time executions were issued there were no judgments to support them, though it contradicts the record which apparently shows the judgment as written up the day of filing. The rule excluding parol applies only to judicial proceedings and not to the ministerial acts of the clerk.

The fact that a witness has been convicted of crime may (by statute) be shown by parol for the purpose of affecting his credibility and such conviction may be proved as any fact not of record by any witness cognizant thereof.

Gage v. Eddy 167 Ill. 103.
Where an indictment for burglary was nol prosed and a new one found, parol was held admissible to show that the crime charged in both indictments was the same.

Swalley v. People 116 Ill. 248.
Where there was a failure of the clerk of a school board to make a minute of the board's action on the official record parol was admitted to show what took place.

Directors v. Kimmel 31 App. 537.
Where the adjudication of some material fact or matter is relied upon as an estoppel between the same parties, parol evidence of what occurred on the former trial—what was actually submitted and determined is always admissible (res judicata).

Leopold v. City of Chicago 150 Ill. 563.
The statutes provide that all trusts of land must be evidenced by a writing. But an action to establish a mechanics lien for labor done and material furnished under contracts with
one L., with him and others, all of whom were members of a firm, parol was held competent to show that L. held the legal title in trust for the firm.

Springer v. Kroeschell 161 Ill. 158.
And where the grantee in a deed absolute in form declares in his answer to a bill in chancery that he holds the lands under an express trust not evidenced by a writing, but that he is unable to recall its precise terms and conditions such terms and conditions may be proved by parol evidence.

Meyers v. Meyers 167 Ill. 52.
Where it does not appear on the face of the instrument, the fact that a party signed a note as a maker or as surety may be established by parol.

Kennedy v. Evans 31 Ill. 253.
This does not affect the terms of the contract but merely establishes a collateral fact and rebute a presumption.


A signed a note as surety for a surety and when sued as a co-surety for contribution he was allowed to show by parol evidence, the agreement made at the time of signing that he signed as surety for a surety and not for the maker.

Meyers v. Fry 18 App. 74.
The rule is well recognized that where a commercial contract (or other writing) is in any respects ambiguous, a particular custom or usage of trade known to the parties or which under the circumstances they are presumed to know, or any previous course of dealings between them that will have a tendency to disclose the real intention of the parties and to aid the court in arriving at its true construction, will be admissible in evidence. Such evidence is not only admissible for the purpose of explaining the terms of a contract but also for the purpose of engrafting new terms onto it subject however to the qualification that such new terms are not expressly or impliedly excluded by the express agreement. To have this effect however the usage must be reasonable and not conflict with any general rule of law. But it is never admissible to vary or contradict either expressly or by implication the terms of the writing.

Gilbert v. McGinnis 114 Ill. 28.
The ambiguity to be explainable must be a latent one i.e. not appearing on the face of the instrument.

Doyle v. Teas 4 Scam. 202; Marshall v. Gridley 46 Ill. 247; Fisher v. Quackenbush 83 Ill. 310; Bowen v. Allen
Where there is a latent ambiguity in the writing, parol is received not for the purpose of incorporating into the writing an intention not expressed therein, but simply with the view of elucidating the words employed; and the duty of the court is to declare the meaning of what is written in the instrument and not what was intended to be written.

Bradish v. Yocum 130 Ill. 386.

See also: Hutton v. Arnett 51 Ill. 198; Sharp v. Thompson 100 Ill. 447; Decker v. Decker 121 Ill. 341; Halliday v. Hess 147 Ill. 588; Whitcomb v. Rodman 156 Ill. 116; Lyon v. Lyon 3 App. 434; Trustees v. Rogers 7 App. 33; Bank v. Rock and Rye Co. 14 App. 141.

Where an agreement in writing is expressed in short and incomplete terms, parol evidence is admissible to explain what is per se unintelligible; such explanation not being inconsistent with the written terms.

Razor v. Razor 142 Ill. 375.

An uncertain description of the beneficiary in an insurance policy may be aided by parol (when it failed to describe anyone related to or known by the insured).

Hogan v. Wallace 136 Ill. 328.

In a mortgage description "one acre and a half in N.W. corner of section 5 together with the brewery", etc. not giving the township and range, parol was admitted to show what township and range the property was.

Bybee v. Hageman 66 Ill. 519.

Ambiguities in a conveyance in the description of grantees, and omitting the number of the block in describing the premises may be remedied by parol.

Young v. Lorsin 11 Ill. 624.
So where no meridian was referred to.
Dougherty v. Purdy 18 Ill. 206.

If the description of land in a deed can equally be applied to several tracts, it is such a latent ambiguity that it may be explained. It may be explained by showing which tract was claimed by the grantor.


Where the description of land in a deed is in vague or general terms, or where it is applicable to several persons,
the intent may be shown by parol.

Mason v. Merril 129 Ill. 503.
Parol evidence is competent to show whether a writing has been delivered.

Jordan v. Davis 108 Ill. 336.
Price v. Hudson 125 Ill. 284.
Life Ass'n. v. Sibley 158 Ill. 411.

Where subscription to the stock of a corporation was left in the hands of the soliciting agent to be withheld until investigations could be made, and directions given for delivery, parol is competent to show there was no delivery.

Telegraph Co. v. Lowenthal 154 Ill. 261.

It is competent to show that a written agreement was delivered to take effect only on certain conditions. Such proof is not admitted for the purpose of changing the terms but for the object of determining whether in fact it ever had an existence at all as a contract.

R.R.Co. v. Hall 1 App. 612.

Previous conversations as to what disposition should be made of the contract are admissible on the question of delivery.

Condit v. Dady 56 App. 545.

When a note is delivered as an escrow to take effect on the happening of a certain event, whether such an event has occurred may be shown by parol.

Fay v. Blackstone 31 Ill. 538.

It is admissible to show that the guarantor signed on condition that the draft was not to be taken unless another named person also signed the same guaranty, and that such condition was not complied with, for the purpose of showing that there was no delivery to the payee and no contract in fact made.


"It is a general rule that deeds can not be delivered in escrow to the grantee, but this rule applies only to deeds which are upon their face complete contracts requiring nothing but delivery to make them perfect contracts. But if the deed is handed to the grantee for the mere purpose of examination, such will not exclude parol to show the deed was never completely executed or delivered as a completed contract.

Ryan v. Cooke 68 App. 592.

The meaning of terms of art and science technical phrases, and words of local meaning when employed in a writing may be proved by parol evidence.

Meyers v. Walker 24 Ill. 133.
Stewart v. Smith 28 Ill. 397.
City of Elgin v. Joslyn 36 App. 301
So the meaning of the word "season" in a particular locality, in a contract for the sale of corn was allowed to be shown.

Meyers v. Walker (supra)
It is also admissible to explain abbreviations.
Converse v. Wead 142 Ill. 132.
Thus it was held admissible to show the meaning of the letters "C.O.D."
In most disputes as to surveys, plans and specifications of houses and other structures and profiles of railroads and the like, parol is competent to show the true lines, courses, and distances, and to explain the field, or other notes and figures used.

Hyde Park v. Andrews 87 Ill. 229.
And where a written contract exhibits an erasure of a certain part, it is admissible to show why such erasure was made.

Johnson v. Pollock 58 Ill. 181.
Courts of Chancery will rectify mistakes in fact in writings—they will extend relief but will not make a new agreement for the parties and parol is admissible to show the mistake. (Does not apply to courts of law.)
Bradwell v. Broadwell 1 Gilm. 599; McConnel v. Brillhart 17 Ill. 354; Hunter v. Bilyen 30 Ill. 228; McLennon v. Johnston 60 Ill. 306; Race v. Webster 86 Ill. 91; McCormack v. Sage 87 Ill. 484; McFarlane v. Williams 107 Ill. 33; Ewing v. Sandoval Co. 110 Ill. 290; Schwaw v. Herschey 125 Ill. 653; Halliday v. Hess 147 Ill. 588.
Anderson v. Montgomery 47 App. 79.
But a description of land resulting from the party's own fault will not be aided.
Ennery v. Mohler 69 Ill. 221.
The falsity of a statement in the application for insurance may be shown, where the statement was made by the agent of the insurers and not by the applicant.
Ins. Co. v. Milling Co. 60 App. 324.
An accident in the writing may be shown.
Race v. Webster 86 Ill. 91.
An innocent alteration in a note was allowed to be explained by parol.
Bank v. Ryan 31 App. 271.
No form can be given to a contract to preclude
evidence impeaching it on the ground of usury.

It is competent to show that a contract in the form of an absolute sale was but a security for an usurious loan.

Ferguson v. Sutpen 3 Gilm. 547.
Kidder v. Vandersloot 114 Ill. 133.

Parol is always admissible to prove the writing a forgery.

Ferguson v. Sutpen 3 Gilm. 547.
Kidder v. Vandersloot 114 Ill. 133.
Windett v. Hurlbut 115 Ill. 403.

And in all cases where it is permissible to prove fraud at all, parol evidence is competent to establish the fraud.


Fraud in the execution may be shown in law—other fraud may be shown only in equity.

Windeitt v. Hurlbut 115 Ill. 403.

Illegality in the contract may be shown by parol.

Packer v. Schoick 58 Ill. 79.

Brand v. Henderson 107 Ill. 141.

The law provides for cases in which fraud, forgery, illegality, and kindred subjects appear, and when there enter into a contract it is always competent to prove the fact by parol evidence, without regard to the effect of such evidence on the terms of the writing. Were the rule otherwise the statute against frauds for instance would be practically unenforceable where the defrauding party had been shrewd enough to have the transaction reduced to writing. These then are true exception to the general rule excluding parol evidence, but they are exceptions admitted by the spirit of the rule itself and founded upon the same principle upon which the rule is based and not dependant for their origin and authority upon the caprice of the courts.

But it is not always permissible to show fraud. Thus evidence offered by the defendant in ejectment, claiming as tenant, to show that the plaintiff was holding title merely as trustee for the former lessor to defend defendant, of his lease, is not competent, as the alleged fraud goes to the consideration of the deed and not to its procurement, and the consideration of a deed is not a proper subject of inquiry in ejectment.

Union Brewing Co. v. Meier 163 Ill. 424.
The law of agency imparts into the question of the admissibility of parol to vary a writing an apparent exception, but taking into consideration the underlying theory of agency "qui facit per alium facit per se", it is easy to reconcile this apparent exception and see that it but follows the rule.

Where a contract is in writing parol is competent to show the party signed as agent, for the purpose of binding the principal.

McConnell v. Brillhart 17 Ill. 354.
O. & M. R.R. Co. v. Middleton 26 Ill. 629.
King v. Handy 2 App. 212.
Machine Co. v. Snell 23 App. 79.
And the principal may show the agency by parol because the act of the agent is the act of the principal.

Barker v. Garvey 83 Ill. 184.
H.R. & E.R.R. Co. v. Walsh 85 Ill. 58.
Whether an insurance broker acted for the insured or the Company may be shown by parol notwithstanding the statement in the policy.

Ins. Co. v. Bell 166 Ill. 400.
If the contract is not under seal, it being made by the agent of an undisclosed principal either principal or agent may sue upon it.

Saladin v. Mitchell 45 Ill. 79.
Parol proof may be given of the recognition by the principal of the acts of his agent in purchasing a tract of land, though the agreement in relation to the purchase was signed by the agent under seal, where the plaintiff seeks to recover upon a promise recognizing the acts of the agent and agrees to pay the purchase money. The original contract is merely inducement and consideration for the promise.

Graham v. Dixon 3 Scam. 115.
Where the question is as to the extent of an agent's authority under a certain letter written him by his principal and such letter refers to former conversations had between the parties and is obscure but for the light thrown upon it by such conversations upon the same subject, it is indispensable for a correct solution that the previous conversations be considered.

Durham v. Gill 44 Ill. 151.
But where one is agent under written authority the authority can not be enlarged by proof of usage.

Graham v. Sadlier 165 Ill. 95.
Though such evidence is admissible to bind the principal on the agents contract, or to enable the principal to
sue, it is not admissible to exonerate the agent himself, even though the other contracting party had notice of the agency. In the case of Hyper v. Griffith a note under seal was executed by the trustees of a church and it was verbally understood they were not to be bound. The court refused to admit the evidence to exonerate the makers of the note on the ground that "a party will not be permitted to show by oral testimony that his written agreement was not in fact binding on him". It would be permitted to bind the principal also. The court said nothing of the seal.

89 Ill. 134.

But it appears that an exception to this rule is made in some cases; in the case of Scanlan v. Keith a note was given signed by the president and secretary of a corporation and sealed with the corporation seal, the court approved Hyper v. Griffith but said however "where a person signed his name as cashier or agent for a banking, railroad or other corporation, in drawing drafts and bills in its ordinary business, if it appear in the obligation of the Company, and the cashier or agent had authority to bind the corporation he is not personally liable and the facts--collateral though they may sometimes be—may be shown by extrinsic evidence".

102 Ill. 634.

But where the contract is under seal the court will not allow parol to change it, at least on the part of the principal. In the case of Life Assurance Society v. Smith an agent of the Society made a contract with Smith in his own name, the Society remaining undisclosed, the contract was made under seal. Subsequently the Society began an action on the contract against Smith but the court held that the agent only was the proper party to prosecute the suit and that parol was not admissible to show the agency. This was expressly put upon the ground that the contract was made under seal.

25 App. 471.

This seems, in connection with the cases cited before, a bit unreasonable. If the principal is allowed to show the agency on the theory that the agent's act is the act of the principal and he is but showing his own act, it is difficult to see what difference a seal could make. The presence of a seal renders it none the less the act of the principal. The reason for excluding parol in cases of sealed instruments falls through here, as an entirely different condition is presented to which the usual reason for excluding the evidence does not apply. The case seems to be one of those where the court adheres to the strict letter of the rule, overlooking or forgetting, the spirit and reason for it.
Parol is admissible to impeach the consideration of a note, bond, or other instrument in writing for the payment of money. It may be shown that the consideration failed wholly or in part. Penny v. Groves 12 Ill. 287; Walton v. Smith 23 Ill. 233; Morgan v. Fallenstein 27 Ill. 31; Ins. Co. v. Rees 29 Ill. 272; Fay v. Blackstone 31 Ill. 538; Harris v. Galbraith 43 Ill. 309; Jones v. Buffsem 50 Ill. 277; Walker v. Crawford 56 Ill. 444; Kirkham v. Barton 67 Ill. 599; Wolf v. Fletemeyer 83 Ill. 418; Ruff v. Jarrett 94 Ill. 475; Grier v. Puterbough 108 Ill. 602; Paulsen v. Mausker 126 Ill. 72; Kiiler v. Vaniersloot 114 Ill. 133; Bress v. R.R. Co. 9 App. 363; Martin v. Stubbings 126 Ill. 387; Idem 27 App. 121; Broadwell v. Sanderson 29 App. 384; Westbrook v. Howell 34 App. 571.

This by statute and is contrary to the rule of common law.

Oertel v. Schroeder 48 Ill. 133.
Overstreet v. Dunlap 56 App. 486.
See statute on Negotiable Instruments S. and C. ch. 98 par. 13.

It appears from most of the decisions rendered under this section of the statutes, that the rule governing the admission of extrinsic evidence to contradict the recitals in written instruments as to the consideration for the contract is much broader than it really is in fact. It is true that it is very broad but there is a well defined limitation which is often lost sight of or perhaps not seen at all. When a negotiable instrument, or one for the payment of money is in question, as between maker and payee the consideration may be impeached for the purpose of showing the contract to be without consideration and thus invalidating it. The common law rule is not so extensive even with negotiable paper, but the statute has broadened it, without however including all writings.

In the case of other writings not covered by the statute the rule is that parol is admissible to prove lack, or failure of consideration only for the purpose of recovering the same and not for the purpose of invalidating the contract.

The case of Howell v. Moores presents the distinction very plainly: "The recital in a deed for land of the consideration paid is prima facie evidence that it is the true sum paid, but as between the grantor and grantee this recital will not be conclusive evidence of the consideration. The actual sum may be shown by parol evidence to be different from that expressed in the deed."
It is competent to show that no consideration has been received in order to recover the same but not to invalidate the deed but where third parties intervene the recital is binding.

Ill. Land & Loan Co. v. Bonner 91 Ill. 114.

The case of Illinois Central Insurance Company v. Wolf was an action of covenant by Wolf against the Company upon a policy of insurance. The policy which was under seal admitted the receipt by the Company, of the premium. Defendant sought to prove by parol that although the policy admitted the payment of the premium, yet it was not in fact paid but a note at sixty days taken therefor. It was insisted that, the said note not having been paid, the policy was void under one of the conditions therein to the effect that where a note is taken for the premium it should be considered a cash payment provided it is paid when due, but if not then paid the policy shall be void.

In the course of its answer to the contention that the recital may be contradicted the court says: "In a deed for the conveyance of land the recital of payment of the consideration may be contradicted provided it is not sought by such evidence to impair the effect of the deed as a conveyance—but admission of payment can never be contradicted by parol for the purpose of making the deed null" and the same principal covers this case of the policy.

37 Ill. 355.

In the case of Kimball v. Walker the court shows thereason for such rulings. There it was said that the practice of reciting the consideration in a deed and acknowledging the receipt thereof had its origin in the desire to prevent a resulting trust in favor of the grantor, and to estop him to deny the deed for the uses mentioned in it. Hence the fact that the deed was upon some consideration can not be denied but the fact that it was paid, may be. This is farther, put upon the ground that parol is not competent evidence to vary the legal import of a writing "The legal import of a deed of bargain and sale for a certain consideration is simply that there is no resulting trust in the grantor and he is estopped from even denying that the deed was executed for the uses and purposes mentioned in it but not that the money was paid to him."

30 Ill. 482.

In the case of Forbes v. Williams which was an action by payee against maker, the note expressed the consideration to have consisted of acts of service, the defendant was allowed to show by parol that there was no consideration because the services were not rendered upon a contract, expressed or
implied, but as acts of kindness and without expectation of pay. 13 App. 280.

For the purpose of recovery the proof of no consideration does not vary the terms of the writing. The presence of a seal in no way alters the rule, nor is it different in those instruments in which consideration though not expressed, is presumed.

See farther: Schneider v. Turner 130 Ill. 28 (27 App. 220).

Receipts have a position similar to that of negotiable instruments as regards their liability to contradiction by parol.

A general receipt in full of all demands is presumed to be given on an adjustment of all transactions between the parties but such a receipt is subject to explanation and may upon satisfactory proof be restrained in its operation. It may be shown that the settlement was in fact but a partial one a particular transaction was not taken into consideration.


Frink v. Bolton 15 Ill. 343; Irwin v. Miller 23 Ill. 348; McCloskey v. McCormick 37 Ill. 66; Corr v. Miner 42 Ill. 179; O'Brien v. Palmer 49 Ill. 72; Anderson v. Armstead 69 Ill. 452; R.R. Co. v. Rose 72 Ill. 183; Ditch v. Vallhart 82 Ill. 134; Stump v. Osterhage 111 Ill. 82; Gage v. Hampton 127 Ill. 87; Ennis v. Pullman Car Co. 165 Ill. 161; Pricket v. Madison County 14 App. 454; Counselman v. Collins 35 App. 68.

The acknowledgement in a deed of conveyance of land, of the receipt of the purchase money, is but a receipt for money and is subject to be contradicted, explained, or varied by parol evidence.

Elder v. Hood 38 Ill. 533; Primm v. Legg 67 Ill. 500

Huebsch v. Scheel 81 Ill. 281; Ludeke v. Sutherland 87 Ill. 481; Ins. Co. v. Kirchhoff 133 Ill. 368; Worrel v. Forsyth 141 Ill. 22; Koch v. Roth 150 Ill. 212; Sterricker v. McBride 157 Ill. 70; Neill v. Chessen 15 App. 266.

Bills of lading are in the nature of receipts and may be explained or contradicted by parol.

Bissel v. Price 16 Ill. 408.

Kingman v. Long 8 App. 504.

Bills of lading can not however be altered by previous oral agreements except in the recital of the goods and the quantity and their condition.


A policy of insurance acknowledging the receipt of the premium can not be contradicted by showing the premium has not in fact been paid, where the action is against the insurer who seeks thus to invalidate the policy. If however the insured had
been defendant in an action to recover the premium the ruling would be otherwise.

Provident Life Ins. Co. v. Fennel 49 Ill. 130.

An instrument may be both a receipt and an agreement, in such case the portion operating as a receipt may be explained like any other receipt but not so of the part containing the contract.

McCloskey v. McCormick 37 Ill. 66.
Andrews v. Mann 92 Ill. 240.

So far as a receipt is evidence of a contract, the general rule governs and parol is not admissible to change it. But in so far as it is evidence of payment it is only prima facie and may be contradicted.

Needler v. Hanifon 11 App. 303.
The receipt contained in a check, which upon its face is a payment in full of all demands to date, enclosed in a letter stating that it is in full of account and followed by a subsequent letter, asking that it be returned if the creditor does not wish to accept it in full settlement, can not be contradicted by showing that the amount was received only in part payment.

But this is on the ground that this was an accord and satisfaction of an unliquidated and disputed claim, and the check was not regarded as an ordinary receipt.

Ostrander v. Scott 161 Ill. 339 (overruling idem 60 App. 332)

By statute it is competent to show by parol that a deed absolute on its face was in fact intended as a mortgage. Whether a written defeasence exists is of no consequence as the real intent of the parties must govern.

Purviance v. Holt 3 Gilm. 394.
Ferguson v. Sutphen Id. 547.
Tillson v. Moulton 23 Ill. 601.
Shaver v. Woodword 28 Ill. 277.

In determining the question whether an absolute deed is a mortgage the court disregards all evidence as to the understanding of the parties; contemporaneous agreements inconsistent with the terms of the deed are not admissible to prove the intent. Equity and law seek for the understanding in the deed itself. The right must be paramount to and independent of the deed. Parol is admissible so far as it conduces to show the relation between the parties or to show any other fact or circumstances of a nature to control the deed and to establish such an equity as would give a right of redemption and no further. It is competent to show a debt existed or money leaned, on account of which the conveyance was made.
Sutphen v. Cushman 35 Ill. 186.

In this case Beckwith J. after stating the rule in substance as given above says farther: "From some expressions of opinion in cases hitherto decided by this court, it has been supposed that a more enlarged rule has been adopted in this state, but a careful examination of them will show that this court has never departed from the rule we now enunciate."

Sutphen v. Cushman (supra).


"To determine whether a deed is a mortgage the intention of the parties controls. To ascertain that intention the transaction must be viewed in the light of all the surrounding circumstances. The deed and the defeasance need not refer to each other they may be connected by parol. The defeasance need not be in writing." A party in embarrassed circumstances conveyed by absolute deed to one who advanced money to relieve his necessities, at the same time the grantee executed a bond for reconveyance if within two years the grantor should pay $3000 the grantee not to be liable for rents. Upon a bill to redeem this transaction was held to have amounted to a mortgage to secure the loan of the money. (This is the ordinary practice of mortgaging by deed absolute.)

Preschbaker v. Heirs of Feaman 32 Ill. 475.

Where a party acquires legal title at a sheriff's sale under execution, in pursuance of a parol agreement with a judgment debtor that he is to hold the title thus obtained as a security for a loan of the money paid to relieve the land from the judgment lien, and that he will reconvey when the money is refunded, the case is not distinguishable from any other where an absolute deed is held to be a mortgage.

Reigord v. McNeil 38 Ill. 401.

A certificate of sale and the sheriff's deed based thereon may be shown to be a mortgage by agreement between the parties.
Trogdon v. Trogdon 164 Ill. 144.
It may be shown that the deed was given in trust unless prevented by the statute of frauds.
Angell v. Jewett 58 App. 596.
The true character of every conveyance of land is open to inquiry, it matters not what form the parties may have given the transaction.

Wyncoop v. Cowing 21 Ill. 570.
The rule permitting parol in such cases is not confined to equity. At common law a deed absolute on its face could be shown to be a mortgage only on the ground of fraud, accident or mistake and since these defenses were peculiarly within the jurisdiction of a court of Chancery, the deed could be shown not to be absolute only in equity. However evidence to prove such a fact is now admitted under the statute and not by virtue of any rule of common law; the statute looks only to the intention of the parties and intentions may be proved at law where the title is not directly in issue. Thus in ejectment such evidence would not be admitted because here the title would be directly in issue and the legal title would prevail.

Ins. Co. v. Gibe 162 Ill. 251.
Where a deed or other writing or record is lost or destroyed parol evidence of its contents is admissible, unless, in the case of deed for instance, there is a record of it.

Bennett v. Waller 23 Ill. 97.
Sawyer v. Cox 63 Ill. 130.
Slate v. Eisenmeyer 94 Ill. 96.
The rule applies to all cases where the writing is in the possession of the party wishing to introduce the evidence.

Humphreys v. Collier and Powell, Breese (1 Ill.) 231.
Unless the absence of the writing is satisfactorily accounted for.

Spencer v. Boardman 118 Ill. 553.
The statutes provide that notice shall be given to the party to produce the writing and if produced it is the best evidence. After notice and non production of books or writings parol evidence is admissible to prove their contents.

Cartier v. Lumber Co. 138 Ill. 533.
Bishop v. Preserver Co. 157 Ill. 284.
Tucker v. Shaw 158 Ill. 326.
The rule also applies only to parties to the instrument. Strangers to a written instrument when their rights are concerned are at liberty to show by parol that the contract
is different from what it purports to be on the face of the writing.

Manufacturing Co. v. Fence Co. 109 Ill. 71.
Needler v. Hanifon 11 App. 303.
Kaskaskia Bridge Co. v. Shannon 1 Gilm. 15.

Complainant in foreclosure being the assignee of the mortgage debt may show that the defendant holding a full warranty deed of the premises did in fact assume payment of the mortgage. But where defendant set up a title by tax deed and there were no allegations in the bill in respect to the adverse claim and that defendant assumed payment of the mortgage debt. Such evidence is not admissible.

Corbim v. Sebastian 6 App. 564.