Dickinson Law Review - Volume 27, Issue 2

Dickinson Law Review

Vol. XXVII NOVEMBER, 1922 No. 2

Subscription Price $1.50 per Year

WHEELER ET. AL. VS. PHILADELPHIA, 77 PA. 338

A rule was issued to January Term 1875, by the Supreme Court of Pennsylvania, to show cause why leave should not be granted by that court to file a bill asking for a special injunction against the City of Philadelphia, its mayor, its city treasurer, its city solicitor, and against the city and its officers, and the Trustees of the Gas Works. Two bills were presented, one asking for an injunction against the city and its officers, forbidding its borrowing $1,000,000, to be used in constructing sewers and the other forbidding the borrowing of $1,000,000, to be paid to the Trustees of the Gas Works.

The bill being filed in the Supreme Court, the first question was did that court have original jurisdiction. The 3rd Sect. of Article V of the constitution says that the Supreme Court "shall have original jurisdiction in cases of ininjunction where a corporation is a party defendant." There are municipal and private corporations. No distinction is here shown between them. Both kinds may be controlled by injunction. No reason appears for allowing an injunction from the Supreme Court, against private corporation, and refusing it against municipal. But, says Agnew, C. J., the Supreme Court may decline to exercise its original jurisdiction, when no sufficient reason appears for not compelling parties to resort in the first instance, to the inferior courts. However, since the bills involve important constitutional questions as to the power of the city of Phila-

delphia to contract debts, an early answer to which becomes important, the Supreme Court decides to entertain them.

The assessed valuation of Philadelphia for taxing purposes on January 1st, 1874, was less than $549,000,000. Its debt exceeded $60,000,000. Sect. 8, Art. IX of the Constitution says that the debt of no city, county, etc., shall ever exceed 7 per cent of the assessed value of its taxable property, but any city whose debt exceeds 7 per cent of such value may be authorized by law to increase the same 3 per cent. in the aggregate at any one time, upon such valuation."

The Act of April 30th, 1874, provided for the increase of the indebtedness, largely in the terms of the constitution.

On May 23rd, 1874, another Act was approved. It divided cities into three classes. Those of the first class were to have more than 300,000 inhabitants; those of the second, less than 300,000 and more than 100,000; and those of the third less than 100,000 and more than 10,000. Under this Act, Philadelphia was the only city of the first class. With respect to cities of the first class whose debt then exceeded 7 per cent. of the assessed value of its taxable property, it authorized its councils to increase the said debt one per cent. of the valuation. The proposed increase of two millions, was less than one per cent.

Objection is made to this Act. It violates, it is alleged, the constitutional provision against local or special laws regulating the affairs of cities, etc. (a) Cities are a class, which is broken up into three sub-classes, in order that legislation special to each sub-class may be effected. But, such sub-division of the class, with legislation peculiar to each sub-division, does not constitute the local or special legislation that is prohibited. The writer of the opinion, Paxson, J., prudently refrains from a definition of local or special. It is sufficient to say, (and how easy it is to say anything) that "a statute which relates to persons of things as a class, is a general law," while a statute which relates to particular persons or things of a class is special, and comes within the constitutional prohibition."

Classification is necessary. The constitution itself classifies. It gave to Philadelphia, nominatim, a court not of record for every 30,000 people. It distinguished between counties whose population exceeded 150,000, and those with

less population; with respect to orphans' courts. But, it is suggested, the inference from constitutional classification, of a legislative power to classify would be unsafe. It is declared that it is not necessary to find the power to classify in the constitution. It exists, unless it is therein "expressly prohibited;" that is, the creation of a legislature is ipso facto the bestowal of the power to classify cities. But, the constitution has forbidden local or special legislation, and it would follow that, to uphold the classification, we must find that it is not special or local.

A large number of instances of classification of property for taxing purposes is referred to as are distinctions between married and single women, between minors and adults.

It is objected that Philadelphia was the only city of the first class. But the answer is that Pittsburg soon will be a second. We are old that Adam, as soon as created, was a class. Solitude, then, is not a negation of class.

The excessive inconveniences that would follow from holding that legislation applicable, at present, to Philadelphia alone, is local and special, are emphasized. It has unique needs which must be provided for. To extend the provisions for them, to cities that did not have the needs, i. e. quarantine, lazaretto, board of health, pilotage, shipping, would be unreasonable. The writer refuses to believe that the makers of the constitution "intend that the machinery of their state government should be so bolted and riveted down by the fundamental law as to be unable to move and perform its necessary functions."

The writer is consoled by the discovery that the courts of Ohio, under a similar constitution, have come to the same conclusion.

He also discovers that, even if the classification was unconstitutional, the objection to the creation of the debt, would gain nothing, because the constitution says "any city," the debt of which exceeds seven per centum may be authorized by law to increase the same. "It was entirely competent for the legislature to have passed an Act authorizing the city of Philadelphia; by name, to increase its debt." Yes, truly, but the legislature has not passed such an Act. It has authorized a city of the first class, whose debt exceeds 7 per centum, to increase its debt, but if the

classification is invalid, no authority is given by the Act to increase the debt.

The court next proceeds to consider the meaning of the Act of May 23rd, 1874. That Act authorized councils to increase the debt one per cent. upon the valuation. It did not require a vote of the electorate. Justice Paxsen understands the constitution to authorize an increase, by two per centum, or any less increase, at the sole will of the legislature, without consulting the voters. To increase beyond two per centum, would require that consultation. "But when the legislative sanction has been obtained the municipal authorities may increase the debt precisely as in the case of towns whose debt is less than seven per centum. This clearly does not require a vote of the people." The Justice refrains from deciding whether had the increase exceeded two per centum, it would have been necessary to submit the increase to a popular vote.

A difficulty arose as to the manner in which the Act of May 23rd, 1874, was passed. The Act began in the Senate, and made no reference to the debt of any city which was already above seven per centum. When it reached the house of representatives, it was amended so as to provide for increase of debt of such city. After conference between committees of the houses, the amended bill was passed. The title was changed to indicate the addition of subject in the Act. Sect. 1, Art. III of the constitution says that no bill shall be so "altered or amended on its passage through either house as to change its original purpose." The justice declines to discuss this objection. "Were we disposed to go behind the Act of Assembly and inquire into the regularity of its passage, there is not sufficient proof before us by affidavit or otherwise, to justify our interference." The Justice also finds that the title of the Act sufficiently indicates the nature of its contents.

As the borrowing of money increases the tax payable by the community, the court concedes readily that tax-payers have a right to file a bill whose object is to have a law declared invalid under which a debt is to be created. One of the bills sought to prohibit the borrowing of $1,000,000 for the Gas Trust. It was objected to this bill that the burden of the proposed loan can never fail upon the city. This is denied by the justice. "The proposed loan can only be issued upon the credit of the city, and the city's certificates

of indebtedness must be given, therefor. The property of the complainants would be responsible for every dollar of the loan. To hold that this responsibility, would not, under any circumstances, be enforced, is to assume that the business of manufacturing gas is absolutely free from all the contingencies to which every other branch of business is liable, and that the Gas Trust itself is so far above all other trusts in its own integrity and that of its numerous employees and agents, as to render defalcations, embezzlements and mismanagement impossible."

The sewer loan ordinance had only passed one branch of councils, when the bill was filed. But that was no objection to the bill, though the ordinance may never pass the other branch of councils, and may be vetoed by the mayor. The bill may be regarded as a bill quia timet.

An objection to the Act authorizing the $1,000,000 loan for the Gas Trust is founded on the 7th section of Art. IX of the constitution which provides that "the General Assembly shall not authorize any county, city, borough, township or incorporated district to become a stockholder in any company, association or corporation, or to obtain or appropriate money for, or loan its credit to any corporation, association, institution or individual."

The reply is that the Gas Trust is none of those things. It is a mere organ or instrument of the city. All the property of the Gas Trust is the property of the city. The business of making and distributing gas, is the business of the city. Although the Trust, created for security of those who lent money to the city, can not be destroyed until this money is repaid, all the property is the city's. The $1,000,000, if raised by taxation, will be the city's. The Gas Works are not a separate entity. They resemble the Water Department and Fairmount Park.

MOOT COURT

HARRISON'S ESTATE

Wills—Charitable Bequests—Trusts for Religious or Charitable Uses—Section 6, 1917 Wills Act, P. L. 406—Act of April 26, 1855, Section 11, P. L. 332

STATEMENT OF FACTS

Harrison bequeathed $50,000 to St. Mary's Protestant Episcopal Church of which Rev. John Parsons was rector. The will which was executed May 21, 1920, provided that if the testator would die within forty days the gift to the Church should be void and in its place the $50,000 should be given to Rev. John Parsons. Harrison had no personal acquaintance with Parsons and never communicated with him concerning the bequests. He made the bequest to Parsons because he believed that Parsons would use it for the benefit of the church but in no way expressed the motive either in the will or otherwise. Parsons since learning of the bequest to him declares that he will regard himself a trustee of the $50,000 for the church. The next of kin object to the bequest as invalid under the Act of April 26, 1855, Section 11.

OPINION OF THE COURT

SCHATZ, J. Under the Act of April 26, 1855, P. L. 332, it is provided that no estate, real or personal, shall hereafter be bequeathed, devised or conveyed to any body politic or to any person in trust for religious or charitable uses except the same be done by deed or will attested by two credible and at the same time disinterested witnesses at least one calendar month before the decease of the testator or alienor and all dispositions of property contrary thereto shall be void and go to residuary legatee or devisee, next of kin or heirs according to law, Provided, that any disposition of property within said period bona fide made for a fair and valuable consideration shall not be hereby avoided.

In the present case Harrison first made the gift to the church, and having made known his intention of giving his money to a religious use, proceeded to devise it to a specific person whom he knows will carry out his wish, should the gift become void under the Act of Assembly given above. The facts themselves show that the testator knew the provision of the statute and intended to get around it. There is no doubt in the mind of the Court that the testator practiced

fraud upon the law. But it is not whether the testator did that which would avoid the gift to Parsons, but whether Parsons the devisee knew of the circumstances before the death of the testator. Harrison did not know Parsons nor had he ever communicated his intention to him. The first that Parsons knew of the gift was after his death. There are two positions in cases of this type. "If an absolute estate is devised but upon a secret trust assented to by the devisee either expressly or impliedly by knowledge and silence before the death of the testator, a court of equity will fasten a trust on the devisee on the ground of fraud; but if the devisee has no knowledge until after the death of the testator there is no ground upon which equity can fasten a trust on him, even though after it comes to his knowledge he should express an intention of following out the wishes of the testator." Justice Sharswood in Schultz's Appeal, 80 Pa. 396. This case has been followed in Pa. and has been lately upheld in the recent decision of Bickley's Estate, 270 Pa. 101.

However, in spite of the fact that the courts have upheld the rule, there have been considerable dissenting opinions among which that of Justice Mestrezat in Flood vs. Ryan, 220 Pa. 450 is probably the best. He says that to allow a gift of the kind in the present case to be good is to destroy the intention of the Act, and gives Chief Justice Lewis's statement of the purpose of the Act as given by the Chief Justice in Price vs. Maxwell, 28 Pa. 23.

The Court in this case has every reason to believe that the rule should be changed for if it is allowed to stand the Act of 1855 actually becomes a nullity as far as the possibility of bequeathing to a charity within 30 days of the death of the testator is concerned. The only thing necessary for the testator to do in order to get around the statute is to make the gift to the charity in such a way as to leave it known what his intention is and then bequeath the same to some honest person whom he knows will carry out the trust should it fail without communicating in any way with such person. But even though this Court thinks the rule of Schultz's Appeal should be abolished it must out of fear take the same position as that taken in Bickley's Estate, 270 Pa. 101, and affirm the rule.

OPINION OF SUPREME COURT

Under our statutes there is a power to dispose by will of one's estate as one pleases. The exceptions to these powers are statutory.

The exception conceived to be relevant here is expressed by

the 6th section of the Wills Act, P. L. 403, 406: "No estate real or personal shall be bequeathed or devised to any body politic or to any person on trust for religious or charitable uses" except at least 30 days before death, and with two attesting witnesses.

Harrison's will first gave a devise to the St. Mary's Church. It provided that, if the testator should die within 40 days, this gift should be void. In its stead a gift was made to John Parsons. No trust was expressed. It is clear then, that the statutory annullment does not apply.

It is idle to talk of a "fraud" on the law. The interpretation of the law, made by the testator, was warranted by its phraseology. One has a right to assume that the legislature can and does express its intention in its words. Besides, the Supreme Court has told us that a devise to one, with a mere expectation, nowhere expressed, that the devisee will use the property devised for the benefit of a charity, does not fall within the scope of the statute. Schultz's Appeal, 80 Pa. 396; Bickley's Estate, 270 Pa. 101. If the legislature wants to forbid, not merely devises in trust, but devises where no trust is imposed, if charities are to become by the free action of the devisee, the beneficiaries let the legislature say so. There is no fraud on the law, in putting a natural interpretation on its words and acting in conformity with it, under that interpretation. It is not a fraud to decline to extend a statute beyond its meaning, as interpretated by the Supreme Court, in order to cover a case supposed by everybody to be within the policy which lay back of the statute, but failed to be embraced in its terms.

The appeal from the decree of the learned court below is DISMISSED.

STUART vs. CARPET CO.

Damages—Earning Capacity—Loss of Hand and Two Fingers—Loss of Chance for Employment as Element of Damages

Bachman, for Plaintiff.
Kirst, for Defendant.

OPINION OF THE COURT

L. D. MORGAN, J. It is not the contention in the present case that the plaintiff is seeking to recover damages for a decrease in his earning power, for as the facts stated there was none, but it is held that the sum of $75.00 is totally inadequate for the loss of one hand and two fingers on the other. In personal injury cases

the measure of damages includes compensation for pain and suffering, medical expenses and loss of earnings and of earning power. The damages in this case the plaintiff contends, are not sufficient to pay even the medical expenses.

The case of Helmstetter vs. Railways Company, 243 Pa. 422, is very similar to the present one. In that case the plaintiff an employee of the city lost one hand and a finger of the other hand. Plaintiff lost no wages by reason of the accident. Plaintiff was awarded $3000.00 damages. Case was reversed because evidence improperly admitted as to salaries of engineers. The evidence showed that engineers salaries were higher at time of trial than when plaintiff was an engineer. Plaintiff had been an engineer thirteen years previous to date of accident. It did not appear that this evidence had any influence on the jury in making their award. In this case also it was shown that the plaintiff was protected by the Civil Service Rules so that he was not likely to lose his position and had an advantage as compared with employment for private parties.

DeHaas vs. Pennsylvania R. R. Company, 26 Pa. 503 holds: In a negligence suit lessened capacity to earn in any actually available occupation may be shown by proper and satisfactory proof.

The loss of earning power is only one of the elements of damages in cases of personal injuries. In the present case the plaintiff may lose his position. Can it be said that he could obtain another as readily as he could if he had not been handicapped? In the majority of cases for damages for the amputations of hands awards have been made ranging anywhere from $500 to $20,000.

In considering the pain and suffering, medical expenses, and the loss by the plaintiff of one of his useful members which could be made valuable use of in other walks of life, we think the award was totally inadequate and not in harmony with other decisions and therefore reverse the judgment of the lower court, and order a new trial.

New trial granted.

OPINION OF SUPREME COURT

It is quite impossible for us to accept the doctrine supposed to be laid down in Helmstetter vs. Railways Co., 243 Pa. 422. The plaintiff was entitled to compensation for the reduction of his earning power. He had had at least two ways of making a living: that of being an engineer, and that of acting as foreman. For the latter function, the fingers and hands were not essential. For the former, they were. As engineer he may have been able to earn as much as he could as foreman; or more, or less. The evidence does

not make this matter clear. The doctrine of the court below seems to be, that if a man has two, three or six ways of earning $1000 a year, and he is deprived of the power in all of these ways but one to earn anything, he nevertheless suffers no loss of earning power. If, in the way that is left open, he, so long as he is employed therein, may earn as much as he could in any of the other ways, he may be deprived of the ability to earn in these other ways with impunity. The chance of employment in one or the other of two ways, is clearly greater than that of employment in only one of them. But, apparently, the reduced chance of employment is not an occasion for compensation at all. In a case relied on by the court below, the writer of the opinion says, that if, employed as an engineer, the plaintiff could have earned no more than he did earn as a foreman, and than he was continuing after the accident to earn, "then admittably he suffered no loss of earning power." He says again, "that plaintiff was capable of earning more than the minimum sum (that is, of several sums stated by witnesses, to be earned by engineers) was not shown. If he was not, then he suffered no loss of earning power," because that minimum was not greater than his compensation as foreman. This opinion is remarkable. Helmstetter vs. Railways Co., 243 Pa. 422.

Apparently, the writer thinks that if a man continues to be employed by his employer after the accident at the same wages as before, out of friendship, or pity, he can recover nothing for loss of earning power, although all the other employers in the neighborhood would on account of his mutilation, have no use for him at all, or be willing to pay only a nominal wage for his services.

It is enough for us to say that we wholly dissent from this conception of the loss of earning power. We must not consider only the wages which the plaintiff could have earned by the exercise of one set of faculties, but also the chance of his gaining the opportunity to exercise any of these sets of faculties.

AFFIRMED.

BUCKINGHAM vs. X BANK

Bank and Banking—Checks—Acceptance of Check—Act of May 16, 1901, Sections 136, 137; P. L. 212

STATEMENT OF FACTS

Buckingham kept a deposit in the X Bank. He received a check from Patton for $1000 drawn also on the X Bank. His account showed a deposit of $1500 at the time and the Bank entered

a credit in Buckingham's passbook on his endorsing over Patton's check. Subsequently the bank learned that the credit on its books of Patton was made up of a check for $1300 on the Y Bank which two days later the X Bank learned that the Y Bank refused to pay. It then charged back the $1000 to Buckingham. Denying its right to do so, he brings suit.

Sciotto for the Plaintiff.
Forcey for the Defendant.

OPINION OF THE COURT

HOFFMAN, J. This was an action of assumpsit brought by the plaintiff Buckingham against the X Bank for wrongfully charging off on it's books a credit given to him in his pass book.

When the bank gave to Buckingham, one of it's depositors, credit on his pass book for the check of Patton drawn on it, having on its books ample funds to pay the $1000 check of Patton's, such credit was equivalent to a payment to Buckingham in cash of $1000. Bryan vs. Bank, 205 Pa. 7. This doctrine has never been questioned since being first settled in Levy vs. U. S. Bank, 4 Dallas 234 and 1 Binney 127. Certainly if instead of receiving credit he had procured the actual cash, it cannot be pretended that there could be a recovery back from him, if unwilling to pay it. Any attempt to distinguish between the credit in the bank book and an actual cash payment is as impolitic on the part of the X bank, as it is unjust to Buckingham, who accepts the banks credit, instead of his money.

The mere delivery of the check to Buckingham was not an assignment of the $1000 out of the $1500 then on deposit to his, Patton's credit. But the acceptance of the check by the bank for deposit was an assignment of the $1000. A bank may make an acceptance in several ways, either by certifying the check, in which the obligation immediately shifts to the bank for payment, or by charging up the check to the drawer.

Did the bank accept this check? If so, what is acceptance? According to Section 137 of the Act of 1901, 3 Purdon 3307, "Where a drawee to whom a bill is delivered for acceptance destroys the same or refuses within 24 hours after such delivery or within such other period as the holder may allow to return, the bill accepted or non-accepted to the holder, he will be deemed to have accepted the same." Before the passage of this act it seems that what was really an acceptance was a question of fact for the jury, and that retention was not conclusive evidence of an acceptance. Bank of Northumberland vs. McMichael, 106 Pa. 460.

Section 136 of the Act of 1901 further provides: "That a drawee is allowed 24 hours after presentment in which to decide whether or not he will accept the bill." The bank, according to the provisions of this act, must be said to have accepted the check in question. It was for them, to investigate the check and determine its value. It can not hold the check indefinitely and then surprise the depositor by later informing him that it was not good, when at the moment he was given credit, sufficient funds were on hand to pay it.

The bank according to the Act of 1901 accepted the check and having done so is now estopped by its conduct to charge back this check to Buckingham. The present day interests in commerce and trade require banks to exercise a high degree of care in the handling of their business, particularly to customers to whom credit is given.

We, therefore, enter judgment for the plaintiff, with costs.

OPINION OF THE SUPREME COURT

The judgment is affirmed.

HOFFMAN vs. BOROUGH

Negligence—Municipalities—Streets—Defects — Pedestrians Crossing Between Crossings—Street Car's Habit of Stopping Between Crossings—Notice of Habit by Municipality—Nonsuit.

STATEMENT OF FACTS

Hoffman, plaintiff in this case, at eight o'clock on the evening of November 27, visited a store on the south side of a street and made sundry purchases. Seeing a street car approaching, he started across the street to meet it. In the street was a depression which he did not and could not see, and stepping into it he fell and was severely hurt. 100 yards up the street was a crossing, well lighted and in using which no similar danger could have been encountered.

The trial court conceeding that the borough was negligent in allowing the depression in the street, entered a non suit because of the attempt to cross elsewhere than at the crossing. This is a motion to take off the non suit.

OPINION OF THE COURT

COLLINS, J. This is a motion to take off a non suit. The

counsel for the plaintiff relies upon the fact that the plaintiff crossed other than at the crossing, and that there was a well lighted crossing nearby.

He cites numerous cases to sustain his point. Among them is Barnes vs. Sowden, 119 Pa. 53, where there was however contributory negligence. This was not so in the case at bar, for there is no averment of it in the statement of facts. That it is not negligence per se to cross a street other than at a crossing is shown by the case of Virgilio vs. Walker, 254 Pa. 241, in which the court ruled: "Conditions has not arisen in any case brought before us where we have felt called upon to rule that it was negligence per se for a pedestrian to traverse a public highway between the regular crossing places, nevertheless, when one does so, he is bound to a high degree of care."

Since it was not negligence per se and there is no negligence alleged, then the presumption arises that the plaintiff used care. However the depression was one which he did not, and could not see.

Section 348, 13 R. C. L. gives an able dissertation on the duties of a municipality to care for streets and the gist of this citation is to the effect that great care must be taken both to discover and remedy such defects as well as anticipate them. This was not done in this case.

As the learned counsel has ably stated, we find:

1. A duty of the borough to the plaintiff to use care in the streets.

2. The duty was not exercised.

3. The plaintiff was not contributorily negligent.

Therefore the non suit is removed and the damages will be assessed.

OPINION OF THE SUPREME COURT

We think the learned court below has properly taken off the non suit. The reasons for the plaintiff's crossing the street may be divined. The hour was 8 o'clock of the evening of November 27th. He was encumbered with a load. If he did not board the passing car, he would have to wait for a half hour or longer, before he could take another.

The municipality is under a duty not only to make crossings safe, but to make the intermediate parts of it's streets fairly safe. The whole street belongs in a sense to pedestrians as well as cab men, drivers of carriages, and others. If A on one side of a street midway between the established crossings, wants to go to a point

directly opposite on the other side, it is unreasonable to say that he must walk up to the crossing, then cross, then walk back to the point which he wishes to reach.

When a street car is in the habit of stopping between crossings to allow passengers to mount or dismount, it is not permissible to say that the city or borough is not bound to take notice of the habit and make the street reasonably safe to cross. The remark in Watts vs. Plymouth Borough, 255 Pa. 185, "When without reasonable excuse he (the person walking) does reject it (the established crossing) and adopt another way, he takes upon himself the risk of every danger arising out of municipal neglect that would have been avoided had he used the established crossing," surely needs qualification. There are surely some defects so serious that the permission of them would be gross negligence, and, could not be required to be anticipated by a pedestrian.

We are unable to say that this mere act of crossing was negligent, and, at most, the jury should have been required to determine whether it was or not. Many circumstances might be conceived that would prompt a prudent person to cross between crossings, and to act on the assumption that the borough had not allowed dangerous depressions, unlighted, to exist upon the street.

The judgment of the learned court below is AFFIRMED.

TROLLEY COMPANY'S PETITION

Petitions of Public Service Corporations—Power of Public Service Commission—Jurisdiction of Court of Common Pleas Over Petitions of Public Service Corporations—Act of April 9, 1856, P. L. 993

Duell, for the Plaintiff.
Collins for the Defendant.

OPINION OF THE COURT

CARTER, J. The company was by charter authorized to build and operate a road between borough X andY, and in Y to run from point A to point B, five blocks long on Ridge Street.

Certain property owners remonstrated against the grant of the petition, alleging and offering to prove, that they built their houses on Ridge Street, with the points mentioned, because of the facilities for travel afforded, and that the loss of these facilities will lower their property value to the extent of 33 per cent.

The main question in this case is whether the Court below was right in refusing the petition of the company.

The learned attorney for the defendant urged that the court was without jurisdiction to grant the petition, alleging that such questions should be decided by the Public Service Commission of Penna. It is true that the Public Service Commission has authority and jurisdiction over the operation of public service corporations, yet there is no express authority in the Public Service Company Law passed in 1913, giving them jurisdiction in the case of petitions to abandon lines. In the case of the New York & Penna. Railway Co. vs. The Public Service Commission in 72 Superior Court 523, it is held that "the irresistible conclusion is that if the corporation gives up its franchise and surrenders the powers given it by its charter, in the manner prescribed by law, the duty and obligation of furnishing the public service is terminated and the regulatory power of the Public Service Commission is at an end."

From this we can see that the petition is rightly in the Court of Common Pleas, and the case is regulated under and subject to the Act of April 9, 1856, which provides as follows:

"It shall be lawful for any court of common pleas of the proper county to hear the petition of any corporation, under the seal thereof, by and with the consent of a majority of a meeting of the corporators, fully convened, praying for permission to surrender any power contained in its charter, or for the dissolution of such corporation, and if such court shall be satisfied that the prayer of such petition may be granted, without prejudice to the public welfare."

It is conceded by both parties that the petition may be granted, without prejudice to the public welfare."

It is conceded by both parties that the petition was made in accordance with the views of the majority of the corporators. But we must consider whether the prayer of the petition is injurious to the public welfare. It seems to us that the abandonment of the street railway is not such an injury that will threaten the public welfare. It is true that the property owners may lose a convenience, and, to a degree, lower the property value of their homes, But such an injury does not go so far as to come under the Act of 1856.

The judgment of the court below is reversed.

OPINION OF THE SUPREME COURT

The Act of 1856, April 9th, P. L. 993, authorizes the amendment of charters by the Court of Common Pleas. It acts in the

name of the Commonwealth, as does the legislature, in the original creation, or as does the governor in the grant of the charter.

The appellants have houses along the site of the trolley road, facility for approaching which will be lessened by the cessation of the operations of the trolley company, but as says Simpson, J., in Easton Transit Company's Appeal, 270 Pa. 136, they are not parties to the contract between the state and the company and therefore, cannot compel performance of the duties of the latter, or object to the release of it therefrom.

The judgment of the learned court below is AFFIRMED.

ASKINS vs. SOLWAY

Joint Tenants—Tenants in Common—Right of Survivorship—Act of March 31, 1812

STATEMENT OF FACTS

A tract of land was conveyed to A, B, and C "as joint tenants, not as tenants in common." C died; then A and B conveyed the land to Askins, who contracted to convey it to Solway. Solway doubts whether he can get more than an undivided two-thirds of the land and declines to accept the deed and pay the purchase money. Assumpsit.

OPINION OF THE COURT

PARNELL, J. The determination of this case rests upon the fundamental distinction between a joint tenancy and a tenancy in common, and upon the question whether or not that distinction was rendered non-existent by the Act of March 31, 1812, abolishing estates in joint tenancy in Pennsylvania.

An estate in joint tenancy exists when a single estate in land is owned by two or more persons claiming under one instrument. Its most important characteristic is that, unless the statute otherwise provides, the interest of each joint tenant, upon his death, inures to the benefit of the surviving joint tenant or tenants, to the exclusion of his heirs, devisees, or personal representatives. Tenancy in common exists when two or more persons hold separate estates in undivided shares of land, claiming under different titles, or under a single instrument not showing an intention to create a joint tenancy. Tiffany 368. The fundamental distinction between the two modes of holding title is the presence of the right of survivorship as an incident of an estate in joint tenancy.

If C, the deceased tenant, was possessed of an interest in the land which was not affected by the right of survivorship, then Solway can obtain no more than a two-third interest in the land by deed from Askins, and may successfully defend against this action of assumpsit; for, Solway, having contracted to purchase an entire interest in the land, is under no obligation to perform if the plaintiff, Askins, can not perform the obligation of his contract. If the right of survivorship attaches to the interest of the deceased tenant, C, then the plaintiff can convey a fee simple interest in the land and hold the defendant liable in this present action for the amount of the purchase money.

Prior to March 31, 1812, a conveyance, containing a description of the holding "as joint tenants, not as tenants in common," would have been construed without question to create an estate in joint tenancy, to which the right of survivorship is an incidental. However, the Act of March 31, 1812, provides in reference to estates in joint tenancy that, thereafter: "If partition be not made between joint tenants, whether they be such as might have been compelled to make partition or not, or whatever kind the estates or thing holden or possessed be, the parts of those who die first shall not accrue to the survivors, but shall descend or pass by devise, and shall be subject to debts, charges, curtesy or dower, or transmissable to executor or administrator, and be considered to every other intent and purpose in the same manner as if such deceased joint tenants had been tenants in common." It is the common belief of many that the foregoing act, by ordering the construction of joint tenancies created subsequent thereto as tenancies in common, in reality abolished the right of survivorship; to this effect, the defendant has quoted the case of Pollock's Estate, 7 Pa. County Court 348.

Estates in joint tenancy have been regarded with marked disfavor by the courts, even prior to the passage of the above, for the reason that the interests of heirs and devisees suffered loss and injury thereby to the gain and profit of those who were strangers, in point of relationship, to the heirs and descendants of the deceased joint tenant, and also for the reason that the deceased joint tenant is deprived of the power of devising his property. Furthermore, during life a joint tenant can not convey an interest in fee simple but can convey only the interest which he possesses, an expectancy. Title to real estate is thus clouded and encumbered by the existence of joint tenancies. An indication of this disfavor is expressed in Bambaugh vs. Bambaugh, 11 S. & R. 191, in which the Court states that: "The inconvenience of a joint ten-

ancy has induced the Court to seize upon every expression which indicates an intention to give a separate interest to each."

Nevertheless, to maintain that the above act and various cases interpreting the same have the effect of abolishing of the right of survivorship goes beyond the intent of the legislature in passing the act. As indicated by later cases, the interest of the legislators was to legislate against and abolish joint tenancies and the right of survivorship when the intent of the testator, grantor, etc., was uncertain and it was doubtful whether he intended to create a joint tenancy or a tenancy in common. When the above circumstances of doubt existed as to the intention of the creator of the estate, the estate was construed to be a tenancy in common, not a joint tenancy accomplished by the right of survivorship. But, where the intention of the creator to provide and make effective the incident of survivorship is clearly and definitely expressed, the right of survivorship attaches to the estate created. In harmony with this view are the cases of the Redemptorist Fathers vs. Lawler, 205 Pa. 24; McCallum's Estate, 211 Pa. 205; Jones et al vs. Cable, 114 Pa. 586; Arnold vs. Jack's Executors, 24 Pa. 57.

The defendant relies in part upon the case of Pollock's Estate, 7 Pa. County Court 348, which seems to hold that survivorship was destroyed by the Act of March 31, 1812. But, upon an examination of the facts of this case, it is discovered that the intention of the testator was a matter of doubt and uncertainty and that in consequence the learned Court held that a tenancy in common was created, that the right of survivorship had no application because of the above act. This conclusion is in complete accord with the rule above stated; in all probability, had the intention of the testator indicated a desire that the right of survivorship attach, the learned court would have so held.

In the present case, the intention of the original grantor is expressed definitely and explicidly to the effect that the right of survivorship be an incident of the estates created. Consequently, in pursuance of the rule stated, it must be held that Askins received title in fee simple from A and B and can convey title in fee simple to Solway; hence, judgment to the extent of the purchase money named in contract to sell is hereby rendered for the plaintiff.

OPINION OF THE SUPREME COURT

That A can devise land to B and C until either should die, and then in fee simple to the survivor, is not to be doubted.

So A might grant or devise land to B, C, and D until the death

of any one, then to the survivors, until the death of one of them, and then in fee to the ultimate survivor.

This is virtually what has been done in the case before us. The conveyance was to A, B, and C, as joint tenants; that is, to them till the death of one; then to the two survivors till the death of one of the two, and then, to the ultimate survivor in fee. It is impossible to see why the state should undertake to prevent such a disposition.

When the meaning of "join tenancy" is not understood by a grantor, there is a risk that, in granting in joint tenancy he is providing for a mode of devolution which he really did not intend. It was wise then, to say, as did virtually the Act of 1812, March 31st, that there should be no survivorship in such cases. The object was not to forbid a grantor's intending to convey in joint tenancy, but to prevent the court's saying that he has so conveyed when probably he did not intend to do so.

But here the devise is to A, B, and C as joint tenants and not as tenants in common. It is impossible to doubt that the testator intended survivorship. It was not the legislature's intention, in enacting the Act of 1812, to forbid the carrying out of such an intention. The learned court below has properly held, following Redemptorist Fathers vs. Lawler, 205 Pa. 24 and other cases, that the intention of the testator must be carried out. This estate their deed would convey.

The judgment is therefore AFFIRMED.

WARD vs. MADDEN

Gift Inter Vivos—Disposal of Personal Property in Husband's Lifetime—Fraudulent Intent

Collins for the Plaintiff.
Blumenthal for the Defendant.

OPINION OF THE LOWER COURT

HUTCHISON, J. This is a bill in equity filed by the widow and two sons to nave declared fraudulent and void, the transfer of some government bonds by the deceased husband and father. The deceased, John Ward, transferred $10,000 of government bonds to one Madden on August 17, 1920, in trust to pay the interest to his, Ward's father for life and the bonds themselves at the father's death to a church. At the time Ward had only $14,000 of property. He died in April, 1922. This bill seeks to have transfer set aside

on the ground that it is fraudulent and therefore void in that it deprives widow and children of what they might have inherited if the transfer had not been made.

The bonds are personal property and personal property may be disposed of by husband at any time during coverture without wife's consent. This is and always has been the law in Pennsylvania as well as the rule in use generally. There are numerous decisions supporting this well known proposition. Ellmaker vs. Ellmaker, 4 Watts 89; Dickerson's Appeal, 115 Pa. 198; Pringle vs. Pringle, 59 Pa. 281, where it is held that: "The power of the husband over his personal property by gift inter vivos is absolute." The latest decision is in Benkert vs. Commonwealth Trust Co., 269 Pa. 257, where the rule is stated that: "During his life a man may dispose of his property by voluntary gift, or otherwise, as he pleases, and it is not a fraud upon the rights of his widow or children."

The trust in this case constituted a valid gift of property inter vivos. There was absolute relinquishment of trust funds. There might be a basis for the widow to claim under the Intestate law if this trust were testamentary but it is not. It was not intended to act as a will or to take the place of a will. There is no statutory requirement forcing a husband to have the wife join in the conveyance of personal property similar to that which requires the wife's joinder in conveyance of husband's real estate else the conveyance is subject to wife's dower interest.

The only ground on which widow can base her claim in the case at bar is upon fraud. The rule in Young's Estate, 202 Pa. 431, shows: "A married man's dominion over the personal property, ample as it is, will not sustain a fraudulent gift of it in contemplation of death or to take effect upon death, to defraud wife's statutory rights as widow; but the indispensible foundation for any limitation on husband's control of property is a fraudulent intent to defeat wife's statutory rights as widow.

"But, if the gift is absolute and accompanied by a transfer of possession with intent to divest the donor of his ownership, although the obvious effect is to defeat the wife's or children's succession to property at donor's death, it is not fraudulent and therefore not invalid." Windolph vs. Trust Co., 245 Pa. 349.

"The good faith required of a settler in making a valid dispositionsition of property does not refer to purpose to affect his wife but to the intent to divest himself of ownership of property." Lines vs. Lines, 147 Pa. 149.

"A fraudulent intent, which will defeat a gift inter vivos, can-

not be predicated of husband's intent to deprive wife of her share in his estate as widow." Benkart vs. Commonwealth Trust Co., 269 Pa. 257.

We are of the opinion that the case at bar falls within the rules of the cases cited supra. There is no evidence of intent to defraud nor can there be any intent predicated from the facts.

We can not perceive how there is a tendency for husbands to defraud their wives simply because the rule stands as it is. This was the argument of the counsel for the widow. His argument that equity should not follow the law in our case appears to be absurd.

We hold that the trust created by John Ward was valid and dismiss this bill with costs to be born by the complainant.

Bill dismissed.

OPINION OF SUPERIOR COURT

No ground whatever exists for the son's filing this bill. As against his children, a father can dispose of his property as he chooses.

A wife has a qualified right in respect to the husband's property. She can claim a share of it against his will. But he can give it away in his lifetime, despite her opposition. He has done so here. His bestowal of it has not been by will. It has taken effect during his life. She cannot annul his disposition of it. The appeal is dismissed.

CARPENTER vs. TILLEY ET VIR

Married Women—Principal and Surety—Borrowing Money—Act of June 8, 1893, P. L. 344.

STATEMENT OF FACTS

Tilley desired to begin a business for which he would need $500. His wife, having property and therefore having credit, agreed with him to borrow $500 on a note to be made by her and by him as surety. The note was made and Carpenter loaned $500 on it. In this suit on the note, Mrs. Tilley seeks to avoid liability. Verdict and judgment for plaintiff. Appeal.

Davis for the Plaintiff.

Smarsh for the Defendant.

OPINION OF THE COURT

KIRST, J. The question involved in the case appealed to this court is one which has been very frequently decided in this state.

There can be found a line of decisions by our state courts deciding this question and which now make it a settled point of law in this state.

In the case at bar one Tilley, the defendant, being desirous of entering into business needed credit to the amount of $500. Not owning any property he agreed with his wife, who was a property-holder to borrow $500 on a note made by her and signed by him as surety. This was done and suit was brought by the plaintiff, Carpenter, on the note. At the trial in the lower court verdict and judgment were for the plaintiff and this appeal taken.

The Act of June 8, 1893, P. L. 344, plainly states that: "A married woman may not become accommodation endorser, maker, guarantor or surety for another." And this case clearly falls within the language of the statute.

The wife made the accommodation note for her husband, and we can find no authority which will permit the husband to be an exception to the word "another" as stated in the statute.

The plaintiff cites a number of cases supporting the fact that a married woman may mortgage her property for her husband's debts, and sets them up as an anology to the case at bar. The Act of June 8, 1893, P. L. 344, does not state that a married woman may mortgage her property for her husband's debts, but there is an abundance of cases as good authority for the practice, and our courts have repeatedly held this as a right which a married woman has.

In Goldsleger vs. Carracciolo, 63 Pa. Sup. 72, and Oswald vs. Jones, 254 Pa. 32; Glennon vs. Hrobak, 76 Pa. Sup. 371, it is clearly stated that a wife cannot be the accommodation maker of a note for the benefit of her husband.

The case is one that is so clearly decided that we think a prolonged discussion is unnecessary. We are of the opinion that the trial court erred in entering a judgment for the plaintiff, and we therefore reverse the judgment of the court below and enter judgment for the defendant.

OPINION OF SUPERIOR COURT

A wife can give or lend her money to her husband. She may become owner of the money thus lent or given, by a loan from X. She may give her own note to X for this money. The note may be enforced. She may procure the joint signature of her husband to it, as a mere surety for her, and not as a borrower. The note may be enforced against her. Such as we understand it, is the doctrine of Scott vs. Bedell, 269 Pa. 167. In the case be-

fore us, the wife became the borrower, and the husband became surety upon her note. Carpenter lent the $500 to her. She is liable on her promise to repay it. It is necessary then to reverse the judgment of the learned court below.

Reversed.

ESTATE OF HARRIS

Master and Servant—Domestic Services—Periodic Payments—Presumption of Payment—Rebuttal of Presumption—Engagement of Parties to Marry—Wages—Priority of Claim—1917 Fid. Act, Sect. 13 (a) P. L. 447

Broomall for Plaintiff.
Baumard for Defendant.

OPINION OF THE LOWER COURT

ANNA E. DAVIS, J.—The question before this court is, whether a claim for wages by Sarah Stevens, a domestic, should be allowed. It appears that she was employed by one Harris on July 7, 1915, that after three years of service he engaged to marry her but because of his illness, the marriage was deferred from time to time until March 1921, when he died. There had been an agreement between them that ten dollars a week and board was to be the amount of her wages. This claim is for wages alleged unpaid from August, 1918.

The defense is presumption of payment at short interval. It is well settled law in Pennsylvania that there is a presumpeion that domestics are regularly paid weekly, bi-weekly or monthly according to the customs of the locality in which they render service to their employers, Carpenter vs. Hayes, 153 Pa. 432, but according to Schrader vs. Beatty, 206 Pa. 184, this presumption is rebutted and has no application where the head of the house assumes relations of intimacy with his servant. This intimacy involves the employer in laxity in his business relations with the employee. Hess vs. McAleer, 268 Pa. 239, holds that the presumption of payment is also rebutted because of said intimacy i. e. the engagement.

Upon the authority of the cases cited above we find that the wages are due and owing to said Sarah Stevens from August, 1918 until March, 1921 at the rate of ten dollars per week amounting to $1310.

According to the Fiduciaries Act of 1917, plaintiff has priority of claim for wages due for one year over the general creditors, Sec.

8458, Statutes of Pennsylvania, 1920, Debts of Decedents. "All debts owing by any person within this state at the time of his decease shall be paid by his executors or administrators so far as they have assets, in the manner and order following—namely: 1. Funeral expenses, medicine furnished and medical attendance given during the last illness of the decedent and servant's wages not exceeding one year." Therefore she shall have a prior claim for $520 for one year's wages but shall receive the remaining $790 with the general creditors upon the settlement of the estate. Costs of this suit to be paid by defendant.

OPINION OF SUPERIOR COURT

In McConnell's Appeal, 92 Pa. 31, the doctrine was propounded that there is a presumption that wages are paid to a domestic servant, within a short time after they are earned, and hence, that the burden is on the servant, a plaintiff suing for the wages to prove that they have not been paid or at least to overcome the presumption that they have been paid.

The effect in this case is to repel the presumption by showing an attitude of the minds of employer and employee, that would induce on one side, ommission to demand payment and on the other side, omission of promptitude in tendering payment.

The cases cited by the learned court below, contain interesting disquisitions in the relevant psychology. It is unnecessary for us to express opinion thereupon. The decree of the learned Orphans' Court is affirmed and the appeal is dismissed.

HOPE vs. DESPAIR

Will—Construction—Devise in Fee—Restraint on Alienation—Attempt to Take From Estate an Inherent Attribute

STATEMENT OF FACTS

Hope's father devised to him and his heirs the farm in question, adding "but he shall not alienate it during 25 years after my death." The death occurred June 7th, 1920. In November, 1921, Hope contracted to convey the land to Despair for $10,000, possession not to be given until 1946. This is an action for the purchase money. Defendant alleges the invalidity of the contract.

Mrs. Stevenson for the Plaintiff.

Borys for the Defendant.

OPINION OF THE COURT

DOEHNE, J. In the case before us for consideration, the testator intended to give his son a fee simple estate in the land with

the reservation that he could not alienate it for a period of twenty-five years. Let us examine the characteristics of a fee simple estate. "The chief incident and attribute of an estate in fee simple is the power of the owner to alien or transfer it. This attribute is so inseparably a part of the very estate itself that it cannot in general be provided that the owner of an absolute fee simple cannot alienate it, but all general provisions and restrictions upon alienation are void, because they are said to be repugnant to the nature of the estate. Alienatio rei praefertui juri accrescendi. This doctrine is just the contrary of the feudal one which at first forbade and afterwards discouraged alienation of lands, while it recognized and permitted subinfeudations. The most material change was made by the Statute Quia Emptores (18 Edw. 1) which permitted tenants to alien (subject to the payment of a fine for license) but forbade subinfeudation. This last restraint upon free alienation (i. e. the fine) was abolished by the statute of 12 Ch. II, c. 24, although long before that statute the law had been settled that no restraint upon alienation could be annexed to an estate in fee. There may be partial restraint for a life in existence at the time of making the deed or as to a particular person." Mitchell on Real Estate and Conveying, page 96.

In the case of McWilliams vs. Neeley, 2 S. & R. 507. Chief Justice Tilghman in asserting the general doctrine, that, when an estate is given, every restraint upon it, which destroys its character, is void, acknowledges the doctrine that a partial restriction not inconsistent with a reasonable enjoyment of the fee, is good.

But when the case of Patton vs. Scott, 270 Pa. 49, came before the present Supreme Court it was decided that even a partial restriction on the power of alienation is void. We will not enter into the justice of this decision, although we believe that it is open to criticism. The case at bar being in accord with Patton vs. Scott and the Supreme Court having decided that the restriction is void.

We must find for the plaintiff.

OPINION OF SUPREME COURT

Heritability and alienability are two conceptions. The fee simple is an estate which has the former quality. Whether it has also the latter, is purely empirical. Indeed, quite a struggle has been necessary to secure to the fee the right to be alienated. At length, fees tail have been abolished by statute. The question is whether the same presiding will that has effected this abolition shall also effect that of even temporary and relatively transient inalienability. It seems unwise to ordain that there shall be no creation of a fee unless it is also left even for five or ten or 15 years capable of sale or gift. Reasons for ruling (a) a fee to be in X, but (b) that he

should not be able to assign it until he becomes of age, are quite imaginable; nor is it thought impossible to give effect to both the wishes, despite the language which declares that alienability is "inseperable" from the fee. If one reason, viz., youth, makes it possible to separate the power to alien, from the fee estate, it is manifest that alienability is not inseparable from a fee.

The question is not to be determined by superstitious phases as to the compulsory co-existence of two qualities. It is purely one of will. Will the court, the legislature, that represents the sovereign power, permit the power to convey to be riven from the possession of a fee? There may be in particular cases, good reasons for allowing, even for requiring it, while in other cases, there would be good reason for disallowing it. Apparently when a legal fee is given, the courts have determined, be the reason good or bad, that the owner of it shall at all times be able to part with it, unless he is a youth, or insane, or is under some special disability. Following Patten vs. Scott, 270 Pa. 49, it is necessary to hold that Hope had the power to contract to convey and to convey, and therefore that he may recover the purchase money.

The judgment is affirmed.

BASSETT vs. KNIGHTS OF MALTA

Beneficial Association—Death Benefit—Disappearance of Beneficiary—Presumption of Death—By-Laws—Unreasonable By—Laws—Retrospective Obligation of Contract

STATEMENT OF FACTS

John Bassett became a member of defendant, a benefit society, which agreed at his death to pay to his widow, $2000. In 1912 Bassett left home for Chicago, but was never heard of afterwards. His wife continued to pay his dues to the defendant. In 1920 the Orphans' Court decreed that he was dead, and appointed an administrator. A year after Bassett's departure from home, the defendant passed a by-law declaring that no death benefits should be paid except on proof of death by persons who had seen and recognized the dead body of any member. This is an action by the widow for the $2,000. The only evidence of death was the departure and non-communication for seven years.

Jurchak for the Plaintiff.

Kantner for the Defendant.

OPINION OF THE COURT

LEWIS, J. The by-law passed by the defendant, a beneficial association, is an evident attempt to abrogate the effect of two

well-settled rules of law, viz., (1) An absence and non-communication for seven years raises a presumption of death on which heirs and beneficiaries may pursue their rights in the same manner as if the presumed decedent were really dead; (2) A party to a contract cannot escape a fixed liability without the consent of the other party to the contract.

The attempt of the by-laws to abrogate the presumption-of-death rule is unsubstantial as the rule is fixed in that it is both unreasonable in substance and places on the plaintiff a burden which rightfully belongs to the defendant to overcome. The application of the rule might oftentimes be the only means by which the beneficiary could recover. One can easily imagine a disaster at sea which would make impossible the production and identification of the bodies of those who had lost their lives. If the validity of by-laws such as are involved in the present case were upheld by the courts, it is easily discernible that the whole effect of marine beneficial associations might be swept aside by the passage of similar by-laws after each sea disaster. A pertinent parallel may easily be drawn regarding the passage of such by-laws after land disasters—explosions, fires, floods, etc. A by-law of such a nature is unreasonable and therefore the beneficial association passing it cannot enforce it. Roblin vs. Knights of Macabees, 269 Pa. 139; Spayde vs. Ringing Rock Lodge, 270 Pa. 67.

Regardless of whether the by-law be reasonable or not, a beneficial association cannot impair a contract right existing between it and one of its members. This is the case although the certificate of insurance provides that the member shall be subject to future by-laws. Sheets vs. Protected Home Circle, 256 Pa. 172; Roblin vs. Knights of Macabees, 269 Pa. 139. In the case before us the by-law was passed by the defendant association in 1913, one year after the disappearance of plaintiff's intestate. Such a by-law is unreasonable in character as it affects an outstanding certificate; that of one who has been absent for one year. The by-law being drawn in the future tense could hardly be applied to the certificate of Bassett as he had disappeared one year before its passage. Such a by-law can never act retroactively unless the language of it is such as to preclude any other construction. Walpert vs. Knights of Birmingham, 2 Pa. Sup. 264; Robling vs. Knights of Macabees, 269 Pa. 139.

The position of the defendant in contending that a by-law passed by a beneficial association becomes a part of a prior insurance contract and both the insured and beneficiary are bound thereby, is untenable. In the case relied on for this position, Chambers vs. Knights of Macabees, 200 Pa. 244, the right that was changed depended upon the by-laws. In the case before us the right which

the defendant association has attempted to change depends on the certificate of insurance. The court reiterates what has been formerly said, viz, that a party to a contract cannot escape a fixed liability without the consent of the other party to the contract.

Judgment for the plaintiff for $2,000 with interest.

OPINION OF SUPREME COURT

The defendant agreed to pay $2,000 to Mrs. Bassett at the death of her husband, John. The death must of course be proved. It can be proved, so as to complete the obligation of the beneficial society by proof of absence for seven years without tidings, etc. Groener vs. Knights of Macabees, 265 Pa. 129; Robling vs. Knights of Macabees, 269 Pa. 139.

We cannot say that the society may not limit its liability to cases in which death is proved in a prescribed way. We think it could.

But, the method of proof prescribed by the defendant is, as applied to the plaintiff, unreasonable. It limits the liability to a sub-class of deaths, whereas the contract applies to the full class.

It forbids proof of the death, by a process that had begun before the amendatory rule was adopted. This we think unreasonable. It is so, also, because it requires proof of death by persons who had seen the dead body of Bassett. Many sorts of unquestionable death may coexist with the inability to educe this species of evidence. We find nothing in the case that would warrant the conclusion that Bassett had assented to such an alteration in the mode of proof of death.

The opinion of the learned court below justifies its result. The judgment is affirmed.

BOOK REVIEW

A selection of cases and other authorities on Labor Law, by Frances Bowes Sayre, L.L. B., S. J. D.,, assistant professor of law in Harvard University, Harvard University Press, 1922.

The appearance of this volume is very attractive. Type and paper are admirable. The dimensions of the book are considerable. It embraces 1016 broad pages. The cases are classified, Chapter III deals with Federal Jurisdiction over Labor Disputes; Chapter IV. with the legality of the means used by labor organizations; Chapter V, with the legality of the ends pursued through collective action by labor organizations. This chapter treats of strikes, lockouts, boycotts, the black list, the Union label; Union organizers in Non-Union fields. Chapter XI. considers the corporate rights, powers and liabilities of Unincorporated Labor Unions, suits by and against such Unions, their ownership of property; Chapter XV. deals with injunctions against labor organizations, the historical development of the injunction remedy in labor cases, injunctions against unnamed parties; Government by Injunction, General Limitations on the issue of Injunctions. Chapter XVI. collects cases on the prohibition of strikes by injunction or by the criminal law, in the light of the 13th Amendment, the 13th Amendment and Compulsory Service, and the Strike; restraining leaders from calling a strike. Chapter XVIII. deals with employment in a business charged with a public interest. Cases on compulsory arbitration and the industrial court are found in Chapter XIX., while Chapter XX. is devoted to workmen's compensation laws.

In this period of discussions concerning labor, the very great utility of this compilation of decisions must be manifest to the lawyers and to the publicist who is concerned in the relations which the state, through the legislation and decision of its courts, is taking towards the workingman and the numberless problems in which he is concerned. An examination of a considerable number of the cases given in this collection, convinces as of its extreme utility to the investigator. The price of the book, $5.00, is surprisingly low.