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THE STATUTE OF FRAUDS

It is not the purpose of the writer to discuss with any degree of thoroughness any portion of the Statue of Frauds, but it is intended merely to call attention to some peculiarities of the law in Pennsylvania, as compared with the law of other states, and to note the statutes in force in Pennsylvania requiring a writing to establish certain contracts and as a condition of certain other rights.

The English Statute (29 Car. II., c. 3) enacted in 1677, was divided into twenty-four sections.[1] The first section provided that all parol transfers of interests in land and not put in writing and signed by the party making the attempted transfer or his agent authorized by writing should make the transferee a tenant at will only, and this regardless of the consideration given and notwithstanding the former custom of making transfers of estates in land by livery and seizin. The second section excepted all leases which by their terms expired not later than three years from the date of their making, (with a further qualification as to the rent reserved). The third section added to grants of interests in land the assignment or surrender of such interests and forbad such transfer "unless by deed or note in writing signed by the party so assigning, granting, or sur-

[1] 29 A. & E. Encyc. of Law P. 801.

rendering the same, or their agents thereunto lawfully authorized by writing, or by act and operation of law." The familiar fourth section forbids actions against an executor or administrator on his express promise to be personally responsible for a debt of the estate, actions upon promises to pay the debt of another, actions upon ante-nuptial agreements, actions upon agreements to sell land or interests therein and actions upon any agreement not to be performed within a year from the making. Sections 5, 6, 12 and 19 to 24 inclusive relate to wills. Section 7 to 11, inclusive, relate to declarations of or creations of trusts. Section 13 to 15, inclusive, relate to the signing and dating of judgments. Section 16 relates to executions. Section 18 relates to certain recognizances. Section 25 relates to the estates of intestate married women.

The seventeenth section was the familiar one requiring that in order to be "good" a contract for the sale of goods "for the price of ten pounds or upwards", must be evidenced by "some note or memorandum in writing of the said bargain," "signed by the parties to be charged by such contract, or their agents thereunto lawfully authorized."

In Ewing vs. Tees, 1 Binney 450, Chief Justice Tilghman, after quoting the Pennsylvania Statutes of March 21, 1772: 1 Sm. L. 389, sec. 1, 2 Purdon 1754, says: "It is plain that our legislature had that (i. e. the English Statute) before them, when they framed the act in question; because that part of our law which I have recited, is copied very nearly verbatim from the English law. But there is a total omission of the fourth section of the English statute, etc." He accordingly held that there was no reason why an action for damages could not be maintained in Pennsylvania for breach of a contract for the sale of land.

It is a curious fact that the fourth clause of the fourth section of the English statute relating to con-

tracts for the sale of lands has been adopted in all the United States except Pennsylvania.[3] The fact remains that the Courts of Pennsylvania have always refused to enforce specifically a parol contract for the sale of land, at the suit of either party thereto. Various reasons have been given and a failure to appreciate the true reason has occasionally led judges of even our appellate courts to make incorrect and misleading statements.

The Vendee's Remedies for Vendor's Non-conveyance," first when the contract is written, and second when it is oral, have been reviewed in an able article in 11 Dickinson Law Review, p. 171. So also the "Vendor's Remedies for Vendee's Breach of Contract," both under written and oral contracts, have been covered in an article in 11 Dickinson Law Review, p. 195. We will merely refer the reader to these articles and to a summary in concise form in 13 Dickinson Law Review at page 221.

The Act of Apr. 22d, 1856, P. L. 533, 2 Purdon 1757, the fourth section of which forbad the creation of express trusts by parol, in its fifth section required contracts for the sale of land to be in writing. The latter section was repealed, however, by the Act of May 13th, 1857, P. L. 500. This provision of the English statute has never been law in Pennsylvania except for this brief period. The English statute requires that the agreement, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorized." It is obvious that to specifically enforce an oral promise to transfer an interest in land would be to give greater effect to a promise than may be given to livery and seizin. This is why the courts require the vendor's promise to be in writing and signed by him or his agent authorized in writing. To get title to the land the vendee must not have less than is required by the Act of 1772. We are, therefore, surprised to find a

[3] 29 Am. & Eng. Encyc. of Law P. 1386.

judge of our Superior Court say: "The requirements of the statute are answered by a memorandum in writing signed by the party to be charged therewith."[8] The fact is that a vendor cannot recover the price from the vendee, who has signed the contract, if the vendor himself has not signed, for want of mutuality. So again a Justice of the Supreme Court has resorted to the fourth section of the Act of 1856 relating to express trusts to find the reason for requiring contracts for the sale of land to be in writing in Pennsylvania. See S. Dep. & T. Co. vs. Coal & Coke Co., 234 Pa. at 108.

It has always been held in Pennsylvania that the agent of a vendor must have written authority but the agent of a guarantor need not. Compare Vanhorne vs. Fricke, 6 S. & R. 90, and Martin vs. Duffy, 4 Phila. 75. The only reason for such a difference is that the Act of 1772 expressly requires the agent of the grantor or lessor to have written authority. The Act of 1856 says nothing about the form of the authority of an agent. It is especially curious to find such an old rule of law as that forbidding specific enforcement of an oral sale attributed to as recent a statute as the Act of 1856 and it is a coincidence that that very statute should have had a section in it relating to contracts for sale of land, which was stricken out the following year. The remarkable way in which the justice omits the words showing the true subject of the fourth section, in order to make it serve his purpose, is also noteworthy.

Another case in which a Supreme Court Justice exhibited his confusion of ideas is found in Twitchell vs. Philadelphia, 33 Pa. 212. At p. 220, Justice Read says: "It is an essential requisite by our Act of Assembly in a contract for the **purchase** of lands, in order to enable a vendor to enforce specific performance of it, that the agent of the **purchaser** be authorized by writing." As a matter of fact, since purchasers do not sign conveyances, they need not sign contracts of purchase and an

[8] Schultz v Burlock, 6 Super. 574.

oral authority to an agent to sign is perfectly good. Contracts signed by the vendor only are specifically enforceable by both parties, while those signed by the vendee only are not specifically enforceable by either.

Only two provisions of the fourth section of the English statute are part of the law of Pennsylvania. These were enacted on April 26, 1855, P. L. 308, 2 Purdon 1759. They are the two first provisions relating to promises by executors or administrators and promises to answer for the debt or default of another. For a full discussion of this statute and the construction placed upon it, see the article in 24 Dickinson Law Review 223.

This statute was followed the next year by the statute of April 22, 1856, P. L. 532, 2 Purdon 1757, the fourth section of which declares that both declarations or creations of trusts of land and all grants and assignments thereof, "shall be manifested by writing, signed by the party holding the title thereof, or by his last will in writing, or else to be void," excepting however resulting and constructive trusts. A parol declaration of trust as to personal estate is not within the statute.

On June 12th, 1878, (P. L. 205), 4 Purdon 4044, a statute was passed which provided that a grantee of real estate should not be personally liable for the payment of an encumbrance which bound the land when granted, "unless he shall, by an agreement in writing, have expressly assumed a liability therefore, or there shall be express words in the deed of conveyance stating that the grant is made on condition of the grantee assuming such personal liability." It further provided that "the use of the words, 'under and subject to the payment of such ground rent, mortgage or other encumbrance,' shall not alone be so construed as to make such grantee personally liable." The second section of the act requires the holder of the encumbrance to be a party to the agreement assuming personal liability, if he is to enforce it, and terminated the personal liability upon a second grant

of the encumbered property in the absence of a further agreement continuing such liability. The attempts of the Supreme Court to construe this act have been so conflicting that it has been declared to be "absolutely unintelligible." See 18 Dickinson Law Review, at page 172. Prior to this act a verbal promise of a grantee of encumbered real estate made to his grantor to pay the mortgage debt, though the grantor himself was not personally bound, was held enforceable by the creditor though he was not a party to such contract. Merriman vs. Moore, 90 Pa. 78. It was not contended that such a promise came within the Act of 1855 relating to promises to pay the debt of another.

On June 8, 1881, (P. L. 84) an act was passed which precluded proof of a parol agreement that a deed for real estate was intended to take effect as a mortgage. A defeasance must have been made at the time the deed was made, be in writing, signed, sealed, acknowledged and delivered by the grantee in the deed to the grantor and be recorded within sixty days from the date of execution. Prior to this act deeds could be converted into mortgages by parol testimony. Pearson vs. Sharp, 115 Pa. 254. This act was used to perpetrate the grossest frauds upon unschooled borrowers of money. For a scathing condemnation of the act, see 11 Dick. L. Rev. 93. It was amended by the Act of April 22, 1909, P. L. 137, 5 Purdon 5908, requiring only that the agreement of defeasance be signed and delivered to the grantor in the deed. As against the holder of the deed, it may now be made subsequently to the deed. It may not have been sealed nor acknowledged nor recorded. But as against a later grantee or mortgagee for value, it must have been recorded before the subsequent deed or mortgage. In its present form it may be hoped that the statute will prevent more frauds than it occasions. See 15 Dick. L. Rev. at page 83.

On May 10th, 1881, P. L. 17, 3 Purdon 3306, the first statute was passed requiring acceptances of drafts to be in writing, "signed by the acceptor or his lawful agent." Like the act relating to promises to pay the debt of another it excepted transactions involving less than twenty dollars. The 132d section of the Negotiable Instruments Act of 1901, P. L. 194, 3 Purdon 3305, merely provides that the acceptance of a bill must be in writing, and signed by the drawee.

Sections 30 and 31 of the Negotiable Instruments Act provide that bills and notes payable to order may be negotiated only by the indorsement of the holder written on the instrument itself or upon a paper attached thereto. Like provisions may be found in the Uniform Commercial Acts with reference to the transfer of title to a certificate of stock, (Sec. 1 of Act of May 5, 1911, P. L. page 126) to an order bill of lading, (Sec. 34 of Act of June 9th, 1911, P. L. page 838), and to an order warehouse receipt, (Sec. 43 of Act of March 11, 1909, P. L. page 18). Section 16 of the Uniform Bills of Lading Act requires that authority to alter a bill of lading must be written or the alteration is void. Section 9, b, of the Uniform Warehouse Receipts Act requires that one must have written authority from the one to whom the goods are deliverable by the terms of a non-negotiable receipt or the warehouseman is not justified in making delivery.

Section 47, 3d sub-section, of the Uniform Sales Act, as amended in Pennsylvania, Act of May 19, 1915 P. L. 543, 6 Purdon 7480, provides that when a buyer of goods directs or agrees that they be shipped C. O. D., the buyer is not entitled to examine the goods before payment of the price, in the absence of agreement **and proper written authority to the carrier** permitting such examination.

The words printed in black type are not part of the form Sales Act as drafted by the commissioners on Uniform State Laws.

Section 122 of the Negotiable Instruments Act requires that if the holder of such an instrument would renounce his rights against any party to the instrument, it must be in writing, unless the instrument be delivered up to the person primarily liable thereon.

Certain notices are required to be in writing. For example, a surety in a written promise to pay money at a future time shall not be discharged from liability by reason of notice to the creditor to collect from the principal, unless such notice be in writing and signed by the principal. Act of May 14, 1874, P. L. page 157, 3 Purdon 3661. So too when a lease is for less than one year, or by the month, or for an indeterminate time, if the landlord desire to regain possession, he shall serve a notice in writing. Act of March 31st, 1905, P. L. 87, 6 Purdon 6513.

It will be remembered that the Act of 1856, requiring express trusts of land to be in writing excepted resulting trusts. But by the Act of June 4th, 1901, P. L. page 425, 2 Purdon 1758, it is provided that if a resulting trust arise in land by reason of the payment of the purchase money by one person and the taking of the legal title in the name of another, and the person advancing the purchase money has capacity to contract, the trust shall be void as to bona fide judgment or other creditors or mortgagees of the holder of the legal title or purchasers from him without notice, unless a declaration of trust in writing has been executed and acknowledged by the holder of the legal title and recorded in the county where the land is or unless the one advancing the purchase money has begun an action of ejectment in said county.

The 17th section of the English statute relating to sales of goods was no part of the law of Pennsylvania until the Uniform Sales Act was passed on May 19th, 1915, P. L. page 543, 6 Purdon 7473. The fourth section of the Sales Act provides that, "A contract to sell

or a sale of any goods or choses in action of the value of five hundred dollars or upwards shall not be enforceable by action unless the buyer shall accept part of the goods or choses in action so contracted to be sold or sold, and actually receive the same, or give something in earnest to bind the contract, or in part payment, or unless some note or memorandum in writing of the contract or sale be signed by the party to be charged or his agent in that behalf." The most conspicuous change from the English Statute is, of course, the raising of the amount to which the statute applies from ten pounds to five hundred dollars. But a comparison of the language will disclose five changes in phraseology, all working for greater clearness and amply justified in his discussion of this section of the act by the learned draftsman. See Williston on Sales, pages 59 to 154.

It is not pretended that the foregoing is a complete list of the Pennsylvania statutes because of which the omission of a writing may prove fatal to a party's rights but it has been thought that, as so few of the statutes mentioned are collected in the digests under the title, "Statute of Frauds," it would serve a useful purpose if they were collected and attention called to the fact that they are all statutes enacted with the same purpose in view, namely to render it more difficult to enforce a pretended right by means of false testimony.

JOSEPH P. McKEEHAN.

MOOT COURT

COMMONWEALTH vs. ROBERTS

Murder—Evidence—Previous Threats, When Admissible—Premeditation—Character.

STATEMENT OF FACTS

Murder. Evidence that Roberts had threatened to kill three different persons within three weeks and before the killing of Arlington, for killing whom he was on trial, no connection was shown between these three persons and Arlington. The Court admitted the evidence.

Glass for Commonwealth.

Schnee for defendant.

OPINION OF SUPERIOR COURT

HAND, J.—The sole question presented by this case is whether evidence of threats to kill certain persons may be introduced against the threatening party who is on trial for the murder of one entirely unconnected with the threats, or with the parties previously threatened.

Such evidence, if we understand the law correctly, is inadmissable. The great weight of authority supports this view, and the cases in this Commonwealth, though scarce, are decisive.

The purpose of the prosecution in attempting to introduce evidence of the previously uttered threats would be twofold: First to blacken the character of the defendant by showing that he had a quarrelsome, murderous disposition, if possible: Second to show some premeditation of the killing. As to the first point, it is a well settled rule of evidence that the prosecution cannot attack the defendant's character unless he himself has made it an issue. As to the second point, since there has been no attempt to show any connection between the threats and the killing for which the prisoner is being tried, it is entirely irrelevant to show a premeditation in the killing of Arlington. General threats, that is, threats against some indefinite person, might be sufficient to show a general premeditation which might attach to a specific crime subsequently perpetrated, and on this theory, they are generally held to be admissable. But the threats in the case at bar were specific threats against definite, ascertained persons.

We have carefully examined the cases cited by the Commonwealth, but find nothing in them that deal with threats against specific third persons, prior to a homicide. It has cited Hopkins vs. Commonwealth, in 50 Pa. 9, which is one of the leading cases hold-

ing that general threats are admissable to show a general malice. 79 Pa. 311, and 156 Pa. 304 are entirely beside the point.

In 21 cyc 923, it is said "Threats against a person other than the deceased are only admissable under circumstances which show some connection with the injury." Numerous cases were cited to support this proposition, one of which, Abernethy v Commonwealth, was cited by the counsel for the appellant, in his able brief. A brief resume of this case will be given here, as we believe it governs the case at bar.

Abernethy, being somewhat under the influence of intoxicants, became engaged in an altercation with one Kain, and an unknown man, and subsequently threatened to kill Kain, "or somebody," meaning Kain's companion, who had struck him. Later in the day the prisoner picked a separate quarrel with the deceased, who struck at him and was immediately killed by Abernethy. This quarrel and its unfortunate termination was in no way connected with the threats against Kain and his companion, and evidence of such threats were held inadmissable. The decision in Abernethy v Commonwealth really goes farther that it would be necessary to go in the case at bar, since the threats and the killing occurred on the same day, and were slightly connected by other circumstances.

In admitting evidence of threats unconnected with the crime, the Court below committed a reversible error.

Judgment reversed, with v. f. d. n.

OPINION OF THE SUPREME COURT

A threat has no importance unless it expresses the purpose of the threatener. It may be made in jest; or simply to awaken fear. So made, it would have no importance as a piece of evidence in a murder case.

Threats were made in this case to kill three different persons. Let us suppose them seriously made. Then they would indicate a murderous purpose toward three different persons. But would the existence of this purpose be a relevant fact?

Could the actual killing of these persons be proved to prove a homicidal bent? Certainly not. But if the killing would not be provable, why would the incompleted purpose to kill, be? The accused cannot be proved to have murderous proclivities, whether by evidence of actual killings, or of threats to kill. We think the learned Court below has properly held the proof inadmissable.

The imperfect report of the facts in Commonwealth v Page, 265 Pa. 273, makes interpretation of the case dubious. The Court's remarks, "Though the threats were not made to Brady, his victim, they were evidence of an intention to kill somebody, and were therefore admissable as showing his malice," are not understand-

able in the absence of a better report of the case. The general proposition that in trying X for the killing of Y, one could prove that X had threatened to kill Z, who had no connection with Y, would be wholly inadmissable. Malice toward one man cannot be proved in order to infer malice toward another unrelated person. Cf. 2 Criminal Law, 999 et seq.

The judgment of the learned Court below is therefore AFFIRMED.

HARRISON v COAL COMPANY

Negligence—Elements of Damages for Personal Injuries—Measure of Damages—Pain and Suffering—Earning Power—Present Worth of Damages for Future Pain and Suffering.

STATEMENT OF FACTS

Harrison was injured in a mine of the defendant through its negligence. He suffered grievous injuries which have disfigured him and made walking difficult, subjecting him to constant pain, as well as lessening his earning power for the future. The Court did not direct the jury to find the present worth of the pain and suffering, mental and physical, which the plaintiff endured or may endure in the future, which is assigned as an error and for which the defendant has taken this appeal.

Glowa, for plaintiff.

Beaver, for defendant.

OPINION OF LOWER COURT

KELCHNER, J.—The only question raised is the right of the defendant to instructions from the trial court directing the jury to allow only the present worth of damages for future pain and suffering. Such instructions were here given as to damages for diminution of future earning power, but declined as to pain and suffering because of the impracticability thereof.

Justice Williams, in 177 Pa. 14, says: "Damages for personal injuries through negligence consist of three principle items; first, the expenses to which the injured person is subjected by reason of the injury complained of; second, the inconvenience and suffering naturally resulting from it; third, the loss of earning power, if any, and whether temporary or permanent, consequent upon the character of the injury."

Where the action is for injuries to the person through negligence, the jury may consider without special averment, pain and suffering, expense incurred for medical treatment and loss of time

for inability to work at the usual occupation of the injured person, inasmuch as these are the natural and usual results of an injury. Long v. Colder, 8 Barr 479; Penna. and Ohio Canal Co. v. Graham, 68 Pa. 299; 259 Pa. 56.

Our early Pennsylvania decisions have held that, pain and suffering have not a market price or value, but it is left to the good judgment and common sense of the jury to say to what amount the plaintiff should be compensated or what amount should be allowed for the pain and suffering he has endured or may probably endure in the future. Money is an inadequate recompense for pain, but, the law aids the sufferer to obtain it in such measure as a jury, considering all the circumstances will allow. 20 Phila. 261; 53 Pa. 276; 77 Pa. 109; 243 Pa. 252.

Pain and suffering are not capable of being exactly measured by an equivalent in money, and we have repeatedly said that they have no market price. The question in any given case is not what it would cost to hire some one to undergo the measure of pain alleged to have been suffered by the plaintiff, but, what under all the circumstances should be allowed the plaintiff in addition to the other items of damage to which he is entitled, in consideration of suffering necessarily endured. This should not be estimated by a sentimental or fanciful standard but in a reasonable manner, as it is wholly additional to the pecuniary compensation afforded by the first and third items, referred to above, that enter into the amount of the verdict in such cases.

It is equally well settled that this rule admits of compensation for future as well as past pain and suffering. With what degree of certainty must it be made to appear that the future pain and suffering will ensue before compensation for them can be allowed? One unvarying rule has been observed regarding the quantum of proof required, and it is this—the jury may and should award compensation for future pain and suffering whenever the evidence furnishes just ground for the belief that such pain and suffering will likely or probably ensue.

In the recent cases, Bostwick v Pittsburg Railway Co. 255 Pa. 367; Sebastian v Philadelphia and Reading Coal and Iron Co., 262 Pa. 510; and Ford v Philadelphia and Reading Coal and Iron Co., 262 Pa. 514, which were actions to recover damages for personal injuries, it was held: In negligence cases involving personal injuries, the rule which requires the court to instruct the jury to allow the present worth of future damages, does not apply in awarding compensation for pain, suffering and inconvenience.

Since there is no error in the opinion of the lower court, the assignment of error is overruled and the appeal is dismissed.

OPINION OF THE SUPREME COURT

It is quite evident that pain is not susceptible of exact compensation by any pecuniary standard, as says Williams, J.; Musick v Latrobe, 184 Pa. 375; Bostwick v Pittsburg Rwys. Co, 255 Pa. 387. Its degree, its quality, is not susceptible of exact appreciation by any court or jury, for no description is adequate, and the experience needful to understand the description is wanting.

Nevertheless, the jury is allowed to suppose the pain, which has been endured, say for six months, and to say that for that pain, a certain sum of money should be paid as compensation for the improper causation of it. But, if the endurance of pain of a given quality and intensity, through six months should receive say, $500, as a solatium, it is hard to see why, if endured for the next six months, the further solatium of $500 should not be paid, and a third for the third half-year of pain, etc.

There is the risk of course, that the plaintiff will not live, as well as not suffer if he lives, but the risk is run, when damages for loss of future earning power are allowed.

If the compensation for future pain should be as great as for past pain, of the same degree and kind and duration, it would seem logically to follow that payment being made now, for the pain of the future, only the present worth of the money that would represent the compensation, had the pain been suffered, should be allowed for future suffering.

But not already having prescribed that the present worth of future pain only should be allowed, "we will not," say the Supreme Court, "extend the rule which requires courts to instruct juries to allow only the present worth of future damages, so as to include th element of pain, suffering and inconvenience." Not having propounded a principle hitherto, may be a warrant for not propounding it now. The refusal seems to work in some cases in favor of the plaintiff, for in Ford v Phila. etc. Co. 262 Pa. 514, and Bostwick v Pittsburgh Rwys. Co., 255 Pa. 387, it is the defendant who complains that the court refused to state to the jury the present worth principle.

The judgment of the learned court below must be affirmed.

COLLINS v TOWNSHIP

Negligence—Township—Dangerous road—Guard rail—Question for jury—Proximate cause—Imputed negligence.

STATEMENT OF FACTS

At a certain point, a township road took a sudden turn. It was there narrow. On one side was a railroad, on the other a de-

clivity at the foot of which was a river. Collins, invited by a friend, was riding in a carriage belonging to the friend and driven by him. There was no guard-rail at the curve or bend of the road. An approaching train startled the horse, which ran down the declivity, seriously injuring Collins. This is a suit for damages. The allegation of plaintiff is that the township should have maintained a guard-rail. Defense was (a) no duty to maintain the guard-rail, (b) negligence of the driver of the carriage, who could have taken a less dangerous road, and a safer horse. Collins had never been on the road before, and had no knowledge of the disposition of the horse.

Glickman for plaintiff.

Kelly for defendant.

OPINION OF THE SUPERIOR COURT

GLOWA, J.—After a careful consideration of the case at bar, we find that two questions present themselves. First, whether or not it was the duty of the township to maintain a guard rail at the curve or bend of the road, and secondly if the driver of the carriage was negligent, could his negligenec be imputed to Collins, his invited guest and thus bar a recovery.

As a general rule the rights and duties of the public and a municipality at a public crossing are mutual and reciprocal and both are charged with the mutual duty of keeping a careful lookout to avoid inflicting or receiving injury, the degree of diligence to be used on either side being such as a prudent person would exercise under the circumstances at the particular time and crossing in endeavoring to perform his duty. Texas and Pacific Railway Co. v Cody, 166 U. S. 606. Continental Improvement Co. v Stead, 95 U. S. 161.

A traveler is bound to use ordinary care in approaching the crossings and observing the approach of trains. Pennsylvania Railroad Co. v Goodman, 62 Pa. 329. And the railroad company is bound to use such care in giving proper and timely warning of their approach, and to otherwise use what, under the circumstances are reasonable precautions in approaching the crossings. 33 Cyc. 924.

At Common Law no action could be maintained against a town for a defective highway. There are courts which hold incorporated townships not liable for damages, but upon this question the

authorities are not agreed, and differ as to where the weight of authority lies. But while they differ in this respect, they are almost unanimous in holding that an action cannot be maintained against counties and townships unless authorized by statute, for damages sustained through their neglect to keep their highways in repair, although the duty of doing so is clearly enjoined upon them by law.

But in Pennsylvania the duty imposed by statute on townships to keep the highway in repair (Laws 1836) is held to create a liability for neglect of this duty.

In an action for injuries to a passenger where the wagon was upset by reason of the absence of guard railings at a dangerous point, it was held that, even if the erection of barriers interfered with a right of way to a mill used by the owner and the public, it was within the power of the township to have erected them if they were necessary to render the road safe. Kelly v Mayberry Township, 154 Pa. 440. And where a road is so narrow that a slight deviation leads to the edge of a precipice, it is the duty of the township to errect guard railings. Trexler v Greenwich Township, 168 Pa. 214; Lydia Betting v Township of Maxatawney, 177, Pa. 213; Cage v Township of Franklin, 11 Sup. Ct. 533. It was the duty of the township to keep all places of minifest danger properly guarded, and to maintain the roads in a reasonably safe condition, and the measure of this duty must be determined by the circumstances of the particular case. Finnegan v Foster Township, 163 Pa. 138.

From the foregoing authorities, we conclude that there is no question as to the duty of the township to maintain guard railings along dangerous points of its roads.

Now, we come to the second question in the case, namely, if the driver of the carriage was negligent, could his negligence be imputed to Collins, his invited guest, and thus bar recovery. But, supposing he was negligent in failing to do what the law requires, can we attribute his negligence to an invited guest, who had no control over him whatsoever?

In 7 Am. & Eng. Ency. of Law 446, it is said that where the question is whether the person injured is chargeable with the contributory negligence of a driver or person with whom he was riding, as a guest by special invitation, or because of some special relationship, there has been and still is, much conflict among the authorities, but the true principle seems to be that when a person is injured by the negligence of the defendant and the contributory negligence of one with whom the injured person is riding as a guest

or companion, such negligence is not imputable to the injured person. The Pennsylvania authorities there cited are: Borough of Carlisle v Brisbane, 113 Pa. 544. Dean v Pennsylvania Railroad Co., 129 Pa. 514. Carr v Easton, 142 Pa. 139.

The rule laid down by the leading English decision is that the negligence of a carrier will be imputed to a passenger injured by the negligence of a third person to which the carrier contributed and this doctrine has been adopted by a few English and American decisions. The decision has, however, been expressly overruled in England and disapproved by the United States Supreme Court and the great weight of authority is to the effect that the negligence of a carrier will not be imputed to a passenger who is injured by the concurrent negligence of the carrier and another and who exercises and can exercise no control over such carrier. Under this rule the negligence of the driver of a public carriage will not be imputed to a passenger. 29 Cyc. 547.

While there are some decisions to the contrary, the great weight of authority, including that of the courts of Pennsylvania, is that the negligence of the driver of a private conveyance will not be imputed to a person riding with him but who has no authority or control over him. Little v Central District and Printing Telegraph Co., 213 Pa. 229. Borough of Carlisle v Brisbane, 113 Pa 544. Mann v Weiand, 81* Pa. 243. Jones v Lehigh & New England Railroad Co., 202 Pa. 81. Bunting v Hogsett, 139 Pa. 313. Finnegan v Foster Township, 163 Pa. 135.

In the case of Jones v Railroad Co., 202 Pa. 81, an omnibus drawn by four horses and containing more than twenty people reached the crossing of the defendant's road as a train approached it. A collision ensued in which eight of the passengers were killed and as many were injured. The driver exercised no care whatever to avoid danger. The court held that the negligence of the omnibus driver could not be imputed to the passengers.

In the case of Mann v Weiand, 81* Pa. 243, it was held that the negligence of the driver of a private vehicle could not be imputed to a companion riding with him, who has no control or authority over the driver or his team, in case such companion is injured in a runaway of the horses frightened by the attacks of vicious dogs belonging to a third person.

There was no evidence whatever in the case at bar that Collins knew that the driver was reckless and that the horse was unmanageable for Collins had never been with the driver before and had never been over this particular road and from the facts of the case it appears that he had no knowledge of the disposition of the horse.

The case clearly shows that the Township was negligent in failing to maintain guard rails where the road took a sudden turn and hence is not entitled to the presumption of having exercised proper care. On the other hand, there was no evidence to show that the driver of the carriage was negligent, therefore he is presumed to have exercised due care.

In view of the above decisions, we render a judgment in favor of the plaintiff.

Judgment for the plaintiff.

OPINION OF SUPREME COURT

Besides the cases cited by the learned court below, Kammerdiener v. Rayburn Township, 233 Pa. 328, may be relied on to support the conclusion reached.

Affirmed.

COMMONWEALTH v HARPER

Murder—Defense of Insanity—Burden of Proof—Quantum of Evidence required—Irresistible Impulse—Omission by Court.

STATEMENT OF FACTS

Murder by shooting. Defense of insanity. The court told the jury that Harper was bound to satisfy by a preponderence of evidence that he was unable to realize that the use of the weapon might result in injury to the person whom he shot and killed; that the burden was not on the Commonwealth to prove sanity, but on the defendant to persuade the jury of insanity. Verdict of guilty of first degree murder.

UNGER, J.—In support of his motion for a new trial the defendant alleges several errors of the court in its charge to the jury.

The defendant, Harper, was tried on the charge of murder, and as a defense, pleaded insanity at the time of the shooting. In giving its instructions to the jury, the court told them (1) that the burden of satisfying them of the defendant's insanity at the time of the murder was upon the defendant; (2) that he was bound to satisfy them that he was unable to realize that the use of the weapon might result in injury to the person whom he shot and killed. We shall dispose of the three grounds of error in the above order respectively.

Upon whom does the burden of proving insanity rest? The rule in this respect has become so well established by the courts in

this state that an extended discussion seems unnecessary. That the law presumes the sanity of the persons governed by it and amenable to it until the contrary is shown, is both sensible and just. In Com. v. Dale, 264 Pa. 362, Justice Kephart said: "The defense of the accused was insanity, and the burden was on him to prove by a fair preponderance of the evidence that he was insane when he killed Swartz." In Com. v Heidler, 191 Pa. 375, it was held to be the law "that the burden of proof of insanity is with the defense from the beginning, and never shifts." Other cases to the same effect are Com. v Wireback, 190 Pa. 138. Coyle v Com., 100 Pa. 573. State v Quigley, 26 R. I. 263. Wigmore's Cases). Com. v. George Winnmore, 1 Brewster, 356. Com. v Frank Beckwith, 27 Pa. C. C. 164.

The second ground of error in the court's charge relates to the quantum of evidence required of the defendant, by law, "to satisfy the jury of the defendant's insanity." In this case the court told the jury that the defendant was bound to satisfy them "by a preponderance" of evidence. Altho it is conceded that the phrase more commonly used by the courts when instructing the jury in this regard, is "by a fair preponderance," or, "by fairly preponderating" evidence, we cannot see that the defendant was in anywise prejudiced by the use of the expression "by a preponderance" of evidence. Com. v Dale, 264 Pa. 362. That the law requires more than the raising of a doubt, or a reasonable doubt in the minds of the jury, is hardly open to argument. Pannell v Com., 86 Pa. 260. Com. v Heidler, 191 Pa. 375. Coyle v Com., 100 Pa. 573. Ortwein v Com., 76 Pa. 414. Com. v Frank Beckwith, 27 Pa. C. C. 481.

The final specification of error set out by the defendant as ground for new trial, has to do with the degree or extent of insanity which the law in this state recognizes as sufficient to relieve the defendant of criminal responsibility. The court's instruction to the jury was "that the defendant was bound to satisfy them that he was unable to realize that the use of the weapon might result in injury to the person whom he shot and killed." Was this burden upon the defendant in order for him to prove his insanity? Such a direction was, in effect, the placing of a restriction or limitation on the defendant as to the manner in which he must show his insanity. We are disposed to think that the instruction was too narrow. It was stated in Com. v Wireback, 190 Pa. 138, that where insanity, whether general or partial, is set up as a defense to an indictment for murder, the degree of it must be so great as to have controlled the will of its subject, and to have taken away from him the freedom of moral action. Also Ortwein v Com., 76 Pa. 414. Again, Chief Justice Gibson speaking for the court in 4 Barr 264,

and again used by the court in Coyle v Com., 100 Pa. 573, said: "There may be an unseen ligament pressing on the mind drawing it to consequences which it sees but cannot avoid, and placing it under a coercion which, while its results are clearly perceived, is incapable of resistance. The doctrine which acknowledges this mania is dangerous in its relations, and can be recognized only in the clearest cases. It ought to be shown to have been habitual, or, at least, to have evinced itself at more than a single instance." In other words the law in this state recognizes a form or degree of insanity, where the case is a clear one, in which the defendant is carried off by an irresistible impulse to commit the crime, though at the time realizing the consequences of his act. This fact the court failed to take into consideration when it charged the jury in the present case. Taylor v Com., 109 Pa. 262. Ortwein v Com., 76 Pa. 414. Com. v George Winnmore, 1 Brewster 356. Com. v De Marza, 223 Pa. 573. Com. v Frank Beckwith, 27 Pa. C. C. 481. Com. v Mosler, 4 Pa. 264. Com. v Fritch, 9 Pa. C. C. 164.

Believing, as we do, that the rights of the defendant may have been violated by the charge of the court in the last respect, the court is constrained to grant the defendant's motion for a new trial.

Motion Granted.

OPINION OF THE SUPREME COURT

There are at least two forms of insanity recognized by the courts in Pennsylvania; one is such defect of mind as renders it incapable of seeing the relation between what it does, and death as its effect. Another is the irresistible impulse which may drive a man to commit the lethal act altho he knows that death will be its consequence. The burden of proving either form of insanity is on the defendant by a preponderance of evidence.

The court gives no instruction as to the proof of the insanity that consists of an irresistible impulse. The burden to prove it is plainly on the defendant by preponderating evidence. For the defective instructions to the jury, the conviction has to be set aside and the judgment of the court below.

AFFIRMED.

HENDRICKS v WM. STAPLES, (EXECUTOR)
Amendment—When Amendment is Not Allowed—Action For Personal Injuries

STATEMENT OF FACTS

This action was for personal injuries inflicted thru negligence. John Staples, (whose executor Wm. Staples is) was conceived to be

the negligent agent. After the action had been pending for 34 months, the plaintiff obtained a rule to show cause for the changing of the name of the defendant, Wm. Staples, omitting the office of executor. The amendment being allowed, the evidence showed that Wm. Staples caused the injury, and a verdict and judgment was secured for the plaintiff for $300.

Gallagher, for the plaintiff.

Fox, for defendant.

M. GARBER, J.—No amendment can be allowed which brings a new party into the action. If the effect of this amendment was merely to correct the name under which the right party was sued, it should be allowed. But if its effect was to bring a new party into the action and to deprive him of the benefits of the Statute of Limitations, it should not be allowed. Wright v Eureka Tampered Copper Co., 206 Pa. 275.

As the action stood before amendment, the suit was not against Wm. Staples, but against John Staples. Wm. Staples, Executor, was named as defendant, because in his capacity as Executor he stood in place of the deceased John Staples. To drop the word executor from the name of the defendant, would amount to an absolute change of the defendants, for thus John Staples, represented by Wm. Staples, Executor, would be released, and an entirely different person, i. e., Wm. Staples, in his own private capacity, would be substituted.

But all persons except Wm. Staples, Executor, are now protected against suit for this negligent act, by the Limitations of Actions, for personal injuries, Act 1895 P. L. 236.

The amendment should not have been allowed. 190 Pa. 364.

OPINION OF SUPREME COURT

Conceiving John Staples to have been the negligent cause of injury to the plaintiff, Hendricks, and Staples having died, Hendricks sued Wm. Staples, as his executor. His intention was to make John's Estate liable. The plaintiff when more than three years had elapsed since the injury, changed his conception of its source, pursuading himself that Wm. Staples was the guilty party. He then asked for and obtained leave to drop the word "executor" and he desired substitution for John Staple's Estate, Wm. Staples. This was virtually beginning suit against Wm. Staples, at a time when the action against him was barred. The amendment should

not have been allowed and the plea of the statute of limitations should have been made to prevail. Bender v Penfield, 235 Pa. 58.

AFFIRMED.

STOKES v. HARMON

Note—Possession in Maker—Mistake as to Payment—Destruction—Parol Evidence of Contents—Statute of May 15, 1901—Evidence and Presumption of Discharge—Burden of Proof

STATEMENT OF FACTS

Suit on note for $2000. Stokes thinking it had been paid, returned it to Harmon, who knowing that it had not been paid, received and destroyed it. Stokes has subsequently discovered his error, and sues on the destroyed note.

Kelsey, for the plaintiff.

Kreps, for the defendant.

OPINION OF THE COURT

MALLIN, J. It must be admitted as a matter of fact, that the return of the note by Harmon was made through a bona-fide mistake of fact, and that the defendant accepted the same, with knowledge of its not having been paid. We must also concede that the plaintiff, in order to have established the fact herein stated, must have carried the burden of proof. These facts were determined by the trial court below, and are indisputable in the case at bar. We must proceed to the question of law left to our determination.

In absence of statute, and in accordance with the decisions held in McKibben v. Doyle, 173 Pa. 579; Reed v. Horn, 143 Pa. 323; and in 23 Superior 615, which held that money erroneously paid, under a mistake may be recovered, we would be obliged to render judgment in favor of the plaintiff.

Without going further into the discussion of the change of the common law remedies on the point in issue, but in view of the present statute of May 15, 1901, (P. L. 210), at section 123, where "A cancellation made unintentionally or under a mistake, or without authority of the holder, is inoperative; but where an instrument, or any signature thereon, appears to have been cancelled, the burden of proof lies on the party who alleges the cancellation was made unintentionally, or under a mistake, or without authority," we decide that this statute embraces the very case at bar, and thereby enter judgment for the plaintiff.

OPINION OF THE SUPREME COURT

Where the possession of the note by the maker is unexplained, the presumption would be, that it had been paid, or the payment of it had been released.

But, presumption is rendered nugatory, by proof of the circumstances of the maker's possession. It had been returned to him by the payee under the belief that it had been paid. This was a mistaken belief. The defendant had in fact not paid it.

The learned court below, has properly held that the amount specified on the note, can be recovered by the plaintiff.

When an instrument has been lost or innocently destroyed, the contents can be proved by parol, and a suit may be maintained upon it, as thus proved. Gangawer's Estate, 265 Pa. 512, at 518.

Judgment of the court below must be affirmed.

SCHNELLENBERGER v. TOMPKINS

Evidence—Credibility of Witnesses—Right of Witness to Explain or Deny Impeaching Testimony — Principal and Agent — Principal Bound by Statement Made by Agent in Scope of His Authority.

STATEMENT OF FACTS

Suit on a lost note for $300. X, agent of Tompkins, testified that the latter had paid the note, and received it from the plaintiff and had destroyed it. Plaintiff, on rebuttal, called three witnesses to testify that three months after the time of the payment, as alleged by X, he had stated that the note had not been paid, but had been lost by the plaintiff. X was still in court when this testimony was given. He was recalled by the defendant and reiterated his testimony but made no statement concerning his alleged statement. Verdict for plaintiff. Motion for new trial.

Farrel, for plaintiff.

Kelly, for defendant.

OPINION OF THE SUPERIOR COURT

SIMMONS, J. It appears that the court below received as evidence, the testimony of the plaintiff's three witnesses without first asking X, the agent of the defendant, on cross-examination whether he had made the alleged contradictory statements or not. The plaintiff had not asked the agent X concerning this

matter on trial and the defendant contends that the court below erred in admitting his testimony as evidence. The Queen's Case, which is cited by the counsel for the defendant as authority for this contention, appears to bear him out in his contention, but the decision in this case, (Queen's Case), was so diverse from the ordinary trend of the law that, although a few courts followed it and handed down decisions in accordance with it's doctrine, it was never finally adopted as law by any of the States of the Union, (17 Mass. 166). Some of the earlier Pennsylvania decisions appeared to have followed this doctrine but they later perceived the error in it and the later decisions hold otherwise.

In Walden v. Finch, 70 Pa. 460, Judge Agnew, in delivering his opinion, admitting that former decisions have been to the contrary, says "we are therefore of the opinion that those decisions of our court are to be preferred which hold that the question is one of sound discretion in the judge trying the cause upon the circumstances before him. When the witnesses are all present and the contradiction tends seriously to impair the credibility of the witness or to reflect upon his character, a court would feel bound to give him the opportunity of explanation or denial before suffering his testimony to be impeached by counter statements."

In Rothrock v. Gallaher, 91 Pa. 108, it is stated "whether his attention must first be called to the matter (whether the witness is cross-examined to give opportunity for explanation) rests in the sound discretion of the judge, and unless that discretion be abused, its exercise is not ground for reversal."

It does not appear from the facts that the lower court abused, in any manner, his discretion to admit or reject the evidence in question, and, since this is true and he decided to admit the testimony as evidence, there is no good reason at law why it should again be reviewed by this court.

There may be some doubt as to whether X made his alleged contradictory statement while acting in his capacity of agent for the defendant or not. If he made the statement alleged to have been made by him in the scope of his authority as agent then the principal—the defendant—is responsible for the statement because X, in such case, is only the mere instrument of the defendant, (Ashmore v. Pa. Steam Towing & Transportation Co., 38 N. J. L. 13).

After duly considering the facts of the case as submitted and giving due weight to the arguments advanced and decisions cited by the able attorneys for both parties, this court finds that the court below exercised sound discretion in admitting the

evidence in dispute and, since all our later decisions appear to favor the judge using his discretion regarding the admissability of evidence, there can be no sufficient reason, so far as this court is able to observe, advanced for having the evidence reviewed again; and the judgment of the lower court is affirmed. The motion for a new trial is refused.

OPINION OF SUPREME COURT

If a witness is impeached by evidence that he has made statements inconsistent with his present testimony, the party calling him, should have the opportunity to elicit from him, what he may be able to say in rebuttal of the impeachment. He may contradict altogether, or he may qualify, by exposing the difference between what he is alleged to have said and what he concedes that he said. He may explain how the opinion that he uttered the contradictory words, mistakenly arose.

But, this privilege of explanation or denial may be extended, either during his cross-examination, or at a later stage of the trial, by recalling the witness and permitting him to contradict or explain the impeaching testimony. It cannot matter which of these expedients for discovery of the truth is adopted; that of asking the witness, whether he has not said so and so, in order that he may deny or explain, before the impeaching testimony is heard; or that of waiting till such testimony is heard, and then recalling him, in order to explain or deny.

Here X is not questioned during his cross-examination as to the making of inconsistent declarations. After he left the stand, the utterance of such statements is testified to by three witnesses, X being still in court. He is recalled, but makes no explanation or denial of the alleged prior remarks. He had then, ample opportunity to set himself right with the jury, had he been able to do so. It would be imbecillity on the part of the court to assert that there was reversible error in not excluding the impeaching evidence because there had been no opportunity to anticipate that evidence by denial or explanation. The court did not abuse its discretion. Cronkrite v. Trexler, 187 Pa. 100; Robinovitz v Silverman, 223 Pa. 139.

Affirmed.

ESTATE OF HENRY TRANSOM

Wills—Intention of Testator—Remainder Over of Unexpended Bequest.

STATEMENT OF FACTS

There was an action by the administrator of the deceased widow of Henry Transom against the executor of the estate of Henry

Transom, claiming the unexpended part of the bequest made by the said Henry Transom, on his death, to his wife. Henry Transom died leaving a will in which, among other provisions, he provided that, he bequeathed all his property to his wife. He then said, "Should she not have expended the whole thereof at her death, I give what remains to my brother Adam." The property was $50,000 invested in stocks, bonds and mortgages. The wife used all the interest and in addition, $10,000 of the principal. Upon her death, her administrator claims the residual $40,000 for which this action is brought.

Obermiller, for the plaintiff.

Naame, for the defendant.

OPINION OF THE LOWER COURT

POLISHER, J.—The case at bar presents for decision a point so well settled by the decisions of this Commonwealth that it scarcely permits of argument. The point alluded to is this—Upon the death of a legatee to whom a bequest of personal property has been made by a testator with a remainder over of the unexpended part on her death, who is entitled to the remanider, her administrator or the executor of her testator?"

In the construction of every will the intention of the testator is the thing to be inquired into; and the intent of the testator which is to be discovered and carried out, means his actual personal ntent, not a mere conventional intent inferred from his use of any set form or phrase. Hence, the solution of the question depends upon the circumstances. It was said by Sharswood, C. J. in Fox's Appeal, 99 Pa. 382 that, "Every will is to be construed from its four corners to arrive at the true intention of the testator. Decisions upon other wills may assist, but cannot conrtol the construction."

We concede the rule invoked by the plaintiff that a gift of the entire personality of the estate with no limitation over is an absolute gift of the entire property. Its application, however, is limited in any particular instance, upon the fact whether the testator has employed language in a subsequent part of his will which renders the will inoperative. It is with the desire to reduce to a minimum the perplexity and uncertainty inseparable from the subject, that the Courts have established certain artificial and arbitrary canons of construction, by which certain forms of expression are presumed to have certain meanings, and in doubtful cases, these canons are held to be decisive. But all the cases are subservient to the great rule as to "intent", and are made to aid,

not to override it. As in all such cases, "care is required that the tools should not became fetters, and that the real end shall not be sacrificed to what was intended only as a means of reaching it". Woelpper's Appeal, 126 Pa. 562.

Such is the case here. The first part of the bequest, standing alone, would pass an absolute gift. But this idea is negatived when we read further, "Should she not have expended the whole thereof at her death, I give what remains to my brother Adam". By the use of that provision, the testator has explicitly disclaimed the intention of giving the property to his wife forever. Hence, the rule can have no application here, as it would defeat the intention of the testator as disclosed by the language and circumstances of the will.

We are not aware that Tyson's Estate, 191 Pa. 218, cited by the plaintiff as the basis of his contention stands for any such proposition as the plaintiff gathered from it—namely, that upon the death of the widow, the remaining property goes to her executor. As a matter of fact, the Court held to the contrary. So that the authority which the plaintiff cited to establish his claim, tends to, and does, clearly disprove his case.

A long line of decisions in this Commonwealth starting with Sheet's Estate, 52 Pa. 257 and running to Shower's Estate, 211 Pa. 302, establishes the proposition, that, "If a testator in one part of his will gives an absolute interest in personality to a person, and in subsequent passages unequivocally shows that he intends that the legatee take a lesser interest, the prior gift is restricted accordingly."

The rule of law expressly applicable to the case at bar is equally well fortified by a host of decisions, beginning with Kinter vs. Jenks, 43 Pa. 445 and running to Philips' Estate, 209 Pa. 62, which hold that, "The testator may vest such interest in his legatee that he can exercise the rights of an absolute owner by sale, conversion, investment in his own name, use and consumption, without appeal in his life time and yet, the estate be limited so that at the legatee's death whatever remains unconsumed will go over."

The extent of the widow's consumption of the estate was within her control. She had the right to consume or dispose of it for herself. He actions during her life seem to have recognized the limitations of her right.,,—that is, existing only so long as she the limitationse of her right,—that is, existing only so long as she property at her death, it would be reasonable to suppose that she would have done so by a will. But she made no will. And now the plaintiff, as her administrator, is attempting to claim a right for

her which she herself would not have dared to assert during her lifetime. If such an unconscionable demand were acceeded to, it would operate as a fraud upon his residuary legatees. We cannot permit a double injustice ot be perpetrated.

Judgement must be rendered against the plaintiff.

OPINION OF THE SUPREME COURT

The whole of a testator's intention is not expressed in one sentence. Having bequeathed all his property to his wife, he immediately added a qualification. "Should she not have expended the whole at her death, I give whatever remanis to my brother Adam". The wife has expended some, but $40,000 remain at her death unexpended. It belongs not to her or to her administrator, but to Adam. The executor of Henry Transom is not entitled to it, but Adam. Cf. Neuman's Estate, 229 Pa. 41; Dickinson's Estate, 209 Pa. 59.

The decree of the learned Court below must be affirmed and the appeal therefrom dismissed.

BOOK REVIEW

Cases on the Law of Domestic Relations and Persons, by Edwin H. Woodruff, Dean of the College of Law of Cornell University. Baker, Voorhis & Co., New York.

It is over thirty years since the first edition of this compilations appeared. It has been used in a good many law schools, and the demand for it has required a second, and, now a third edition. A persual of many of the cases, convinces us of the justness of the judgment which selected them. Many of them are extremely interesting, not an unimportant matter in a collection made for the use of students. The cases are classified under Marriage, Parent and Child, Infancy, Insanity, Drunkenness, and Aliens. Under Marriage are treated the contract to marry; breach of promise; contract of marriage; Husband and wife; Divorce and Separation.

Attention should be given to the fact that the book filling 750 pages, is of such size that the instructor will be able to cover the whole ground in the time ordinarily devoted to this topic. We know no collection of cases on the subject of equal merit, from the standpoint of the needs of the student and instructor, in a law school.