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SOME COMMON LAW FORMS OF CONVEYING TITLE OF LAND

The student of law should know something of the ancient modes of conveyancing and common law forms of transferring title to land. First as to the meaning and significance of the term seisin.

SEISIN

This was a term of primary importance in early times although it is not of so much importance at the present time. But no one can fully understand the law of Real Property without knowing what was, and what now is, the significance of this term. Seisin originally meant possession. It probably had no connection with the phrase "to seize" land or at least very little connection therewith. It is more probable that it was derived from that which

indicated possession or "to set," meaning that one who is seised is one who, as we might say, is "setting on the land" as when he was given the seisin he was set on the land. So then at the time of William the Conqueror the common phrase "to sit upon land" meant to possess it. Even at the present day we speak of one in possession of land as a "mere squatter" and not as one seised or in rightful possession of the land. Seisin therefore was formerly connected with the idea of quiet enjoyment so that a man was seised or "set on" land when he was in possession to enjoy it. This did not in all cases mean that he had the rightful possession or title but later it came to mean **quiet possession with a claim of a freehold estate in the land.** If a man had in his possession some article of personal property he was seised and in possession of the same whether he had the legal title to it or whether he had stolen it. Thus with land he who was in possession of land claiming a freehold estate therein was said to be seised of that land and the rightful owner may have been disseised of it. So one may be in possession of land claiming that right through or with the consent of another who was acknowledged to be the one having title to the same. In this case such possession was said to support the seisin of the rightful owner.

Seisin founded on possession and a claim of right or title gives one a right or limited title even at the present day, to wit; that which may be called a defeasable title. Thus when land belongs to A, the mere fact that B ousts A and takes possession of the land gives B a right to such land which is good against all the world except A. Such possession of B deserves and has the protection of the law against all persons but A. If B is disseised by C, B may bring an action against C and recover the possession of the land from him. Likewise, in such case C can be made to pay damages to B, his disseisee.

FEOFFMENT

Before the passage of the Statute of Uses in 1535 the chief mode of making an original transfer of land was by feoffment with livery of seisin. A feoffment was a species of gift and either a life estate or a fee simple estate was created by feoffment either with or without a writing or what was called a "charter of feoffment."

The livery of seisin was effected by the donor and donee going on the land; the words of gift were said or, if there was a charter of feoffment, it was read by the donor or his attorney. Subsequent to the statute of Quia Emptores in 1290 this process of feoffment could not create a new tenancy by way of subinfeudation but the feoffee took the land subject to the same feudal burdens to which it had been subject in the hands of his feoffor.

It was usual for the donor and donee to go on the land and if the subject of the feoffment was land alone, a twig or a bit of turf from the land was delivered to the feoffee in the name of the seisin or transfer of the land conveyed. If a house was situated on the land it was usual for the feoffor to put the hasp or ring of the door into the feoffee's hand. Feoffment, as a transfer of the title, might also take place in view of the land conveyed if the feoffee made an actual entry on the land while the feoffor was yet alive.

In making a feoffment it was possible for the giver to impose conditions or to establish remainders. This might even be done by word of mouth. However should anything elaborate be provided, a charter or writing setting out the same was made a part of the ceremony of feoffment.

THE FINE

The conveyance by fine was, in substance, a conveyance of land; in form, a compromise of an action. In most cases the action was begun in order that the pretended compromise might be had and the possession and title to the land thus transferred to the one who brought the action.

At times however the compromise or settlement of of the case was the end of a serious litigation. This process was used largely for the transfer of some title to the land vested in a married woman who before the fine or finish of the action was examined as to such compromise or transfer separate and apart from her husband to see that she understood what she was doing.

COMMON RECOVERY

A common recovery was effected in somewhat the same manner as the fine. It was not confined however to the transfer of land by a married woman but was used chiefly in later times to bar or defeat an estate tail. The final outcome of a recovery was not brought about by a fine or compromise settlement but by the one against whom the action was brought purposely failing to defend. The one bringing the action thereby procured the fee simple title to the land and after entry he, in accordance with a previous arrangement, conveyed to the original tenant in tail. Thus a tenancy in tail holding of the land was transferred into a tenancy in fee simple and the original intention of the donor in tail defeated.

INCORPOREAL THINGS

While the above were the chief modes of conveying land at common law it was said that the transfer of incorporeal things "lay in grant" or could be conveyed only by deed. Corporeal property or real estate could only be conveyed by livery of seisin.

In feudal times the lord's right to the services of his tenant, who might be a tenant in fee, was called the lord's seignory. This he might own in fee, he being seised of the same not in demesne, but in service. While this seignory of the lord could be conveyed by grant it was necessary before the statute abolishing attornment in 1705, that the

tenant of the land should attorne to his new lord or acknowledge himself bound by the feudal burdens to which the land was subject.

IS IT SELF-EVIDENT THAT "ALL MEN ARE CREATED EQUAL"?

Generally speaking and for most purposes is it not true that "all men are created equal?" What meaning did the signers of the Declaration of Independence intend to convey by the use of that phrase? Certainly not that all men are created physically, mentally, morally or spiritually equal, nor that their capacity to acquire wealth or to merit the esteem and good will of their fellow-men is equal.

What meaning then did they intend to convey? They were dealing with govermental, legal, administrative and political matters. Is it not probable therefore that their intention was to speak of equality as pretaining to legal rights, duties, obligations and privileges as created and enforced by the government? In other words did they not mean that in so far as the government and its machinery is concerned, all men have, or should have equal political, legal and govermental rights, obligations, privileges and duties without regard to their diverse natural capacities?

While this was probably the meaning the framers of the Declaration intended to convey did they believe it, or were they acting hypocritically? Let us prefer to believe from what has followed in this country due in large measure to their influence and that of their compatriots and descendants, that their attitude was like that of the one who said "Lord I believe; help though mine unbelief."

Concerning things which have been done to apply this principal we note various advances. Rights have been ex-

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Concerning things which have been done to apply this principal we note various advances. Rights have been ex-

tended by the government to the people in regard to the voting franchise and also in connection with legal and financial matters. Before the Civil War, which as far as the South was concerned was nothing more nor less than a war to perpetuate the institution of slavery, it was said that a negro had no right which a white man was bound to respect. As a result of that war and as a means to protect the liberty which had been extended to the negro, the right to vote was also granted him. Let us hope that we may not be involved in any future war, civil or foreign, which may be instituted against us to force us to live up to this principle of equality enunciated in our Declaration of Independence.

In this connection certain citations that have been made showing how the various states in a legal way discriminate against women may be of interest.

GUARDIANSHIP OF CHILDREN

The father is the sole natural guardian of minor children in Alabama,[1] Rhode Island[2] and several other states. It is legally possible for a father in some states, as for example Georgia[3] and Maryland[4] even to will away the custody of a child from its own mother.

Michigan,[5] New York[6] and Massachusetts[7] are among the states where the father alone is entitled to the services and earnings of a minor child. Iowa[8] and Minnesota[9] are among the states where the right to recover damages for

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[1]Cases cited in Vol. 7, Encyclopedic digest of Ala. Reports, p. 914.
[2]Vetterlein, Petitioner, 14 R. I. 378; Grant v. Grant, 110 Atl. 70.
[3]Code, Secs. 3033, 3022.
[4]British Stats. in Force in Maryland, Coe's edition, p. 630.
[5]Reeder v. Moore, 95 Mich. 594; Yost v. Grand Trunk Ry. Co., 163 Mich. 564.
[6]Gray v. Durland, 51 N. Y. 424; Tidd v. Skinner, 225 N. Y. 422.
[7]Hogan v. Pacific Mills, 158 Mass. 402; Tornroos v. R. H. White Co., 220 Mass. 336.
[8]Code, Secs. 3471.
[9]Gen. Stats., Sec. 7681.

loss of such services in case of injury to the child belongs primarily to the father. In Florida, when the death of a minor child is caused by the negligence of another, the father is permitted to collect damages even for the "mental pain and suffering" of the mother.[10]

BURDENS OF ILLEGITIMATE PARENTHOOD PLACED UPON MOTHER

Although as to the legitimate child the law gives the father greater rights than the mother, in the case of an illegitimate child, the existence of which is frowned upon by society, the laws of many of the states leave the father in the background and place the weight of responsibility on the mother. For instance, in Idaho, Virginia and Texas, there are no laws by which the unmarried mother may demand aid from the father for the support of the child.[11]

MARRIED WOMEN'S DISABILITIES

Before a woman marries, the law presumes that she is able to look out for herself. For instance, if she wants to run a millinery shop, no one will hold an inquiry as to her capacity to run it, but when she marries, the law in some of the states, as in Nevada[12] and Texas,[13] requires her to go through a complicated court procedure to determine her capacity to carry on a business. Before marriage a woman can contract and assume all kinds of liabilities and obligations. As soon as she marries, the law of some of the states takes her under its wing and classes her with

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[10]East Coast R. R. Co. v. Hayes, 66 Fla. 589; Rev. Gen. Stats. Sec. 4962.

[11]Children's Bureau Publication No 42, Legal Series No. 2, pp. 30. 181, 231, 224. See also the absence of provisions in the codes for these states.

[12]Rev. Laws, Secs. 2190-2194.

[13]Vernon's Texas Stats., Art. 4629 (a).

persons under a "disability." This disability of married women is still recognized in Nebraska,[14] Michigan,[15] Florida,[16] and other states, except that if a married woman has property she may contract to a greater or lesser extent in relation to her property.

There are certain documents which a married woman has no power to sign and to which her signature would be worthless,—at least so far as the law is concerned. Because it is not always easy to determine what she can do and what she can not do legally, people are wary of transactions with her, and this is a real hardship if she is in business. As a New Jersey court has remarked, people are charged with knowledge of the "dangers of a married woman's paper."[17]

THE DOUBLE STANDARD OF MORALS

In Texas a husband is entitled to divorce his wife for a single act of infidelity on her part, but a wife can not divorce her husband for infidelity unless he has abandoned her and is living in a state of infidelity.[18]

Minnesota is among the states where a wife has not the same right to the chastity of a husband that a husband has to the chastity of his wife.[19] According to the United States Interdepartmental Society Hygiene Board, there are less than fifteen states which define prostitution as an act of the male as well as the female.[20] In many states, as in Michigan[21] and New York,[22] the women are punished while the men who employ them go free.

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[14]Marsh v. Marsh, 92 Neb. 189.
[15]Edwards v.McEnhill, 51 Mich. 160.
[16]Micou v. McDonald, 46 So. 291.
[17]First Nat'l. Bank of Freehold v. Rutter, 104; Atl. 138; 106 Atl. 371.
[18]Vernon's Texas Stats. 4631.
[19]Kroëssin v. Kessler, 60 Minn. 372.
[20]Letter dated April 3, 1922.
[21]Comp. Laws, Sec. 7774.
[22]Code Criminal Procedure, Sec. 887; People v. Breitung, City Magistrate's Court, Borough of Manhattan, 4th District, 1921.

WIFE'S SERVICES BELONG TO HUSBAND

In all of the states, except probably the eight community property states, the services of the wife belong to the husband.[23] Therefore, in at least forty states, marriage is not a partnership between equals, where each partner owns his own labor. Nor is it a partnership where the partners jointly own the property acquired by their mutual efforts.

The average couple has no property at the time of the marriage. The wife may spend the best years of her life laboring in the home or assisting the husband in his business; but if prosperity comes, all the property belongs to him. Sometimes her property even in her clothes is limited to the use of them, because under the common law the ownership of a married woman's clothes is in her husband, and some states, as South Carolina[24] and Michigan,[25] have not materially changed this rule.

WIFE'S EARNINGS MAY BE HUSBAND'S PROPERTY

Much is heard about women being on a pedestal. But in some of the states, as Zona Gale has said: "The pedestal does not seem to be high enough to prevent a husband from scaling it to collect his wife's earnings." In Georgia[26] the common law rule that the earnings of a married woman belong to her husband is still in force. The law reports of Georgia abound with cases where the husband has availed himself of a profit from his wife's earnings. But in a case where an aggressive woman undertook to bargain to furnish her husband's services, the court solemnly scrutinized the contract to see if any question of force or peonage might be involved.[27]

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[23]Schouler's Domestic Relations, 6th Edition, Secs. 47, 543, 678.
[24]Battle v. Columbia N. & L. R. R. Co., 70 S. C. 329; State v. Pitts, 12 S. C. 180.
[25]Smith v. Abair, 87 Mich. 62; Mains v. Webber's Estate, 131 Mich. 213.
[26]Ga. R. Co. v. Tics, 124 Ga. 459; Roberts v. Haines, 112 Ga. 842.
[27]Atlantic Rd. Co. v. McDilda, 125 Ga. 468.

HUSBAND CAN COLLECT FOR LOSS OF WIFE'S SERVICES

As a result of the rule that the services of the wife belong to the husband, he usually has the right to sue for damages for injury to her. Suits of this kind are maintainable in Illinois,[28] Colorado,[29] Delaware,[30] Nebraska,[31] Michigan,[32] Mississippi,[33] Missouri,[34] New York,[35] Tennessee[36] and other states. People who are inclined to consider a wife's services as of no material value would perhaps be surprised at the great value which the jury finds such services to be worth when the husband is suing for damages for their loss.

MARRIED WOMAN'S PROPERTY RIGHTS RESTRICTED

Laws relating to property discriminate against married women in many jurisdictions. Florida laws entitle the husband to manage and control his wife's separate property.[37] Louisiana and other of the community property states permit only the husband to manage and dispose of the joint property of husband and wife.[38] In Michigan the husband has the sole right to the rents and profits from land held jointly by husband and wife as tenants by the entirety and this is true even though the wife paid the entire purchase price of the land.[39]

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[28]Chicago & Milwaukee Electric Co. v. Krempel, 116 Ill. App 253.
[29]Colorado Mortgage & Investment Co. v. Giacomini, 55 Col. 538.
[30]Townsend v. Wilmington City Ry. Co., 78 Atl. 635.
[31]Omaha R. R. Co. v. Chollette, 41 Neb. 578; Riley v. Lidtke, 49 Neb. 139.
[32]Burns v. Township of Van Buren, 218 Mich. 44.
[33]Brahan v. Meridian L. Ry. Co., 121 Miss. 269.
[34]Womach v. City of St. Joseph, 201 Mo. 467.
[35]Blaechinska v. Howard Mission, 131 N. Y. 497.
[36]City of Chattanooga v. Carter, 182 Tenn. 609.
[37]Rev. Gen. Stats. Sec. 3948.
[38]La. Civil Code, Art. 2404; Nixon v. Brown, 214 Pac. 524.
[39]Morrill v. Morrill, 138 Mich. 112.

INHERITANCE LAWS DISCRIMINATE AGAINST WOMEN

The laws of the District of Columbia,[40], Idaho,[41] Maryland[42] and New York,[43] prefer men to women in granting administration on the estates of decedents. In Arkansas,[44] West Virginia,[45] and a number of other states, the father inherits to the exclusion of the mother when their child dies without a will and leave no descendants.

In New Mexico[46] and Nevada,[47] all property acquired after marriage by the industry of the husband or wife is their common property and when the husband dies he may leave his half to whomever he pleases, but on the other hand, unless a wife outlives her husband, it is a general rule that she cannot leave a dollar of her half to any one, not even to her own children.

WOMEN DISCRIMINATED AGAINST IN PUBLIC OFFICE OR POLITICS

Iowa permits male citizens only to be members of the legislature.[48] In seeking positions or office, women find themselves at a disadvantage because of sex. Always in the government service whether state or federal, men are given the preference in appointments.

Women school teachers who perform the same service as men teachers are practically always paid less for their services as there are only a few states which have laws prohibiting such discriminations. For instance, in the high schools at Providence, Rhode Island, the men teachers are paid $300 to $400 per year more than the women teach-

[40]Code, Sec. 281.
[41]Comp. Stats. Sec. 7488.
[42]Code, Art. 93, Secs. 27 and 29.
[43]Surrogate Court Act, Sec. 118.
[44]Crawford & Moses Digest of Ark. Stats., Sec. 3471.
[45]Barnes W. Va. Code, Ch. 78, Sec. 1.
[46]Stats., Secs. 1840-1.
[47]Rev. Laws, Secs. 2164-5.
[48]Const., Art 3, Secs. 4 and 5.

ers.[49] Moreover under the school regulations the marriage of a woman means forfeiture of her position in many schools.[50]

WOMEN INELIGIBLE FOR JURY SERVICE

In more than half of the states women are denied the right to serve on juries. Among these states are Arizona,[51] Colorado,[52] Connecticut,[53] Massachusetts,[54] Missouri,[55] New Hampshire,[56] North Carolina,[57] Oklahoma[58] and Wyoming.[59]

DISCRIMINATION IN CITIZENSHIP RIGHTS

Under the citizenship laws of the United States including the Cable Act, women are denied equal right with men. For instance, if a native American women citizen married to a foreigner resides continuously for five years abroad, or if she resides for two years in the foreign country of which her husband is a citizen, it is a legal presumption that she has ceased to be an American citizen unless she takes affirmative action and presents to the authorities evidence sufficient to overcome the presumption. On the other hand, a native American male citizen married to a foreigner, may reside continuously in a foreign country any number of years and he is still presumed to be an American citizen. In fact he is never deemed to have expatriated himself unless he has actually taken an oath of allegiance to a foreign country or has been naturalized in

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[49]Letter dated Nov. 1, 1923 from Supt. of Public Schools for City of Providence.

[50]Sec. 6, Ch. 5, Rules School Committee for City of Woonsocket, R. I.

[51]Code, Sec. 3516.

[52]Const., Art. 3, Sec. 23.

[53]G. S., Sec. 5681.

[54]In re Opinion of the Justices, 130 N. E. 685.

[55]Const., Art. 2, Sec. 28.

[56]Laws of 1921, Ch. 144.

[57]Const., Art. 1, Sec. 13.

[58]Const., Art. 2, Secs. 18 and 19.

[59]McKinney v. State, 30 Pac. 293.

a foreign country in conformity with its laws. Moreover, an American woman marrying an alien ineligible for American citizenship loses her American citizenship, but on the other hand, an American man who marries a woman ineligible for American citizenship, continues to be an American citizen, entitled to all the rights and privileges such a status confers.[60]

It would thus appear that the principal of equality, as declared and set forth in the Declaration of Independence, is not fully carried out, or lived up to in this country.

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[60]The Act "relative to the naturalization and citizenship of married women" passed by the 67th Congress.

MOOT COURT

MAIN VS. FIRST NATIONAL BANK

Banks and Banking—Checks—Presentment—Delay—Negotiable Instrument Act of 1901, P. L. 194.

STATEMENT OF FACTS

The defendant bank drew checks on the E Bank in England and placed money with the A Company, which telegraphed E to pay the checks and debit the A Company's account. The A Company had a sufficient balance with the E Bank until after a lapse of a reasonable time for presentment, but before presentment the A Company became insolvent, and its balance was withdrawn from the E Bank. On presentment the E Bank refused to pay the checks. The plaintiff, accommodated payee of the checks, after demand and refusal, sued the defendant for the amount of the checks. The bank claims that it is relieved from liability under the Negotiable Instrument Act.

Swaboski, for Plaintiff.

H. Johnston, for Defendant.

OPINION OF THE COURT

Wiest, J. The plaintiff, the accommodated payee of several checks, failed to present for payment the checks drawn on a bank, which, during a reasonable time for presentment, had sufficient funds in its possession belonging to the depositary of the defendant's depositary. The depositary became insolvent before the presentment of the checks and its account was withdrawn from the drawee bank.

The question presented for our determination is, "Did the failure to present the checks for payment within a reasonable time relieve th drawer, the defendant bank, of liability?"

When the First National Bank placed money with the A Company, the deposit created a debt, not a bailment. The title to the money deposited passed from the First National Bank to the A Company, and the A Company became the First National Bank's

debtor. In re Prudential Trust Company, 223 Pa. 409; Northern Liberties Bank vs. Jones, 42 Pa. 536. The facts do not disclose a special deposit, any kind of bailment, or a trust, and in the absence of such facts, we must presume them not to exist. So far as we can see, it was a common, ordinary business transaction similar to many which occur every day in the world of commerce. Hence, by the weight of authority, the A Company's insolvency gave the First National Bank no right to any preference, but made it share pro rata with the general creditors. In re Purl, 147 Mo. A. 105; 125 S. W. 849: Butcher vs. Butler, 134 Mo. A. 61; 114 S. W. 564; Raban vs. Cascade Bank, 33 Mont. 413, 417; 84 Pac. 72: Bruyan vs. Middle District Bank, 9 Cow. (N. Y.) 413; Matter of Franklin Bank, 1 Paige (N. Y.) 249; 19 Am. D. 413: Blackwell Bank vs. Dean, 9 Okla. 626; 60 Pac. 226. It is therefore clear that the First National Bank would be damaged by Main's failure to present the check for payment before the A Company's insolvency, were Main allowed to rover the face value of the checks.

Sec. 186 of the Negotiable Instrument Act, Act of May 16, 1901, P. L. 194, declares that a check must be presented for payment within a reasonable time after its issue or the drawer will be discharged thereon to the extent of the loss caused by the delay. This was applied in Heralds of Liberty vs. Hurd, 44 Pa. Super. Ct., 478.

The able counsel for the plaintiff contends that the burden of proof is upon the defendant to show that he has been injured by the delay in non-presentment. He cites Rosenbaum vs. Hazard, 233 Pa. 206, followed by the court in McKinley vs. Wainstein, 74 Pa. Super. Ct. 490, to this effect: (1) In an action by the holder of a check against the drawer, brought nearly six years after the check was drawn, where the defendant in his affidavit of defense, makes no averments of loss and in no way shows that he has been injured by the delay in presenting the check there is no burden on the plaintiff to prove that the defendant has suffered no loss. (2) To hold otherwise would be to require the holder to prove a negative, as to a matter peculiarly within the knowledge of the drawer.

Let us consider this question thorougly, for upon the answer to it, we believe, turns the decision which must be made in this case. We affirm the doctrine that it is necessary for the defendant to show his loss caused by the delay of the plaintiff, but we hold that it is incumbent upon him so to do only where the facts of the case as presented by the plaintiff do not show such loss. The facts of this case as they are presented to us do not show what was contained in the defendant's affidavit of defense. But the fact remains that he did suffer a loss. Whether that was shown by the plaintiff or by the defendant we do not know. If the plaintiff proved non-payment

by the E Bank in England because the A Company, the defendant's depositary, became insolvent during the plaintiff's own delay, he cannot be heard to complain that the defendant did not prove his loss. The court infers that he has been injured by reason of his debtor's insolvency, or at least would be injured if the court would allow the full amount of the plaintiff's claim to be recovered. We do not know how great was the defendant's loss, but whatever it was, it must be deducted from the face value of the checks and the plaintiff will be allowed to recover the remainder.

The case therefore will be remanded to the court below for its reconsideration in accordance with the principles and directions herein set forth, costs to abide the outcome of the proceedings.

OPINION OF SUPREME COURT

Many cases can be found holding that the insolvency or bankruptcy of the drawee causing a loss because of delay in presentment that would not have occurred had the presentment been timely, relieves the drawer pro tanto. But there is no such wealth of authority on the present situation. By a literal interpretation of the Act, the same result will be reached. The insolvency of the A Company causes the same loss as would have been occasioned by the insolvency of the E bank. The only efficient reason that has been suggested for not relieving the drawer is that it thereby increases the risks taken by the holder. But this risk is not taken if there is no delay on his part. In the absence of a controlling authority so holding, we feel that the drawer should be relieved to the extent of the loss suffered. Heralds of Liberty vs. Hurd, 44 Super. 478, has been cited as upholding the contrary view but it merely decided that the loss was occasioned by the act of the drawer in settling partnership accounts as though the check had been paid when he should have known that it was still out-standing. See Ferrari vs. Bank of Connellsville, 216 N. Y. Supp. 280 for contrary holding.

The opinion of the learned court below has disposed of the other issues involved and the judgment is affirmed.

BATES VS. NEW YORK LIFE INS. CO.

Insurance—Contracts—Construction—"By His Own Hand or Act"—Accidental Death.

STATEMENT OF FACTS

Howeel was insured with the defendant company. The policy contained a clause relieving the insurance company from liability in the event the insured should die "by his own hand or act." The

by the E Bank in England because the A Company, the defendant's depositary, became insolvent during the plaintiff's own delay, he cannot be heard to complain that the defendant did not prove his loss. The court infers that he has been injured by reason of his debtor's insolvency, or at least would be injured if the court would allow the full amount of the plaintiff's claim to be recovered. We do not know how great was the defendant's loss, but whatever it was, it must be deducted from the face value of the checks and the plaintiff will be allowed to recover the remainder.

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insured died by accidentally taking a dose of carbolic acid in mistake for medicine. This is an action by the beneficiary to compel payment of the insurance.

Yarmov, for Plaintiff.

Wesler, for Defendant.

OPINION OF THE COURT

Walls, J. The determination of the question under consideration depends upon the construction of the clause, "die by his own hand or act," as contained in the policy of insurance in question.

Undoubtedly the weight of authority in this country is in support of the theory that the words so used in a policy of insurance or similar expression shall be deemed to mean and to be synonymous with "Suicide." Eastbrook vs. Union Mutual Life Ins. Co., 54 Maine 224, Hartman vs. Keystone Ins. Co., 21 Pa. 466.

The words contained in the clause should not be interpreted in their literal sense, but should be interpreted as applying to an intentional self killing and not to death occassioned by accident or mistake. Evans vs. Phoenix Asso., 1 Pa. Dist. Rep. 27, American Life Ins. Co. vs. Isett's Adm., 74 Pa. 176.

In American Life Ins. Co. vs. Isett's Adm., 74 Pa. 176, a case very much like the case at bar, the condition of the policy was:— in case the assured should "die by his own hand" . . . this policy should be void, null and of no effect. The court in affirming the decision of the lower court held, "If the insured possessed sufficient mental capacity to form an intelligent intent to take his own life and was conscious that the act he was about to commit would effect that object, it avoided the policy. If however he was unconscious of the effect of his action upon his life, a recovery can be had."

The leading case in this country on this point was decided by the Supreme Court of the United States in Life Ins. Co. vs. Terry, 15 Wall. 580. There the condition in the instrument was that if the assured shall "die by his own hand" the policy should be void. In that case George Terry died from the effects of taking poison. The court held that if the death was caused by the voluntary act of the assured, he not knowing or intending that death would be the result of the act, the insurer should be held liable. This case was quoted and the doctrine laid down by it approved by Mr. Justice Woodward in Conn. Mutual Life Ins. Co. vs. Groom, 86 Pa. 92.

The case of Pollock vs. U. S. Mutual Accident Asso. 102 Pa. 230 cited and relied on by the learned counsel for the defendant should not rule this case. While that case may well stand on its peculiar

facts, we think the present case is clearly distinguished in its controlling facts and principle applicable to them. In that case Pollock was insured against, "injuries effected through external, violent and accidental means," the certificate further declared that the benefits under it, "should not extend to any death or disability which may have been caused by the taking of poison." Mr. Justice Sterret in Pickett vs. Ins. Co., 144 Pa. 79, in speaking of the above case says, "In deciding that case, this court never could have intended to lay down the broad rule, that in construing an accident policy there is no distinction between 'external, violent and accidental' causes of death and those cases in which death results from 'voluntary' acts."

Again, in Evans vs. Phoenix Mutual Relief Asso. supra, Hempill J., in commenting on the Pollock case, states, "The decision in that case, is based upon the terms of the contract which expressly excepts death 'by taking of poison' from the benefits of the Asso."

From the above comment it will be seen that the doctrine of Pollock vs. U. S. Mutual Accident Asso. supra, must be confined to cases where the same clause and facts appear.

"Suicide" obviously can mean nothing more than the taking of one's life purposely and intentionally. To go beyond this and to relieve the Insurance Co. from all liability in all cases where the acts of the insured, without design on his part, caused his death would in most cases render life insurance policies of very little value to the insured.

It would not be a fair interpretation of this clause to hold it to cover the case of a purely accidental death from the taking of poison, though the hand of the insured may have been the innocent agent by which the poison was conveyed to his lips. It is fair to presume that such an accident was not intended by the parties to the policy, to relieve the company from liability. The insurance was intended to stipulate against "Suicide," but who will contend that the taking of poison by mistake though it result in death is what is ordinarily understood as "Suicide?"

Certainly the language of the policy admits of the construction we have placed on it and even if the construction contended for by the learned counsel for the defendant, were equally reasonable, that must be adopted which is most favorable to the assured. Evans vs. Phoenix Mutual Relief Asso., 1 Pa. Dist. Rep. 27, Western Insurance Co. vs. Cropper, 32 Pa. 351.

Judgment must therefore be for the Plaintiff.

OPINION OF SUPREME COURT

No Pennsylvania decision is available which directly adjudicates the issue here involved. But courts invariably have construed the

words "die by his own hand or act" to be synonymous with "suicide." Nor do we feel that this is a strained construction. If the parties wish to exclude accidental deaths they may do so in unequivocal words.

The cases cited by the learned court below, while not controlling, clearly portray the attitude of our courts in similar circumstances. The judgment of the learned court below is affirmed.

FLACK VS. JOHNS

Contract—Actions—Measure of Damages—Evidence—Value of Services

STATEMENT OF FACTS

Flack and Johns entered into a verbal agreement, whereby Flack was to contribute his services in procuring a sale of land to Johns, who was to resell the land, and give Flack one-half the profits in return for his services. Johns, by means of Flacks' services, was enabled to buy the land, but he then repudiated the contract and refused to sell the land, although made an offer of $100,000 above the cost. Flack sued for an interest in the land, but the court held the action barred by the Statute of Frauds. He then began the present suit for breach of contract, seeking to recover the value of his services. He sought to introduce the contract as evidence of the value of his services, and sought to show the possible re-sale price. This was permitted, and he recovered $50,000. The defendant has appealed.

Swartz, for Plaintiff.

Hyman, for Defendant.

OPINION OF THE COURT

Ferraro, J. This is a suit by Flack to recover the value of services performed by him in the sale of certain land, from a third person to Johns, the apparent vendee.

From the facts, and the pleadings of this case, the first question which arises for our determination, is as to the exact status and relationship of Johns and Flack to each other. Were they partners in this single transaction, or was their relationship merely one of principal and agent?

The Uniform Partnership Act of March 22, 1915, P. L. 18, which Act regulates the entire law of partnerships, in Sec. 6 defines a "part-

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The Uniform Partnership Act of March 22, 1915, P. L. 18, which Act regulates the entire law of partnerships, in Sec. 6 defines a "part-

nership" as "an association of two or more persons to carry on as co-owners, a business for profit." From this definition it is obvious that Flack and Johns were not partners, inasmuch as they did not agree to carry on any business as co-owners of such. The only semblance of partnership here, is the oral agreement to share equally in the profits of a re-sale. A fortiori, in Section 7 several rules are laid down for determining "whether a partnership exists," the first of which states that "persons who are not partners as to each other are not partners as to third persons." It is readily apparent that in this case neither Flack nor Johns ever regarded themselves as partners. If this arrangement were a partnership, the property purchased here would have become partnership property and be deeded in the firm name . This was not so here, however, since the deed to the property, as inferred from the facts, was made in the name of Johns only, the vendee, and whom the vendor recognized as such, and for whom Flack exerted his influence. Section 16 makes a person who holds himself out to others as a partner, a partner "by estoppel," and liable as a partner. But here Flack never represented himself as a partner of Johns, but was merely acting for him to secure a purchase. Furthermore, if this plaintiff and defendant were partners, plaintiff's remedy would have been in equity, in the lower court, and not in law. We note from the facts that the lower court granted a verdict in damages to the plaintiff. Therefore, it could not have regarded Flack and Johns as partners.

The jurisdiction of courts of equity over partnerships, is general and unlimited. "Partnership accounts must be adjusted and settled, and the liability of one partner to another ascertained by an action of account render or by a bill in equity for an accounting:" McCollum vs. Carlucci, 206 Pa. 312.—1903.

As an analogy to the present case, Hart vs. Kelley, in 83 Pa. 286 (1877), holds that "one who has no interest in the business of a firm or in the capital invested, save that he is to receive a share of the profits as compensation for money loaned for the benefit of the business, is not a partner and cannot be held liable as such by a creditor of the firm."

From all this we see that Flack and Johns were not, in any sense of the word "partners," and since not so, we must, by the process of elimination, accept the relationship of principal and agent as existant here, and that Flack was merely the agent for the purchase of real estate for Johns. Therefore, we have a case of a contract between one man, the purchaser, and the agent for him, by which the purchaser agrees to give the agent, as compensation for his services in securing the purchase, one-half the profits realized upon a re-sale of this land bought.

Now we are called upon to determine just what sort of right or interest this plaintiff (the agent), acquired, on the completion of his contractual obligations, i. e. the securing of the purchase of the land to the defendant. If, from the terms of the contract, he acquired a one-half interest in the land, he cannot recover here, because barred by the Statute of Frauds (as so held in the lower court). However, the Act of March 22, 1772, "for the prevention of frauds and perjuries," is limited in its operation to dealings between a vendor and purchaser, or parties in a similar relationship, for the transfer of land, and requires their contracts for the sale, etc. of same to be in writing, or a memorandum thereof. As before stated, the contract in the case at bar is between the purchaser and his agent, and the original contract between the vendor and purchaser, as encouraged by this plaintiff (the purchaser's agent), has been fully executed. It was the intent of both parties to the oral contract in controversy, that the land, when bought, was to be re-sold, and in the profits of that re-sale plaintiff was to have a one-half interest. Therefore, an equitable conversion was to take place, and the realty was to be converted to personalty in the form of cash. And in that personalty would lie the interest of this plaintiff. Therefore, can it be said that he had "an interest in the land" as so understood from the Act of 1772? He (plaintiff) did not want land; he wanted money, and this was the understanding of both parties to the oral contract.

"An interest in contingent profits arising from the sale of land, does not amount to an 'interest in land' within the meaning of the Statute of Frauds." Benjamin vs. Zell, 100 Pa. 33. From all this we see that the Statute of Frauds has no application to the contract in the present case, inasmuch as the plaintiff had no interest in any land, but did have an interest in the re-sale value of same, which could be readily ascertained, and which, from the agreement of the parties, was to be personalty and divided as such. (Cf. Davis vs. Hillman (Pa.) 135 Atl. 254.)

The re-sale of the land in question was a vital term of this oral contract. Of the several ways in which a contract is discharged, "breach of a vital term" is one of the most prevalent. By the defendant's breach here, and his refusal to perform his part of the contract, he will be unjustly enriched at the expense of this plaintiff. The plaintiff has conferred a benefit on the defendant, under an express contract, which has been broken by the default of the defendant alone. Can we justly say that the plaintiff cannot recover here the very amount upon which he was induced to act for the defendant? Apparently he was well acquainted with land values, and performed his obligations in reliance on the defendant's sincerity and promise to re-sell, and he should recover.

The general rule is well settled that a party to a contract where services are to be performed, upon the breach of the contract by the other party, has two remedies open to him. He may sue upon the contract, and recover damages for its breach, or he may ignore the contract, and sue for services and labor expended, and expenses incurred, from which he has derived no benefit. Kearney vs. Doyle, 22 Mich. 294. In case he pursues the latter remedy, the measure of damages as to services is not necessarily the contract price, even though the value of the services can be measured or apportioned by the contract rate; but he may recover what his services are reasonably worth, although in excess of the rate fixed by contract. Hosmer vs. Wilson, 7 Mich. 294.

Where the party suing is not responsible for the breach, neither the right nor the amount of the recovery depends upon the measure of benefit received by the party guilty of the breach. The test is: the reasonable value of what the plaintiff has done. The rule laid down by Christiancy, J., in Hosmer vs. Wilson, supra, is that: "The defendant having appropriated and received the benefit of the services (or, what is equivalent, having induced the plaintiff to expend his labor and services for him, and, if properly performed according to his desire, the defendant being estopped to deny the benefit) a duty is imposed upon the defendant to pay for the services thus performed." In this connection, Hemminger vs. Western Assurance Co., in 95 Mich. 355, is also authoritative.

It is apparent from the argument of the plaintiff here, that he has elected to recover upon the quantum meruit, on the theory that defendant "had violated the contract and prevented its completion."

The law is well settled on cases of this kind where the plaintiff has fully performed. "Where one is employed to render services, and fully completes his contract, and the other declines to carry out the provisions as to compensation, or fulfill other conditions in the contract, suit may be brought and recovery had on a quantum meruit for the services." Coeus vs. Marousis, 275 Pa. 479 (1923).

The lower court was correct in admitting this contract between the parties as evidence to measure the value of the plaintiff's services, and its position must stand. As was said in Brown vs. Foster, 51 Pa. 165, "the services having been completed and accepted before suit was brought, it was admissable to sue in indebitatus assumpsit and give the special contract in evidence, not as proof of the promise, but a rule to measure the damages for its breach."

This ruling is reiterated in Wilson Co. vs. Reighard, 230 Pa. 141 (1911) which holds that "in an action to recover for labor and materials, where the statement of claim contains the common counts in indebtitatus assumpsit and on a quantum meruit, and a detailed

statement of the work done and materials furnished, the plaintiff is not defeated of his right to recóver because at the trial he proves an express oral contract."

As to the correctness of the court below in admitting evidence as to the re-sale value (an offer of $100,000), we are governed by the general rule, which, stated broadly, is that "in an action for breach of contract, any evidence bearing directly upon the damage occasioned by the breach, and tending to establish a legitimate element of damage, is admissable; and as all damages which the parties can reasonably be presumed to have contemplated as the probable consequence of the breach are recoverable, evidence therof is admissable. The evidence must, of course, be confined to matters relevant to the contract in suit." 17 C. J. page 1028.

Where it is shown that a loss of profits is the natural and probable consequences of the act of omission complained of, and their amount is shown with sufficient certainty, there may be a recovery therefore." 17 C. J. page 786. Here an offer of $100,000 was shown to a certainty, thus proving the amount of profits to which plaintiff would have been entitled.

In order that there may be a recovery of profits lost by reason of a breach of contract, the profits must be such as were within the contemplation of the parties at the time the contract was made. Cornelius vs. Lytle, 246 Pa. 205 (1914).

Therefore, inasmuch as there is no error in the rulings of the court below as to the admission of the oral contract and the re-sale value of the land, in evidence and inasmuch as the defendant has received a benefit from the plaintiff, and the retention of the benefit by the defendant is inequitable under all the circumstances of the case, we are constrained to affirm the decision of the court below, and dismiss this appeal.

Judgment affirmed for plaintiff.

OPINION OF SUPREME COURT

In such a case as this, the defendant being at fault, recovery may be had either on the contract or in quasi-contract for the reasonable value of the services rendered, Wilson Co. vs. Reighard, 230 Pa. 141.

But whether the recovery be on the contract or on one constructed by the law, the recovery allowed by the courts below is incorrect. To allow the recovery of $50,000 in the present case is to enforce the contract specifically. This the court has refused to do in a prior action. It would be highly inconsistent to allow it by a mere change in form of action. Cf. Breniman vs. Breniman, 281 Pa. 304 and cases therein cited for the attitude of the court on such en-

deavors. The contract may be shown but the offered price of $100,000 is irrelevant as bearing on the value of the services. Only what is considered a reasonable value as the remuneration of an agent in negotiating a sale of real estate may be allowed. No evidence of the value of the services was offered in the court below and judgment n. o. v. should have been entered.

The judgment of the learned court below is reversed and judgment is here entered for the defendant.

SCOTT VS. HARLAN INSURANCE CO.

Insurance—Insurance Companies—Liability For Negligence of Agents—Death Before Consummation of Policy.

STATEMENT OF FACTS

Application was made by Scott for insurance to Roemer, agent of the insurance company. The agent negligently failed to forward the application, and the applicant died before action was taken on the application, although according to the company's usual course of business action would have been taken before the death occurred. The wife of the deceased applicant, as executrix of his estate, sues the insurance company in trespass, alleging the agent's negligence as a ground for recovery, and showing that the deceased was in such physical condition at the time of the application as to be an acceptable risk.

Yosko, for Plaintiff.

Larimer, for Defendant.

OPINION OF THE COURT

Woodside, J. The only question for the court in this case is whether there was a right violated by the defendant. In other words, whether the defendant owed a legal duty to the plaintiff. That the executrix is the proper party to bring suit; that the suit is brought against the proper person; that the agent was in fact the agent of the insurance company; that the agent acted negligently; that the deceased was an acceptable risk; that the application of the deceased would have been acted upon by the company before the death except for the neglignt delay of th agent; and that there is no liability upon a contractual theory has either been found as a matter of fact or has been admitted by both parties to this action.

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The plaintiff seeks to recover in a tort action. In order to recover in tort there must be two things shown. First, that a legal duty was owed the defendant by the plaintiff, and second, that that duty was violated. If an insurance company, through its agent, owes a duty to an applicant for insurance to act upon that application within a reasonable time, then there is no doubt that this duty has been violated in the case before us.

A suit of this kind is unique in Pennsylvania. Neither counsel was able to cite a case of a similar action in this State, and a search through the reports by the court was marked with no greater success. It thereupon falls upon us to decide the case on the general rules of tort actions, the precedents that can be found in other states, and inferences that may be drawn from Pennsylvania cases.

The question arises whether insurance companies are to be considered as a new member of this class of "public servants," and a greater duty imposed upon them than is imposed upon an individual contractor. It is the opinion of the court that they are at least of a quasi-public nature, and for some purposes to be considered as a member of this class. The Pennsylvania legislature has recognized them as such, as is clearly indicated by the regulations and control which they have assumed over insurance companies by statutes and through the insurance commissioner.

In Heaven vs. Pender, 11 Q. B. D. 503, the English courts defined when liability arises in tort as follows: "Whenever one person is by circumstances placed in such a position with regard to another that every one of ordinary sense who did think would at once recognize if he did not use ordinary skill and care in his own conduct with regard to those circumstances he would cause danger of injury to the person or property of the other, a duty arises to use ordinary case and skill to avoid such danger." Applying this definition to the present case it is the opinion of the court that the defendant would be liable. But so would an individual who delayed in entering into many other kinds of contracts be liable for such delay, and yet the rule is that a person cannot be held liable for delay in entering into a contract. But, again, there is an exception to this last rule in cases where the party who delays in entering into the contract is doing business of a public nature. It is on this ground that insurance companies have been held liable in other states where cases have arisen with facts similar to the one before us.

A review of the authorities on actions similar to this one has brought the court to the conclusion that the weight of authority is clearly on the side of the plaintiff in this case. It is true that in two states, Arkansas and Alabama, the opposite view is held; but in

Iowa, Kansas, Nebraska, Oklahoma, and Kentucky it has been held that insurance companies are liable in tort actions for the negligent delay of their agents in forwarding applications for insurance.

A recent case in Oklahoma (1922) reviewed the law on the subject very thoroughly and held that: "An insurance company is chargeable with the negligence of an agent in failing for an unreasonable length of time to forward an application of insurance for acceptance or rejection. . . . Insurance companies are held in law to a broader legal responsibility than are parties to purely private contracts or transactions."

As it appears to the court the principle argument of the counsel for the defendant amounts to this: Pennsylvania courts have refused to permit a party to recover in an action of assumpsit when an insurance company delays in acting upon the application of the party; therefore the insurance company owes no legal duty to an applicant to act upon that application within a reasonable time, but may delay passing upon the application indefinitely without assuming any liability for any injury caused thereby. This does not follow as is shown by a review of the cases in the states where the applicant or his personal representative are permitted to recover in tort actions. As indicated above a Kentucky case held that with the same set of facts there could be no recovery in an action of assumpsit but there could be in tort action; Northwestern Mutual Life Insurance Company vs. Neafus. It has been held in jurisdictions where recovery when action is brought in tort is allowed, that there can be no recovery with similar sets of facts in actions of assumpsit: Winchell vs. Iowa State Insurance Company, 103 Iowa 189, 72 N. W. 503; Van Arsdale vs. Young, 21 Okla. 151, 95 Pac. 778. These cases should be sufficient to show that this reasoning of the counsel for the defendant is not sound.

A statement, unsupported by authority, is made by the counsel for the defendant to the effect that there is no presumption that a company would accept a risk even though it is a desirable one. This is not the law; Duffy vs. Bankers Life Association, and cases cited above.

The counsel raises one other argument worthy of consideration. That is that the applicant for the insurance is under a duty to inquire as to the action that is being taken on his application, and he cited as his authority for the rule Insurance Company vs. Johnson, 23 Pa. 72, where on facts similar to the one at bar a suit in assumpsit was unsuccessful. There are two things worthy of note in drawing such a conclusion from that case. One is that the case was decided in 1854, since which time change has taken place in the

law of torts and of insurance; and the other, that careful study of the case will reveal that it was not decided upon that point, but rather upon the proposition that there could be no inference of the approval of the application.

For the reasons above the court concludes that it is the weight of authority that the plaintiff should be permitted to recover; that such decision is in harmony with justice and reason, and that there is nothing in the existing laws of Pennsylvania inconsistent or contradictory to such a rule. The court therefore decrees that the plaintiff shall be entitled to recover the amount of the application, that amount being the injury suffered.

OPINION OF SUPREME COURT

The opinion of the learned court below has adequately covered the available precedents on the issue presented. The weight of authority holds the Insurance Co. liable in tort for the negligent delay of its agent, the nature of insurance warrants such a duty, and no judicial decisions of Pennsylvania prohibit such a holding. The judgment of the learned court below is approved and affirmed on its opinion.

CONDON VS. TASS

Contracts—Nonperformance—Legal Obstacles—Intention of Parties.

STATEMENT OF FACTS

The lessee, defendant, in renting a frame store, covenanted to rebuild, in case of fire. Thereafter a city ordinance was passed forbidding the erection of frame buildings in that district. Fire then destroyed the building. The lessee would have been compelled to pay twice the anticipated cost to rebuild. He refused to rebuild, the lessor did, and now sues the defendant for the cost of the buildin.

Bukowski, for Plaintiff.

Spear, for Defendant.

OPINION OF THE COURT

M. Cohen, J. The defendant's argument as to the validity of the ordinance is superfluous, since the plaintiffs have not attacked

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Bukowski, for Plaintiff.

Spear, for Defendant.

OPINION OF THE COURT

M. Cohen, J. The defendant's argument as to the validity of the ordinance is superfluous, since the plaintiffs have not attacked

or questioned its validity or questioned the right of the city to create it in the exercise of its police powers. Therefore the court discards it from consideration.

That an action cannot be maintained upon a contract the performance of which is contrary to and inviolate of the legislation of the State has been uniformly held—13 C. J. Sec. 26.

A distinction must be made, first of all between a case where the happening of a certain contingency has rendered performance of a contract more burdensome and a case where performance is actually impossible. An example of the former would be a case of a building contract wherein the price of biulding materials was increased so as to render performance burdensome, but not impossible. An example of the latter case would be, as in the case at bar, where performance is absolutely prohibited by the law.

Counsel for plaintiff argues that performance of the contract was not impossible, but on the contrary, was possible, by building a dwelling of another sort such as the brick building which the plaintiff has himself caused to be built. But as the counsel for defendant has pointed out, and as explained by Trickett on Landlord and Tenant, at p. 100, "to rebuild in case of fire" means to return premises to same condition as when leased. It is very true that defendant might build a brick dwelling at double the expense—and even a castle at many times the cost of the original frame dwelling—but would that be putting the premises in their original status? Obviously not. To decide otherwise would be to substitute or read into the contract terms not contemplated by the parties at the time of the formation of the contract. We do not think, therefore, that the plaintiff's argument on this question is tenable.

It has been uniformly held in Penna. that where a party by his contract creates a duty on himself, he is bound to make it good notwithstanding he is prevented by inevitable necessity from performing, 247 Pa. 242, 278 Pa. 250. But these are cases where performance by the defendant is not actually impossible, but would impose on him a great burden. In the case where defendant is compelled to pay rent for a building useless because of the Volstead Act the defendant could nevertheless inhabit the premises or use it for other purposes, which, although not as profitable, thereby imposing on him a burden, is nevertheless not impossible of performance. But, in the case at bar to perform the contract would be to directly violate the law and is thus rendered impossible of performance. Should then a defendant, who being willing to perform the terms of his contract, but is prohibited from doing so by the law, be subjected to an assumpsit for his failure to perform such con-

tract? The law is well settled that he cannot be so subjected, but that his contract is discharged, 247 Pa. 242.

The question may arise whether, the performance of the contract being discharged because of legal impossibility, the plaintiff (lessor) should be prejudiced to the extent of the value of the original frame dwelling. The U. S. Circuit Ct. has held in a Pa. case appealed to that tribunal, that where performance of the contract was rendered impossible by statute, the contract would not be enforced but that neither party to the contract shall be prejudiced, Odlin vs. Ins. Co. of Pa., 18 Pa. Co. Ct. 433.

In Rooks vs. Seaton, 1 Phila. 106, which was a case very similar, in facts, to the case at bar, the defendant (lessee) agreed to erect on a lot a frame building within a specified period. Before expiration of this period, erection of frame dwellings were prohibited by ordinance. The court held that the defendant could not be compelled to build the dwelling but that defendant was bound to satisfy his covenant by paying the plaintiff in money, an equivalent for the house to be erected.

In Louisville & N. R. Co. vs. Crowe, 157 Ky. 27, the court held that where performance by the defendant was rendered impossible by Act of Congress, plaintiff was entitled to recover a reasonable value of the benefits received by the defendants less the value of any benefits which the plaintiff has received.

However, as this court is not called upon to decide whether or not the plaintiff is entitled to the reasonable value of the original frame dwelling, we will refrain from expressing any opinion on this point, and will conclude with the decision that the plaintiff is not entitled to recover the value of the brick dwelling and accordingly render judgment for defendant.

OPINION OF SUPREME COURT

What did the parties mean by a contract to "rebuild?" If they meant merely replacement by an equivalent structure, the contract has not become impossible of performance by law. If they meant to replace with a structure of similar design and materials, their contract has become impossible of performance. The latter view would seem to conform more nearly to the normal intention of the ordinary lessee and has been upheld by respectable courts. Lehmeyer vs. Moses, 127 N. Y. Supp. 253, Albers vs. Norton Co. (Ky.) 144 S. W. 8, Cordes vs. Miller, 39 Mich. 581, Am. Rep. 430. That such is the view of the Pennsylvania authorities is suggested by Battle Co. vs. Gas Co., 47 C. C. 89, 97 affirmed in 261 Pa. 523 and Monaco Boro vs. St. Rwy. Co., 247 Pa. 242. The contract being discharged by the change in law relieves the lessee of all responsibility.

Judgment affirmed.

BOOK REVIEWS

CASES ON CONSTITUTIONAL LAW WITH SUPPLEMENT BY JAMES PARKER HALL, 1927

Published by West Publishing Company, St. Paul, Minn.

In 1913 this work, less the supplement, was published. It contained over 1400 pages, and was the largest compilation then accessible and it is not too much to say that the selections were most judicious. Possessed of this book, the diligent student of Constitutional Law had the best possible equipment for the pursuit of his investigations. This compilation has been widely used in law schools, and by isolated students of constitutional law. The publication of 1926 contains unchanged, unaltered, the original collection of decisions; but in addition, a supplement of about 400 pages. The number of added cases in this supplement is nearly one-third the number of the 1913 edition. The compiler remarks, "As was to be expected, the police power, taxation and the commerce clause furnish the major part of the new matter." He adds, "The never-ending judicial efforts to draw more accurately the elusive line between the powers of the states and of the nation, are also well represented." Time was when the ordinary lawyer knew little, and cared no more, for the Constitution of his country. There has, in recent years, been a marked emphasis put on constitutional studies, and a work such as this by Mr. Hall, is contributing to the impulse, by making the leading decisions of the courts readily accessible, and in a form that renders them more quickly intelligible. The book is worthy of emphatic praise.

ARGUMENTS AND ADDRESSES OF JOSEPH H. CHOATE, BY FREDERICK C. HICKS

The West Publishing Company, St. Paul, Minn., 1926

For the publication of this book, the West Publishing Company, merits the gratitude of all who have admired and esteemed Mr. Choate. The book opens with a memorial by Elihu Root. The products of the genius of Mr. Choate follow, under the following classification; Forensic Speeches and Arguments; Addresses on International Affairs; Addresses about Lawyers; Addresses on occasions; After Dinner Speeches, and Political Speeches. The book contains 1183 pages, is finely printed, and bound. The type is clear. The possession of such a book must be coveted by the

large number of lawyers and cultivated citizens of all professions, who through Mr. Choate's various activities, have grown acquainted with his learning as lawyer and publicist, and have admired the grace and force of his style of thinking and expression. Mr. Choate died in 1917. As the editor remarks, "he was born during the administration of President Jackson * * * and he lived nearly two-thirds of the years between the inauguration of Washington and his own death. In collecting the speeches and other effusions of Mr. Choate, the editor has performed a service to his country.

CASES AND OTHER AUTHORITIES ON EQUITY
By WALTER WHEELER COOK

West Publishing Co., St. Paul, Minn., 1925 p. XIX, 1179.

This book is an abridgment of a three volume case book by the same editor. It was prepared in response to requests from a number of teachers who found the use of the three volume edition impossible or undesirable in their schools.

It is divided into six parts, as follows: 1—General Nature and Scope of Equity; 2—Specific Performance of Contracts; 3—Reformation and Recission; 4—Benefits conferred under agreements which have been wholly or partially performed; 5—Benefits conferred under compulsion and under influence; 6—Benefits obtained by the wrongful use of another's property.

The last three parts are principally composed of cases dealing with quasi-contractual obligations. Cases of injunctions are included in the first part: Bills of peace and bills of interpreader are not specifically included.

In addition to cases the book contains many excerpts from text books and law reviews, and thus illustrates the modern tendency to abandon the case method of teaching law in favor of the combined case and text method.

It is very probable that no teacher of equity will find this book entirely satisfactory. Its omissions and its emphasis as well as its content furnish a fruitful basis of discussion and criticism. It nevertheless appears to the reviewer to be the best case book for the teaching of equity which has been published.

The great majority of cases are American and recent. The notes by the editor are both instructive and suggestive. The writings of Ames, Langdell, Maitland, Stone, Hohfield, Beale, et al., are frequently quoted.

There is no agreement among teachers as to what should be included in the course of equity. This renders the task of preparing a case book very difficult. Commercial considerations will dictate a compromise among conflicting theories, and compromises are not apt to be satisfactory to enthusiastic advocates. Mr. Cook's book is the most recent and successful effort to effect such a compromise.