



**PennState**  
Dickinson Law

**DICKINSON LAW REVIEW**  
PUBLISHED SINCE 1897

---

Volume 52  
Issue 3 *Dickinson Law Review* - Volume 52,  
1947-1948

---

3-1-1948

## Sealed Contract-Trustee's Agreement for Sale of Realty

Fred Gallagher

Follow this and additional works at: <https://ideas.dickinsonlaw.psu.edu/dlra>

---

### Recommended Citation

Fred Gallagher, *Sealed Contract-Trustee's Agreement for Sale of Realty*, 52 DICK. L. REV. 175 (1948).  
Available at: <https://ideas.dickinsonlaw.psu.edu/dlra/vol52/iss3/6>

This Article is brought to you for free and open access by the Law Reviews at Dickinson Law IDEAS. It has been accepted for inclusion in Dickinson Law Review by an authorized editor of Dickinson Law IDEAS. For more information, please contact [lja10@psu.edu](mailto:lja10@psu.edu).

## SEALED CONTRACT — TRUSTEE'S AGREEMENT FOR SALE OF REALTY

The recent Pennsylvania Supreme Court case, *In Re Commonwealth Trust Company of Pittsburgh*, 54A2 649 (1947), exhibits a departure from the traditional position of the court on the subject of sealed contracts, in a four to three decision.

In the majority opinion the facts as given are that the Trust Company as trustee petitioned the Orphans' Court for leave to sell certain real estate, the bid of the appellant was accepted by the court, and an order was made approving the sale. The Trust Company and the appellant then executed a sealed writing, adding the clause, "It is the understanding of the parties hereto that this Agreement covers property in a Trust Estate and that the Vendor in its fiduciary capacity is legally obliged to accept any higher or better offer which it receives prior to the approval of the within sales agreement by the Orphans' Court of Allegheny County, Pa. If the Vendor receives a higher or better offer than the terms of the within agreement, it has the right to revoke the within Agreement at any time prior to the consummation of the within sale and to refund the payment made on account of the purchase price without further liability to the Vendee." The Trust Company did receive a higher offer, and upon petition the court set aside the earlier order, and entered a new order approving the sale to the subsequent bidder. The court, in its opinion dismissing the exceptions to the decree, stated that the Act of 1945, P.L. 944, 20 P.S. sec. 818, 819, was unconstitutional. The act provided that when the court shall approve a contract, neither inadequacy of consideration, nor the receipt of an offer to deal on other terms, "except as otherwise agreed by the parties" shall constitute grounds to set it aside, or for refusing to enforce by specific performance or otherwise. While this case was before the lower court, an appeal was pending before the Supreme Court to a ruling of the same lower court that the Act of 1945 was unconstitutional: *Brereton's Estate* 355 Pa. 45 (1946), in which the act was declared constitutional.

The appellant contended in his appeal that the additional provisions of the writing executed subsequent to the order of the Orphan's Court were without consideration. The Supreme Court upheld this contention in reversing the decree of the lower court. It stated that equitable title passed upon the entry of the order. When the Trust Company procured the appellant's signature, "new promises therein could only be valid and enforceable if supported by legally sufficient consideration." The dissent relies on prior Pennsylvania cases, and reaches a conclusion which might reasonably be expected until the present case, recalling that the principle of the seal importing consideration is firmly established, *Conrad's Estate*, 333 Pa. 561 (1938), and that in absence of fraud the defense of want to consideration is not available. The majority opinion states that fraud does not appear in the record.

The majority opinion states that when the agreement itself reveals the insufficiency or lack of consideration, the rule that the seal imports consideration will not be applied to the detriment of the promisor. The dissent points out that the case cited for this proposition, *Jeffers v. Babis*, 304 Pa. 281 (1931), contains the element of fraud, and otherwise, according to decisions, the fact that no consideration was intended did not invalidate the contract. A sealed promise requires no consideration.<sup>1</sup> "It will be observed that the instrument is a formal one under seal, and as such is not merely evidence of the obligation, it is the obligation itself."<sup>2</sup>

The majority opinion uses a novel construction of the word "agreement" to support its holding. It states that the legislature intended the word to mean promises supported by legally sufficient consideration. It seems that there are no Pennsylvania cases defining the word. The *Restatement of Contracts*, sec. 3, defines the word as meaning a manifestation of mutual assent, and comments that the word contains no implication that legal consequences are or are not to be produced. *Williston on Contracts*, p. 5, sec 2, says juristically it is a neutral word, for it covers promises to which the law attaches no legal or equitable consequences. If our legislature meant enforceable contracts, it should be assumed to have remembered the significance of the seal in our law.

The provision is treated as a mistake of fact in the majority and concurring opinions, and as a mistake of law in the dissent. A mistake of law does not justify rescission.<sup>3</sup> *Williston*, sec. 1581, p. 4416, remarks that we should obtain uniformity and certainty by putting both on the same footing. But, as long as our courts preserve the distinction, in their language and in the effect, it would seem that a misconception as to the constitutionality of a law of the State is as clear a mistake of law as can be found. It is more than possible that the parties were conscious of the uncertainty of their position, and wished to remove all doubt by taking the agreement outside its questionable position under the statute, particularly in front of a court which had ruled on its constitutionality.

The concurring opinion of the Chief Justice states that he agrees with the majority holding because of the realities of the situation. In his opinion he cites articles and cases from other jurisdictions which have modified the effects of the seal, with approval. This case perhaps is the expression of a new conception of the meaning of the seal in Pennsylvania law.

FRED GALLAGHER

<sup>1</sup>*Yard v. Patton*, 13 Pa. 278 (1850); *Mardis v. Steen*, 293 Pa. 13 (1928); *Greater Adelpia Building and Loan Ass'n. v. Trilling*, 323 Pa. 361 (1936).

<sup>2</sup>*Sears Estate*, 313 Pa. 415 (1934).

<sup>3</sup>*Lies v. Stub*, 6 Watts 48 (1837); *Rankin v. Mortimore*, 7 Watts 372 (1838); *McAninch and Wife v. Laughlin*, 13 Pa. 371 (1850); *Harter v. Bomberger*, 47 Pa. 492 (1864).