New York to the same places are subjected to the unheard of rigor of a *new rule* laid down by the bare majority of a small Court, infinitely more strict than the edicts of the Roman Prætor or the law of any other civilized nation. In fact, the law is made to depend upon which end of a railway or a steamboat route you take your departure from.

A ship is loading in New York for a foreign port, and is burnt, with her cargo, at the wharf. By the law of this place, as evidenced by the decisions of its highest tribunal, the ship owner is liable for the cargo on board, although he may have had in his bill of lading the exception of fire, and his consolation is that it is not the act of God or of the people's enemies. Can this be the law of an enlightened community? The cargo so burnt is insured by its owner, he receives the amount from the insurer, and then the insurer, in the name of the insured, can recover the amount paid from the owner of the ship. Such is the inevitable result of such a doctrine.

The old common law, as understood by England and other States, allows the exception, and the loss falls on the insurer who has contracted to pay it, and not on the ship owner who has contracted not to pay it. There is but one simple course for the Judiciary of New York to pursue—to reject at once their new rule *in toto*, and return to the rule of common sense, which allows parties to make their own contracts. A.

PROFESSIONAL OPINIONS.

CASE.[1]

Samuel Richardson, being seized of sundry Ground Rents for a term of Years, and of the Reversion in fee of and in Certain Lots

[1] The following case and opinions will, we do not doubt, prove interesting to our readers, not only from the nature of the question involved, which is one not altogether settled, but also as furnishing a specimen of the discussions of the colonial bar of a century ago. Mr. Galloway and Mr. Dickinson, the authors of these opinions, were both among the ablest of the provincial lawyers of their time, and played distinguished and rival parts in the politics of Pennsylvania before and during the

in high Street, in the city of Philadelphia, out of which they issued, made his last Will and Testament and inter alia, devised as follows:

"I Give, Devise and bequeath unto my dear Wife Elizabeth,

Revolution. Of very much the same age, influence and standing, they were the leaders of the opposing parties in the Assembly on the occasion of the great struggle of 1764, with regard to the attempted change of the character of the government of the State, and their respective speeches were deemed of sufficient importance to to be published; that of Galloway being edited by Dr. Franklin, then an intimate and active friend of his. Mr. Dickinson's course after this time is well known. He was the author of the famous "Farmer's Letters," published in Philadelphia in 1769. which contributed no little in preparing the way for the separation from the mother country. He became a member of the Continental Congress, and wrote some of its ablest State papers. His subsequent opposition to the Declaration of Independence, which he thought premature, made him temporarily unpopular, but afterwards espousing, with renewed ardor, the republican side, he regained his seat, and continued to serve his country, with zeal and talent, till the end of the war. He was subsequently in turn President of the Council in Pennsylvania and in Delaware; and was engaged, from time to time, in political discussions till the beginning of this century. His learning and industry as a lawyer are attested in various ways, not the least important of which is the careful annotation of his law books, many of which are still preserved. Mr. Galloway, with equal abilities, was not so fortunate in the close of his career. After his contest with Dickinson he remained a member of the Assembly, of which he soon became Speaker, and with him, too, was elected a member of the Congress of 1774. After making himself prominent there by his talents. sagacity and experience, his eagerness in the cause of liberty gradually cooled, he became disaffected, and, from being the leader of the popular party of the State, he was soon converted into a violent and vindictive Royalist. After remaining a couple of years with Clinton's army, he went over to England, where his restless mind employed itself in bitter criticisms of the conduct of the war by Howe, and other generals in the English army. His estate, valued by him at £40,000, was confiscated, a two-fold blow, if the charge of avarice brought against him be true; and he himself became the butt of the witticisms of the victorious Whigs. A member of the board for prosecuting the claims of the royalists against England, his own title to relief was violently disputed, and though ultimately successful in that, he died an unhappy and disappointed man.

With regard to the point of law on which these men, as in other things, differed, the following authorities will show that the balance rather inclines in favor of Mr. Dickinson's arguments: Kaye *v.* Laxon, 1 Brown's Ch. R. 76; Reed *v* Reed, 9 Mass. 372; Den *v.* Grew, 2 Green, 68; Anderson *v.* Greble, 1 Ashm. 136; Smith *v.* Post, 2 Edw. Ch. 547; Parks *v.* Parks, 9 Paige Ch. 107; Taylor *v.* Boehm, 3 W. & S. 163; Doe *v.* Brazier, 5 B. & Ald. 64.

during her natural life, the Yearly rent of three pounds, one Shilling and eight, payable from Hugh London, and his heirs, three Pounds Yearly rent, due from Abraham Bickley, Five Pounds, seven shillings, and three pence, due from James Jacobs, Yearly. Two Pounds yearly rent due from Thomas Tresse, One pound yearly rent due on Account of the House and Lot Mary Pain, widow, now lives in, and thirty Shillings yearly rent due from Stephen Stapler and Mary Appleton, all which *said sums being Ground Rents*, my Executors shall yearly pay to my said Wife, for her own use and support, every Year so long as she lives, also I Give and bequeath unto my Son in Law, William Hudson, of the city of Philadelphia, Tanner, one pound, ten Shillings and Eight Pence yearly, due from John Jones, Three Pounds twelve Shillings due from James Tuthill, One Pound sixteen Shillings due from Anthony Morris, for the White Hart, Three Pounds, twelve Shillings, due from Hannah England, One Pound, sixteen Shillings, due from Pentecost Teague, Three Pounds twelve Shillings, due from Nathaniel Edgecome, and two Pounds five Shillings from Mary Cooke, all of which *said sums*, are yearly *Ground rents Issuing out of certain Lots of Land* on the north side of High Street, in Philadelphia, held of me for a term of Years, part unexpired, He, the said Wm. Hudson, shall yearly *receive and take*, during the natural Life of my daughter in Law, Elizabeth Richardson, after whose decease all the *said* Ground Rents in High Street, I do hereby Give, devise and Bequeath unto my son Joseph Richardson, and his heirs forever.

Q. Is the Reversion of the said Lots disposed by the Will, or does it pass by the Words of the Devise to Joseph Richardson, in fee.

Opinion of Mr. GALLOWAY:

I have maturely considered the above case and the Will at large from whence it is taken, and apprehend that the Reversion which the Devisor had in the Lots of Land in the North side of High Street, in Philadelphia, after the Term of Years expired, are not passed by words of said Will, or any of them, but that as to the said Reversion the Testator died Intestate, and, of Course, that it

decended among his Children, according to the Laws of this Province, the eldest Son taking two Shares, and the Reasons in support of this Opinion are,

First, because it is a rule in the Construction of Devises as well as Grants, that no Words will pass Lands but those which in a rational and natural signification at least imply the Land itself; as a Grant of *Alnetum* will pass the Land, because *alnetum est Terra ubi alni Crescunt.* So a Grant of *Salicetum* will pass the Land because, *Salicetum est ubi Salices Crescunt*, i. e. the Land where Willows grow; with many other Examples of the like Nature that might be produced. But a Grant of *Herbagium* or herbage will not pass the Lands, because it does not imply the Land in its natural signification, nor the Trees, Mines, &c., but only a particular thing issuing out of the Land, as grass, &c. So a devise of *Rents* or *Ground Rents*, without words more general and descriptive of Lands it has been adjudged, and no where that I can find Contradicted, will not pass Lands, as they do not include in their definition the Land, but only a particular thing, a species of profit, issuing out of Land, no more than Herbage or Grass includes the Land its grows on. Now, upon perusal of the whole will, I can find no words that can by the utmost Stretch of a reasonable construction be enlarged to mean Lands, or any thing more than the Rents "issuing out of Lands." But on the contrary, there are many Words which confine the thing intended to be passed to the *Ground Rents* only, separate from the Land. For after particularizing the several "Ground Rents" he intended to dispose of, the Testator expresses himsalf in this manner, "All of which said *sums* are *ground rents* issuing out of certain lots of Land." Here he uses the words "Sums and ground Rents" as synonimous, which by no rational construction can mean Lands, and these sums of money, it plainly appears, did not mean the Land, but a particular species of Profit distinct from "and issuing out of the Land, which was to be received and taken by William Hudson, during the life of Elizabeth Richardson, and after her Decease. He devises all his said Ground Rents (i. e. the *Ground Rents* or *Sums of Money* which before were declared to be issuing out of the High Street Lots, and to be

received and taken as aforesaid by William Hudson,) unto his son Joseph Richardson, and his heirs, forever. Now it is clear the things devised to William Hudson, were "Sums" of money or Ground Rents, and the same identical things and no other, it is as clear by the word "*said*" were devised to Joseph Richardson, and therefore the Lots themselves could not pass.

Should it be objected that the Words "heirs forever" shew the Intent of the Testator that the Lands in Reversion should pass to Joseph Richardson, in fee; I apprehend it could bear but little weight when rightly considered. As there is no rule of Law or adjudged case that determines that a thing neither expressly or implicitly described, should pass by the bare Word of Limitation only.

There are but two Cases that I have met with in the Reports, that can give the most distant Countenance to such an Objection, and when these cases are rightly understood, they will be found to be by no means apposite to the present case, but to depend on much more strong and very different Reasons. They are, Kerry & Derrick, reported in Moore, 640, Cro. Jac. 104, and Maundy v. Maundy, in Fitzgibbons, 70, and Strange, 1020. In the first it was expressly determined by justice Gandy and the Lord Keeper of the Great Seal, that the work rent, alone, in a Devise, was not sufficient to pass Lands; and had there been Nothing more in that Case to show the Interest of the Devisor, that his Land should pass, the Judgment of the Court has been certainly against it. But upon the least attention to the Devise, it will appear from express Words, that the Testator not only intended to dispose of the Rents, but the *Lands* also, and therefore he makes use of the words in the first part of the Devise,—"and as concerning the *Disposition* of my *Lands* and *Tenements*, I give and bequeath, &c.," which words are expressly demonstrative of an Intention to dispose of his Lands, but in the present Case there are no Words that bear the same or like meaning, and therefore the case is by no means parallel.

In the second Case, Maundy & Maundy, the like reason held. The Devise begins with these Words, "In respect to my worldly estate (i. e. all the estate he had in the world) wherewith it had

pleased God to Bless me, I Give, and bequeath, &c." Here the Judges gave Judgement that the Reversion should pass by the Words of the Will.

First, because it appeared clearly the Intent of the Testator, that all his Estate should pass, and therefore, his Lands in reversion of Course.

Secondly, the Devise contained express Words, which demonstrated the Testator's design that his eldest Son shou'd not inherit or enjoy any part thereof, and therefore there was a necessity to support the devise of the Land to the younger Children, otherwise none could take. For the heir being disinherited, he cou'd not take if the Land was adjudged not to pass; and the younger Children cou'd not while there was an heir alive. And thirdly, therefore the Devise being made in favor of younger Children, upon the whole words the Devise was adjudged to pass the Lands.

Upon the whole, the difference between these Cases and that under Consideration, is shortly,

1. In Kerry and Derrick, there are express Words that show the Devisors Intent, that his "Lands and Tenements show'd pass, in the present Case there are no words that even tend to show such Intention.

2. In Maundy and Maundy, there are words still more strong to prove his design to dispose of all his wordly Estate, which included his real as well as personal,—in the present case no such words.

3. In Maundy and Maundy, the heir was expressly disinherited, and cou'd not take, nor cou'd the younger Children, if the Lands did not pass; But in the Case before me, the Heirs at Law will Inherit if the Lands pass not, and if they do, one of the Children will oust his Brothers and Sisters, who are also heirs under the act for selling intestates Estates by Construction of the Words, which even cannot be called an implyed one.

JOS. GALLOWAY.

Philadelphia, July 27, 1761.

Opinion of Mr. DICKINSON:

I have carefully considered Samuel Richardson's Will, and am

of opinion that by the Devise "of all his Ground Rents in High Street, to his son Joseph Richardson, and his Heirs forever, after the Decease of his Daughter in Law, Elizabeth Richardson," the Fee simple of the Lots out of which those ground rents issue, is given to his son Joseph.

This opinion is founded on two adjudged Cases, extremely similar to the present, tho' they are not exactly the same. The first is the Case of Kerry & Derrick, reported in Moore, p. 771, [S. C. Cro. Jac. 104.] A man seized in Fee of Lands in Surrey, and other Lands in Middlesex, made several Leases for Years of them, reserving £10 Rent on each Lease. Afterwards he died, having made his Will in this manner, "Touching the Disposition of my Lands & Tenements, my Will and Meaning is, I do will and bequeath the Rent of £10 in Surrey, to my loving Wife, during her Life, & after her Decease to my father, &c. Item, I give and bequeath to my loving Wife, my House and Tenements in Middlesex, forever." Notwithstanding the Devisor made in this Distinction of giving the Rent only in Surrey, but the Land itself in Middlesex; it was determined that the Land in Surrey past to the Wife for her life after the Expiration of the Lease. The other Case is that of Maundy & Maundy, [2 Stra. 1020, 2 Barn. K. B. 202 cas. tem. Hard. 142, Fitzg. 70, 288,] adjudg'd in the Common Pleas, & that Judgment confirmed in the King's Bench. This differs from the present only in these particulars;—that the Devisor begins his Will with saying "he disposes of his worldly Estate in manner following:—and after giving five Pounds per ann. to his eldest, &c. undutiful Son, declares he shall have no more Share or Portion."

The Building Leases being expir'd, the Heir of the eldest Son brought an Ejectment, insisting that the Reversion was undispos'd of; and that however strong the Intention to disinherit the eldest Son appear'd, yet if it is undispos'd of, he must have it. But adjudged against him in both Courts. 1. Because the Devisor's Intention to pass all his Estate was plain, from the introductory Part where he declares his Will was to dispose of all his worldly Estate, and that part where he says what his eldest Son shall have,

and no more: 2. The Limitation is to the younger Children and their Heirs, which cannot take Effect, if their interest is only during the Continuance of the Rent; and nothing more common, than for people to speak of their Ground rents, when they mean their House and Lands out of which they issue.

Perhaps it may be objected that Samuel Richardson's Intention to dispose of his whole Estate does not appear so evident, as the Testator's in the Case just above mentioned. But if it be consider'd that Samuel Richardson, in the subsequent Part of his Will, does not take Notice of any Residue of his Estate undispos'd of, and that in the Devise of the Ground Rents to his son Joseph, and his Heirs, he makes use of the words "forever," which must be utterly senseless, unless they extend to a longer space of Time than the Continuance of the Leases, which the Devisor observes were only Part unexpir'd, I think this obejction must vanish.

The 2d Reason given by the Judges above, holds more strongly in the present Case than in that, for the Devise to Joseph and his Heirs, being after a Devise for Life, renders it more improbable that Joseph or any of his Heirs wou'd have any Effect from the Devise, if only the Rent was given. At most, it could take Effect only for one or two Descents, tho' the Terms in Law give a Fee simple. But the better Opinion seems to be, that in such Case it would not take effect at all; but wou'd go to the Executors of the Devisee, and that I take to be the meaning of the Judges.

Upon the whole, it seems that "Ground rents" is a sufficient Name to pass the Lands out of which they issue; & if words of Inheritance are annex'd to this Description, they will give a Fee simple or Fee Tail respectively in such Lands, where there is a Reversion in the Devisor.

JOHN DICKINSON.

Philadelphia, June 8th, 1761.