RECENT CASES.

ATTORNEY AND CLIENT—CONTINGENT FEE—DEATH OF ATTORNEY—An attorney agreed to bring a certain suit upon a contingent fee. Before this suit was terminated by either judgment or settlement, the attorney died. When the client with another attorney recovered judgment in the suit, the representatives of the deceased attorney sued for the contingent fee. *Held:* The contract was one for personal skill and therefore the party's death extinguished the contract. Sargent v. N. Y. C. & H. R. R. R., 103 N. E. Rep. 109 (N. Y. 1913).

The law on contracts for personal services is well settled. Such a contract is upon the implied condition that the party shall be able to perform; thus the contract may be extinguished and performance excused by the party's sickness, Robinson v. Davison, L. R. 6 Exch. 268 (1871); Spalding v. Rosa, 71 N. Y. 40 (1877); or by his death, Wolfe v. Howes, 20 N. Y. 197 (1859); Blakely v. Sousa, 197 Pa. 305 (1900). But when the party is prevented from performing by either sickness or death, he, or his personal representatives may recover *pro rata* for the services already performed. Welsh v. Dusar, 3 Binney, 329 (Pa. 1811); Stubbs v. Holywell Ry., L. R. 2 Exch. 311 (Eng. 1867). Contracts of attorneys with clients come within this rule. The death of the attorney extinguishes the contract. Baxter v. Billings. 83 Fed. Rep. 790 (1897). But when the contract is upon a contingent fee, the attorney's personal representative may not recover *pro rata* until the suit is brought to a successful conclusion. Badger v. Cellar, 41 App. Div. 599 (N. Y. 1899).

AUTOMOBILES—ORDINANCES—NEGLIGENCE—Although a driver of an automobile at the time of a collision with a pedestrian was driving within the speed limit required by an ordinance, yet that is not conclusive proof that he was not driving negligently. Adams v. Averill, 88 Atl. Rep. 738 (Vt. 1913).

This decision, though much criticized by automobile owners, is in perfect accord with the law of negligence. Stroub v. Meyer, 132 Mich. 75 (1902). The speed limit fixed by a municipal corporation is supposed to represent the minimum of care which is required at all times of those who use the streets; whereas negligence is the failure to exercise reasonable care under the circumstances peculiar to the particular occasion. Thies v. Thomas, 77 N. Y. Supp. 276 (1902).

Although there is no doubt that the mere observance of an ordinance is not conclusive of the exercise of due care, there is great difference of opinion in the various courts as to whether the violation of an ordinance is, as a matter of law, negligence. Some courts hold that it is negligence *per se* on the theory that what the legislature can do directly, by statute, it may do indirectly by granting municipal corporations authority to pass such ordinances. Robinson v. Simpson, 8 Hous. 398 (Del. 1889); Seimers v. Eissen, 54 Cal. 418 (1880); Healy v. Johnson, 127 Iowa, 221 (1905); May v. Hahn, 22 Tex. Civ. App. 365 (1900); Sandifer v. Lynn, 52 Mo. App. 553 (1893); Bott v. Pratt, 33 Minn. 323 (1885); Toledo R. R. v. O'Connor, 77 Ill. 391 (1875). Many other courts have held that a municipal ordinance can create no duty between citizen and citizen and that consequently the violation of such an ordinance is not negligence *per se*. In these states, however, the ordinance is admissible in evidence as showing the municipal opinion of what is proper conduct. Phila. & Read. R. R. v. Ervin, 89 Pa. 71 (1879); Heeney v. Sprague, 11 R. I. 456 (1879); Simons v. Gaynor, 89 Ind. 165 (1883); Dolfinger v. Fishback, 12 Bush. 474 (75 Ky. 1876); Bell v. Pistorius, 9 O. C. D. 869 (Ohio, 1899); McCambly v. Staten Island M. R. Co., 32 App. Div. 346 (N. Y. 1898).

BAILMENT—LIABILITY OF RESTAURANT-KEEPER FOR COAT OF GUEST—An overcoat was hung up in a restaurant by the owner within two feet of where he was sitting. The coat was stolen and suit brought against the keeper of the restaurant. There was no evidence that the defendant or any of his servants had seen the coat or received it into their possession. *Held:* The defendant was not liable upon any theory of negligence as there was no bailment. Wentworth v. Riggs, 143 N. Y. Supp. 955 (1913).

In order to establish liability in such a case as this, there must appear either an actual bailment to the restaurant keeper or his servant, an implied bailment where circumstances showed a necessity for laying aside the coat and notice to the keeper of the restaurant, or that the loss occurred by reason of the insufficiency of general supervision for the protection of customers' property. Montgomery v. Ladjing, 61 N. Y. Supp. 840 (1899). The view taken by the courts with respect to cases of this character is that the owner of the article retains his possession of and control over it, that he has not bailed it to the restaurant-keeper and that the latter has neither assumed, nor had imposed upon him, any duty toward its safekeeping. To constitute one a bailee of property, he must have such full and complete possession of it as to exclude, for the time of the bailment, the possession of the owner. Fletcher v. Ingram, 46 Wis. 202 (1879).

One who enters a restaurant to procure a meal or refreshments is not to be deemed a guest or traveler entitled to the protection which the law affords against innkeepers. Carpenter v. Taylor, 1 Hilt. 193 (N. Y. 1856). Yet if a guest entrusts articles of apparel to a restaurant-keeper while he partakes of food in the latter's establishment, the proprietor is liable as a bailee and must exercise due care. Buttman v. Dennett, 30 N. Y. Supp. 247 (1894). Although notice is printed on the bill of fare that the restaurant-keeper is "not responsible for hats and coats," where a waiter assumes custody of such articles and they are lost, his employer is held to be a bailee and liable as such for the loss. La Salle Restaurant v. McMasters, 85 Ill. App. 677 (1898).

CARRIERS—LIABILITY FOR MAILS—A railroad was under contract with the federal government to carry mail. Certain valuable mail matter was destroyed in a wreck caused through the negligence of the railroad's employees. There was no evidence of any defect in the railroad's equipment or of negligence in the selection of its employees. The United States as bailee sued the railroad for the loss of the mail. *Held:* The railroad is not liable. A railroad, carrying mail under contract with the government, is not a common carrier in respect to such service. United States v. Atlantic Coast Line R. Co., 206 Fed. Rep. 190 (1913).

The general law is that a railroad carrying mails does not act as a common carrier with corresponding rights and liabilities, but as an agency of the government. Atchison, Topeka, *etc.*, Ry. Co. v. U. S., 225 U. S. 640 (1912); Conwell v. Voorhees, 13 Ohio, 523 (1844); Boston Ins. Co. v. Chic., *etc.*, Ry. Co., 118 Iowa, 423 (1902). These decisions are based upon the ground that there is no privity of contract between the railroad and the sender or receiver of mail. The railroad is a mere bailee for hire and is not liable unless the loss was caused through its own negligence. Central R. & Banking Co. v. Lampley, 76 Ala. 357 (1884). It is the government that undertakes to deliver mail and not the railroad. Bankers' Mutual Casualty Co. v. Minneapolis, St. P., *etc.*, Ry. Co., 117 Fed. Rep. 434 (1902).

CONSTITUTIONAL LAW—POLICE POWER OF CITY—UNREASONABLE ORDINANCE—The City of Baltimore passed a "Segregation Ordinance," making it unlawful for white and black persons to dwell within the same city block. *Held:* The ordinance was invalid. State v. Gurry, 88 Atl. Rep. 546 (Md. 1913).

The police power of the State cannot be definitely defined, but in general terms it is the power to impose such regulations upon private rights as are necessary for the general welfare. State v. Wagener, 77 Minn. 483 (1899); Champer v. Greencastle, 138 Ind. 339 (1894). Although the State may have power to pass a segregation act, and although under its charter the city has police power equal to that of the State, Rossberg v. State, 111 Md. 394 (1911), yet the court must determine whether an ordinance is so unreasonable that it must be assumed that the state did not give the city power to enact it, State v. Hyman, 98 Md. 618 (1904). The following ordinances have been held unreasonable: Ordinance making it unlawful for women to go in and out of saloons, Gastenan v. Com., 56 S. W. Rep. 705 (Ky. 1900); ordinance prohibiting the erection of a building within one hundred feet of another without permission from the city council, Inhabitants of Winthrop v. N. E. Choc. Co., 180 Mass. 464 (1902); ordinance prohibiting the erection of signboards in residential sections without the consent of three-fourths of the residents, Chicago v. Gunning System, 214 Ill. 628 (1905). The following have been held reasonable: Ordinance prohibiting the erection of signboards exceeding six feet in height without permission of the council, Rochester v. West, 164 N. Y. 510 (1900); ordinance prohibiting the erection of a livery stable without permission from one-half of the property owners within the same block, State *ex rel.* Russel v. Beattie, 16 Mo. App. 131 (1884); ordinance making it unlawful to have lottery tickets in one's possession, *Ex parte* McClain, 134 Cal. 110 (1901). When the unreasonableness of an ordinance is not apparent on its face, the burden of proof is upon the party attacking the ordinance. New York v. Dry Dock, 15 N. Y. Supp. 297 (1891). See article by Robert P. Reeder on power of the United States Supreme Court to declare a law unconstitutional because it is unreasonable, January (1914) issue, 62 UNIVERSITY OF PENNSYLVANIA LAW REVIEW, 191.

CONTRACTS—PERFORMANCE—TUITION—A mother entered her son in a boarding school, knowing by the terms of the catalogue that the first term tuition was due on the first day of the term. The boy remained but part of a day and then left and never returned. *Held:* The principal, who had been prevented from carrying out his part of the contract by the mother's act, can recover the whole amount. Swavely v. Eno, 54 Pa. Sup. Ct. 82 (1913).

Although the authorities are few on this point the decision is consistent with the theories advanced by the courts of other jurisdictions. When notice has been given to a parent by means of a catalogue or advertisement containing provisions as to payment of fees, such notice is binding on the parent. Hartridge School v. Riordan, 112 N. Y. Supp. 1089 (1908); Horner & Graves v. Baker, 74 N. C. 65 (1876). And such a contract is entire and cannot be apportioned, so the principal must recover all or nothing. Starr v. Liftchild, 40 Barb. (N. Y. 1863); Kabus v. Seftner, 69 N. Y. Supp. 983 (1901). If a pupil is expelled from a school for bad conduct, and thus prevents the other party from going on with the contract, he forfeits his entire tuition fee. Kabus v. Seftner, *supra.*

The theory advanced in Swavely v. Eno, *supra,* is that schools must provide a teaching force in anticipation of a certain number of pupils and that the expenses are as heavy although there is one less pupil. Therefore, as the principal is not bound to fill the vacant place he is entitled to recover compensation according to the contract if he reserved a place as he was required to do by the terms of the contract.

CONTRACTS—REWARD—PERFORMANCE OF LEGAL DUTY AS CONSIDERATION—A reward was offered by the select men of a town to any person furnishing evidence which would convict certain persons of setting on fire certain buildings in that town. The evidence was procured by the town constable.

Held: The plaintiff can recover for the services performed if they were in addition to those required of him by law. Hartley v. Inhabitants of Granville, 102 N. E. Rep. 942 (Mass. 1913).

It is a well established principle that a promise of additional compensation to a public officer for services rendered in performance of his duty cannot be enforced. Pool v. Boston, 5 Cush. 219 (Mass. 1849). This rule has, however, been placed on a variety of grounds. It has been said that it is presumed that such a person was excluded from the offer by the offerer *Ex parte* Gore, 57 Miss. 251 (1879). But as was pointed out in Chicago R. R. v. Sebring, 16 Ill. App. 181 (1884), if the offerer intended to so exclude he could have said so, and if he does not, the court should not presume it. Following Lord Ellenborough's decision in Stilk v. Myrick, 2 Camp. 317 (Eng. 1809), some courts have refused to enforce these promises on account of a lack of consideration. Pool v. Boston, *supra;* Reif v. Paige, 55 Wis. 496 (1882). These decisions are based on the theory that detriment to the promisee is the essence of consideration, and performance of a legal duty is no detriment. Pollock on Contracts (3rd Am. Ed.), 203. Some courts refuse recovery, but do not state upon what grounds. Masking v. Needy, 71 Ky. 22 (1871); Warner v. Grace, 14 Minn. 487 (1869). The large majority of courts base this rule on public policy, holding that though a valid contract has been formed it is for that reason unenforcible. Hassan v. Doe, 38 Me. 45 (1854); St. L. Ry. Co. v. Grafton, 51 Ark. 504 (1889); Kirk v. Merry, 23 Mo. 72 (1856); Stamper v. Temple, 25 Tenn. 113 (1845); U. S. v. Matthews, 173 U. S. 381 (1899); Stophlet v. Hogan, 74 Ill. App. 631 (1897); Smitha v. Gentry, 20 Ky. Law Rep. 171 (1898).

CONTRACTS—STATUTE OF FRAUDS—PROMISE TO ANSWER FOR THE DEBT OF ANOTHER—A promissory note made by a company matured, and at that time both parties to this suit knew the corporation to be insolvent. The president, who was also a stockholder and creditor of the corporation, persuaded the holder of the note not to proceed further by agreeing that he, as an individual, would pay the claim within sixty days. The jury found that his real purpose was to protect himself by selling his individual interest in the corporation. *Held:* The promisor is liable. Goodling v. Simon, 54 Pa. Sup. Ct. 125 (1913).

This decision follows the rule laid down by the Supreme Court of the United States in Emerson v. Slater, 63 U. S. 28 (1859), "Whenever the main purpose of the promisor is not to answer for another, but to subserve some business or pecuniary purpose of his own, involving either a benefit to himself or damage to the other party, his promise is not within the statute, although it may be in form a promise to answer for the debt of another, and although the performance of it may incidentally have the effect of extinguishing that debt." This rule has been adopted *verbatim* in Pennsylvania. Webber & Co. v. Bishop, 12 Pa. Sup. Ct. 51 (1899); Klein v. Rand, 35 Pa. Sup. Ct. 263 (1908); Bailey v. Marshall, 174 Pa. 602 (1896).

The strict rule is that only where the original debtor is released at the time of the new promise does the Statute not apply. O'Connell v. Mt. Holyoke College, 174 Mass. 511 (1899); Miles v. Driscoll, 201 Mass. 318 (1909); Engleby v. Harvey, 93 Va. 440 (1896).

But when the original debtor is not released the mere promise of forbearance to sue him is not sufficient consideration and therefore the promisor is protected by the Statute. Thomas v. Delphy, 33 Md. 373 (1870); Dexter v. Blanchard, 93 Mass. 365 (1865); Reigleman v. Focht, 141 Pa. 380 (1891). So also when the benefit to the promisor was not the principal object. White v. Rintoul, 108 N. Y. 222 (1888); Clapp v. Webb, 52 Wis. 638 (1881); Eshleman v. Harnish, 76 Pa. 97 (1874); Stoeffer v. Jackson, 42 Pa. Sup. Ct. 450 (1910).

Where the principal object is to secure benefit to the promisor the general view is that the Statute does not apply, although the original debtor is

not released. For example, relinquishment of liens on property in which promisor has an interest. Small v. Schaefer, 24 Md. 143 (1865); Weisel v. Spruce, 59 Wis. 301 (1884); Luark v. Malone, 34 Ind. 344 (1870); to complete a building on which the promisor holds a mortgage. Boeff v. Roesanthal, 78 N. Y. Supp. 1108 (1902).

CRIMINAL LAW—BURGLARY—BREAKING—The defendant found the door of a freight car partly open and pushed it further open in order to effect an entry for the purpose of committing larceny therein. *Held:* The defendant was guilty of burglary. State v. Lapoint, 88 Atl. Rep. 523 (Vt. 1913).

It is universal law that one who enters a house through an open door or window is not guilty of burglary. Pines v. State, 50 Ala. 153 (1873); Smith v. Commonwealth, 128 S. W. Rep. 68 (Ky. 1910). But opening closed doors or windows with intent to commit a felony, no matter how such opening may be effected, is a breaking in the law of burglary. State v. Obrien, 81 Iowa 93 (1890); State v. Moore, 117 Mo. 395 (1893); State v. Vierck, 23 S. D. 166 (1909). The breaking, however, need not be of the outer parts of the house, but may be of an inner door or window. People v. Young, 65 Cal. 225 (1884); Hild v. State, 67 Ala. 39 (1885).

There is, however, a conflict of authority as to whether the further opening of a door left ajar or a window slightly raised, so as to effect an entrance, is a breaking such as to constitute burglary. The English authorities take the negative view on this issue. Rex v. Smith, 1 Moody, C. C. 178 (Eng. 1827). And the majority of American courts follow the English rule on this point. Common. v. Strupney, 105 Mass. 588 (1870); Rose v. Common., 40 S. W. Rep. 245 (Ky. 1897). A few states, however, take the opposite view. Claiborne v. State, 113 Tenn. 261 (1904); People v. White, 153 Mich. 617 (1908); State v. Sorensen, 138 N. W. Rep. 411 (Ia. 1912).

The tendency of the courts of late has been to depart from the strict construction of the common law, which required an actual breaking, and to hold that but the slightest force is necessary to constitute a breaking. State v. Wilson, 225 Mo. 503 (1909); Collins v. Common., 146 Ky. 698 (1912). Even to enter by the chimney was at an early date declared to be burglarious breaking. Hale's P. C. 551. And such, now, seems to be the settled law. State v. Willis, 52 N. C. 190 (1859); Odds v. State, 79 Ala. 81 (1892). In England, prior to the Statute of 12 Anne (1713), there was a difference of opinion whether it was burglary to enter a house without breaking and then break out in order to escape. Clarke's Case, 2 East P. C. 490 (Eng. 1707). Most of the courts in this country in which the question has arisen have held that it is not burglary. Adkinson v. State, 5 Baxter, 569 (Tenn. 1875); Brown v. State, 55 Ala. 123 (1876).

CRIMINAL LAW—SUSPENSION OF SENTENCE—VIOLATION OF CONDITIONS—The accused pleaded guilty to the unlawful sale of intoxicating liquor and the court suspended sentence on condition that the accused appear at each criminal term for two years and show good behavior on his part. At a subsequent term, the court having satisfied itself that the defendant had again engaged in selling intoxicating liquor, imposed sentence upon the former plea of guilty. *Held:* The sentence imposed was for the former offence and not for the subsequent conduct which only was considered to show that the defendant was no longer entitled to clemency. State v. Everett, 79 S. E. Rep. 274 (N. C. 1913).

By the weight of authority it seems that the courts do not have inherent power to suspend sentence; that an attempt to do so is a usurpation of the power to pardon or to remit the punishment which belongs solely to the executive; or a usurpation of the power to parole, which is within the province of the legislature. People v. Brown, 54 Mich. 27 (1884);

Gray v. State, 107 Ind. 177 (1886); State v. Voss *et al.*, 8 L. R. A. 767 (Ia. 1890); U. S. v. Wilson, 46 Fed. Rep. 748 (1891); People v. Barrett, 202 Ill. 287, 67 N. E. Rep. 23, 63 L. R. A. 82 (1903); Hoggett v. State, 57 So. Rep. 811 (Miss. 1912). *Contra,* Comm. v. Foose, 17 York Leg. Rec. 166 (Pa. 1904); Fultz v. State, 2 Sneed, 232 (Tenn. 1854); State v. Crook, 115 N. C. 760, 29 L. R. A. 260 (1894).

By interpretation of the Penal Code in several states, the courts in those states are held to have power to suspend sentence. People v. Court of Sessions, 141 N. Y. 288, 36 N. E. Rep. 386, 23 L. R. A. 856 (1894); *In re* Collins, 8 Cal. App. 367, 97 Pac. Rep. 188 (1908); Marks v. Wentworth, 199 Mass. 44, 85 N. E. Rep. 81 (1908); State v. Mallahan, 65 Wash. 287, 118 Pac. Rep. 42 (1911). Where the suspension of sentence is asked for by the accused, and granted on satisfactory reasons appearing to the court, the accused cannot, where he is subsequently sentenced, assign this as error. People v. Patrick, 118 Cal. 332, 50 Pac. Rep. 425 (1897); Fultz v. State, *supra.* The payment of costs does not affect the power of the court to subsequently impose sentence, since requirement to pay costs is not part of the sentence. State v. Crook, *supra.*

DAMAGES—MASTER AND SERVANT—PUNITIVE DAMAGES FOR SERVANT'S TORT—A conductor on a railway train assaulted a passenger. The passenger claimed that the Railway Company was liable in punitive damages. *Held:* Punitive damages could not be recovered from the company, as it had not authorized or ratified the act of the conductor. Voves v. Great Northern Ry., 143 N. W. Rep. 760 (N. D. 1913).

Upon the question of whether a corporation may be liable in punitive damages for the unauthorized act of its servant, the courts of this country show a definite division. A great many of the states—perhaps a majority—allow punitive damages to be recovered. These states place their decision upon the ground that a corporation would escape all liability for punitive damages if it was not made liable to them for the acts of its servants. Railroad v. Rosenzweig, 119 Pa. 519 (1886); Kennedy v. Sullivan, 126 Ill. 94 (1891); Berg v. Railroad, 96 Minn. 513 (1905). On the other hand, a large number of the states, the Federal courts and the Supreme Court of the United States do not hold a corporation liable in punitive damages. They consider that as punitive damages should be recovered only against one who has personally been in fault, such damages should not be recovered from a corporation for an act not authorized by it. Lake Shore R. R. v. Prentice, 147 U. S. 101 (1892); Magagnos v. Railroad, 128 App. Div. 182 (N. Y. 1908). This rule, though followed by fewer states, is generally considered to be the better one. 1 Sedgwick, Damages (9th Ed.), 741.

DAMAGES—MENTAL SUFFERING—An undertaker contracted to properly prepare a body for shipment. The body arrived at its destination in an advanced state of decomposition and had to be left outside while the funeral ceremonies were being conducted. The widow sued the undertaker in contract, claiming damages for her mental suffering. *Held:* Substantial compensatory damages for mental suffering only cannot be recovered in an action for breach of contract where the acts constituting the breach consist of simple negligence and the defendant is not shown to have acted wilfully or wantonly. Hall v. Jackson, 134 Pac. Rep. 151 (Col. 1913).

This case illustrates the generally accepted principle of law, although some few states are *contra.* The so-called "Texas doctrine" allows recovery for mental suffering alone where this has been caused simply by negligence in carrying out an obligation incurred by contract. Western Union Tel. Co. v. Long, 148 Ala. 202 (1906); Western Union Tel. Co. v. Giffin, 65 S. W. Rep. 661 (Tex. 1901). The making of arrangements for prompt delivery of a telegram announcing a death is sufficient to notify the company

that the sender will suffer mental anguish in case of non-delivery, and for such mental anguish the company is liable in damages. Lyles v. Western Union Tel. Co., 77 S. C. 174 (1906).

The rule as announced in the principal case is sometimes applied in cases of pure tort where the plaintiff has sustained no physical injury and the act complained of was not willful or wanton. Wyman v. Leavitt, 71 Me. 227 (1880); Mitchell v. Rochester Ry. Co., 157 N. Y. 107 (1896). But if the act be willful, a recovery is everywhere allowed, although no direct bodily harm is suffered. Williams v. Underhill, 71 N. Y. Supp. 291 (1901). Likewise, where a breach of contract is accompanied by willful, insulting or wanton conduct, substantial damages may be recovered for mental suffering only. Bleecker v. Ry. Co., 50 Col. 140 (1911).

DOWER—BILL TO PRESERVE INCHOATE RIGHT—Under a statute enlarging dower right to all estates held by the husband or another to his use, the wife may bring a bill in equity against the trustee to protect her inchoate right of dower in the land to which he holds the legal title. Brown v. Brown, 88 Atl. Rep. 186 (N. J. 1913).

Dower has always been especially protected by the law. Kennedy v. Nedrow, 1 Dall. 415 (Pa. 1789). When it has attached, the husband can not defeat it by any act of his. Williams v. McCourtney, 77 Mo. 585 (1883). The only disposition of the dower right which is in the wife is to release it by deed to a grantee of the land from her husband. Howlett v. Dilts, 4 Ind. App. 23 (1891). While dower itself does not accrue until the death of the husband, the inchoate right of dower is a valuable interest which is entitled to protection and for which the wife may maintain a separate action. Clifford v. Kampfe, 147 N. Y. 386 (1895); Buzick v. Buzick, 44 Ia. 259 (1876).

Some jurisdictions do not recognize dower in equitable estates. Hopkinson v. Dumas, 42 N. H. 307 (1861). In New York, for the wife to have dower rights in property, the husband must have the power to have the legal title transferred to himself. Phelps v. Phelps, 143 N. Y. 197 (1894). In other jurisdictions, the right of dower is recognized in those equitable estates of which the husband dies possessed, *In re* Ransom, 17 Fed. 331 (1883); Glenn v. Clark, 53 Md. 580 (1880); Shoemaker v. Walker, 2 S. & R. 554 (Pa. 1814), and it would seem that in these jurisdictions there is no inchoate right of dower in equitable estates, but only the consummate right upon the death of the husband. Directly opposed to the principal case is Beck v. Beck, 64 Ia. 155 (1884).

EQUITY—PUBLIC NUISANCE—RIGHT TO ENJOIN—A wooden awning extending over the sidewalk and supported by two iron posts at the curb is a public nuisance whether actually interfering with public travel or not; but may not be enjoined by a private individual unless his rights are injuriously affected in a manner different from the public. Davis v. Spragg, 79 S. E. Rep. 652 (W. Va. 1913).

The rule that any permanent structure or purpresture which materially encroaches upon or over a public highway is a nuisance *per se* is supported by abundant authority. 2 Elliot, Roads and Streets, §828. For example, the permanent maintenance of a fruit stand on the sidewalk, Costello v. State, 108 Ala. 45 (1895); State v. Berdetta, 73 Ind. 185 (1880); an overhanging roof, Garland v. Towne, 55 N. H. 55 (1874); a flagstaff in the street, Dreher v. Yates, 43 N. J. L. 473 (1881); a platform scales, Emerson v. Babcock, 66 Iowa, 257 (1885); a passage-way between two buildings, fourteen feet above the street, Byher v. State, 94 Ind. 443 (1883); a bay window projecting into the street, People v. Harris, 203 Ill. 272 (1903), even though fifteen feet above the sidewalk, Reimer's Appeal, 100 Pa. 182 (1882), Hess v. Lancaster, 4 Pa. Dist. Rep. 737 (1896); an awning over the side-

walk, Farrel v. City of New York, 5 N. Y. Sup. 672 (1888), Hubbard & Co. v. Chicago, 173 Ill. 91 (1898); pillars in front of a building extending onto the sidewalk, Bank v. Tyson, 133 Ala. 459 (1901), Bischof v. Bank, 75 Neb. 838 (1906). For a summary of the Pennsylvania decision, see 14 P. & L. Dig. Dec. col. 23946 *et seq.*

It is equally well settled that a private individual must show some special injury in order to enjoin a public nuisance. Indianapolis Water Co. v. American Co., 57 Fed. Rep. 1000 (1893); O'Brien v. Norwich & W. R. Co., 17 Conn. 372 (1845); Vail v. Mix, 74 Ill. 127 (1874); Taylor v. Portsmouth Ry., 91 Me. 193 (1898); Jenks v. Williams, 115 Mass. 217 (1874); Baker v. McDaniel, 178 Mo. 447 (1903); Humphreys v. Eastlach, 63 N. J. Eq. 136 (1902); Talbot v. King, 32 W. Va. 6 (1889). But he has sustained a special injury, he may maintain a bill to enjoin a public nuisance. Bank v. Tyson, 144 Ala. 457 (1905); Grigsby v. Water Works Co., 40 Cal. 396 (1868); Stetson v. Taxon, 36 Mass. 147 (1837); Roessler Co. v. Doyle, 73 N. J. L. 521 (1906); Dimon v. Shewan, 69 N. Y. Sup. 402 (1901); Blagen v. Smith, 34 Ore. 394 (1899); Keystone Bridge Co. v. Summers, 13 W. Va. 476 (1878).

EVIDENCE—HEARSAY—PEDIGREE—BIBLE RECORD—In order to prove the legitimacy of his deceased father, the son offered in evidence an entry in the family Bible made by the deceased himself, showing his own birth and its date. *Held:* This was admissible in evidence, as it was connected with a question of pedigree or genealogy. Ewell v. Ewell, 79 S. E. Rep. 509 (N. C. 1913).

This decision illustrates the point that the declaration of a deceased relative, involving a question of pedigree, is admissible in evidence. Berkley Peerage Case, 4 Campbell, 401 (Eng. 1811); Elliott v. Piersoll's Lessee, 1 Pet. 328 (U. S. 1828). And that even the deceased himself may state his own relationship to the family. Russell v. Langford, 135 Cal. 356 (1902); Fowler v. Simpson, 79 Tex. 611 (1891). But such a declaration must have been made under circumstances which show clearly that the declarant had no motive which would have made him state the fact otherwise than as he understood it. Chapman v. Chapman, 2 Conn. 347 (1817); De Haven v. De Haven, 77 Ind. 236 (1881). It therefore must have been made before the commencement of the suit involving the issue to which the statement related. Stein v. Bowman, 13 Pet. 109 (U. S. 1839).

Such statements are confined to deceased members of the family in which the question arises. Atty.-Gen. v. Monkton, 2 Russ. & M. 147 (Eng. 1831). This includes statements of a husband concerning his wife's family, Vowles v. Young, 3 Ves. 140 (Eng. 1806); or *vice versa.* Matter of Fox, 30 N. Y. S. 385 (1894). But the statement of a wife's sister concerning the husband's family is inadmissible, Blackburn v. Crawfords, 3 Wall. 175 (U. S. 1865); as is that of an intimate friend. Johnson v. Lawton, 2 Bing. 86 (Eng. 1824).

FORCIBLE ENTRY—IS PHYSICAL FORCE NECESSARY?—Under a fraudulent pretense of inspecting a house for the purpose of renting it, the tenant took possession and refused to leave upon the demand of the landlord. No physical force was used in entering. *Held:* This act was sufficient to sustain the charge of forcible entry and detainer. White v. Pfieffer, 134 Pac. Rep. 321 (Cal. 1913).

As a general rule the entry must be made against the will of the occupant, but the decisions are about equally divided as to whether physical force is essential. Some courts hold that the entry must be accompanied by acts of violence or menaces sufficient to cause fear of injury. Kramer v. Lott, 50 Pa. 495 (1865); Pharis v. Gere, 110 N. Y. 336 (1888); Richter v. Cordes, 100 Mich. 278 (1894); Riley v. Catron, 69 S. W. Rep. 908, 4 Ind. T. 376 (1902).

The forcing of a door and removal of the lock was not held to be a forcible entry. Thompson v. Com., 116 Pa. 155 (1887). Breaking down a door and taking possession of the building, unaccompanied with violence towards any person, was not a forcible entry. Shaw v. Hoffman, 25 Mich. 162 (1872). Other courts hold that an entry obtained by strategy or stealth is sufficient. Emsley v. Bennett, 37 Iowa, 15 (1873). Any entry is forcible, within the meaning of the law, that is made against the will of the occupant. Hammond v. Doty, 184 Ill. 246 (1900); Young v. Milwood, 109 Ky. 123 (1900); Paden v. Gibbs, 40 So. Rep. 871, 88 Miss. 274 (1906). The removal of a fence, though done peaceably, was held a forcible entry. Mallon v. Moog, 121 Ala. 303 (1899).

In Kerr v. O'Keefe, 71 Pac. Rep. 447, 138 Cal. 415 (1903), it was held that one who enters peaceably is guilty of forcible entry if he subsequently turns out the person in possession. This is the rule of the principal case, but it is not in accord with the general rule that the entry must be made against the will of the occupant.

HUSBAND AND WIFE—ANTE-NUPTIAL AGREEMENTS—CONSTRUCTION—A man, in contemplation of marriage presently to be performed, covenanted that he would never claim any right, title or interest in the property of his wife "during her lifetime or upon her death." *Held:* Such an agreement was a release of his expectancy or right to take as heir, as well as of his right of control over her property during coverture. Collins v. Phillips, 102 N. E. Rep. 796 (Ill. 1913).

Ante-nuptial contracts are subject to the same rules of construction as other contracts. As they tend to promote domestic felicity and to avoid ligitation, they are favored by the law and are therefore construed liberally. Buffington v. Buffington, 151 Ind. 200 (1898); Casey v. Casey, 84 Kan. 380 (1911); Carroll v. Rerich, 15 Miss. 798 (1846). Effect is sought to be given to the intention of the parties; in making clear that intention the surrounding circumstances may be considered as well as the instrument itself. Buffington v. Buffington, *supra;* Stewart v. Stewart, 7 Johns. Ch. 229 (N. Y. 1823); De Save v. Moore, 55 U. S. 253 (1852). As our principal case recognizes, when the rights of one of the spouses in the property of the other are involved, the law makes a distinction between rights during coverture and the rights of the survivor. Ward v. Thompson, 6 Gill & J. 349 (Md. 1833); Stewart v. Stewart, *supra;* Pierce v. Pierce, 71 N. Y. 154 (1876); Lyre's Exs. v. Crouse, 1 Barr, 111 (Pa. 1845). A renunciation of rights merely during coverture cannot of itself affect common law or statutory rights in the property of the other after that other's death; but a clear intention to include the rights as survivor must appear in order to bar such rights. Bailey v. Wright, 18 Ves. Jr. 49 (Eng. 1811); Staut's Appeal, 66 Conn. 127 (1895); Fleming v. Fountain, 73 Ga. 575 (1884); Stewart v. Stewart, *supra;* Talbot v. Calvert, 24 Pa. 327 (1855); Wetsel v. Firebaugh, 258 Ill. 404 (1913). But in the absence of express powers granted in the trust deed, in jurisdictions where the *cestui que trust's* right of control depend upon such express grant, a *cestui que trust* of a sole and separate use trust cannot by an ante-nuptial agreement give the other party any rights in the trust property whatever. Hallett v. Hallett, 152 Pa. 590 (1893).

MUNICIPAL CORPORATIONS—AUTHORITY TO DECLARE NUISANCES—A city grew up in a locality through which a railroad had exercised its right of way for years previous. The city passed an ordinance establishing a district within which any sidings or freight tracks were declared a nuisance. *Held:* The ordinance is invalid, since it declared that to be a nuisance, which was not so in fact. City of Bushnell v. Chic., *etc.*, R. Co., 102 N. E. Rep. 785 (Ill. 1913).

Certain things are nuisances *per se* and are so recognized at common law. Other things *may* be nuisances, but differences of opinion may exist as to whether they are not. However the municipality has authority to declare conclusively whether such things shall be nuisances. Langel v. Bushnell, 197 Ill. 20 (1902); Walker v. Jameson, 140 Ind. 591 (1894). For example, an ordinance declaring street cars run by steam a nuisance was held valid. North Chic. City Ry. Co. v. Lake View, 105 Ill. 207 (1883). Slaughter houses within a certain area were held to be nuisances. Harmison v. Lewistown, 153 Ill. 313 (1894).

There are still other things which are not in their nature nuisances, although they may become so by reason of their locality or the manner in which they are conducted. The municipality has no authority to declare these things nuisances. Village of Desplaines v. Poyer, 123 Ill. 348 (1888); Yates v. Milwaukee, 77 U. S. 497 (1870). So an ordinance prohibiting a railroad from fencing its tracks within the city limits is invalid, since whether such a use of property is a nuisance is a judicial and not a legislative question. Grossman v. Oakland, 30 Or. 478 (1895). This question must be left for judicial determination, Griffin v. Gloversville, 73 N. Y. Supp. 684 (1901). An ordinance declaring the emission of dense smoke a nuisance, irrespective of the quantity or length of time of emission is invalid, because this is not in its nature a nuisance. St. Louis v. Heitzeberg Packing Co., 141 Mo. 375 (1897). A partially burned building within city limits is *per se* not a nuisance, irrespective of its actual condition or location. Evansville v. Miller, 146 Ind. 613 (1897). Nor can a laundry be made a nuisance by legislative enactment. *In re* Hong Wah, 82 Fed. Rep. 623 (1897).

The general rule is that, a municipality has authority to declare nuisances only such things which are or may be so by their nature, and has no authority to declare nuisances things which are not so by their nature.

NEGLIGENCE—CONTRIBUTORY NEGLIGENCE—LAW AND FACT—A workman in an elevator shaft projected his head into an adjoining shaft, relying on the statement of the foreman that the elevator in this other shaft would not be moved without a warning. It was, however, so moved, and the workman was injured. *Held:* Under these facts the question of contributory negligence is one for the jury. Lucas v. Walker, 134 Pac. Rep. 374 (Cal. 1913).

In general, the disputed questions of fact must be decided by the jury. But if all the physical facts are admitted, it is a much discussed question whether or not negligence or contributory negligence is a matter of law to be deduced from them, or whether it is also a fact, which must go to a jury. On principle it would seem that since negligence is determined by the conduct of a reasonable man under the given circumstances, and since the jury are supposed to represent average reasonable men in the community, it should be considered a question of fact. The majority of decisions are in accord with this view. Williams v. Grealy, 112 Mass. 79 (1873); Esher v. Mineral Co., 28 Pa. Super. Ct. 387 (1905).

The court, however, has always the right to take from the jury any fact whenever in its opinion there is no evidence to support it and whenever it believes that a verdict in any way but one would be perverse. Lorenzo v. Wirth, 170 Mass. 596 (1898).

So, too, in the case of contributory negligence if the court believes the facts are so clear that a verdict for the plaintiff would be perverse, it may order a nonsuit. In so doing, however, it is not making negligence a question of law, but is merely exercising its control over the facts on which it will allow the jury to pass. C. & A. R. R. v. Gore, 96 Ill. App. 553 (1901).

PROPERTY—DEED—ESCROW—An owner of property delivered to the defendant a warranty deed in regular form with letter of instructions to deliver it to her son, ninety days after her death and on the condition that

the son pay certain moneys to his brothers. The owner died. The son fulfills the conditions and demands the deed, which was refused. *Held:* The death of the grantor will not effect the escrow, for the second delivery will be considered as an execution and consummation of the first, thus relating back, takes effect by the first delivery. Jackson v. Jackson, 135 Pacific, 201. (Ore. 1913).

This case expresses the general rule that where justice requires it, the delivery will be held by fiction of law to relate back to the deposit, as where either of the parties dies before the condition is performed, or before final delivery. Prewitt v. Ashford, 90 Ala. 294 (1890); Davis v. Clark, 58 Kan. 100 (1897); Lindley v. Groff, 37 Minn. 338 (1887); Hammond v. Hunt, 11 Fed. Cas. No. 6,003 (1879); Stewart v. Wills, 137 Iowa, 17 (1908); Stockwell v. Shalit, 204 Mass. 273 (1910); Gammon v. Runnell, 22 Utah, 427 (1901); Sheppard's Touchstone, p. 59; Webster v. Kings County Trust Co., 145 N. Y. 275 (1895); Bostwick v. McEvoy, 62 Cal. 499 (1881); Stone v. Duvall, 77 Ill. 480 (1875); Craddock v. Barnes, 142 N. C. 89 (1908); Gosh v. Brown, 171 Pa. 479 (1895); Simpson v. McGlathery, 52 Miss. 723 (1876). The same rule applies if in the meantime one of the parties has come under a disability, such as mental incapacity or coverture; Wheelright v. Wheelright, 2 Mass. 447, 454 (1807); Sheppard's Touchstone, p. 59.

The fiction will never be resorted to when injustice would result. Taft v. Taft, 59 Mich. 185 (1886); Brown v. Austen, 35 Barb. 341 (1861 N. Y.); Vorheis v. Kitch, 8 Phila. 554 (Pa. 1871); Hoyt v. McLagan, 87 Iowa, 746 (1893); Whitmer v. Schenk, 11 Idaho, 702 (1906).

RAILROADS—NUISANCE—NEGLIGENT USE OF YARDS—Property situated next to that part of a railroad yard where the locomotives were cleaned and stoked was injured by smoke and falling cinders and the conditions were made so unbearable that the persons living there had to move. It was shown that there was a method of eliminating the smoke and cinders which was efficient and practical. *Held:* As the railroad had not adopted this method, it was guilty of maintaining a nuisance. Spronson v. Philadelphia & Reading Ry., 54 Pa. Super. Ct. 30 (1913).

Damage to property caused by the ordinary operation of the railroad is *damnum absque injuria,* and the owner of the property cannot recover unless the railroad has been negligent. Parrot v. R. R., 10 Ohio St. 624 (1858); Bennett v. R. R., 181 N. Y. 431 (1905). But damage caused by property of the railroad company outside that used for the actual operation is not *damnum absque injuria.* Thus a roundhouse has been considered a nuisance and the adjacent owner was allowed to recover. Cogswell v. R. R., 103 N. Y. 10 (1886); Terminal Co. v. Jacobs, 109 Tenn. 727 (1902); Kuhn v. R. R., 111 Ill. App. 323 (1903); turntable and yards, Garvey v. R. R., 159 N. Y. 323 (1899); yards, Angell v. R. R., 41 N. J. Equity, 316 (1886); cattle yards, Truman v. Ry., L. R. 25 Ch. Div. 423 (1883).

The Pennsylvania rule, originally laid down in R. R. v. Lippincott, 116 Pa. 472 (1887), is that injury necessarily incident to the operation of the railroad is *damnum absque injuria.* The tendency always has been to protect business rather than the individual. Rhodes v. Dunbar, 57 Pa. 274 (1868); Coal Co. v. Sanderson, 113 Pa. 126 (1886); Harvey v. Coal Co., 201 Pa. 63 (1902). Thus the principal case, though not expressly overruling the previous cases, appears to be a distinct advance on the earlier rule.

SALES—BONA FIDE PURCHASER OF GOODS OBTAINED BY FRAUD—A sale of jewelry was induced by fraud and false representations. The vendee sold the jewelry to a *bona fide* purchaser without notice and the original vendor brought suit against this subsequent purchaser. *Held:* A *bona fide* purchaser for value without notice will be protected even where his vendor obtained the goods by fraud, if the fraudulent act is a felony by statute only and would

not have been a felony at common law. Phelps *et al.* v. McQuade, 143 N. Y. Supp. 822 (1913).

Where goods are obtained by a transaction which would come within the scope of common law larceny, title does not pass and the original owner can recover from one who innocently purchases from the thief. Breckenridge v. McAfee, 54 Ind. 141 (1876). But if the owner intended to transfer both the property in, and the possession of, the goods to the person guilty of the fraud, there is a contract of sale, however fraudulent the device, and the property passes. Benj. on Sales (6th Ed.), §433; and this is true notwithstanding that the crime of false pretences is included in the statute definition of a felony, but which was not such at common law. American Sugar Refining Co. v. Fancher, 145 N. Y. 552 (1895).

Although the sale is not void when induced by fraud and property passes to the vendee, yet the contract is voidable at the election of the vendor and may be rescinded at any time before the property reaches the hands of a subsequent purchaser without notice. Harding & Dubois v. Lloyd, 3 Pa. Super. Ct. 293 (1897). A *bona fide* purchaser from the fraudulent vendee, however, without notice of the fraud, acquires good title which cannot be attacked by the original vendor. Hochberger v. Baum, 85 N. Y. Supp. 385 (1903). There is a decision of the House of Lords to the effect that when property in goods has been obtained by false pretenses, the owner of the goods may, upon conviction of the thief, recover them from the person in whose possession they are at that date, irrespective of his status. Bentley v. Vilmont, 12 App. Cas. 471 (Eng. 1887). Under the Sale of Goods Act of 1893, 56 & 57 Vict. c. 71, s. 24, the *bona fide* purchaser is protected in such a case and against him the original vendor can assert no right to title. Rex v. Walker, 65 J. P. 729 (Eng. 1901).

SALES—WARRANTIES—A wholesaler sold a carload of oats to a retail dealer who, in turn, sold them to a number of farmers. The oats were used for seeding purposes and did not germinate when planted under ordinary conditions. The retail dealer was obliged to make good the money paid for the oats by his customers, and brought an action against his vendor for breach of warranty. *Held:* No warranty against latent defects can be implied in the sale of goods where the vendor is not the producer or manufacturer. Coleman v. Simpson & Co., 143 N. Y. Supp. 587 (1913).

This is the general rule governing an implied warranty in the sale of goods, and it is true although the vendor knows the purposes for which the goods are bought. National Oil Co. v. Rankin, 68 Kan. 679 (1904); Borden & Co. v. Fraser & Chalmers, 118 Ill. App. 655 (1905). The doctrine of *caveat emptor* applies in all such cases. Bowman v. Clemmer, 50 Ind. 10 (1875); Horner v. Parkhurst, 71 Md. 110 (1889). But there is an implied warranty of identity or genuineness to the extent that the article sold is identical with the article bought, whether the vendor be a manufacturer or not. Van Wyck v. Allen, 69 N. Y. 61 (1877).

The manufacturer of an article for a specific purpose impliedly warrants the quality of the material and workmanship. Murray Iron Works Co. v. Dekalb Electric Co., 103 Ill. App. 78 (1902). And so, where a grower sells seeds for planting, there is an implied warranty that they are free from any defects arising from the manner of cultivation, harvesting and storing. Prentice v. Fargo, 65 N. Y. Supp. 1114 (1900). Where there is a breach of implied warranty of quality and suitableness of seeds sold by the grower, the measure of damages is the value of the crop had the seeds been as warranted, less the expenses of raising the crop and the value of the crop actually raised. Landreth v. Wyckoff, 73 N. Y. Supp. 388 (1901).

STATUTE OF LIMITATIONS—WHEN IT BEGINS TO RUN—The writ in an action on a promissory note was issued on September 23, 1912. The time for payment of the note had expired on September 22, 1906. According to

section 3 of the Limitation Act (1623), "All actions . . . shall be commenced and sued . . . within six years next after the cause of such action or suit." *Held:* The date on which the cause of action arises is not excluded, but that day is the first of all the days in the six years. Gelmini v. Moriggia, 2 K. B. 549 (Eng. 1913).

In construing statutes similar to that in the above case, there seems to be a decided conflict in the various jurisdictions of this country. Some courts hold that the day upon which the cause of action arises, marks the time when the Statute begins to run, while others interpret the Statute to allow for the prescribed period after that day. The day upon which the right of action accrues should be included. Shinn v. Tucker, 33 Ark. 421 (1878); Presbrey v. Williams, 15 Mass. 193 (1818). But *contra,* that day is not to be included in the computation. Menges *et al.* v. Frick, 73 Pa. 137 (1873); McCulloch v. Hopper, 47 N. J. L. 189 (1885). The cases which follow the latter rule give as their reason that the Statute takes away remedies and therefore should be strictly interpreted.

Some jurisdictions apply different rules when the computation is to be made from an act done or the time of an act done, and when the time is to be computed from a date or the day of a date. In the former case, the day when the act is to be done is included, though in the latter, the day of the date is excluded. Blake v. Crowninshield, 9 N. H. 304 (1838).

TORTS—LAST CLEAR CHANCE—One who has stopped his automobile, with the engine running, on the trolley tracks and stays in that position for more than a minute, with his back turned to the direction from which cars may come at a speed of fifteen miles an hour, is not barred from recovery for injury caused by the negligence of the motorman who by use of ordinary care might have seen the autoist in time to avoid any injury. King v. Grand Rapids Ry. Co., 143 N. W. Rep. 36 (Mich. 1913).

The doctrine of "last clear chance," which was adopted in this case, was first enunciated in the famous "Donkey Case." Davies v. Mann, 10 M. & W. 546 (Eng. 1842). The rule as expressed in that case has been variously interpreted, but the interpretation which has gained the greatest weight is that expressed in the doctrine of "last clear chance," which applies to the situation in which the injured party has by his own negligence put himself in a place of peril, from which he cannot extricate himself, and the act of the defendant in injuring him does not amount to wanton negligence or willful wrong. B. & O. Ry. Co. v. Anderson, 85 Fed. 413 (1898); Northern C. Ry. Co. v. Price, 29 Md. 420, 437 (1868). The best modern example of the situation to which this doctrine applies is the case of one injured on a trestle by the negligence of the defendant. Bogan v. Carolina C. Ry. Co., 129 N. C. 154 (1901). In some jurisdictions there is no liability on the part of the defendant unless he has actually discovered the helpless condition of the injured party. Tanner's Exec. v. N. R. R., 60 Ala. 621 (1877); Allen v. B. & P. R. R., 8 App. D. C. 69 (1896). This distinction is explained in some cases on the ground that although the railroad has no duty to keep a lookout for trespassers, yet it still owes them a greater duty than merely to avoid willful harm. Newport News R. R. v. Howe, 52 Fed. 362 (1892); Haley, Adm'r v. Kansas City R. R., 113 Ala. 640 (1896). The doctrine is wholly denied in jurisdictions which hold that a negligent person can ask nothing more of others than to avoid willful injury, Railroad v. Norton, 24 Pa. 465 (1855); Belt R. R. v. Mann, 107 Ind. 89 (1886). The doctrine has also been said to be merely a restatement of the rule, that contributory negligence to bar recovery must be the proximate cause of the injury. Nehring v. Conn. Co., 84 Atl. Rep. 301 (1912).

Only a few jurisdictions would decide the principal case as it was decided, for the "last clear chance" doctrine works against both parties. Therefore, if the position of the plaintiff was such that he could by the exercise of ordinary care have avoided the result of the negligence of the

defendant, he had the "last clear chance" to avoid the injury and cannot recover. Dyerson v. Union P. Ry. Co., 87 Pac. Rep. 680 (Kan. 1906); Vazachero v. Rhode Island Co., 26 R. I. 392 (1904).

TRUSTS—ENTIRE BENEFICIAL INTEREST—The complainant purchased the equitable life estate from a beneficiary for life and the equitable reversion in fee from the reversioners in fee and demanded that the trust be terminated and the property be transferred to him. *Held:* A decree terminating the trust should be issued. Brooks v. Davis, 88 Atl. Rep. 178 (N. J. 1913).

Where the equitable life estate and the equitable reversion in fee become vested in the same person, there is a merger of the two and the beneficiary has the equitable fee in the entire estate. Warner v. Sprigg, 62 Md. 14 (1884). One who holds the entire equitable title to an estate held by trustees for his benefit is entitled to have the trust terminated, provided that there is no limitation over of the estate in any contingency. Sears v. Choate, 146 Mass. 395 (1888). Although a trust may not have ceased through expiration of time, and though its purposes may not have been accomplished, yet if all the parties who are or who may be interested are in existence and *sui juris* and if they all consent, the trust may be terminated. Whall v. Converse, 15 N. E. Rep. 660 (Mass. 1888); Stone, Petitioner, 138 Mass. 476 (1885); Josselyn v. Josselyn, 9 Sim. 64 (Eng. 1837). Where a *cestui que trust* wishes a trust terminated, it will not be continued merely for the benefit of the trustee. Slater v. Hurlbut, 146 Mass. 308 (1887).

Other courts have held that if none of the provisions of the will creating the trust are contrary to law or public policy, and if the objects and purposes of the trust have not been accomplished, the trust will not be terminated merely at the desire of the beneficiary. Young v. Snow, 167 Mass. 287 (1897); Douglas v. Cruger, 80 N. Y. 15 (1880). The weight of authority, however, is in accord with the rule stated in the principal case.