RECENT CASES.

CONTRACTS—LICENSE TO PRODUCE COPYRIGHTED PLAY—PHOTOPLAY RIGHTS.—Plaintiff, a playwright, granted to defendant, a manager, the "exclusive license" to "produce, perform and represent" his play, subject to certain specified conditions. Plaintiff sued to enjoin defendant from producing a photoplay version, on the ground that he retained motion picture rights. *Held:* Injunction to issue, provided that plaintiff should not himself produce or license a photoplay version during the running of the contract. Manners v. Morosco, 252 U. S. 317, 40 U. S. Sup. Ct. 335 (1920).

The fundamental question involved is whether a grant of dramatic rights includes photoplay rights. It has been held that such rights are not included. Harper Bros. v. Klaw, 232 Fed. 609 (Dist. Ct., 1916); Klein v. Beach, 151 C. C. A. 282, 239 Fed. 108 (1917). Since these cases were frankly decided on the qualifying provisions of the grants, they are not conclusive of the basic question.

The contrary was held in Frohman v. Fitch, 164 N. Y. App. Div. 231, 149 N. Y. S. 633 (1914); Lipzin v. Gordin, 166 N. Y. S. 792 (1915). These decisions, however, were chiefly influenced by "the impossibility of supposing that the author reserved the right," without expressly so stating, to injure the spoken play, to the manager's detriment, by a contemporaneous photoplay production. Thus, before the principal case, there was no decision avowedly based only on the fundamental principle involved.

Nor does the principal case settle the question definitely, since it was admittedly decided on the qualifying provisions of the contract. It seems, however, to establish the proposition that a naked grant of dramatic rights neither includes nor excludes photoplay rights; nor are any words, such as "represent" or "produce," in themselves sufficient to pass such rights. The intention of parties, gathered either from an express grant or reservation, or from the general tone of the contract, controls.

The principal case substantially agrees with the English rule, before the passage of their present Copyright Act, which, like the German statute, entirely separates dramatic and photoplay rights, and provides that the author retains photoplay rights, in the absence of an express agreement to the contrary. Precisely the opposite was held in France. Calmann-Levy v. Dumas (Cour de Paris, 17 May, 1912).

The condition on which the injunction issues in the principal case is based on an implied negative covenant that plaintiff shall not himself make motion pictures of the play during its stage production. This doctrine, which effectually prevents the author from injuring the manager's interest, originated in Harper Bros. v. Klaw, *supra*, where the contract was made in 1899. It was declared inapplicable to contracts made after photoplays became general, in Klein v. Beach, *supra*. The principal case, however, applies it to a contract made in 1912, and is controlling where there is no express reservation of photoplay rights. While the implication of such a covenant may seem unduly restrictive at first glance, and savors of making a contract for the parties, it cannot be questioned that it serves the end of substantial justice.

CONTRACT FOR PERSONAL SERVICE—SPECIFIC PERFORMANCE—ABSENCE OF NEGATIVE STIPULATION.—A professional boxer agreed that his manager should have the "sole" arrangements of matching him for all his boxing contests. Before the termination of the period of contract, he repudiated the agreement by arranging to act as his own manager. *Held:* An injunction to restrain the boxer from entering any self-arranged match refused, in absence of any negative stipulation that the boxer would not make any arrangements for matches apart from his manager. Mortimer v. Beckett, 123 L. T. 27, Chan. Div. (1920).

The rule that an injunction will be granted to restrain the breach of a contract for personal services of a unique character which contains a negative stipulation not to perform for any person other than the employer is firmly established. An agreement not to sing elsewhere than at the plaintiff's theatre during the period covered by her contract was held sufficient to grant an injunction. Lumley v. Wagner, 1 De G. M. and G. 604 (1852).

In England it has been held that a negative stipulation will be implied whenever it is a reasonable inference that the parties contracted with the understanding that the employe was not to render services for any one except his employer. Montague v. Flockton, 28 L. T. Rep. 580 (1873). But from the trend of English opinion it is apparent that a controlling importance is again attached to the fact that the contract does or does not contain an express negative stipulation, and the more recent cases have rigidly adhered to this strict doctrine. Mutual Reserve Fund Life Association v. New York Life Insurance Company, 75 L. T. 528 (1896); Kirchner v. Gruban, 99 L. T. Rep. 932 (1908). The principal case is in accord with this view, the court refusing to infer a negative clause from the word "sole."

The American courts have made the deciding factor the quality of the personal services, and, in general, have not granted injunctions unless the services were "special, unique and extraordinary," and the loss of them would produce irreparable injury, for which there would be no adequate redress at law. Rogers Mfg. Co. v. Rogers, 58 Conn. 356; 20 Atl. 467 (1890); Philadelphia Ball Club v. Lajoie, 202 Pa. 210, 58 L. R. A. 227, 51 Atl. 973 (1902); Gossard & Co. v. Crosby, 132 Iowa 155, 109 N. W. 483; 6 L. R. A. N. S. 1115 note (1906). This doctrine has been held to apply even though the contract does not contain an express negative stipulation. Duff v. Russell, 14 N. Y. Supp. 134 (1891); Edwardes v. Fitzgerald (N. Y.), 9 Nat. Corp. Rep. 45, (1895).

It would seem that the distinction adopted by the American courts is the sounder, and that equitable principles are more clearly followed by a consideration of the quality of the services than by the mere form of the contract.

CORPORATIONS—FRAUDULENT ISSUE OF STOCK—CONSTRUCTIVE NOTICE. The by-laws of the defendant corporation provided that its stock should be issued bearing the signatures of its president and secretary. The secretary forged the president's signature and issued a certificate of stock to himself. The plaintiff loaned him money on the certificate and became full owner thereof on default. *Held:* The plaintiff may recover damages for refusal to transfer the stock, there being no circumstances giving the plaintiff actual or constructive notice of the fraud. Greensburg T. & Tr. Co. v. Aspinwall-D. Co., 266 Pa. 160 (1920).

A corporation is responsible for its agent's fraudulent acts which are not ultra vires and which are within his apparent or actual authority. Barwick v. English Joint Stock Bank, L. R. 2 Ex. 258 (1867); Mechem on Agency, sec. 1984. So a corporation is liable where its agent, empowered to issue stock, does so fraudulently, provided it is issued to a bona fide holder for value. N. Y., N. H. & H. R. R. Co. v. Schuyler, 34 N. Y. 30 (1865); Healy v. Defiance City Bank, 160 Ill. App. 628 (1911).

The cases in which a person takes from an officer of a corporation a certificate of its stock in exchange for money to be used for the officer's private purposes, present an interesting question of constructive notice. There are two lines of decisions which are distinguishable on their facts. When the officer of a corporation issues a certificate directly to the purchaser in consideration for money for his personal use, the issue of such stock without the surrender of an equivalent certificate is a patent irregularity and the purchaser is held to have constructive notice. Moores v. Citizen's National Bank, 111 U. S. 156 (1884); Farrington v. South Boston R. R., 150 Mass. 406, 23 N. E. 109 (1890); Rubens v. Great Fingal Consolidated, L. R. App. Cases 439 (1906). But where there is nothing in the by-laws of the corporation prohibiting an official who issues stock from also owning it, and such an officer transfers a certificate in his name to another in consideration for money for his private use, there is nothing in the circumstances giving warning of any irregularity in the issue of the stock putting him on constructive notice of any fraud in the issue. Cincinnati, etc., R. R. Co. v. Citizen's National Bank, 56 Ohio St. 351, 47 N. E. 249 (1897); Havens v. Bank of Tarboro, 132 N. C. 214, 43 S. E. 639 (1903); American Exchange National Bank v. Woodlawn Cemetery, 120 N. Y. App. Div. 119 (1907). The principal case in facts and decision falls squarely within the latter line of cases.

The cases in the law of negotiable instruments are analogous. Where an officer having power to make checks for a corporation pays his own debt with the check of the corporation made out by himself to the order of his creditor, there is a patent irregularity giving constructive notice. Rochester & Co. Turnpike Co. v. Paving, 164 N. Y. 281, 58 N. E. 114 (1906); de Jonge & Co. v. Woodport Co., 77 N. J. L. 233, 72 Atl. 439 (1909); but where such an officer pays his own debt by indorsing the check of the corporation made out by himself to his own order, there is no constructive notice, for a check from the corporation to himself may represent the payment of his salary or any other bona fide debt between himself and the corporation. Fillebrown v. Hayward, 190 Mass. 472, 77 N. E. 45 (1906).

DIVORCE—ADULTERY—CONDONATION.—Petition for divorce on ground of adultery. Defense: condonation. Petitioner found his wife pregnant by the co-respondent and they separated. However, upon several occasions during the week following the separation, intercourse occurred. *Held:* that condonation is established and the petition must be dismissed. Cramp v. Cramp & Freeman, 123 L. T. 141 (Eng. 1920).

The general rule is that if either the husband or wife condone the infidelity of the other such infidelity cannot be set up as a ground for divorce. Quincy v. Quincy, 10 N. H. 272 (1839); Story v. Story & O'Connor, 57 L. T. 536 (Eng.

1887), and continuance of cohabitation after knowledge of the commission of adultery is a condonation of that offense. Turnbull v. Turnbull, 23 Ark. 615 (1861); Norris v. Norris, 30 L. J. P. & M. 111 (1861).

The English and American courts agree that cohabitation with knowledge of the marital offense amounts to condonation. Some American jurisdictions, however, use the word cohabitation as implying sexual intercourse. Burns v. Burns, 60 Ind. 259 (1877) *semble*. In these jurisdictions it has not been decided whether sexual intercourse in itself, as distinguished from cohabitation which implies intercourse, will amount to condonation. In other jurisdictions it is settled that sexual intercourse with knowledge of the adultery is condonation. Johnson v. Johnson, 78 N. J. Eq. 507, 80 Atl. 119 (1911); Phillips v. Phillips, 102 Ark. 687, 144 S. W. 914 (1912).

The English courts have recognized that there could be cohabitation without sexual intercourse. Although not called upon to decide the point, this was the court's view as expressed in Keats v. Keats, 1 Sw. & Tr. 334 (1858). This raised the question as to whether intercourse in itself would be condonation, and in Timmings v. Timmings, 3 Hag. Eccl. 76 (1792) there is dictum to the effect that it would be sufficient to condone the offense of adultery if the husband had once had intercourse with his wife with knowledge of her guilt. The question was directly in issue for the first time in the principal case and the court has decided that sexual intercourse would amount to condonation.

DIVORCE—REFUSAL TO INDULGE IN SEXUAL INTERCOURSE "DESERTION." Plaintiff's wife lived in the same house with her husband, but persistently refused to have sexual intercourse with him, whereupon plaintiff petitioned for a divorce on the ground of desertion. *Held:* Refusal of the wife to indulge in sexual intercourse with her husband, without reasonable cause, is desertion and sufficient ground for divorce. Fleegle v. Fleegle, 110 Atl. 889 (Md. 1920).

The majority of jurisdictions will not grant divorces for desertion on the ground set forth in the principal case, the courts holding that a refusal of marital intercourse is not "wilful desertion," Fritz v. Fritz, 138 Ill. 436, 28 N. E. 1058 (1891); Schoessow v. Schoessow, 83 Wis. 553, 53 N. W. 856 (1892); Pratt v. Pratt, 75 Vt. 432, 56 Atl. 86 (1903); or that it does not constitute "utter desertion." Southwick v. Southwick, 97 Mass. 327 (1867); Stewart v. Stewart, 78 Me. 548, 7 Atl. 473 (1887); or that it does not amount to "wilful and obstinate desertion." Prall v. Prall, 58 Fla. 496, 50 So. 867 (1909). In many jurisdictions it has been held that desertion involves the breach of more than the one marital duty in question, and it has been frequently asserted, by the courts, that desertion imports a complete separation of the parties. Carter v. Carter, 62 Ill. 439 (1872); Lambert v. Lambert, 165 Iowa 367, 145 N. W. 920 (1914).

In Pennsylvania the divorce statute uses the words "desertion and absence from the habitation." This has been construed to require the parties actually to live apart in order to establish the fact of desertion. Wacker v. Wacker, 55 Pa. Super. Ct. 380 (1913); Cunningham v. Cunningham, 60 Pa. Super. Ct. 622 (1915).

But, while the weight of authority is in accord with the cases above cited, there are jurisdictions in accord with the principal case Thus it has been held that a refusal of marital intercourse is desertion, if without justification. Sise-

more v. Sisemore, 17 Or. 542, 21 Pac. 820 (1889); even though the parties live in the same house. Whitfield v. Whitfield, 89 Ga. 471, 15 S. E. 543 (1892); Raymond v. Raymond, 79 Atl. 430 (N. J. 1909); and, if the refusal is continuous and obstinate, it is "wilful desertion." Graves v. Graves, 88 Miss. 677, 41 So. 384 (1906). But in Gruner v. Gruner, 183 Mo. App. 157, 165 S. W. 865 (1914), it was held to be only an element of desertion. Section 96, California Civil Code, provides that "a persistent refusal to have reasonable matrimonial intercourse is desertion." Vosburg v. Vosburg, 136 Calif. 195, 68 Pac. 694 (1902).

The doctrine contended for by the principal case rests mainly on the idea that sexual intercourse is the central element of marriage. This view was advanced by Mr. Bishop, 1 Bishop, Mar. & Div., 6 ed. par. 779, and has been frequently cited with approval by the courts. It is believed, however, that if the violation of this one marital duty is considered a proper ground for divorce, the divorce statutes should be amended so as to include it, as was done in the state of California. No meaning should be ascribed to the word "desertion" which it does not strictly possess.

EVIDENCE—VARIATION OF WRITTEN CONTRACT—SHAM.—An insurance agent was engaged in soliciting business for his company under an oral agreement; but he also executed with the company a formal contract, embodying different terms which was understood by both parties not to be binding, but simply for the purpose of showing to other agents so that it might appear that all such contracts were uniform. *Held:* The agent is bound by the terms of the written contract and may not show by parol that it was executed merely as a sham, and not intended to express the real agreement between the parties. Supreme Lodge v. Dalzell, 223 S. W. 786 (Mo. 1920).

No principle is better established in our law than the rule that when any contract has been reduced to writing, it cannot be contradicted, altered, added to, or varied by parol or extrinsic evidence. 22 C. J. 1070 and cases cited.

It has been justly declared, however, by a long series of decisions that evidence, which is offered not for the purpose of varying or contradicting the terms of a written instrument, but to show that it was never intended to be operative between the parties and never in fact had any legal existence as a contract, is admissible. 22 C. J. 1214 and cases cited. So it has been held that oral evidence to show that an alleged written contract was never intended to be operative between the parties and that it never in fact had a legal existence—that its sole and only purpose was to overcome certain objections of a trades union—was admissible. Robinson v. Nessel, 86 Ill. App. 212 (1900); and that parol evidence is admissible to show that the parties thereto had agreed that a written contract was never to be performed, but was a mere sham, executed for the purpose of influencing the conduct of a third person. Coffman v. Malone, 98 Neb. 819, 154 N. W. 726 (1915).

In accord with the principal case it was held that parol evidence was incompetent to show that a writing was agreed and understood to be a sham, and was executed only to keep off the creditors of one of the parties. Conner v. Carpenter, 28 Vt. 237 (1856); and that a writing between a corporation and an agent for the sale of its stock cannot be shown to have been executed simply for the purpose of showing other salesmen that the agent in question was draw-

ing no more than they. Graham v. Savage, 110 Minn. 510, 126 N. W. 394 (1910).

The words of the court in Graham v. Savage, *supra*, are significant: "We think that the court should not vary the general rule as to the exclusion of evidence by making an exception in aid of such an illegitimate purpose and in violation of common honesty." The error of this view is apparent; for to show by parol that a writing has no legal existence as a contract is no departure from nor exception to the parol evidence rule, no attempt being made to vary the terms of the contract. It seems, therefore, that the principal case is both contrary to the almost universal weight of authority, and faulty when considered in the light of sound legal reasoning.

FIRE INSURANCE—STIPULATIONS IN POLICY—MORAL HAZARD—GIVING OF CHATTEL MORTGAGE, THOUGH VOID FOR USURY, WILL AVOID FIRE POLICY.—Defendant issued to plaintiff a standard fire insurance policy, insuring the personal property burned, which contained a stipulation that: "This entire policy, unless otherwise provided by agreement indorsed hereon or added hereto, shall be void—if the subject of insurance be personal property and be incumbered by a chattel mortgage." The property was subject to a chattel mortgage void for usury. No agreement was indorsed on or added to the policy. Defendant had no knowledge of the mortgage until after loss. *Held:* Failure of plaintiff to disclose existence of mortgage avoided the policy, since its existence in point of fact, though void in law, increased the moral hazard which is the test for violations of conditions in insurance policies. Lipedes v. Liverpool & London & Globe Ins. Co., Ltd., 128 N. E. 160 (N. Y. 1920).

It is the settled policy of the law to construe most strictly against the insurer stipulations in fire insurance policies which limit his liability. Gilchrist Transportation Co. v. Phenix Ins. Co., 170 Fed. 279 (1909). As a result of this policy it is uniformly held that the legality or illegality of the thing or act stipulated against is the proper test to determine whether the conditions of an insurance policy have been violated or not. Under this rule chattel mortgages, though void for usury, are not held by the courts to be violations of the stipulation although given without complying with the terms of the stipulation. Penn. Mut. Fire Ins. Co. v. Schmidt, 119 Pa. 449 (1888); Hartford Fire Ins. Co. v. Liddell Co., 130 Ga. 8, 60 S. E. 104 (1908); Rowland v. Home Ins. Co. of N. Y., 82 Kan. 220, 108 Pac. 118 (1910). The giving of a void mortgage, or any mortgage in violation of the stipulation, which does not alter the interest of the parties, and thus has no tendency to create temptation for the destruction of the property, has been held by some courts not to be a violation of the policy. Watertown Fire Ins. Co. v. The Grover and Baker Sewing Machine Co., 41 Mich. 131, 1 N. W. 961 (1879); Alston v. Phenix Ins. Co., 100 Ga. 287, 27 S. E. 981 (1896); Weigen v. Council Bluffs Ins. Co., 104 Iowa 410, 73 N. W. 862 (1898). A voidable mortgage given in violation of the stipulation will avoid the policy since it is legal until set aside. Secrest v. Hartford Fire Ins. Co., 68 S. C. 379, 47 S. E. 680 (1903).

The application of the general rule that the legality or illegality of the thing or act stipulated against is the test for determining violations of the stipulations in insurance policies is not limited to provisions against chattel mort-

gages alone, but extends to stipulations against judgments entered against the insured property, Continental Fire Ins. Co. v. Vanlue, 126 Ind. 410, 26 N. E. 119 (1890); mechanics liens, Smith v. St. Paul Fire & Marine Ins. Co., 106 Iowa 225, 76 N. W. 676 (1898); Hence v. Agricultural Ins. Co., 122 Pa. 128 (1888); sales, when there is foreclosure of mortgage and the sale thereunder set aside by decree of court, Niagara Fire Ins. Co. v. Scammon, 144 Ill. 490, 28 N. E. 919 (1891); and other subsequent insurance, Thomas v. Builders Mutual Fire Ins. Co., 119 Mass. 121 (1875); Jersey City Ins. Co. v. Nichol, 35 N. J. Eq. 291 (1882).

By deciding that the moral hazard is the proper test to determine violations of the conditions in a policy, the New York Court impliedly discards the legality test which had been the New York rule, Forward v. Continental Ins. Co., 142 N. Y. 382, 37 N. E. 615 (1894). It is submitted that the general application of moral hazard as the test for violations of conditions in fire insurance policies when the insured is ignorant of the result of his act in point of law, will effect a more complete justice in the interpretation of conditions in such policies, since the risk assumed by the insurer is made up of not only the computable risk alone but also the moral risk.

INDICTMENT—GRAND JURY—RESUBMISSION.—A motion to quash an indictment was granted in the United States District Court on the ground that the district attorney had no power, after one grand jury had ingored the bill, to resubmit it to a second grand jury without leave of court, and that the second grand jury had no authority to consider the subject. *Held:* The motion to quash should not have been granted. U. S. v. Thompson, 251 U. S. 407 (1920).

The court based its decision upon the premises that, (1) the power of the grand jury to investigate is original, complete, continuous and independent; (2) the district attorney similarly has complete and continuous power to present indictments. Once the premises are accepted the conclusion reached by the court is inevitable, but the exact scope of the grand jury's inquisitorial power is not uniformly agreed upon. Wharton Crim. Pro. paragraphs 1258–1265. This fundamental disagreement perhaps accounts for the different views existing in various jurisdictions upon the point under discussion.

In Pennsylvania, although the cases are none too clear, it would seem that the district attorney's power to resubmit a bill which has once been ignored is subject to the review of the trial court. Rowand v. Commonwealth, 82 Pa. 405 (1876); Commonwealth v. Whitaker, 25 Pa. Co. Ct. 42 (1901); Commonwealth v. Stoner, 70 Pa. Super. 365 (1918). In Missouri it has been held that the refusal by one grand jury to find an indictment will not affect the power of another grand jury to indict, State v. Green, 111 Mo. 585 (1892), 20 S. W. 304; while in North Carolina a grand jury can reconsider a charge only in case new witnesses are offered. State v. Harris, 91 N. C. 656 (1884). Blackstone stated the rule to be that after the grand jury has ignored a bill "a fresh bill may afterwards be preferred to a subsequent grand jury." 4 Blackstone's Comm. 305. This is the present practice in England. Regina v. Humphrey, 1 Car. & Mar. 601 (Eng. 1842). The tendency where statutory provisions govern the point is to prohibit resubmission without leave of court. N. Y. Code Crim. Pro. paragraph 270; State v. Collis, 73 Iowa 542 (1887), 35 N. W. 625; Sutton v.

Commonwealth, 97 Ky. 308 (1895), 30 S. W. 661; Rea v. State, 3 Okla. Crim. 269 (1909), 105 Pac. 381.

The decisions which do not allow resubmission without leave of court are founded on a desire to guard against persecution by the prosecuting officer. The different views concerning the power of the grand jury to reconsider bills are to be traced to the conviction, on the one hand, that it is not advisable to lodge initiative as well as veto authority in a body which deliberates in private and which is liable to be ignorant and irresponsible, and on the other hand, that power so democratically placed is a protection against autocratic oppression. Wharton's Crim. Pro., *supra*. The principal case is extreme in upholding the independence of the district attorney and the grand jury.

LANDLORD AND TENANT—WAIVER OF NOTICE TO QUIT.—The plaintiff lessor accepted rent from the defendant tenant accruing after the lease had been terminated by a notice to quit, stating that the money was received "on account of use and occupation of the premises, but not as rent." An action was brought to recover possession of the premises. *Held:* The action does not lie, since this retention of money, which was tendered as rent, was a waiver of the notice to quit. Hartell v. Blackler, 123 L. T. 171 (Eng. 1920).

The question involved has been the subject of confusion. Some courts hold that if a landlord receives money from his tenant as rent, accruing after the expiration of a notice to quit the premises, there is a waiver of notice. Goodright v. Cordwent, 6 T. R. 219 (Eng. 1795); Prindle v. Anderson, 19 Wend. 391 (N. Y. 1838); Collins v. Canty, 6 Cush. 415 (Mass. 1850); Tiffany, Landlord and Tenant, p. 1463. However, if the acceptance be of money, not as rent, but as compensation for occupation and use, it does not constitute a waiver. Stedman v. McIntosh, 27 N. C. 571 (1845). Other courts hold that the acceptance of rent by a landlord does not amount to a waiver, but is merely evidence to go to a jury to determine whether the landlord intended to waive the notice. Doe ex dem Cheny v. Batten, 1 Cowp. 243 (Eng. 1775).

The decision in the principal case is not in accord with either of these views, since it is based entirely on the so-called forfeiture cases. These cases hold that if a landlord receives rent accruing after the tenant has forfeited his lease for condition broken, there is a waiver of breach even though the rent was received, not as rent, but as compensation for the occupation of the premises merely. Croft v. Lumley, 5 E. and B. 648 (Eng. 1855); Davenport v. The Queen, 37 L. T. 727 (Eng. 1878). However, the principle involved in the forfeiture cases and the principal case would seem the same. In both the lessor may at his option treat the tenant either as on the premises under the lease or as a trespasser. (Forfeiture); Davenport v. The Queen, *supra;* Webster v. Nichols, 104 Ill. 160 (1882); 24 Cyc. 1359. (Expiration of lease); Haynes v. Aldrich, 133 N. Y. 287, 31 N. E. 94, 28 Am. St. Rep. 636 (1892); 24 Cyc. 1012.

Therefore, the sole question involved is whether money tendered as rent by a tenant can be received by the landlord, not as rent, but as compensation for the occupation of the premises. It would seem according to general principles of law that the landlord cannot do so. Where a debtor directs the manner in which his payment is to be applied, the creditor, if he accepts the payment, must apply it in that manner. Reed v. Boardman, 37 Mass. 441 (1838); Jackson v. Bailey, 12 Ill. 159 (1850); Goodman v. Snow, 81 Hun. 225 (N. Y. 1894);

30 Cyc. 1231. Although reaching the same conclusion on different grounds, it would seem that the decision of the court in the principal case would be materially strengthened had they invoked the general principle above stated. But it is significant to note that the courts in neither the principal case nor in the cases heretofore decided involving the question of tender of rent and acceptance by the landlord of the money as compensation for use and occupation of the premises, have based their decision on this ground.

SALES—C. I. F. CONTRACT—PASSAGE OF TITLE.—The plaintiff sold codfish to the defendant under a C. I. F. contract, and thereunder procured customary insurance on the goods, gave credit in his bill for the freight charges and delivered the goods to the carrier. The ship was sunk by a German submarine and the seller sued for the purchase price. *Held:* The defendant must suffer the loss and pay the full contract price. Smith Company, Limited v. Marano, 267 Pa. 107 (1920).

The letters "C. I. F." are abbreviations of the words "cost, insurance and freight." Under a C. I. F. contract of sale, the price quoted by the seller includes the cost of the goods, customary insurance thereon and freight charges to the destination. Ireland v. Livingston, (1872) 5 Eng. Ir. App. 395, (semble), opinion of Lord Blackburn. A question arising under such a contract is when does the title to the goods pass. At common law it has been held to pass when the seller has delivered the goods to the carrier, procured the customary insurance and either paid or given credit for the freight, *i. e.*, when he has done all that is required of him under the contract. Tregelles v. Sewell, 7 H. & N. 574 (Eng. 1872); Mee v. McNider, 109 N. Y. 500, 17 N. E. 424 (1888). It has been held that the English Sale of Goods Act does not change the common law on a C. I. F. contract. E. Clements Horst Company v. Biddell Bros., (1912) App. Cases 18; Law & Bonar, Limited v. British American Tobacco Company, Limited, (1916) 2 K. B. 605.

The principal case is interesting because it is the first in Pennsylvania to be decided interpreting a C. I. F. contract, and the first in any jurisdiction on this point under the Uniform Sales Act. The act has no provision specifically covering this kind of contract. It was argued, however, that it falls under Rule 5 of Section 19, which provides that unless a different intention appears, if the seller is required to pay the freight to a particular place, title does not pass until the goods have reached such place. Pennsylvania Sales Act of May 19, 1915, P. L. 543. The court based their decision on the fact that the contract expressly provided for the procurement of insurance on the goods. They reason that if the buyer was to have no title during transit, it is difficult to understand why he should be concerned in any stipulation regarding payment of insurance, either by himself or by the seller. When the contract is taken as a whole, the stipulation for insurance is controlling and significant of the intention of the parties, otherwise it would be entirely meaningless. The only intention with which this stipulation can be reconciled is that the title should pass on delivery to the carrier. By Section 18 of the Sales Act, title passes at such time as the parties to the contract intend. Thus it is held that the act does not change the common law on this point. This decision has been followed in a recent New York case. Smith Company, Limited v. Moscahlades, 183 N. Y. S. 50. (1920).