RECENT CASES.

ALIENS—CITIZENSHIP—MEMBERSHIP IN THE I. W. W. AS A BAR TO NATURALIZATION.—In the examination of an alien who was seeking citizenship by naturalization, the petitioner testified that he was a member of, and believed in the doctrines and practices of, the Industrial Workers of the World. When asked if he would support the Constitution of the United States if it should be found to be in conflict with such organization, he answered that he believed in the Constitution of the United States and likewise in the order, that he was not aware of any conflict as he understood it, but he refused to say that he would, under any and all circumstances, support the laws and Constitution of the United States. *Held:* Petition denied. *In the Matter of the Petition of Gust Olsen,* U. S. D. C., W. Dist. Wash., March 17, 1925.

In the Naturalization Act (34 STAT. AT L. 596), it is provided that the petitioner shall declare on oath in open court that he will support and defend the Constitution and laws of the United States against all enemies, foreign and domestic, and bear true faith and allegiance to the same (sec. 4, subsec. 3). Sec. 7 provides further that no person who disbelieves in or who is opposed to organized government or who is a member of, or affiliated with, any organization entertaining and teaching such belief in, or opposition to, organized government, shall be naturalized or be made a citizen of the United States. In the present case the Court, if it had so chosen could have rested its decision on the narrow ground that the petitioner refused to declare his true faith and allegiance to the Constitution of the United States. The decision is, however, based on the reason that the I. W. W. is an order opposed to organized government and that a firm believer in its doctrines and practices could not conscientiously support the Constitution of the United States. It has been held that failure to disclose membership in the I. W. W. at the time of application for citizenship was sufficient fraud to warrant the annulment of the certificate of naturalization. *U. S. v. Swelgin,* 254 Fed. 884 (D. C., 1918). It is unquestionably true that the organization is opposed to capital and to the wage system. The preamble of its official membership book recites that between the working class and the employing class a struggle must go on until the workers of the world unite as a class, take possession of the earth and the machinery of production, and abolish the wage system. It does not confine itself to legitimate methods of obtaining those results, but "as a revolutionary organization, the Industrial Workers of the World aims to use any and all tactics that will get the results sought with the least expenditure of time and energy." VINCENT ST. JOHN, THE I. W. W., ITS HISTORY, STRUCTURE AND METHOD. Its teachings and practices are not such as tend to the domestic peace and tranquillity for which the Constitution of the United States stands.

Aliens are not granted citizenship as a privilege which they may demand, but as an act of grace by the government, which may fix such conditions as it sees fit. *In re Sigelman,* 268 Fed. 217 (D. C., 1920). The burden is on the petitioner to prove that he has complied with all the requirements of the Naturalization Act. *In re Vasicek,* 271 Fed. 326 (D. C., 1921). In the present case the petitioner having failed to convince the Court that he does not belong to any organization opposed to organized government must fail in his petition.

BILLS AND NOTES—CONSIDERATION—MORAL OBLIGATION—RENEWAL OF NOTE VOID FOR ALTERATION.—The defendant purchased an automobile from the plaintiff and agreed to give a note at four months with six per cent. interest from date. The note he executed was on a printed form which provided for eight per cent. interest from maturity. The plaintiff without the knowledge or consent of the defendant, altered it to conform to the original contract. The defendant did not see the altered note until he had signed the renewal note, when it was returned to and kept by him until the suit on the renewal note was brought. *Held* (two dissenting): Plaintiff could recover, since there was sufficient evidence of legal and moral consideration to support the finding of the trial court that the note was a binding instrument. *Born v. Lafayette Auto Co.*, 145 N. E. 833 (Ind., 1924), superseding 139 N. E. 364, which gave judgment for the defendant.

A note which has been materially altered without the assent of all parties is void as to the non-assenting parties. An alteration which changes the sum payable as to either principal or interest is material. N. I. L., secs. 124, 125. The original note was therefore void. An agreement to renew a void note is void. *Campbell v. Sloan*, 62 Pa. 481 (1869); *Wheelock v. Berkeley*, 138 Ill. 153, 27 N. E. 942 (1891). But where a note taken in lieu of another is founded on a valuable consideration independent of that on which the original was founded, a failure of the original consideration is no defense in an action on the latter note. *Muirhead v. Kirkpatrick*, 21 Pa. 237 (1853). Moreover, although a note is void because of a material alteration, in the absence of fraud the original debt is not destroyed. *Keene v. Wecks*, 19 R. I. 309, 33 Atl. 446 (1895); *Edington v. McLeod*, 87 Kans. 426, 124 Pac. 163 (1912).

If, in the instant case, it had been possible to say that the note was given, not as a renewal of the prior note, but in consideration of the former debt, plaintiff should recover. N. I. L., sec. 25. If he had sued on the original debt he should also be allowed to recover. *Edington v. McLeod, supra.* As neither party raised these points the note must be treated as being given solely in renewal of the void note.

The court cites several cases in support of the proposition that a note given in consideration of a moral obligation is a good note. Certain types of moral obligation are sufficient consideration for a common law contract. *Carey v. Hess*, 112 Ind. 398, 14 N. E. 235 (1887); *Heady v. Boden*, 4 Ind. App. 475, 30 N. E. 1119 (1892). Notes founded on such a consideration should be upheld. N. I. L., sec. 25; *Eastwood v. Kenyon*, 11 Ad. & E. 438 (1840); *Gidding v. Giddings*, 51 Vt. 227 (1878). If the note sued on in the present case had been given after the running of the statute of limitations in consideration of the original debt, it would come under this rule. But it was given about nine months after the creation of the debt by the purchase of the automobile and suit was begun in the space of a few months thereafter. It is impossible to ascertain from the facts of the case or from the previous reports whether or not the statute had run while the appeal was pending but the defendant's strenuous prosecution of the appeal hardly lends color to the inference that he renewed his promise after the running of the statute. The note was given for what plaintiff and defendant both supposed was a binding

legal obligation, and not for an obligation which would not otherwise be legally enforceable.

The court seems to have felt that the plaintiff ought to recover, and so found consideration for the note. The view of the dissenting justices, however, is preferable both from the point of view of logic and of stability in the law of negotiable instruments.

CARRIERS—FREIGHT CHARGES—LIABILITY OF CONSIGNEE.—The defendant bought specific steel beams, but others were sent in their stead under a uniform bill of lading which stipulated that "the owner or consignee shall pay the freight and all other lawful charges accruing on said property and if required shall pay the same before delivery." The defendant refused to accept the beams because they were not the goods he ordered. The plaintiff, a common carrier, sold them for freight and demurrage charges and sued the defendant for the deficit. *Held:* The plaintiff cannot recover. *Phila. and Reading Ry. Co. v. International Motor Co.*, Superior Court of Pennsylvania, Feb. 27, 1925.

Such a stipulation in the bill of lading does not relieve the consignor of his obligation to pay the freight, when the carrier delivers to the consignee without collecting the charges. It is considered to be provided entirely for the carrier's benefit, as a recognition of his right to payment before delivery. But when the consignee accepts delivery under such a bill of lading, he also becomes liable for the freight charges. A contract to pay is implied from the fact that he accepted under a bill of lading containing this stipulation, when he knew that the carrier waived his lien on the expectation that the consignee would pay the freight charges. *N. Y. Central R. R. Co. v. Warren Ross Co.*, 234 N. Y. 261, 137 N. E. 324 (1922); *Pa. R. R. Co. v. Whitney*, 73 Pa. Super. 588 (1920); *Pa. R. R. Co. v. Townsend*, 90 N. J. L. 75, 100 Atl. 855 (1917); *Union Pac. R. Co. v. American S. & R. Co.*, 202 Fed. 720 (C. C. A., 1912).

Clearly, under these principles the instant case is correctly decided, since the defendant refused to accept the goods. But it would seem to conflict with the doctrine of *Pa. R. R. Co. v. Descalzi*, 59 Pa. Super. 614 (1915), in which it was held that a consignee who refused to receive a shipment, on the ground that the goods were not of the kind or grade ordered, would nevertheless be liable to the carrier for the freight. In that case melons of lower grade were sent, but the court held that this was no defense; that melons were ordered and melons were sent, and that such a defense would be available only if the article sent were entirely different from that ordered. This rule, also recognized in *P. & R. Ry. Co. v. Parry*, 66 Pa. Super. 49 (1917), seems entirely anomalous. It is tantamount to holding that the consignee must take the goods, although it cannot even be said that title ever passed to him, and then adjust his differences with his vendor. There is no practical advantage in such a proceeding and it clearly is in conflict with legal reasoning. This curious doctrine could have been applied to the facts of the instant case, for steel beams were bought and steel beams were sent. The court, however, distinguished the *Descalzi Case, supra*, on facts on which the court in that case did

not rely at all. It would seem, therefore, that the Superior Court has recognized the rule of the *Descalzi Case, supra,* to be unsound, but is not prepared expressly to overrule it.

CHATTEL MORTGAGE—CONSTRUCTIVE NOTICE—UNPLANTED CROPS.—One Keller, being indebted to the plaintiff, executed a chattel mortgage on certain horses and mules, the instrument containing an agreement by Keller to give the plaintiff a mortgage on crops to be planted during that season. This chattel mortgage was duly recorded. Keller then executed a mortgage on the crops to the defendant. The crops were sold and by consent of the parties the proceeds paid into court. The defendant had no actual notice of the recorded agreement by Keller. *Held:* The defendant did not take with notice either constructive or actual of the first agreement to mortgage. *American State Bank of Scottsbluff v. Keller, et al.,* 200 N. W. 999 (Neb., 1924).

There seems to be little doubt that in laying down the principle that a mortgage on unplanted crops is void at law the court is in agreement with the weight of authority. *Cusseta Bank v. Ellaville Guano Co.,* 143 Ga. 312, 85 S. E. 119 (1915); *Cheatham v. Kelley,* 170 Ky. 429, 186 S. W. 128; *Kelley v. Goodwin,* 95 Me. 538, 50 Atl. 711 (1901). Some states say that although void at law, a mortgage on crops the seed of which has not yet been planted will give the mortgagee a lien on the crop upon its coming into existence, which a court of equity will enforce as against persons other than *bona fide* purchasers for value without notice. *Hurst v. Bell,* 72 Ala. 336 (1882); *Apperson v. Moore,* 30 Ark. 56 (1875); *Richardson v. Washington,* 88 Tex. 339, 31 S. W. 614 (1895). In some states, however, a mortgage on unplanted crop is upheld either by statute; *Grand Forks National Bank v. Minnesota Electric Co.,* 6 N. D. 357, 43 N. W. 806 (1889); *Senter v. Mitchell,* 16 Fed. 206 (C. C., 1883); or on the ground that the crop has a potential existence which gives validity to the mortgage. *Briggs v. United States,* 143 U. S. 346 (1891); *Wilkerson v. Thorp,* 128 Cal. 221, 60 Pac. 679 (1900); *Dickey v. Waldo,* 97 Mich. 255, 56 N. W. 608 (1893).

The court in the instant case ignores the distinction sometimes made between goods not in existence and goods having a potential existence. In the former case, a mortgage is undoubtedly void. *Deeley v. Dwight,* 132 N. Y. 59, 30 N. E. 258 (1892); *Griffith v. Douglass,* 73 Me. 532 (1882); *France v. Thomas,* 86 Mo. 80 (1885). The decision in the principal case, however, may be justified on two grounds: first, that it is in accord with the law of Nebraska as laid down in *Cole v. Kerr,* 19 Neb. 553, 26 N. W. 598 (1886), but see *Sporer v. McDermott,* 69 Neb. 533, 96 N. W. 232 (1903), an action in equity; secondly, which is the stronger argument, that the agreement to give the mortgage on the unplanted crops was part of a mortgage of other unrelated chattels and would therefore not be constructive notice on the principle that even when an instrument is properly recorded it gives notice of its general character and main purpose, and also of all facts properly connected with the transaction recorded; 23 R. C. L. 216, sec. 79; but not of facts recited therein which are not connected with the transaction from which the authority to record is derived. *Mueller v. Engeln,* 75 Ky. 441 (1876).

CONSTITUTIONAL LAW—FOURTEENTH AMENDMENT—UNREASONABLE CLASSIFICATION.—By the Act of June 14, 1923, P. L. 802, the Legislature of Pennsylvania prohibited the use of "shoddy" in the making or renovating of mattresses, pillows, bolsters, feather beds, comfortables, cushions, or articles of upholstered furniture; but allowed second-hand materials to be used, if properly sterilized. Plaintiff, a manufacturer of comfortables, sought to enjoin the enforcement of the act, alleging that it was a violation of the Fourteenth Amendment to the Constitution of the United States. It was agreed that shoddy can be rendered harmless by sterilization. *Held:* This prohibition of the use of shoddy was unconstitutional. *Palmer Bros. Co. v. Weaver, Chief of Bureau of Inspection, etc., of Com. of Pa.*, U. S. District Court of Pa., Western District, March 9, 1925.

The decision was placed squarely on the ground that the regulation was unreasonable, since it was admitted that shoddy could be rendered harmless by sterilization. The court also found that the classification was improper, as discriminating against manufacturers of stuffed articles and in favor of manufacturers of woven materials such as blankets and clothing materials. It is not a deprivation of the equal protection of the laws to make classifications in the effort to regulate under the police power, but such classification must have a real and not an arbitrary basis, and the regulation must be reasonable. Had there been any doubt that shoddy could be made harmless, the judgment of the legislature would have prevailed. WILLOUGHBY, CONSTITUTIONAL LAW, sec. 480, *et seq.* See also *Barbier v. Connolly*, 113 U. S. 27 (1885); *Price v. Illinois*, 238 U. S. 446 (1915). Twenty-seven states have legislated on the subject of bedding, and some of them have prohibited entirely the use of shoddy, but the constitutionality of this absolute prohibition has not come up before, so that very probably this case will go to the Supreme Court for final determination. On principle, the decision seems sound. The prohibition of the use of shoddy seems to be based not on any valid reason but on a prevailing hostility to shoddy as such. Any valid objection to shoddy applies equally well to second-hand material; but as both can be rendered harmless, and as in fact shoddy is merely a prepared form of second-hand material, any prohibition or regulation of one without the other is clearly discriminatory.

CONTRACTS—RESTRICTIVE COVENANTS—ENFORCEABILITY BY ASSIGNEE.—The A Co. granted radio patent rights to the B Co., reserving certain rights of manufacture and sale for amateur use. These rights were restricted by a covenant that the A Co. would sell no apparatus except upon written agreement of the purchaser not to use the apparatus in commercial radio, and not to transfer the apparatus to another. This was intended to protect the B Co. in the commercial field. The rights passed from the B Co. through the C Co. and D Co. to the E. Co., operating in the amateur field. The E Co. seeks specific performance of the covenant against the A Co. From a decree granting an injunction the defendant appeals. *Held:* Injunction refused. *The Radio Corporation of America v. De Forest Radio Telephone and Telegraph Co.*, 127 Atl. 678 (N. J. Ch., 1925).

Putting aside the question of restraint of trade, it would be interesting to learn whether the benefit of such a restrictive covenant runs, in equity, with such a license. It has been held that the burden of a restrictive agreement will run with a chattel. *Murphy v. Christian Press Asso. Pub. Co.*, 38 App. Div. 426, 56 N. Y. Supp. 597 (1899); *N. Y. Bank-Note Co. v. Hamilton Bank-Note Engraving & Printing Co.*, 83 Hun. 593, 31 N. Y. Supp. 1060 (1895); see 17 HARV. L. REV. 415. But the weight of authority seems opposed. *Taddy v. Sterious*, [1904] 1 Ch. Div. 354; *McGruther v. Pitcher*, [1904] 2 Ch. Div. 306; *Dr. Miles Medical Co. v. John D. Park & Sons Co.*, 220 U. S. 373 (1911); *Boston Store v. American Gramophone Co.*, 246 U. S. 8 (1918); see 25 HARV. L. REV. 63. In most of the chattel cases there was no definite property for the benefit of which the restriction was imposed. Here, however, we have the restriction of one portion of the patent right for the benefit of another, so that the analogy to dependent parcels of real estate seems very close.

However, the court assumed the plaintiff's right to sue, and found no violation of the covenant which it would enjoin. The restriction was intended to protect the obligee's rights in the commercial field; enforcement is now sought to protect these rights in the amateur field. This situation also finds a close analogy in the law of covenants restrictive upon land, so-called equitable servitudes. Just as the enforcement of the servitude depends on the possibility of carrying out the original purpose; *Trustees of Columbia College v. Thacher*, 87 N. Y. 311 (1882); 31 HARV. L. REV., 876, 879; so here the enforcement of the restrictive covenant fails, on the failure of the original purpose.

INHERITANCE TAX—EQUITABLE CONVERSION OF LAND OUTSIDE THE STATE.—The executors of the deceased who was domiciled in South Carolina appealed from the assessment of an inheritance tax in South Carolina upon real estate in Pennsylvania devised to the executors in trust to sell and distribute part of the proceeds to a charitable corporation in Pennsylvania; the appeal was from the assessment on the share going to the Pennsylvania corporation. *Held:* An equitable conversion being worked by the direction in the will to sell, by the law of Pennsylvania the realty became personalty and taxable by South Carolina under the principle of *mobilia sequuntur personam. Land Title & Trust Co. v. South Carolina Tax Commission*, 126 S. E. 189 (S. C., 1925).

The authorities all state that land situated in another state is not subject to an inheritance tax; *Marr's Estate*, 240 Pa. 38, 87 Atl. 291 (1913); *People v. Kellogg*, 268 Ill. 489 (1915); GLEASON AND OTIS, INHERITANCE TAXATION, (3d ed.) 300; although the cases on which these statements are based are not strongly in point. See *Connell v. Crosby*, 210 Ill. 380, 71 N. E. 350 (1904); *Attorney General v. Barney*, 211 Mass. 134, 97 N. E. 750 (1912); *In Re Estate of Swift*, 137 N. Y. 77, 32 N. E. 1096 (1893); *Gallup's Appeal*, 76 Conn. 617, 57 Atl. 699 (1904). In these cases either the taxing statute does not include such land or the decision is not well considered. Yet the rule is considered to be well settled.

As in the principal case, the value of such land has been included in assessing the tax when the doctrine of equitable conversion could be applied, in the courts of Pennsylvania and Iowa. *Miller v. Commonwealth*, 111 Pa. 321, 2 Atl. 492 (1885); *Williamson's Estate*, 153 Pa. 508, 26 Atl. 246 (1893); *In Re Sanford's Estate*, 188 Iowa 833, 175 N. W. 506 (1920). The application of the doctrine for purposes of taxing land outside the state is limited to cases where the will directs that the proceeds of the sale be used for general purposes of administration or of the residuary estate, a so-called "out and out" conversion, and not where they are to go as specific legacies. See *Marr's Estate, supra*, following the analysis in a note by Howard W. Page, in 32 AM. L. REG. 474. Also the direction must be positive, or it must be absolutely necessary to sell immediately, and not left to the discretion of trustees; *Re Chamberlain*, 257 Pa. 113, 101 Atl. 314 (1917); nor to be sold in the future at the end of a period of time or after an intervening estate. *Marr's Estate supra*, Ann. Cas. 1915A 167 with note; *Handley's Estate*, 181 Pa. 339, 37 Atl. 587 (1897).

English cases cited to uphold the view adopted in the principal case are not in point. It was held that a conversion would not operate to subject land to a legacy tax; *Cunstance v. Bradshaw*, 4 Hare 315, 67 E. R. 669 (1845); and though later cases, distinguishing that case, permitted it so to operate, the land was converted because it was part of partnership assets before death and not by direction to sell after death. *Forbes v. Stevens*, L. R., 10 Eq. 178 (1870); *Stokes v. Ducroz*, 62 L. T. R. (N. S.) 176 (1890). It was said, however, that a legatee cannot "with the same breath say, effectually—'Give me the money because it is residuary personal estate,' and declare that it is not taxable because it is not residuary personal estate." The same reason underlies the Pennsylvania view; if for purposes of administration the land has become personalty, no matter by what doctrine, it will be taxed as such by the State.

All other states where the question has arisen, refuse to apply the doctrine. *In Re Estate of Swift, supra; Connell v. Crosby, supra; McCurdy v. McCurdy*, 197 Mass. 248, 82 N. E. 881 (1907). It is said that an equitable fiction should not be used to obtain over land in another state a taxing jurisdiction not otherwise had.

Since the law of the actual *situs* governs the status and transfer of land, the equitable conversion must operate by the law of the *situs* in order that the state of deceased's domicile may tax as personalty. *Clarke v. Clarke*, 178 U. S. 186 (1899).

"The doctrine of equitable conversion . . . has been adopted solely for the purpose of executing trusts." *Condit v. Bigalow*, 64 N. J. Eq. 504, 54 Atl. 160 (1903). It is based on the rule that equity regards as done those things which ought to be done, but they will be so regarded "only in favor of those who have a right to pray that they might be done." STORY, EQUITY JURISPRUDENCE, (4th ed.) sec. 792. A legatee, but not the state, is such a one, and the state should not strictly, use the doctrine for taxing purposes. It is a matter of opinion, whether today the rule should be stretched to permit it to do so. The reason for the Pennsylvania view seems to warrant it, if no regard be

had to other factors. But it is submitted that it is not warranted, because it permits taxation by the state of domicile, by use of a fiction, of property taxable in the state of its actual *situs* by better established principles; the rule, *mobilia sequuntur personam*, whereby as personalty it is taxable in the state of domicile, though too well established to be upset, is frowned upon when it leads to taxation of the same property in two states. *Blackstone v. Miller*, 188 U. S. 189 (1903). The tendency today is to avoid that result, if possible, rather than to find new means of attaining it, as was done in the principal case.

INTERSTATE COMMERCE—BRIDGES—POWERS OF STATE TO REGULATE.—The Burkburnett Bridge Co. owned and operated a bridge across the Red River and across the state line, between Oklahoma and Texas, all the traffic over which was interstate. A complaint was filed with the Corporation Commission of the State of Oklahoma setting forth that the rates charged by the Bridge Company were excessive, and praying that the Commission fix a scale of rates. The plaintiff filed a plea to the jurisdiction of the Commission. The Commission overruled the plea and plaintiff appeals. *Held:* The Commission of the State of Oklahoma has no power to fix rates for the use of the bridge. [The decision was based on *Covington Bridge Co. v. Kentucky*, 154 U. S. 204 (1894), which was quoted at length, including the sentence: "We do not wish to be understood as saying that in the absence of congressional legislation or mutual legislation of the two states, the company has the right to fix tolls at its own discretion."] *Burkburnett Bridge Co. v. Cobb, et al.*, 233 Pac. 963 (Okla., 1925).

A state has no power to regulate rates on interstate ferries connected with railroads engaged in interstate commerce, because Congress has legislated on the subject; *N. Y. C., etc., R. R. v. Freeholders*, 227 U. S. 248 (1913); but since Congress has not legislated on the subject, a state has power to regulate rates on interstate ferries unconnected with railroads engaged in interstate commerce. *Port Richmond Ferry v. Freeholders*, 234 U. S. 317 (1914). Bridges are classed with ferries. *Covington Bridge Co. v. Kentucky, supra; Port Richmond Ferry v. Freeholders, supra.*

Covington Bridge Co. v. Kentucky, supra, denies only the power of a state to regulate rates on interstate bridges on persons coming into the state; cf. *Port Richmond Ferry v. Freeholders, supra.* Therefore, it is submitted, a state has power to regulate tolls on an interstate bridge on persons leaving the state, in the absence of legislation on the subject by Congress. The report of the principal case does not state if the tolls sought to be regulated were those on persons coming from Texas into Oklahoma, as well as on persons going from Oklahoma into Texas. If they were, the principal case is correct. If the tolls sought to be regulated were only those on persons leaving Oklahoma, it is submitted that the principal case does not come within the authority of *Covington Bridge Co. v. Kentucky, supra*, and is incorrect.

SALES—CONDITIONAL SALES—PASSAGE OF TITLE—RISK OF LOSS.—A harvester was sold on a contract of conditional sale stipulating payment of $100 on execution of the contract, $500 on delivery of possession, and the residue

in two deferred annual payments. Notes were to be executed for the deferred payments, secured by a first mortgage on the harvester, and the vendee was to pay all taxes and to insure against loss, naming the vendor as beneficiary in the policy. The title was expressly reserved in the vendor until payment in full. The machine was delivered and used for two or three days when it was totally destroyed by fire without fault. The vendor sued on the contract for the deferred payments. *Held* (three dissenting): The consideration in the contract had failed and the vendor could not recover. *Holt Mfg. Co. v. Jaussaud*, 233 Pac. 35 (Wash., 1925).

The majority view, contra to the instant decision, holds that any loss or gain during the installment period is borne by, or accrues to, the purchaser. The consideration for the buyer's promise to pay is his possession of the goods and his right to acquire absolute title upon payment in full. Upon delivery of possession, the seller has completely performed his part of the contract. The legal title is retained only as security for the purchase price and the buyer is said to have a qualified property in the chattel, somewhat analagous to that of a mortgagor of personalty. *Burnley v. Tufts*, 66 Miss. 48, 5 So. 627 (1888); *American Soda Fountain Co. v. Vaughn*, 69 N. J. L. 582, 55 Atl. 54 (1904); WILLISTON, SALES, (2d ed.) 304. This view is incorporated into the Uniform Sales Act, section 22 (a). *O'Neil Adams Co. v. Ecklund*, 89 Conn. 232, 93 Atl. 524 (1915). The minority view, exemplified in the instant case, refuses to recognize any division of the interest in the chattel, as in the case of a mortgage, but considers the entire property in the chattel to remain in the vendor. But since the seller's right in the chattel, under the contract, is solely to secure the payment of the purchase price, the logic of the question would seem to be with the majority.

STATUTE OF FRAUDS—PART PERFORMANCE BY LESSOR UNDER ORAL CONTRACT.—The defendant entered into an oral contract with the plaintiff to take a twenty-year lease of a flat, certain alterations to be made by the plaintiff. During the progress of the alterations, the defendant frequently visited the flat and made suggestions for further alterations, which were carried out by the plaintiff at her request. Defendant later repudiated the contract. In an action for specific performance, the defendant relied on the Statute of Frauds. *Held:* The extensive alterations made by the plaintiff at the request of the defendant were sufficient part performance to take the contract out of the Statute of Frauds, and plaintiff was entitled to specific performance of the contract. *Rawlinson v. Ames*, [1925] 1 Ch. 96.

The principle, that part performance of an oral contract pertaining to land will, in equity, take the contract out of the Statute of Frauds, is accepted law in England and in the vast majority of American jurisdictions. 4 POMEROY EQUITY JURISDICTION, sec. 1409. Four American jurisdictions, Kentucky, Mississippi, North Carolina, and Tennessee, reject the doctrine as a clear violation of the express terms of the Statute of Frauds. 5 POMEROY EQUITY JURISDICTION, sec. 2245, and cases cited. The majority, however, uphold the principle on the ground that here there is at least equitable fraud and that it is unjust that the Statute of Frauds should be used to protect fraud. In

applying the principle, the courts insist on four prerequisites: (1) the acts of part performance must be such as not only to be referable to a contract such as alleged but to be referable to no other title; (2) they must be such as to render it a fraud in the defendant to take advantage of the contract not being in writing; (3) the contract to which they refer must be such as in its own nature is enforceable by the court; and (4) there must be proper parol evidence of the contract which is let in by the part performance. FRY, SPECIFIC PERFORMANCE, (6th ed.) 276.

The present case, unusual in that it is the lessor who has made the alterations and who is seeking specific performance, seems to meet these prerequisites. As to the third and fourth there can be no doubt. As to the first, it appears that the alterations were unusual and were not such as the plaintiff would have made except for the expected lease. Had they been such as would have added value to the property, they could hardly be said to have been referable to the contract alone, since the plaintiff would have actually received a benefit, and it could be well argued that he might have made them if there had been no expectancy of a lease. It is worthy of note that most of the cases in which the lessee is suing require not only alterations by the lessee but also an exchange of possession. *Morrison v. Herrick*, 130 Ill. 631, 22 N. E. 537 (1889); *Harrell v. Sonnabend*, 191 Mass. 310, 77 N. E. 764 (1906); *Parry v. Miller*, 247 Pa. 45, 93 Atl. 30 (1915). In the present case change of possession would be unlikely to occur, because the alterations were to be completed before the lease was to be made, and the lessee who contemplated repudiation of the oral contract would not go into possession. But possibly the strongest feature of this case is that it would be a fraud on the plaintiff to allow the defendant to take advantage of the contract being oral. Plaintiff had made extensive alterations; some of these affected the marketability of the flat. There was no adequate measure of damages; the defendant had acted in bad faith. There is, then, a very strong incentive to apply the doctrine to this case. The case is probably correctly decided on its facts, although an extension of a doctrine in itself an anomaly.

WILLS ACT—AFTER-BORN CHILD—ILLEGITIMATE CHILD.—The Pennsylvania Wills Act of 1917, P. L. 403, sec. 21, provides: "When any person, male or female, shall make a last will and testament, and afterward . . . shall have a child or children not provided for in such will . . . although . . . born after the death of their father," every such person shall be deemed to die intestate so far as regards such child or children. A single woman during pregnancy made a will devising all her property to B, absolutely, by the terms of the will, but in fact upon a secret parol trust. The terms of the trust made provision for the after-born child but were not communicated to the trustee, B, until after the death of the testatrix. *Held:* The act includes an illegitimate child so far as regards its mother's will and there is an intestacy as to such child unless expressly provided for in the will. And a secret parol trust, whether valid or invalid, is not such express provision. *Patterson's Estate*, 282 Pa. 396 (1925).

By the common law, "children" means only legitimate children, but a bastard may take under a will as one of the children if the intention of the testator to include can fairly be gathered from the context and operation of the will. SCHOULER, WILLS, (6th ed.) 981. Similarly, when used in legislation, the interpretation should be governed by the intention of the legislators, as found in the context of the same statute or in related statutes. A Massachusetts statute merely granting the right of inheritance from the mother in case of intestacy was held to make a bastard only an "heir" and not a "child" of the mother within the meaning of another statute. *Kent v. Barker*, 68 Mass. 535 (1854). But the Pennsylvania Legislature has granted not only the right of inheritance; Intestate Act of 1917, P. L. 429, sec. 15; but has specifically repudiated the common law doctrine of *filius nullius* as regards the mother and her illegitimate offspring, and has established the legal relation of parent and child; Act of 1901, P. L. 639, sec. 1. It would seem therefore that a bastard is fairly included in the above section and that the court rightly held the clause "although born after the death of their father" to refer only to the particular case of a legitimate posthumous child as regards its father.

But in construing the clause "not provided for in the will" to refer only to express provision in terms, in the will itself, the decision seems to be unnecessarily narrow. A devise in a will upon a secret parol trust, the terms of which are communicated to the trustee, by the weight of authority creates a valid and binding trust which may be enforced by the *cestui que trust*. See 37 HARV. L. REV. 655. While in the instant case the parol trust is unenforceable, yet under this decision a case could arise in which a child might take its share under the Intestate Act and also, if not the sole heir, compel the execution of a secret parol trust in its favor as to the residue.