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ADVERSE POSSESSION—CLAIM OF RIGHT—GOOD FAITH.—The plaintiff had been in possession of the land in question for more than thirty years under a claim of right, but in 1899, before the statutory period of ten years had run, a judgment was rendered against him in an action to quiet title. The record title to the land later passed to the defendant, but the plaintiff continued in open and hostile possession for another eighteen years. The plaintiff sought to quiet title in himself and to restrain the defendant from entering the premises. *Held,* that such relief should be refused, because the plaintiff's possession subsequent to the judgment of 1899 lacked such good faith in his claim of right as would enable him to assert title through adverse possession. *Bryan v. Christianson* (1920, Iowa) 176 N. W. 702.

It is generally held that the adverse possession which is requisite to establish title and to bar the rights of the ousted owner must be actual (as to part of the land), hostile, visible, notorious and exclusive, continuous for the statutory period, and under claim or color of title. See Ballantine, *Claim of Title in Adverse Possession* (1919) 28 YALE LAW JOURNAL, 219. The question whether good faith is an essential element of adverse possession is the subject of considerable conflict. It has been said that the conflict, not only between different jurisdictions but within the same jurisdiction, defies reconciliation. See *Lampman v. Van Alstyne* (1896) 94 Wis. 417, 426, 69 N. W. 171, 174. It would seem, however, that the trend of decisions since that day has been largely in one direction. The early view that the statute of limitations operated by a presumed acquiescence on the part of the ousted owner favored the growth of the requirement of good faith, since bad faith on the part of the possessor obviously rebutted the presumption. *Cf. Louisville & N. R. R. v. Smith* (1907) 125 Ky. 336, 101 S. W. 317. The prevalent, and seemingly more accurate, view is that the statute is one "of repose." *Lampman v. Van Alstyne, supra; McAllister v. Hartzel* (1899) 60 Oh. St. 69, 53 N. E. 715. Its object is not to aid the guilty disseisor, but to penalize the negligence of the owner in not bringing his action within the prescribed period. See COMMENT (1919) 29 YALE LAW JOURNAL, 91, 95. The statute being based on the lapse of time, its very nature is to mature "a wrong into a right" by cutting off the remedy. *Humbert v. Trinity Church* (1840, N. Y. Sup. Ct.) 24 Wend. 587. To hold that good faith is necessary to make possession adverse is simply to magnify the state of mind of the party and to dwarf his acts. *Cf. McAllister v. Hartzel, supra.* Much confusion has arisen from the failure to distinguish between good faith as one of the *evidential* facts determining whether or not the possession was really hostile, and good faith as an *operative* fact in creating "adverse possession." *Cf. Johns v. Johns* (1914) 244 Pa. 48, 90 Atl. 535; see *Roe v. Doe ex dem. Tennessee Coal, Iron & Ry. Co.* (1909) 162 Ala. 151, 158, 50 So. 230, 232. A few jurisdictions in that minority group which still regards color of title, i. e. some instrument purporting to convey the property, as an essential element in adverse possession, hold that good faith is also necessary. *Stone v. Kansas City & W. B. Ry.* (1914) 261 Mo. 61, 169 S. W. 88; *West v. Middlesex Banking Co.* (1914) 33 S. D. 465, 146 N. W. 598. Constructive adverse possession under color of title almost always requires it. The great weight of authority, however, would seem to be against the necessity of good faith as to land actually occupied, even under color of title. 15 L. R. A. (N. S.) 1233, note. There is no decision of recent years which holds squarely with the principal case that good faith is necessary to a claim of right. It would seem that the Iowa courts, while they are consistent with their own historic rule

as frequently laid down, are opposed to the weight of modern authority, and by thus preventing a trespasser from relying on the statute of limitations are destroying an important effect of the statute.

BILLS AND NOTES—AGREEMENT TO RENEW.—The plaintiff orally agreed with the defendant's agent some time before the defendant's note came due to renew it at maturity for four months, upon payment of interest then due and $250. Prior to the maturity of the note the defendant's agent tendered the new note, the interest, and $250, which the plaintiff refused. He then brought an action on the original note. The defendant pleaded that the action was prematurely brought as the period had not expired for which the note sued upon was to be renewed. *Held,* that the plaintiff should recover, with a *dictum* that the defendant might have redress in another action on the breach of contract to renew. *West v. Jones* (1919, Del.) 108 Atl. 675.

The decision is in accord with the general (though inadequate) rule that though a contract to forbear for a definite time to sue upon a contract is itself a valid contract, if supported by a consideration, the contract to forbear cannot be pleaded in bar to an action brought on the original contract, although the time of forbearance has not elapsed. *Bridge v. Tierman* (1865) 36 Mo. 439; *Brown v. Shelby* (1891) 4 Ind. App. 477, 31 N. E. 89; see Daniel, *Negotiable Instruments* (6th ed. 1913) secs. 158, 159. The cases agree with the principal case in following the doctrine of *Ford v. Beech* (1847) 11 Q. B. 852. But in that case the agreement to renew was made after maturity, whereas in the principal case it was made prior to maturity. For the effect of the parol evidence rule where the agreement is contemporaneous with the note, see (1919) 28 YALE LAW JOURNAL, 823. It is conceivable that the breach of such an agreement might cause irreparable damage, as where the maker of the note, relying on the agreement, might not make arrangements to meet it, and become financially embarrassed. Where the legal remedy is inadequate, executory accords have been enforced in equity, if tender has been made. See (1920) 29 *ibid.,* 114. It has been suggested that an accord like the one in the principal case might be sustained as an equitable defence, giving to the defendant an irrevocable power to extinguish his former duty by tender. See Corbin, *Discharge of Contracts* (1913) 22 YALE LAW JOURNAL, 513, 529; see Wald, *Pollock on Contracts* (Williston's ed. 1906) 833; *cf. Innes v. Munro* (1847) 1 Exch. 473. Nevertheless there seems to be no case which so holds. Such an agreement does operate, however, to release a surety on the original note. *Bank v. Woodward* (1829) 5 N. H. 99; *Windhorst v. Bergendahl* (1907) 21 S. D. 218, 111 N. W. 544. This would tend to indicate that the payee's right arising from the note should be suspended until the time agreed upon had expired. It seems clear that to allow the equitable defence would avoid circuity of action.

CARRIERS—TORTS OF SERVANTS—CONTRACTUAL DUTY TO CARRY SAFELY.—The plaintiffs employed the defendant, a private carrier, to convey their goods, which the defendant's driver stole. The defendant had not been guilty of any negligence in selecting the driver. *Held,* that the plaintiff should not recover, because the defendant had not held out the driver as one having authority to do the act which caused the loss. *Mintz v. Silverton* (1920, K. B.) 36 Times L. R. 399.

Manifestly in the instant case in tortiously converting the goods, the driver of the defendant was not acting within the scope of his employment, and the maxim *respondeat superior* does not apply. *Cf. Cheshire v. Bailey* (1904, C. A.) 21 Times L. R. 130. In the United States, also, the defendant is not responsible for the driver's tort on this theory. *Cf. Vandeymark v. Corbett* (1909) 131 App. Div. 391, 115 N. Y. Supp. 911. The defendant, however, having lawfully acquired possession of the plaintiff's goods as bailee for hire, was under a duty

to exercise reasonable care to protect them. See Dobie, *Bailments and Carriers* (1914) 154, note 92. He could delegate the performance of his contractual duty of carriage to a servant; but as bailee he was still under a common-law duty to accomplish their safe carriage. See VanZile, *Bailments and Carriers* (2d ed. 1908) 111. So it would seem that American courts would hold that he was under a contractual duty to deliver the plaintiff's goods at the agreed place, the performance of which was not excused by the driver's conversion of the goods while transporting them. See *Hasbrouck v. New York Central & H. R. R.* (1911) 202 N. Y. 363, 374, 95 N. E. 808, 812. The Wisconsin court in a famous case, where the conductor of a railroad kissed an unwilling female passenger, imposed a similar duty upon the carrier to protect its passengers from the insults of its servants. *Craker v. Chicago & Northwestern Ry.* (1875) 36 Wis. 657. Commenting on this case, a learned English author said that such a decision was in effect to hold that the master warranted the moral impeccability of his servants. See Beven, *Negligence* (3d ed. 1908) vii. This clearly indicates the English viewpoint and its refusal to recognize the master's duties in this regard. The instant case is in accord with the majority of the English adjudications, but it seems that few American courts would follow it. For a discussion of a master's criminal responsibility for the acts of his servant, see (1919) 28 YALE LAW JOURNAL, 700.

CONSTITUTIONAL LAW—ADMIRALTY—STATE WORKMEN'S COMPENSATION ACTS NOT MADE APPLICABLE TO ADMIRALTY BY ACT OF OCTOBER 6, 1917.—The plaintiff, whose husband was drowned in the Hudson river on August 3, 1918, while doing work of a maritime nature, had obtained an award of compensation for herself and minor children under New York law. *Held,* that the award was invalid since the Act of Congress of Oct. 6, 1917, ch. 97, 40 Stat. L. 395, saving from the grant of admiralty jurisdiction to the federal courts by the Judiciary Act "to claimants the rights and remedies under the Workmen's Compensation Law of any State," violates the grant of admiralty jurisdiction to the federal courts by article 3, section 2 of the federal Constitution. Holmes, Pitney, Brandeis and Clarke, JJ., *dissenting. Knickerbocker Ice Co. v. Stewart* (May 17, 1920) U. S. Sup. Ct. Oct. Term 1919, No. 543.

This decision reverses (1919) 226 N. Y. 302, 123 N. E. 382 and overrules *The Steamship Howell* (1919, S. D. N. Y.) 257 Fed. 578, (1919) 28 YALE LAW JOURNAL, 835 and approves *Rhode v. Grant Smith Pater Co.* (1919, D. Ore.) 259 Fed. 304. As already indicated in the JOURNAL, the decision logically follows from *Southern Pacific Co. v. Jensen* (1917) 244 U. S. 205, 37 Sup. Ct. 524, (1917) 27 YALE LAW JOURNAL, 255, 269, 924, where by the same division of the Court as in the instant case state workmen's compensation laws were held unconstitutional when applied to maritime torts. See also (1918) 28 YALE LAW JOURNAL, 251; *cf.* (1920) 29 *ibid.*, 362. Though the Act here in question was passed to avoid the effect of that decision the objections raised by the majority could not be removed by Congress. The decision itself was not unexpected but it does accentuate the unfortunate results of the earlier decision. Justice Holmes argues that Congress has by this Act made the state laws federal, citing *Clark Distilling Co. v. Western Md. Ry.* (1917) 242 U. S. 311, 37 Sup. Ct. 180, (1917) 26 YALE LAW JOURNAL, 399, sustaining the act of Congress which prohibited the shipment of intoxicating liquor from one state into another when intended for use contrary to the latter's law. The majority answer distinguished that case on the ground that the constraint, i e., the will causing the prohibition came from Congress, and reassert the doctrine that the legislative power of Congress cannot be delegated to the states.

CONSTITUTIONAL LAW—INTERSTATE COMMERCE—STATE REGULATION OF GAS RATES.—The plaintiff company piped natural gas from its wells in Pennsylvania directly to its consumers in New York. The Public Service Commission of New York proposed to fix the gas rates to be charged the consumer. The plaintiff sued out a writ of prohibition, alleging that the attempted regulation was an interference with interstate commerce. *Held,* that the writ should be vacated, because the regulation was local and in a field which Congress had not occupied. *Pennsylvania Gas Co. v. Public Service Commission* (1920) 40 Sup. Ct. 279.

It is well settled that interstate transmission of oil or gas by pipe line is interstate commerce. *West v. Kansas Natural Gas Co.* (1911) 221 U. S. 229, 31 Sup. Ct. 564. And this is true where the pipe line owner also owns the commodity transmitted. *Pipe Line Cases* (1914) 234 U. S. 548, 34 Sup. Ct. 956. It is generally stated that a transaction remains interstate commerce while the goods remain in the "original packages." *Leisy v. Hardin* (1890) 135 U. S. 100, 10 Sup. Ct. 681 (state statute forbidding sale of liquor held invalid). The principal case held gas to be the subject of interstate commerce up to and including its sale to the consumer. But the decision was carefully distinguished from the case where an intervening local concern received the gas and itself dealt with the consumer. The gas was said to have there lost its interstate character and become wholly subject to state regulation. *Public Utilities Commission v. Landon* (1919) 249 U. S. 236, 39 Sup. Ct. 268. It is submitted that any attempt to draw an exact line where federal control ends and state control begins is generally both difficult and misleading. *Cf. Western Union v. Foster* (1918) 247 U. S. 105, 38 Sup. Ct. 438 (interstate telegrams); *cf. Hall v. Geiger-Jones Co.* (1917) 242 U. S. 539, 37 Sup. Ct. 217 (interstate commerce in stocks). Films though in their "original packages" in the hands of the consignee, have been forbidden exhibition by state censorship regulations. *Mutual Film Corporation v. Ohio Industrial Commission* (1915) 236 U. S. 230, 35 Sup Ct. 387. It is enough to say the state may regulate where Congress has not acted, if the subject does not require national uniformity. See (1920) 29 YALE LAW JOURNAL, 456. But "the federal power is paramount and continues until the commodity has ceased to be the subject of discriminating legislation by reason of its foreign character." See *Welton v. Missouri* (1876) 91 U. S. 275, 282. For an excellent discussion of the power of a state to change the rates of a public service corporation established by contract, see Burdick, *Regulating Franchise Rates* (1920) 29 YALE LAW JOURNAL, 589.

CONTRACTS—ENTIRE OR SEVERABLE—INTENT OF PARTIES.—The defendant contracted to build a sea-wall for the plaintiff city. Payment was to be made in installments estimated on the basis of each cubic yard of excavation, rip-rap and fill accepted by the city engineer each month, and a balance on completion. A stipulation placed the risk of loss of work and material on the defendant. When the structure was nearly complete, a storm seriously damaged the wall. The defendant refused to make repairs, claiming that the contract was severable and that the stipulation did not apply to work performed and accepted. The plaintiff sued to recover damages for this refusal. *Held,* that the plaintiff should recover. *City of Bridgeport v. T. A. Scott Co.* (1920, Conn.) 109 Atl. 162.

After partial performance the entirety or severability of a contract becomes a very important factor in determining the promisor's position. Has he a right to all or part of the price? Has he the privilege of retaining it after payment, when he becomes unwilling or unable to continue, or when the works are destroyed? Is he under a duty to complete performance or answer in damages for breach? In deciding any one of these issues the decisions of the courts as to entirety or severability have been the same upon similar facts. The cases

generally agree that the intention of the parties determines whether or not the contract is entire. The intention is to be gathered from the language used and the nature of the subject-matter. See *Dick v. Riddle* (1909) 139 Mo. App. 584, 589, 123 S. W. 486, 487; see *Hodson-Feenaughty Co. v. Coast Culvert and Flume Co.* (1919, Ore.) 178 Pac. 382, 388. Where the performance, left incomplete by the promisor, required further expenditure of work or materials to fit it to the purpose designed by the promisee, the contract was held entire. *School District v. Dauchy* (1857) 25 Conn. 530; *International Contracting Co. v. United States* (1911) 47 Ct. Cl. 158; see *Shinn v. Bodine* (1869) 60 Pa. 182, 185. It has been held that where the price was to be paid in a lump sum, the contract was entire. *Collins v. Frazier* (1919, Ga.) 98 S. E. 188; *Pitcairn v. Phillip-Hiss Co.* (1902, D. Pa.) 113 Fed. 492. Where the performance consists of separate and distinct items and the price is apportioned to each, the contract has usually been construed as severable. *Amsler v. Bruner* (1912) 173 Ill. App. 337; *Parkersburg & Marietta Sand Co. v. Smith* (1915) 76 W. Va. 246, 85 S. E. 516. But the fact that the price is apportioned is not conclusive. *Steere v. Formilli* (1918, Calif.) 175 Pac. 806; *Grassman v. Bonn* (1880, Ch.) 32 N. J. Eq. 43. In the instant case the express stipulation that the contractor should bear the risk of loss of work and materials, taken with the fact that the parties seem to have contemplated a complete sea-wall, justifies the holding that the contract is entire.

CONTRACTS—ILLEGALITY—OPTION CONTRACTS FOR FUTURE DELIVERY.—In consideration of $80.00 the defendant gave to the plaintiff an option on 8,000 bushels of corn for December delivery at $1.40 per bushel. On the plaintiff's election to purchase the corn, the defendant refused to deliver, claiming that it was a gaming contract and therefore illegal. The plaintiff brought an action for breach of contract for the sale and delivery of the corn. *Held*, that he should recover. *Yontz v. McVean* (1920, Mo.) 217 S. W. 1000.

Contracts in which the parties intend to wager on the future price of a commodity with the understanding that no delivery is to be made, but that there shall be a mere "settlement of differences," are illegal and unenforceable. *Raymond v. Parker* (1911) 85 Conn. 694, 81 Atl. 1030; *Lamson v. Bane* (1913, C. C. A. 8th) 206 Fed. 253. The illegality of such transactions is determined by whether or not there was an actual intent on the part of both the plaintiff and the defendant to deliver, make payment for, and receive the commodities. See *Graff v. Moench* (1913) 181 Ill. App. 127, 130; see *Rogers v. Marriott* (1900) 59 Neb. 759, 772, 82 N. W. 21, 24. Option contracts in which there is actually an intention to deliver if the option is exercised, are likewise valid. *Schmidt v. Marine Milk Condensing Co.* (1915) 197 Ill. App. 279; *Waters-Pierce Oil Co. v. Progressive Gin Co.* (1916) 59 Okla. 262, 159 Pac. 349. An option contract for future delivery, as in the instant case, is valid even where the seller does not at the time of giving the option own the goods. *Wiggin v. Federal Stock & Grain Co.* (1905) 77 Conn. 507, 59 Atl. 607; *Sawyer Wallace Co. v. Taggart* (1879, Ky.) 14 Bush, 727. If one party intends actual delivery, but the other intends a "settlement of differences" only, the contract may be enforced at the option of the one intending actual delivery. *Merriam & Millard Co. v. Cole* (1917, Tex. Civ. App.) 198 S. W. 1054; *Donovan v. Daiber* (1900) 124 Mich. 49, 82 N. W. 848; *contra, Elmore-Schultz v. Stonebraker* (1919, Mo.) 214 S. W. 216. A few courts have tried to lay down general rules for determining this intention to deliver. The majority of these courts hold that where nothing is said about actual delivery, the presumption is that the contract is legal and the burden of proof is upon the defendant to show its illegality. See *Lamson Bros v. Mensen* (1919, Iowa) 174 N. W. 689; see *Miller Co. v. Klovstad* (1905) 14 N. D. 435, 105 N. W. 164; see Anson, *Contract* (3d Am. ed. by Corbin, 1919) 281, note; *contra, Pate v. Wilson Bros. Mercantile Co.* (1919, Tex. Civ. App.) 209 S. W. 187. It

seems evident, however, that these rules cannot be relied upon with certainty. In this connection, it has been held that where the contract, though legal on its face, is so made that its undisclosed but real purpose is to deal in cotton futures, parol evidence is admissible to establish the real intention of the parties. *Talbot & Son v. Martindale* (1919, Tex. Civ. App.) 211 S. W. 302. For an accurate analysis of option contracts, see Hohfeld, *Fundamental Legal Conceptions* (1913) 23 YALE LAW JOURNAL, 16, 44; see Corbin, *Option Contracts* (1914) 23 YALE LAW JOURNAL, 641.

CRIMINAL LAW—MURDER—INTOXICATION AS AN EXCUSE.—The accused, in the act of violating a young girl, placed his hand upon her mouth to quiet her thereby causing her death by suffocation. The lower court assumed that the accused had the intent to rape, but on the ground of intoxication reduced the verdict from murder to manslaughter. *Held,* that the verdict of murder should be restored, since the death was caused by an act of violence done in furtherance of a felony. *Director of Public Prosecutions v. Beard* (1920, H. L.) 36 Times L. R. 379.

An unlawful homicide, perpetrated in the commission of an offense amounting to a felony, is generally held to be murder. *State v. Cross* (1900) 72 Conn. 722, 46 Atl. 148; *Regina v. Serne* (1887, Cent. Cr. Ct.) 16 Cox C. C. 311. Formerly drunkenness was held to aggravate, rather than excuse or mitigate a crime. See Hale, *Pleas of the Crown* (1778) 32; see 4 Blackstone, *Commentaries* (21st ed. 1852) 26. A few isolated cases in the United States have held that drunkenness was not a fact to be considered in determining the degree of the crime. *United States v. McGlue* (1851, C. C. D. Mass.) 1 Curtis, 1; *Commonwealth v. Hawkins* (1855, Mass.) 3 Gray, 463; *State v. Brown* (1904) 181 Mo. 192, 79 S. W. 1111. Where a person with the intention of killing becomes intoxicated, though at the time of the killing he was too drunk to form any intent whatsoever, the intoxication is no excuse. *Cook v. State* (1903) 46 Fla. 20, 35 So. 665; *State v. Robinson* (1882) 20 W. Va. 713. But intoxication such that the person is incapable of forming an intent always reduces murder from the first to the second degree, unless the intention to kill existed before the intoxication. *People v. Rogers* (1858) 18 N. Y. 9. But the usual rule would seem to be that it does not reduce the offense from murder in the second degree to manslaughter. *State v. Johnson* (1874) 41 Conn. 584; *Atkins v. State* (1907) 119 Tenn. 458, 105 S. W. 353. In some cases where the rule is apparently contrary, the cases are based upon the statutory requirement of a specific intent for murder. *State v. Rumble* (1909) 81 Kan. 16, 105 Pac. 1; *Perryman v. State* (1916) 12 Okla. Cr. 500, 159 Pac. 937; see Cook, *Act, Intention, and Motive in the Criminal Law* (1917) 26 YALE LAW JOURNAL, 645. A number of jurisdictions require the existence of a specific intent to do at least serious bodily harm to constitute the crime of murder. As a logical result in those jurisdictions such a degree of intoxication reduces the crime to manslaughter. *State v. Corrivau* (1904) 93 Minn. 38, 100 N. W. 638; *Springfield v. State* (1892) 96 Ala. 81, 11 So. 250. England follows this doctrine. *Regina v. Doherty* (1887, Cent. Cr. Ct.) 16 Cox C. C. 306. The instant case appears to be entirely sound on its facts and in accord with the English concept of the crime of murder.

FRAUD—PROMISSORY STATEMENTS—INTENTION NOT TO PERFORM—A MISREPRESENTATION OF FACT.—The plaintiffs represented that they would use honest methods to increase the defendant's sales. The defendant gave six promissory notes in consideration of the plaintiffs' promise to organize and manage contests to produce this result. The plaintiffs did nothing in the work of organization and fraudulently cast votes to keep the few contestants close. The defendant demanded the return of the three notes remaining unpaid, and the plaintiffs sued to recover on them. *Held,* that the plaintiffs should not recover, because the

consideration had failed, although fraud could not be predicated upon representations, however false, of a promissory character. *Records v. Smith* (1920, Ind.) 126 N. E. 335.

The general rule appears to be that fraud cannot be predicated on representations of a promissory character, but only on representations of past or present fact. Anson, *Contract* (3d Am. ed. by Corbin, 1919) secs. 222 ff. The same test seems to be applied whether the misrepresentations claimed are set up as a defence to an action for breach of contract, as a ground for rescission in equity, or as a basis of the tort action for deceit. *Keithley v. Mutual Life Ins. Co.* (1916) 271 Ill. 584, 111 N. E. 503 (tort); see *James Music Co. v. Bridge* (1908) 134 Wis. 510, 513, 114 N. W. 1108, 1110 (defence to replevin); *Harris v. Trueblood* (1916) 124 Ark. 308, 186 S. W. 836 (tort). It is said that a promise alone is not, in a legal sense, a representation, and that failure to perform does not make it such. *Brown v. Pierce & Co.* (1918) 229 Mass. 44, 118 N. E. 266 (counts in tort and contract); see *Russ Co. v. Muscupiabe Land Co.* (1898) 120 Calif. 521, 529, 52 Pac. 995, 998 (defence to breach of contract). Some courts say that while a statement of occurrences to happen in the future when stated as a fact may amount to fraud, a promise or expression of intention to do something in the future will not. See *Miller v. Sutliff* (1909) 241 Ill. 521, 526, 89 N. E. 651, 652 (action to rescind); see 2 Pomeroy, *Equity Jurisprudence* (4th ed. 1918) sec. 877. Yet an action for deceit may be had on a promise made at a time when the promisor had put it out of his physical power to perform by contracting with a third party. *Traber v. Hicks* (1895) 131 Mo. 180, 32 S. W. 1145; see COMMENT (1917) 27 YALE LAW JOURNAL, 691; see (1918) 28 *ibid.*, 415. A distinction should be made between a promise which the promisor intends to perform, and one which the promisor at the time of promising intends to break. In the second case there is a fraudulent misrepresentation of present fact. *McLean v. South Western Casualty Ins. Co.* (1916, Okla.) 159 Pac. 660 (rescission); *Cerny v. Paxton & Co.* (1907) 78 Neb. 134, 110 N. W. 882 (tort); see 10 L. R. A. (N. S.) 640, note. *Contra, Farris v. Strong* (1897) 24 Colo. 107, 48 Pac. 963 (rescission); *Ingersoll v. Brown & Co.* (1917) 205 Ill. App. 537 (tort). In the final analysis an intention, although difficult of proof, is an existing fact. *Edginton v. Fitzmaurice* (1884) 29 Ch. Div. 459 (tort); *Adams v. Gillig* (1910) 199 N. Y. 314, 92 N. E. 670 (tort). With the qualification that if an intent not to perform at the time of promising can be proved, it should make out a case of fraud in contract, tort, or equity, the *dictum* of the principal case is sound. For the effect of innocent mispresentation, see COMMENT (1918) 28 YALE LAW JOURNAL, 178.

MARRIAGE AND DIVORCE—ANNULMENT OF MARRIAGE—PARTIES IN PARI DELICTO.—The petitioner sought a decree annulling her marriage to the defendant. At the time of such marriage, as she and the defendant knew, she was the lawful wife of another. *Held,* that the decree of annulment should be granted. *Davis v. Green* (1919, N. J. Eq.) 108 Alt. 772.

There has been a growing doubt as to the wisdom of applying the doctrine of *in pari delicto* universally. In equity exceptions have been made where the courts have felt that public interest or the justice of the case should operate to prevent its enforcement. See (1918) 28 YALE LAW JOURNAL, 699. Thus a deed executed for the purpose of terminating a criminal prosecution has been set aside. *Burton v. MacMillan* (1907) 52 Fla. 469, 42 So. 849; *Tucker v. Cox* (1915) 101 S. C. 473, 86 S. E. 28; *cf. Schroeder v. Turpin* (1913) 253 Mo. 258, 161 S. W. 716. Even at law, in certain cases of illegal contracts, there has been some tendency to allow the plaintiff judgment where his actions do not disclose a high degree of moral turpitude. See (1918) 27 YALE LAW JOURNAL, 1090; see Thurston, *Cases in Quasi Contract* (1916) ch. 3, sec. 2. The general rule has been applied to parties *in pari delicto* seeking the annulment of a marriage. *Rooney v. Rooney*

(1895) 54 N. J. Eq. 231, 34 Atl. 682. The instant case held, however, that vital public interests were involved, that the decree of annulment would establish the status of the parties beyond any doubt, and that if the defendant should remarry, such marriage and the status of children born therefrom would not be subject to question. It is submitted that the court applied the most desirable rule. The courts holding to the contrary admit the invalidity of the second marriage of which annulment is asked, but disregard the obvious public benefits to be gained from having such a fact made a matter of record by judicial decree. Nevertheless, the wife may be held criminally for bigamy. *Cf. Baker v. State* (1920, Fla.) 84 So. 99.

PERSONS—INSANE PERSONS—CONTRACTS—DEEDS.—The guardian of an insane person brought suit to set aside two deeds of certain real estate owned by the ward. The land was conveyed to one Weston, who knew of the mental condition of the grantor, and then the land was attached by the defendant White and a judgment recovered. *Held,* that the deeds should be set aside, even though the defendant was in the position of an innocent purchaser from the grantee. *Brewster v. Weston* (1920, Mass.) 126 N. E. 271.

The issue raised by this case is one concerning which there have been many contradictory decisions. It seems settled that the deed of an adjudged incompetent is absolutely void. *Thorpe v. Hanscom* (1896) 64 Minn. 201, 66 N. W. 1; *Redden v. Baker* (1882) 86 Ind. 191. But some cases go further and hold that, as the lunatic has nothing which the law recognizes as a mind, he is not capable of forming an intent to which the law will give effect; therefore his deeds or contracts are void, even though he had not been adjudged insane at the time of the acts. See *Dexter v. Hall* (1872, U. S.) 15 Wall. 9, 20; *cf. Galloway v. Hendon* (1901) 131 Ala. 280, 31 So. 603. It is suggested, however, that this view is based on a mistaken idea as to the mutual assent necessary for a contract. Actual mental assent is not material, the important thing being what each party is justified in believing from the actions and words of the other. See Corbin, *Offer and Acceptance* (1917) 26 YALE LAW JOURNAL, 169, 205. Therefore the weight of authority holds that the deed of an insane person is not void, but merely voidable. *Arnett's Committee v. Owens* (1901) 23 Ky. L. Rep. 1409, 65 S. W. 151; *Aetna Life Ins. Co. v. Sellers* (1900) 154 Ind. 370, 56 N. E. 97. And where a contract has been made and executed in good faith without knowledge of the insanity (or of circumstances, such as office found, which have the same effect as knowledge) the incompetent is under a disability to avoid the contract unless the other party be put in *statu quo*. *Morris v. Great Northern Ry.* (1896) 67 Minn. 74, 69 N. W. 628; *Loman v. Paullin* (1915, Okla.) 152 Pac. 73. In this way the court succeeds in sufficiently protecting two innocent parties, and avoids the extreme view that even where the grantor has offered to return the consideration, the contract cannot be avoided, where there was no knowledge of the insanity on the part of the grantee. See *Bevins v. Lowe* (1914) 159 Ky. 439, 443, 167 S. W. 422; *cf. Rhoades v. Fuller* (1897) 139 Mo. 179, 40 S. W. 760; see 1 Williston, *Contracts* (1920) sec. 249 ff.

PROPERTY—FIXTURES—EFFECT OF NEW LEASE ON PRIVILEGE AND POWER OF REMOVAL.—In 1857 the plaintiff leased to the defendant a plot of land, on which the defendant erected a sulphuric acid plant. In 1868 and again in 1912 the defendant took a new lease. On vacating the premises at the expiration of this third lease the defendant removed certain portions of the chemical plant. The plaintiff brought an action for a breach of the defendant's covenant to deliver up the premises in good repair. *Held,* that the plaintiff should recover, as the parts of the plant removed were a part of the realty and were not tenant's

fixtures; and, as an alternate ground, that the tenant had lost his privilege and power to remove the fixtures by accepting a new lease without reserving the same. *Pole-Carew v. Western Counties Manure Co.* (1920, C. A.) 36 Times L. R. 322.

In the United States some jurisdictions hold that a tenant who accepts a new lease, silent as to fixtures already erected, thereby loses his privilege to remove them. *Sanitary District of Chicago v. Cook* (1897) 169 Ill. 184, 48 N. E. 461; *Laughran v. Ross* (1871) 45 N. Y. 792; *Watriss v. First National Bank of Cambridge* (1878) 124 Mass. 571. The contrary has been held in a steadily growing number of jurisdictions. *Second National Bank v. Merrill Co.* (1887) 69 Wis. 501, 34 N. W. 514; *Radey v. McCurdy* (1904) 209 Pa. 306, 58 Atl. 558; *Sassen v. Haegle* (1914) 125 Minn. 441, 147 N. W. 445. Even in those states where the strict rule has been followed it has been subsequently closely limited. Thus a fine distinction is drawn between ordinary fixtures and trade fixtures, however firmly attached. *Bernheimer v. Adams* (1902) 70 App. Div. 114, 75 N. Y. Supp. 93; *Thomas v. Gayle* (1909) 134 Ky. 330, 120 S. W. 290. And where the second lease is merely a *renewal,* as contrasted with a *new* lease, the tenant is allowed to remove his fixtures. *Baker v. McClurg* (1902) 198 Ill. 28, 64 N. E. 701; *Woods v. Bank of Haywards* (1909) 10 Calif. App. 93, 106 Pac. 730. Maryland has repudiated the strict rule by statute. Md. Code, 1904, art. 53, sec. 28. The reason usually given in support of the narrow view is that the fixtures are included in the second lease of the land. This would seem to be a begging of the question; it should not be inferred that the fixtures passed by the lease unless such an intention clearly was expressed in the lease. *Ogden v. Garrison* (1908) 82 Neb. 302, 117 N. W. 714; *Wright v. MacDonnell* (1895) 88 Tex. 140, 30 S. W. 907. Since the tenant has the privilege of removal during his first lease the natural presumption is that he does not intend to give up this valuable privilege. *Bergh v. Herring-Hall-Marvin Safe Co.* (1905, C. C. A. 2d) 136 Fed. 368. The idea that he is giving up his privilege of removing his fixtures by taking out a new lease never occurs to the lay mind. See *Red Diamond Clothing Co. v. Steidmann* (1912) 169 Mo. App. 306, 152 S. W. 609. The reason ordinarily given where a tenant who has given up possession at the expiration of his lease is not allowed to subsequently remove his fixtures is to keep him from disturbing his landlord or a succeeding tenant. But when the tenant stays in possession continuously under a new lease, this reason obviously does not apply. *Cf. Kerr v. Kingsbury* (1878) 39 Mich. 150. The instant case is plainly sound on its facts as to what constitutes a fixture. It accords with the earlier English cases in following the harsher and less desirable rule. *Cf. Leschalles v. Woolf* [1908] 1 Ch. 641.

PROPERTY—PERCOLATING WATERS—PRIVILEGE TO DIVERT.—The plaintiff and defendant owned adjoining lands. The defendant watered his cattle by tanks fed by siphons from waters percolating below his lands. The plaintiff sought to enjoin him from wasting this water by letting it overflow from the tanks into hog wallows, and claimed that the waste caused the diminution of a spring on the plaintiff's land. *Held,* that the plaintiff should have the relief sought. *De Bok v. Doak* (1920, Iowa) 176 N. W. 631.

The earliest cases on this subject applied the maxim *"cujus est solum, ejus est usque ad coelum"* and held that damages sustained by the diversion of percolating waters were *"damnum absque injuria."* *Greenleaf v. Francis* (1836, Mass.) 18 Pick. 117; *Acton v. Blundell* (1843, Exch.) 12 M. & W. 324; *Chasemore v. Richards* (1859) 7 H. L. Cas. 349; *Huber v. Merkel* (1903) 117 Wis. 355, 94 N. W. 354; *cf.* Summers, *Property in Oil and Gas* (1919) 29 YALE LAW JOURNAL, 174. Other reasons assigned were that the uncertain nature of percolating waters made the application of strict rules difficult; that the act of digging being lawful, the motive for the act could not make the actor subject to damages. *Frazier v.*

Brown (1861) 12 Oh. St. 294; *Chatfield v. Wilson* (1855) 28 Vt. 49; *Mayor of Bradford's Case* [1895] A. C. 587. But the increasing importance of the subject necessitated modifications. First the courts questioned the justice of barring relief where the obstruction had been actuated by malicious motives. *Wheatley v. Baugh* (1855) 25 Pa. 528; *Swett v. Cutts* (1870) 50 N. H. 439; *Miller v. Black Rock Co.* (1901) 99 Va. 747, 40 S. E. 27; *Gagnon v. Hotel Co.* (1904) 163 Ind. 687, 72 N. E. 849. Next they modified the doctrine of the unqualified ownership of the soil and its contents by the maxim *"sic utere tuo,"* and declared that wasting of percolating water should be prevented when it deprived another of its legitimate use. *Stillwater Water Co. v. Farmers* (1903) 89 Minn. 58, 93 N. W. 907. From this developed the theory that landowners in the same vicinity have correlative rights in the percolating waters thereof. *Patrick v. Smith* (1913) 75 Wash. 407, 134 Pac. 1076; *Ballantine v. Public Service* (1914, Err. & App.) 86 N. J. Law, 331, 91 Atl. 95; *Forbell v. City of New York* (1900) 164 N. Y. 522, 58 N. E. 644. *Cf.* COMMENT (1919) 29 YALE LAW JOURNAL, 213. In determining whether or not a landholder has the privilege of diverting a flow of percolating water, the courts examine the reasonableness of the use he is to make of that water. *Smith v. Brooklyn* (1897, N. Y. Sup. Ct.) 18 Hun, 340; *Katz v. Walkinshaw* (1902) 141 Calif. 116, 70 Pac. 663; *Pence v. Carney* (1905) 58 W. Va. 296, 52 S. E. 702; *Barclay v. Abraham* (1903) 121 Iowa, 619, 96 N. W. 1080; *Schenck v. City of Ann Arbor* (1917) 196 Mich. 75, 163 N. W. 109. The instant decision seems to be in accord with the present tendency of the courts to enjoin such diversion of percolating waters as will materially injure a landholder to whom they would eventually come, without proving of equal benefit to the confiscator. For the obstruction of the natural flow of surface waters by the adjacent land owner, see (1920) 29 YALE LAW JOURNAL, 686.

SALES—STATUTE OF FRAUDS—SIGNATURE OF PARTY TO BE CHARGED.—Because their own stationery had not been received from the printer, the defendants wrote out the plaintiff's order for suits of clothes on the order blank of the defendants' predecessors in business. The name of the defendants nowhere appeared upon the order blank in question. The purchaser sued for non-delivery and the defendants moved to dismiss the complaint. *Held,* that the defendants' motion should have been granted, since there was no sufficient memorandum to satisfy the statute of frauds. *Joseph Galin Co. v. Newhouse* (1920, App. Div.) 180 N. Y. Supp. 812.

Under the statute of frauds in the Sales Act, sec. 4, New York now requires only that the agreement be *signed* (formerly required to be subscribed) by the party to be charged thereby or by his authorized agent. A person may incur contractual duties under any name, fictitious or assumed. *Gotthelf v. Shapiro* (1913) 210 N. Y. 538, 103 N. E. 1124; *Roberts v. Mosier* (1913) 35 Okla. 691, 132 Pac. 678; see N. I. L. sec. 18. One may sign either by writing a name or mark or by adopting it when printed. But such adoption, to be effective, must be made with the intent to authenticate the document. This intent and so an adoption of the printed name as a signature may fairly be presumed where the promisor writes a contract on his own paper whereon his name appears in print. *Evans v. Hoare* [1892] 1 Q. B. 593; *Schneider v. Norris* (1814, K. B.) 2 M. & S. 286; *Cohen v. Wolgel* (1919, Sup. Ct.) 107 Misc. 505, 176 N. Y. Supp. 764. Ordinarily where the letter-head is not his own such a presumption would seem unreasonable. But where, as in the instant case, the paper is that of the former business which the promisor was continuing, though under a different name, it is submitted that the continuity of the business presents an element which should be considered and which might fairly lead to holding the name to have been adopted as the defendants' signature.

SPECIFIC PERFORMANCE — MUTUALITY — STATUTE OF FRAUDS. — In a suit for specific performance of an oral contract for the sale of realty, the written memorandum relied on by the purchaser to take the case out of the statute of frauds was a receipt for part of the purchase price, signed by the vendor's agent. The receipt named the parties, the purchase price, and the property bought. The defence was that as the plaintiff had not signed the memorandum, the agreement was lacking in the requisite mutuality. *Held,* that specific performance should be decreed. *Hensel v. Calder* (1920, Md.) 109 Atl. 195.

This decision, in effect at least, brings the Maryland court into accord with the long line of decisions in other jurisdictions following *Hatton v. Gray* (1684) 2 Ch. Cas. 164, 1 Ames, *Cases on Equity Jurisprudence* (1904) 421; *contra, Lipscomb v. Watrous* (1894) 3 D. C. App. 1. It was formerly held that a vendor who had not signed such a memorandum could not get specific performance against a vendee who had. *Duvall v. Myers* (1850) 2 Md. Ch. 401. That case followed the rule that mutuality meant mutuality of remedy at the time the contract was made. See Fry, *Specific Performance* (5th ed. 1911) sec. 463; *Lawrenson v. Butler* (1802, Ir. Ch.) 1 Sch. & Lef. 13. But it applied the rule to facts similar to those in the instant case, which had always been regarded as an exception. See Ames, *Mutuality in Specific Performance* (1903) 3 COL. L. REV. 1, 5; see Lewis, *Specific Performance of Contracts* (1901) 49 AM. LAW REG. 559, 571. The principal case distinguishes *Duvall v. Myers, supra,* on the ground that the vendor's name did not even appear casually in the memorandum in that case. The distinction bears upon the legal question as to what form of memorandum is sufficient to satisfy the statute of frauds, rather than the equitable question of mutuality. Fry's rule has been properly criticised as overburdened with exceptions. See Langdell, *Specific Performance* (1887) 1 HARV. L. REV. 104; see COMMENT (1917) 27 YALE LAW JOURNAL, 261. Pomeroy's statement of the doctrine requires fewer: "So far as there is a principle of mutuality, it is a mutuality of remedy in equity at the time of filing the bill that is required." 5 Pomeroy, *Equity Jurisprudence* (2d ed. 1919) sec. 2191. But the most satisfactory rule of mutuality is that of Ames: "The reciprocity of remedy required . . . is simply the right (*privilege*) of one party to refuse to perform, unless performance by the other is given or assured." Ames, *Mutuality in Specific Performance, supra.* In other words, when only the defendant is bound under a contract sought to be specifically enforced, a decree will be granted, if it can be made conditional on performance by the plaintiff. It is believed that there are no exceptions to this rule. Much of the confusion as to the defence of want of mutuality arises from those cases where it is said that a contract is unenforceable where there is no mutuality of obligation. But in such cases the reason for not granting relief may be that there is no contract at all, but only an offer creating a power in the offeree. See (1917) 26 YALE LAW JOURNAL, 795; Corbin, *Offer and Acceptance* (1916) 26 *ibid.,* 169, 190; (1917) 26 *ibid.,* 802; COMMENT (1920) 29 *ibid.,* 767; (1919) 28 *ibid.,* 705.

TAXATION—PUBLIC PURPOSE—GOVERNMENT MERCHANDIZING.—The plaintiffs, taxpayers in the state of North Dakota, brought a bill for an injunction to restrain the defendants, state officers, from disbursing certain funds or issuing certain bonds in pursuance of constitutional amendments and statutes alleged to be a violation of the Fourteenth Amendment in taking property for other than public purposes. The amendments and statutes provide that the state should "engage in the business of manufacturing and marketing farm products" by establishing a warehouse, elevator, and flour mill system, and "engage in providing homes for the residents of the state" by providing a commission endowed with the power of eminent domain to acquire land on which to build homes and farmhouses to be sold at minimum rates. *Held,* that the injunction should not be granted. *Green v. Frazier* (1920, N. D.) 176 N. W. 11.

A late decision of the Supreme Court held that it was a public purpose to provide necessities for the public, and that the state legislatures and courts could best decide what were included in that term. *Jones v. City of Portland* (1917) 245 U. S. 217, 38 Sup. Ct. 112, (1918) 27 YALE LAW JOURNAL, 824, 836. The instant case represents a decidedly liberal view of "necessities." See (1918) AM. L. REV. 215. Indications are that government operation of a business will be allowed where regulation of rates and facilities would be sustained. See COMMENT (1918) 27 YALE LAW JOURNAL, 824. But operation may even precede such regulation. *Holton v. Camilla* (1910) 134 Ga. 560, 68 S. E. 472. It would seem that the concept of "necessities" might soon cover nearly all products, and that all industries might be regulated or operated as in mediaeval times. It is not easy to see what limitations will be placed on government operation, but as yet the furnishing of amusements is unauthorized. *State ex rel. Toledo v. Lynch* (1913) 88 Oh. St. 71, 102 N. E. 670. And it may be presumed that the operation must be for the general benefit rather than for a particular group or class. *Cf. Loan Association v. Topeka* (1875, U. S.) 20 Wall. 655. However, it is doubtful if the courts will insist on the curiously unsound requirement that the operation shall not be for profit. See *Jones v. Portland, supra.* The court in the instant case relies for affirmance of its decision on the promises of the Supreme Court to give great weight to the decision of the state courts on the ground that they could best judge economic conditions. *Cf. Hairston v. Danville and Western Ry.* (1908) 208 U. S. 598, 28 Sup. Ct. 331; *cf. Jones v. Portland, supra.* Consistent holdings could now allow the establishment of different economic systems in different states. Perhaps the resultant competition would be the best test of the new economic theories.

TELEGRAPHS AND TELEPHONES—MESSAGES ACCEPTED BY TELEPHONE—OPERATOR AGENT OF COMPANY AND NOT OF SENDER.—The defendant telegraph company maintained a telephone in its transmitting office for the purpose of receiving messages to be sent over its wires. Through the negligence of the operator in receiving a telegram over the telephone, a mistake was made in the initials of the addressee. The message failed to reach its destination, thereby causing damage to the plaintiff for which suit was brought. *Held,* that the plaintiff should recover, because the operator, in receiving the message over the telephone, was the agent of the telegraph company and not of the sender. *Salisbury v. Western Union* (1919, Mo. App.) 217 S. W. 551.

A telegraph company may place reasonable regulations upon the use of its service. Stipulations upon a telegraph blank that "no responsibility attaches to this company concerning messages until the same are accepted at one of its transmitting offices," and that "if a message is sent to such office by one of the company's messengers, he acts for that purpose as the agent of the sender," have been held reasonable. *Collatta v. Western Union* (1920, Miss.) 83 So. 401, (1920) 29 YALE LAW JOURNAL, 697. *Ayres v. Western Union* (1901) 65 App. Div. 149, 72 N. Y. Supp. 634; *Stamey v. Western Union* (1893) 92 Ga. 613, 18 S. E. 1008. Where the sender was unable to write and requested the operator to write the message for him, it was held that the operator was acting as the agent of the sender and that the company was under no duty to pay for mistakes. *Western Union v. Jackson* (1909) 163 Ala. 9, 50 So. 316; *Western Union v. Holcomb* (1912, Tex. Civ. App.) 152 S. W. 190. Nor could the telegraph company be held when the messages were delivered orally to the operator. *Western Union v. Dozier* (1890) 67 Miss. 288, 7 So. 325. If the company has customarily undertaken to transmit messages accepted orally, however, they have been liable for any error of the operator. *Western Union v. Stevenson* (1889) 128 Pa. 442, 18 Atl. 441. Likewise, when a telegraph company maintains a telephone in its transmitting office over which it accepts messages, it

thereby invites the public to send messages over this telephone. An operator accepting such message is the agent of the company and it is liable for his errors. *Markley v. Western Union* (1913) 159 Iowa, 557, 141 N. W. 443; *Postal Telegraph & Cable Co. v. Prewitt* (1917, Tex. Civ. App.) 199 S. W. 316; *Bowie v. Western Union* (1907) 78 S. C. 424, 59 S. E. 65. The instant case is decided upon the theory accepted by a majority of the courts.

TORTS—JOINT TORT-FEASORS—LIABILITY FOR POLLUTION OF WATER-COURSES.—The plaintiff brought an action for damages against six coal mining corporations for the pollution of a stream. There was no collusion or concerted action whatever between the defendants. *Held,* that the plaintiff should not recover, because the defendants were not jointly and severally liable. *Farley v. Crystal Coal & Coke Co.* (1920, W. Va.) 102 S. E. 265.

There is a conflict of authority as to whether or not the doctrine of joint and several responsibility at law should apply to cases of unintended damage caused by the acts of several persons acting without collusion and independently. See Cooley, *Torts* (3d ed. 1906) 246. The general tendency appears to favor enforcing a joint and several duty to pay damages where a single injury is caused by concurrent wrongful acts or omissions. *Matthews v. Delaware L. & W. R. Co.* (1893) 56 N. J. Law, 34, 27 Atl. 919 (injury in collision due to joint negligence of two railroads); *Corey v. Havener* (1902) 182 Mass. 250, 65 N. E. 69 (plaintiff's horse frightened by two passing motorcycles). Where the plaintiff suffers separate injuries, caused by the several defendants, though similar in character and inflicted at the same time, he can hold the defendants only severally. *State v. Wood* (1896) 59 N. J. Law, 112, 35 Atl. 654; *New Orleans Ins. Ass. v. Harper & Waggaman* (1880) 32 La. Ann. 1165; see Shearman & Redfield, *Negligence* (6th ed. 1913) sec. 123. Cases of water pollution, though the defendants do not cause "separate injuries" in this latter sense at all, are almost universally placed in the second group, and each defendant must be sued for his contribution to the damage. *Chipman v. Palmer* (1879) 77 N. Y. 51; *Mansfield v. Brister* (1907) 76 Oh. St. 270, 81 N. E. 631; *Thackaberry v. Sioux City Service Co.* (1911) 154 Iowa, 358, 132 N. W. 945, 40 L. R. A. (N. S.) 102; *cf. Valparaiso v. Moffit* (1895) 12 Ind. App. 250, 39 N. E. 909. It is difficult to see how the damage caused by each individual defendant can be identified in these cases, and logically it would seem far better to place them in the first group and enforce joint and several responsibility. In the instant case the court overruled a previous decision on the ground that the cases cited to uphold it dealt with direct as opposed to consequential injury. *Day v. Louisville Coal & Coke Co.* (1906) 60 W. Va. 27, 53 S. E. 776. But the reasons for holding the defendants jointly are equally strong where the damage is consequential; in either event it seems impossible to apportion it. *Cf. Schumpert v. Southern Ry.* (1902) 65 S. C. 332, 43 S. E. 813; *cf. Lyman v. County of Hampshire* (1885) 140 Mass. 311, 3 N. E. 211. In thus overruling the previous decision, the instant case has wiped out one of the very few decisions which clearly favor joint responsibility at law in the water-pollution cases. Yet almost all jurisdictions will sustain a joint bill for an injunction in cases of this type. *Warren v. Parkhurst* (1906) 186 N. Y. 45, 78 N. E. 579, 6 L. R. A. (N. S.) 1149, note. It is submitted, therefore, that it would be more consistent with ideas of modern procedure if the law courts were to enforce joint and several responsibility. For the obstruction of the natural flow of surface water by an adjacent landowner, see (1920) 29 YALE LAW JOURNAL, 686.