RECENT CASE NOTES

ADMIRALTY—SALVAGE—OWNER OF CARGO CANNOT COLLECT DAMAGES FROM SALVAGED VESSEL.—Cargo carried on a salving vessel was greatly damaged by the delay caused by the salvage service. The bill of lading precluded any claim against the carrier for loss caused by a salvage enterprise. The owner of the cargo libelled the salvaged vessel for damages. *Held,* that the libel be dismissed. *Swift & Co. v. Menominee* (Jan. 30, 1924) S. D. N. Y. Oct. Term, 1923. (Not yet reported.)

A vessel which has conferred salvage service is entitled to compensation covering labor expended, risk incurred, and a reward. *The Jelling* (1918, E. D. N. C.) 253 Fed. 381; *The Nord Alexis* (1921, C. C. A. 2d) 273 Fed. 160. Originally, the award could be claimed only by one who had rendered voluntary personal service. *The Jack Jewett* (1868, S. D. N. Y.) Fed. Cas. No. 7,122. A shipowner may now base his claim on services rendered by his ship. *The Lewis Brothers* (1923, S. D. Fla.) 287 Fed. 143. Or merely on the risk of loss. *The Johnson Lighterage Co.* (1918, C. C. A. 3d) 248 Fed. 74 (owner of a chartered ship). However, the salving crew or passenger must still show hazardous personal services. *The Johnson Lighterage Co., supra.* And this has been applied to a cargo owner. *The Brixham* (1893, E. D. Va.) 54 Fed. 539; *The Persian Monarch* (1884, E. D. N. Y.) 23 Fed. 820. He is therefore usually left to his remedy against the shipowner for damages to his cargo. *The Nathaniel Hopper* (1839, D. Mass.) Fed. Cas. No. 10,032. But he may also make himself co-salvor by consenting to the salvage enterprise and thus absolving the shipowner from liability. *Mason v. Blaireau* (1804, U. S.) 2 Cranch, 240. To absolve the shipowner by a mere bill of lading has been held to prevent the cargo owner from claiming an interest in the salvage award. *The Dupuy de Lome* (1893, E. D. La.) 55 Fed. 93. But it seems that this might be regarded as previous consent to any salvage enterprise. In any case, it is probably sound policy to refuse the cargo owner more than compensation for losses actually sustained. *Compagnie Commerciale v. Charente Steamship Co.* (1893, C. C. A. 5th) 60 Fed. 921. But even if the bill of lading lessens the damage claim of the salving ship, the cargo owner should be allowed to claim directly from the salvaged ship such damage as the cargo actually suffered through the salving operations. *The Colon* (1878, S. D. N. Y.) Fed. Cas. No. 3,024.

BANKS AND BANKING—LIEN OF BANK ON DEPOSITS OF NEGOTIABLE PAPER.—The X company, a firm of commission merchants, purchased as the defendant's agents a carload of cattle, received the defendant's check to its order for the price including commissions, deposited it with the plaintiff bank, and gave the seller its own check for the price. The bank credited the company with the deposit and charged an overdraft and a demand note against it. It subsequently dishonored the company's check when presented by the seller for payment. The company informed the plaintiff of its agency and it still refused to honor the check. The company notified the defendant, who stopped payment on his check, paying the seller in cash for the cattle. In a suit by the bank on the check, the jury made a general finding for the defendant. *Held,* that the judgment on the verdict be affirmed. *Southwest National Bank v. Evans* (1923, Okla.) 221 Pac. 53.

The instant case is decided on the ground that, either as a matter of law, or as a question of fact settled by general verdict, the plaintiff bank had notice of the X company's interest in the check from the nature of its business. *Union Stockyards Bank v. Gillespie* (1890) 137 U. S. 411, 11 Sup. Ct. 118. But the result would probably have been the same in the absence of notice. Although cash deposits of the customer received bona fide and without notice are subject, regardless of ownership, to a banker's lien, the tendency in the United States

to regard the lien as a mere right to set off against the depositor the sums due from him is partly responsible for placing deposits of negotiable paper on a different footing. *Furber v. Dane* (1909) 203 Mass. 108, 89 N. E. 227; 12 A. L. R. 1048, note; 1 Morse, *Banks and Banking* (5th ed. 1917) secs. 324-5. Where the crediting by the bank of paper indorsed in blank or for collection and credit is held a sale of the paper, the bank should be regarded as a holder for value at least to the extent of the customer's existing indebtedness, and if the bank is also a holder in due course, the paper should to the extent of its interest be discharged of equities in others. *Ex parte Richdale* (1881) L. R. 19 Ch. 409 (holding the bank a full holder for value); see Scott, *Cases on Trusts* (1919) 64, note. But the American cases still require a change of position on the faith of the "purchase." *Union National Bank v. Winsor* (1907) 101 Minn. 470, 112 N. W. 999; 6 A. L. R. 252, note; *contra: Williamson Bank v. Miles* (1914) 113 Ark. 342, 169 S. W. 368. Paper indorsed for collection usually makes the bank a trustee and—as opposed to "for collection and remittance"—with the privilege, if without notice of equities in others, of changing its position to that of debtor upon collection. *Evansville Bank v. German-American Bank* (1895) 155 U. S. 556, 15 Sup. Ct. 221; 24 A. L. R. 1148, note. And the relation of debtor and creditor after the paper is cashed, seems generally to cut off the rights of others therein. *Wood v. Bank* (1880) 129 Mass. 358; *Kimmel v. Bean* (1904) 68 Kan. 598, 75 Pac. 118; see *Bank of the Metropolis v. N. E. Bank* (1848, U. S.) 6 How. 212 (additional change of position required but merely allowing a balance against the debtor to remain uncollected held sufficient); *contra: Lawrence v. Bank* (1827) 6 Conn. 521; see 111 Am. St. Rep. 407, note; L. R. A. 1915 A, 715, note. Advances made on the faith of the paper before collection constitute the bank a pledgee or mortgagee and a holder for value to the extent of the advances. *Old National Bank v. Gibson* (1919) 105 Wash. 578, 179 Pac. 117; see COMMENTS (1924) 33 YALE LAW JOURNAL, 628. The English authorities not only carry the sale theory to its logical conclusion, but take it for granted that even a bank holding for collection is a lienholder to the extent of its balance against the depositor. *Ex parte Richdale, supra; Giles v. Perkins* (1809, K. B.) 9 East, 11; Paget, *The Law of Banking* (3d ed. 1922) 335, 401-7. Thus section 27 (3) of the Bills of Exchange Act which constitutes a lienholder of commercial paper a holder for value to the extent of his lien, means in this respect far more than the identically worded corresponding section 27 of the N. I. L. And, if the purpose of the banker's lien is to facilitate and strengthen the extension of credit by allowing the bank to rely in law on its expectancy of security in future deposits, it seems that the English view adopts the better commercial practice.

CONFLICT OF LAWS—GARNISHMENT OF ENEMY PROPERTY—"SITUS" OF MONEY DUE ON INSURANCE POLICIES.—The plaintiff, a New York corporation, was indebted to German nationals on policies of life insurance issued in England before the war, and made payable in England. The English Public Trustee claimed to be entitled to recover from the plaintiff certain charges on enemy property, treating the debts due the German nationals as such property in the hands of the plaintiff. The insurance company sought a declaratory judgment that the policies were not subject to the charge. From a judgment for the insurance company, the defendant appealed. *Held,* that the policies were subject to the charge. *New York Life Ins. Co. v. Public Trustee* (1924, C. A.) 40 T. L. R. 430.

A debt can have no physical situs. See Beale, *The Exercise of Jurisdiction in Rem to Compel Payment of a Debt* (1913) 27 HARV. L. REV. 107; Carpenter, *Jurisdiction over Debts* (1918) 31 HARV. L. REV. 905, 909. Any state having physical control over the debtor or his property can allow the "debt" to be garnished. It is generally agreed that this power may be exercised where both the garnishee and principal defendant are personally served. *McShane v. Knox* (1908) 103 Minn. 268, 114 N. W. 955; Beale, *op. cit. supra.* And by the majority

rule where suit is brought at the garnishee's domicile without personal service on the principal defendant. *Swiss Bank Corporation v. Böhmische Industrial Bank* (1923, C. A.) 67 SOLICITORS' JOURNAL, 423; *Chicago, R. I. & P. Ry. v. Sturm* (1899) 174 U. S. 710, 19 Sup. Ct. 797 (adjudication of state court entitled to full faith and credit); 67 L. R. A. 209, note; 3 L. R. A. (N. S.) 608, note; *contra: Central of Georgia Ry. v. Brinson* (1899) 109 Ga. 354, 34 S. E. 597; see *Bullard v. Chaffee* (1900) 61 Neb. 83, 84 N. W. 604 (debt expressly made payable at creditor's domicile). And in the United States, as to debts contracted here, wherever the garnishee is personally served, irrespective of his domicile. *Harris v. Balk* (1905) 198 U. S. 215, 25 Sup. Ct. 625; see COMMENTS (1917) 27 YALE LAW JOURNAL, 252. It is still unsettled whether the latter rule will be followed if the garnished debt is contracted or payable in foreign countries. In England garnishment of a debt contracted in Germany and due to the principal defendant from a foreign corporation served in England has been denied. *Martin v. Nadel* (1906, C. A.) 2 K. B. 26. It does not seem possible to form any generalization as to when garnishment of debts should be permitted, other than that garnishment should be allowed in a forum which has a substantial connection with the debt garnished. *Cf.* Lorenzen, *Validity and Effect of Contracts* (1921) 30 YALE LAW JOURNAL, 673. The place of payment seems especially important in determining the substantiality of the forum's connection. *Cf. Rouquette v. Overmann* (1875) L. R. 10 Q. B. 525; *Greenwald & Co. v. Kaster* (1878) 86 Pa. 45. Applying the generalization suggested, the result of the principal case seems sound in that the debts were both contracted and payable in England. It is to be noted that except where the force of a superstate, as of the United States under the full faith and credit clause, will be exerted in the particular instance, there is no assurance that the adjudication in respect to the debt owed to the principal defendant by the garnishee will be respected in other jurisdictions. *Cf. Ward v. Boyce* (1897) 152 N. Y. 191, 46 N. E. 180; *Harris v. Balk, supra.*

HUSBAND AND WIFE—DESCENT AND DISTRIBUTION—EFFECT OF BIGAMOUS MARRIAGE ON STATUTORY RIGHT OF INHERITANCE.—The plaintiff abandoned her husband and contracted a bigamous marriage. On her husband's death she claimed half of his property under Okla. Rev. Laws, 1910, secs. 8417 and 8418, which made her an heir. The defendant, the other statutory heir, resisted her claim on the ground that the plaintiff's conduct had precluded her from any share. The district court found for the defendant and the plaintiff appealed. *Held,* (two judges *dissenting*) that the judgment be reversed. *Cox v. Cox* (1923, Okla.) 217 Pac. 493.

At common law, adultery of a wife barred her right to dower. Statute Westminster II (1285) 13 Edw. I, c. 34. This principle has been embodied expressly or by construction in the law of many states. 5 Ann. Cas. 230, note; 1 Bishop, *Marriage, Divorce, and Separation* (1891) sec. 1520. It is not expressed in the statute involved in the instant case; and the dissenting judges argued that although the wife takes as an heir under the statute, she takes because of the fact that she is a wife, and hence her right is similar to her dower right at common law. See also *Daniels v. Taylor* (1906, C. C. A. 8th) 145 Fed. 169; (1923) 8 MINN. L. REV. 66. But where, as in the instant case, dower is expressly abolished and the wife's interest is entirely statutory, it is not subject to any common law principle. *Davis v. Davis* (1918) 167 Wis. 328, 167 N. W. 819; see *Estes v. Merrill* (1915) 121 Ark. 361, 181 S. W. 136. So, in the absence of express qualification by statute, even the principle that "one shall not profit by his own wrong" does not preclude a murderer from inheriting from his victim. *McAllister v. Fair* (1906) 72 Kan. 533, 84 Pac. 112; *contra: Riggs v. Palmer* (1889) 115 N. Y. 506, 22 N. E. 188 (devisee, not statutory heir); L. R. A. 1915 C, 328, note. And there is no equitable estoppel in the instant case since there is no element of reliance on the plaintiff's conduct. *De France v. Johnson* (1886, C. C. D. Minn.)

26 Fed. 891. Statutory abolition of dower seems commercially desirable as removing a hindrance to the transfer of real estate; and the unethical result of the instant case is avoided where the substance of the statute of Westminster II has been embodied as a qualification of the statutory right to property given the wife in lieu of dower. *Kantor v. Bloom* (1916) 90 Conn. 210, 96 Atl. 974; *Morello v. Cantalupo* (1920) 91 N. J. Eq. 415, 111 Atl. 255.

INTERPLEADER—APPLICANT DENYING LIABILITY CANNOT INTERPLEAD.—The defendant had executed a surety bond against injury from public vehicles operated by one Smith. The plaintiffs, who were injured, sued for the whole amount of the bond although they had recovered damages from the owners of the vehicle. The defendant denied liability to the plaintiffs and sought to interplead the other claimants on the bond. The lower court held that the defendant was not liable on the bond and disregarded the request for an interpleader. The plaintiffs appealed. *Held,* that the defendant was liable on the bond but that the interpleader be refused. *Stusser v. Mutual Ins. Co.* (1923, Wash.) 221 Pac. 331.

Interpleader is historically an equitable remedy for one who has incurred a single liability but is threatened with a multiplicity of suits by conflicting claimants. NOTES (1909) 22 HARV. L. REV. 294. Under modern statutes it is granted by courts of law, but generally subject to its historical limitations. *Commercial Savings Bank v. Bailey* (1920) 18 Ala. App. 30, 90 So. 48; Chafee, *Modernizing Interpleader* (1921) 30 YALE LAW JOURNAL, 814. Where a defendant admits the exact liability claimed, he may withdraw from the suit and substitute the claimants, provided he is reasonably uncertain as to their relative merits. *Conner v. Bank of Bakersfield* (1920) 183 Calif. 199, 190 Pac. 801; *Williams v. Simon* (1921, Tex. Civ. App.) 235 S. W. 257. And free from independent liability toward any one of them. *Young v. Colyear* (1921) 54 Calif. App. 232, 201 Pac. 623; *Sewanee Fuel v. Leonard* (1918) 139 Tenn. 648, 202 S. W. 928. But where the extent of his liability is in controversy, he may not withdraw. *Montpelier v. Capital Savings Bank* (1903) 75 Vt. 433, 56 Atl. 89. Where the issue of the extent of liability may be settled without an accounting, the majority of courts deny the interpleader, since at law a plaintiff cannot be forced to sue other than necessary parties. *Maxim v. Shotwell* (1920) 209 Mich. 79, 176 N. W. 414; *Brown v. Arbogast* (1914, 1st Dept.) 162 App. Div. 603, 147 N. Y. Supp. 998. Otherwise where an accounting is necessary since all interested parties must be before the court. *Guaranteed State Bank v. D'Yarmett* (1918) 67 Okla. 164, 169 Pac. 639; *Hayward v. McDonald* (1912, C. C. A. 5th) 192 Fed. 890. And there is a modern tendency to grant relief wherever the inequitable element of double vexation for a single liability is present, even though the amount in controversy can be settled at law. *Security State Bank v. Melchert* (1923, Mont.) 216 Pac. 340; *Supreme Lodge v. Stapf* (1916, Sup. Ct., Spec. T.) 160 N. Y. Supp. 1051. But where, as in the instant case, the applicant denies liability to the plaintiff, the conflicting rights of the claimants are not involved, and there is no need for requiring them to interplead. *Stevens v. Robinson* (1922, N. J. Eq.) 118 Atl. 273.

LEGAL ETHICS—UNPROFESSIONAL CONDUCT—CRAMMING APPLICANTS FOR ADMISSION TO THE BAR.—An attorney was conducting courses for bar applicants, which were confined solely to cramming the students with definitions and brief statements of legal principles, unsupported by training in reasoning, or analysis of facts or the application of the law to the facts. As a result students were able to pass the bar examinations though unfitted by experience, training, and study to be members of the bar. The relator brought an information to disbar the attorney. *Held,* (two judges *dissenting*) that the information be dismissed as the attorney was not guilty of professional misconduct warranting disciplinary measures. *People, ex rel. Chicago Bar Assoc. v. Baker* (1924, Ill.) 142 N. E. 554.

The courts have found it impractical to penalize an attorney for a breach of

good taste or of a tradition of the profession. Sexual immorality has been held no ground for court discipline. *People, ex rel. Black, v. Smith* (1919) 290 Ill. 241, 124 N. E. 807; 9 A. L. R. 189, note. Or intoxication. *In re Elliott* (1906) 73 Kan. 151, 84 Pac. 750. A contract for a contingent fee of 50% of the recovery has been held not of itself ground for suspension. *Grievance Committee v. Ennis* (1911) 84 Conn. 595, 80 Atl. 767. Similarly where business was procured from a client by the exertion of political pressure. *In re Lauterbach* (1915, 1st Dept.) 169 App. Div. 534, 155 N. Y. Supp. 478. Or even where counsel for the defendant in a criminal prosecution appeared for the plaintiff in a civil action based on the same cause of action. *In re Wilmarth* (1919) 42 S. D. 76, 172 N. W. 921. It does not follow, however, any more than with the ordinary citizen, that decency and ethics permit an attorney to go to the limit of his strict legal privilege. Thus the propriety of insisting on ultra-technical defenses is often questionable. Leavitt, *Lawyer and Client* (1910) 55. Similarly when an attorney appears for an accused with a knowledge of or belief in his guilt. See (1922) 8 A. B. A. JOUR. 166. Or when unduly severe cross examination is indulged in. See Purcell, *Forty Years at the Criminal Bar* (1916) 169. In the instant case the attorney assisted students in meeting the legal requirements and standards for admission to the bar, and probably should not be punished by the court for not attempting to maintain a higher standard. This does not, however, mean that his conduct was "professional." Ethical conduct is more than conduct free from liability to discipline by the courts. Fortunately professional success or distinction is rarely attained by one held in disrepute by his fellow citizens and fellow members of the bar. A strong practical inducement is thus furnished for endeavoring to attain the highest standard of professional conduct.

NEGLIGENCE—INFANTS—DUTY TO ANTICIPATE CAPRICIOUS ACTS.—The defendant's servant, while driving a truck in the course of his employment, saw two very young children playing on an embankment near the highway. One suddenly attempted to cross the street and was run over. The trial court instructed the jury that the driver owed no duty to the child until the latter was seen or ought to have been seen approaching danger. *Held,* that the judgment be reversed, since the driver was under a duty to anticipate the capricious act of the child. (1924, Ky.) *Craig's Adm'r v. Bannon Pipe Co.,* Jefferson Circuit Ct. Com. Pleas Branch, 2d Div.

The capricious intervening act of a child is often held insufficient to break the chain of causation. *Lane v. Atlantic Works* (1872) 111 Mass. 136; *Akin v. Bradley Engineering Co.* (1907) 48 Wash. 97, 92 Pac. 903. One who sells a toy gun or cartridges to a small child is responsible for injury resulting from the child's thoughtless act. *Binford v. Johnston* (1882) 82 Ind. 426. Similarly, in the turn-table cases. *Stout v. Sioux City & P. R. Co.* (1873, U. S.) 17 Wall. 657; see (1922) 32 YALE LAW JOURNAL, 200. And it is universally recognized that when the child is on the highway, a driver owes a duty to anticipate heedless acts. *Albert v. Münch* (1917) 141 La. 686, 75 So. 513; *Silberstein v. Showell, Fryor Co.* (1920) 267 Pa. 298, 109 Atl. 701. He is not justified in assuming that the child will hear and appreciate a warning. *Herald v. Smith* (1920) 56 Utah, 304, 190 Pac. 932. In some jurisdictions when the child is seen playing near the highway, there is a duty to foresee such acts. *Mulhern v. Phila. Bread Co.* (1917) 257 Pa. 22, 101 Atl. 74; *Lederer, Adm'r v. Conn. Co.* (1920) 95 Conn. 520, 111 Atl. 785. Especially, where there is a group of children. *Clark v. Blair* (1914) 217 Mass. 179, 104 N. E. 435; *Bulger v. Olataka* (1920) 111 Wash. 646, 191 Pac. 786. Other courts require some act indicating an intent to come on the highway. *Graham v. Consolidated Traction Co.* (1899) 64 N. J. L. 10, 44 Atl. 964; *Borland v. Lenz* (1923, Iowa) 194 N. W. 215; see *Reaves v. Maybank* (1915) 193 Ala. 614, 623, 69 So. 137, 140. And there is a duty before starting a vehicle to see that no child nearby is trespassing upon it. *Ziehn v. Vale* (1918) 98 Ohio St. 306, 120

N. E. 702; *Ostrander v. Armour & Co.* (1916, 2d Dept.) 176 App. Div. 152, 161 N. Y. Supp. 961. But the owner or driver is not an insurer. Thus no liability attaches where the child suddenly darts out and was not or could not have been seen in time to stop the car. *Hyde v. Hubinger* (1913) 87 Conn. 704, 87 Atl. 790; *Sorsby v. Benninghoven* (1916) 82 Or. 345, 161 Pac. 251. In every case the duty to anticipate depends on the circumstances. For the application of the doctrine of contributory negligence to infants, see (1920) 29 YALE LAW JOURNAL, 684.

PLEADING—PRAYER FOR JUDGMENT—INCONSISTENCY BETWEEN CAUSE OF ACTION AND RELIEF DEMANDED—EFFECT OF ANSWER.—Officers of a corporation diverted corporate funds for the payment of personal debts to the defendants, who had notice of the diversion. The plaintiffs, trustees of the now bankrupt corporation, sued the defendants and demanded an accounting. The defendants moved to dismiss the complaint on the ground that equitable relief was demanded whereas the facts showed only a legal cause of action. *Held,* that the motion be granted. *Chadbourne v. Ritz-Carlton Co.* (1924, Sup. Ct.) 202 N. Y. Supp. 805.

Codes generally require that the complaint contain a prayer for judgment. N. Y. C. P. A. sec. 255; Calif. C. C. P. 1915, sec. 426. A serious problem arises where the relief demanded is inconsistent with the cause of action as made out by the facts of the complaint. Where an "answer" has been interposed, relief is granted consistent with the facts alleged and issue raised, regardless of the relief demanded. *Building Society v. Nakielski* (1906) 127 Wis. 539, 106 N. W. 1097; *Doctor v. Reiss* (1917, 1st Dept.) 180 App. Div. 62, 167 N. Y. Supp. 193; N. Y. C. P. A. sec. 479. Does a demurrer or a motion to dismiss constitute an "answer" within the meaning of this rule? The difficulty is perhaps obviated where the code uses the term "defense" instead of "answer." See *Hansford v. Holdam* (1878, Ky.) 14 Bush. 210; Ky. Rev. Codes, 1900, sec. 90. And even where "answer" is used, it may be construed to mean not "answer" *strictu sensu,* but appearance, i. e. to include all cases except defaults. See *Lane v. Gluckauf* (1865) 28 Calif. 288. The New York courts have been in conflict as to whether "answer" under C. P. A. sec. 479 includes a motion in the nature of a demurrer. *Johnson v. Kelly* (1874, N. Y. 2d Dept.) 2 Hun, 139 (held to include); *Sims v. Furson* (1913, 3d Dept.) 157 App. Div. 38, 141 N. Y. Supp. 673 (same); *Consolidated Rubber Tire Co. v. Firestone Tire and Rubber Co.* (1909, 2d Dept.) 135 App. Div. 805, 120 N. Y. Supp. 128 (held not to include); *Fidelity Trust Co. v. International Ry.* (1922, Spec. T.) 118 Misc. 227, 193 N. Y. Supp. 726 (same). The court in the instant case has unfortunately adopted the strict technical view. The plaintiff is thereby precluded from obtaining the relief to which he would have been entitled if he had merely asked for general relief. The objection that the court will not determine for the plaintiff what form of relief he may desire is answered by authority, that where either a legal or equitable cause of action is stated, but both legal and equitable relief are demanded, the demand for the inappropriate form of relief may be treated as surplusage. *Mitchell v. Thorne* (1892) 134 N. Y. 536, 32 N. E. 10. Moreover, the intent of the codifiers of the New York Code seems to have been to consider an appearance as constituting an "answer" for this purpose. See *First Report of the Commissioners* (1848) sec. 231, note. See also, for a similar interpretation of "answer," judgment statutes. *Ibid.* sec. 202.

PROPERTY—INTEREST SUFFICIENT TO MAINTAIN TRESPASS—POWER OF REDEMPTION.—The plaintiff's vein of coal was forfeited to the state due to his failure to enter it on the land books and to pax taxes. Before his power of redemption was exercised, the defendant entered upon the land and carried away some coal. After redemption, the plaintiff brought trespass. *Held,* that trespass might be maintained. *Elk Garden Mining Co. v. Gerstell* (1924, W. Va.) 121 S. E. 569.

It is generally said that to maintain trespass the plaintiff must have, at the time

of the trespass, either actual possession or such legal "title" as gives "constructive" possession. *Newman v. Mountain Park Land Co.* (1908) 85 Ark. 208, 107 S. W. 391. It has been held, however, that the action will also lie at suit of an equitable owner of unoccupied land provided he has an immediate right to possession. *Russel v. Meyer* (1898) 7 N. D. 335, 75 N. W. 262; *Miller v. Zufall* (1886) 113 Pa. 317, 6 Atl. 350. On the other hand, where the necessary title or possession is acquired subsequently to the trespass, the action will not lie. *Knight v. Empire Land Co.* (1908) 55 Fla. 301, 45 So. 1025. Thus a tenant may not recover for a trespass committed before his tenancy commenced. *Sposata v. New York* (1904) 178 N. Y. 583, 70 N. E. 1109. But a disseisee may sue after re-entry for a trespass committed during the possession of the disseisor, by use of the fiction that his resumed possession has been continuous from the time of the disseisin. *Alliance Trust Co. v. Nettleton Hardwood Co.* (1896) 74 Miss. 584, 21 So. 396. A similar fiction is appealed to in the instant case. But the cases are distinguishable in that the plaintiff at the time of the trespass had only a power of redemption and not an immediate right to possession. Although an action on the case seems to be the more appropriate remedy, the decision reaches a just result, and may be supported on the ground that the plaintiff's retention of that portion of the legal "title" represented by the power of redemption is sufficient to give "constructive" possession.

PROPERTY—SALE OF STANDING TIMBER—REMOVAL BY VENDEE AFTER STIPULATED PERIOD.—The plaintiff sold standing timber on his land to the defendant, giving him the right during five years from the date of sale to cut and remove the same. The defendant entered after the five years had expired, cut, and carried timber away. In an action for trespass the lower court sustained the defendant's plea of no cause of action. *Held,* that the judgment be reversed, as title to the timber not cut within the contract period reverted to the plaintiff. *Ward v. Hayes-Ewell Co.* (1923, La.) 98 So. 740.

If no time limit is set, the timber must be removed within a reasonable time. *Polley v. Ford* (1921) 190 Ky. 579, 227 S. W. 1007; *Hill v. Vencill* (1922) 90 W. Va. 136, 111 S. E. 478. Where a definite time limit has been set, all courts agree in the statement that the intent of the parties determines the time when the title passes, but in the absence of evidence of intent, different arbitrary rules are used. *Houston Oil Co. of Texas v. Boykin* (1918) 109 Tex. 276, 206 S. W. 815; *Furrow v. Bair* (1919) 84 W. Va. 654, 100 S. E. 506. In a few jurisdictions it is held that an absolute sale of the timber was contemplated, and that the vendee's failure to remove in time gives rise merely to an action for breach of contract. *Zimmerman Mfg. Co. v. Daffin* (1906) 149 Ala. 380, 43 So. 858; *Hanby v. Dominick* (1921) 206 Ala. 539, 90 So. 287; see *Monroe v. Bowen* (1873) 26 Mich. 523. Damages do not then include the value of the trees. *Hoit v. Stratton Mills* (1873) 54 N. H. 109. Other courts adopt the rule of the instant case that title passes upon sale, subject to defeasance if the timber is not removed within the agreed period. *Kee v. Carver* (1920) 95 Or. 406, 187 Pac. 1116; *Harrington v. Kneeland-Bigelow Co.* (1921) 213 Mich. 327, 182 N. W. 68. Others hold that title does not pass until severance. *Mallett v. Doherty* (1919) 180 Calif. 225, 180 Pac. 531; *Maynard v. Farley* (1923) 198 Ky. 420, 248 S. W. 1022. It seems that there is little practical difference between the legal consequences resulting from the two latter views. It is thought, however, that the interest conveyed might well be classified as a profit, giving the vendee an easement coupled with the power of acquiring title by severance within the time set. See generally for profits *à prendre,* 2 Tiffany, *Real Property* (2d ed. 1920) 1388; (1917) 27 YALE LAW JOURNAL, 97. Replevin would lie under the rule that title passes upon sale, where it would not lie for interference with a profit. But under modern procedure any damages recovered would seem to be identical with what could be gained in trespass.

SALES—IMPLIED WARRANTY—EFFECT OF TRADE USAGE.—Pursuant to the plaintiff's request for Golden Yellow celery seed, the defendants furnished seed which on maturity was found to be Green celery, a worthless variety. The plaintiff alleged a warranty of the variety of the seed. The court refused the defendants' request for an instruction that if there was a general custom of non-warranty among dealers in California the plaintiff would be bound thereby, even if he did not know of such custom. From a judgment for the plaintiff the defendant appealed. *Held,* (two judges *dissenting*) that the instruction should have been granted. *Miller v. Germain Seed Co.* (1924, Calif.) 222 Pac. 817.

Descriptive statements import an unqualified warranty of the character or quality of an article sold. *Hoffman v. Dixon* (1900) 105 Wis. 315, 81 N. W. 491; *Newhall Land Co. v. Hogue-Kellogg Co.* (1922) 56 Calif. App. 90, 204 Pac. 562. But the parties may by express stipulation rebut the inference of such a warranty. *Leonard Seed Co. v. Crary Canning Co.* (1911) 147 Wis. 166, 132 N. W. 902; *Kibbe v. Woodruff* (1920) 94 Conn. 443, 109 Atl. 169. Some jurisdictions have refused to give to a general trade usage the same effect as an express stipulation. *Whitmore v. South Boston Iron Co.* (1861, Mass.) 2 Allen, 52; *Chicago Provision Co. v. Tilton* (1877) 87 Ill. 547. But the modern tendency is to permit a well-defined usage to defeat a warranty which would otherwise exist. *Blizzard Bros. v. Growers Canning Co.* (1911) 152 Iowa, 257, 132 N. W. 66; *Ross v. Northrup, King & Co.* (1914) 156 Wis. 327, 144 N. W. 1124; *Seattle Seed Co. v. Fujimori* (1914) 79 Wash. 123, 139 Pac. 866. Similarly, in the absence of descriptive statements, a warranty may be established by a general usage. *Sumner v. Tyson* (1850) 20 N. H. 384; *Proctor v. Atlantic Fish Co.* (1911) 208 Mass. 351, 94 N. E. 281. Here, too, earlier cases denied such effect to a usage. *Dickinson v. Gay* (1863, Mass.) 7 Allen, 29; *Thompson v. Ashton* (1817, N. Y. Sup. Ct.) 14 Johns. 316. That a trade usage may be recognized as one of the circumstances surrounding the making of a contract, it must be either known to both parties or so notorious that actual knowledge is immaterial. *Blizzard Bros. v. Growers Canning Co., supra; Ross v. Northrup, King & Co., supra.* Subject to these limitations, the courts in measuring the seller's obligation, in warranty as in other matters, might well give more attention to the bearing of circumstances on the meaning of the acts and language of the parties at the time the contract is made.

SURETYSHIP—STATUTE OF FRAUDS—WRITTEN PROMISE TO SIGN NOTE.—The plaintiff loaned money to the defendant's tenant at the defendant's request, taking the note of the tenant which the defendant promised in writing to sign. The tenant refused to pay, the defendant refused to sign, and the plaintiff sued both for the amount of the note. The defendant pleaded the statute of frauds and the lower court directed a verdict for the plaintiff, holding the defendant's promise not within the statute. The defendant appealed. *Held,* (two judges *dissenting*) that a new trial be ordered, since the question was one for the jury. *Farmer's Bank of Traveler's Rest v. Eledge* (1923, S. C.) 120 S. E. 362.

In determining whether a promise is within the statute of frauds, there seems no reason for a distinction between a promise to answer for, and a promise to sign a note making one answerable for, the debt of another. See *Carville v. Crane* (1843, N. Y. Sup. Ct.) 5 Hill, 483. The statute applies when the person receiving the principal consideration is obligated, even though the credit of the promisor is in fact exclusively relied on. *Matson v. Wharam* (1787, K. B.) 2 T. R. 80; *Mankin v. Jones* (1908) 63 W. Va. 373, 60 S. E. 248; *Condon National Bank v. Cameron* (1923, Or.) 216 Pac. 558. And it should apply here, since the tenant signed the note. Otherwise where the "main purpose" of the defendant's promise is to secure a direct benefit to himself. *Emerson v. Slater* (1859, U. S.) 22 How. 28. But where the expected economic benefit to a promisor is sufficiently great and direct, there is a tendency to say that the main purpose of his promise is to serve his own interest, even

though the effect of fulfilling the promise may be to discharge the debt of another. *Davis v. Patrick* (1891) 141 U. S. 479, 12 Sup. Ct. 58; *Housley v. Strawn Merchandise Co.* (1923, Tex. Civ. App.) 253 S. W. 673; Spencer, *Suretyship* (1913) sec. 69. But the mere fact that the surety received consideration for his promise does not necessarily bring it within this rule. If it did, all compensated suretyships would be outside the statute. *White v. Rintoul* (1888) 108 N. Y. 222, 15 N. E. 318; Browne, *Statute of Frauds* (5th ed. 1895) sec. 212; Falconbridge, *Guarantees and the Statute of Frauds* (1920) 68 U. PA. L. REV. 1, *ibid.* 137; but see *Leonard v. Vredenburgh* (1811, N. Y. Sup. Ct.) 8 Johns. 23. The directness of the expected benefit is, however, evidential of the "main purpose" of making the promise. *Gardner v. Jarrett* (1922) 121 S. C. 338, 113 S. E. 493 (landlord's promise to stand good for advances made to a share-cropper on his land held not within the statute); *Gaines v. Durham* (1923, S. C.) 117 S. E. 732 (landlord's promise to pay for fertilizer used by a tenant on his property held not within the statute). The benefit to the promisor in the instant case seems sufficiently remote to keep the promise out of the "main purpose" rule. *Perry v. Jarman* (1916) 125 Ark. 240, 188 S. W. 544 (landlord's promise to pay for goods delivered to tenants); *Hurst Co. v. Goodman* (1910) 68 W. Va. 462, 69 S. E. 898 (promise of an officer liable as indorser on its paper to pay for goods sold to the corporation); *Harburg Co. v. Martin* [1902] 1 K. B. 778. And this seems a question for the court rather than the jury, since it is a matter of construing an undisputed agreement. *Richardson Press v. Albright* (1918) 224 N. Y. 497, 121 N. E. 362. It seems indeed that the judgment should have been affirmed in the instant case on the ground that the written promise was a compliance with the statute. Spencer, *Suretyship, op. cit. supra,* ch. 7.

TROVER—CONVERSION OF GRAIN BY WAREHOUSEMAN—INNOCENT PURCHASER.—The plaintiff was the assignee of warehouse receipts for grain stored in a warehouse. The warehouse was subsequently emptied. Other grain was then deposited and part was wrongfully sold by the warehouseman to the defendant, a bona fide purchaser for value. In an action for conversion the lower court found for the plaintiff, and the defendant appealed on the ground that the plaintiff's interest in the grain was not sufficient to support an action for conversion. *Held,* that the plaintiff had a continuing claim on all grain of like kind and quality received on account of purchase or general storage subsequent to the deposit by the plaintiff's assignors, in the proportion which plaintiff's receipts bore to the outstanding total. *Carson State Bank v. Grant Grain Co.* (1924, N. D.) 197 N. W. 146.

An assignee of storage receipts becomes a tenant in common with other depositors of the mass in the warehouse, in the proportion which his receipts bear to the whole. *National Exchange Bank of Hartford v. Wilder* (1885) 34 Minn. 149, 24 N. W. 699; Colebrook, *Collateral Securities* (1883) sec. 420. If part of the mass is lost or destroyed, the depositors remain tenants in common of the residue in the same proportion. *Goodman v. Northcutt* (1887) 14 Or. 529, 13 Pac. 485; *Ramsey v. Rodenburg* (1923, Colo.) 212 Pac. 820; (1872) 6 AM. L. REV. 467. When there has been a wrongful sale by the warehouseman, depositors may sue him or an innocent purchaser for conversion. *Hall v. Pillsbury* (1890) 43 Minn. 33, 44 N. W. 673; *Kastner v. Andrews* (1923, N. D.) 194 N. W. 824; Bowers, *Law of Conversion* (1917) 67. When a warehouseman wrongfully disposes of all the grain in the warehouse and later deposits more himself, holders of previous receipts may claim from these subsequent deposits. *Eggers v. Hayes* (1889) 40 Minn. 182, 41 N. W. 971; see *Hall v. Pillsbury, supra.* The bailor's claim evidently attaches to the money derived from the wrongful sale, and thence to the grain purchased with that money, as long as it remains in the hands of the warehouseman. But in the instant case the subsequent deposits were made by others than the warehouseman, so that the plaintiffs were never in fact tenants in common of the mass of

which the grain sold to the defendant was a part. Since the doctrine of prorating is an incident to the actual confusion of goods, it seems inapplicable to the facts in the instant case where there was no such physical mixture. The grain elevator industry would be greatly hampered if owners of grain should hesitate to utilize elevators lest they be thus penalized for previous defaults of the warehouseman. See *Goodman v. Northcutt, supra.*

TRUSTS—CONSTRUCTIVE TRUSTS—PURCHASE OF REVERSION OF PARTNERSHIP LEASE BY ONE PARTNER.—The plaintiff's partners secretly contracted to buy a reversionary interest in premises held by the partnership under a lease, and sold the contract at a profit. The plaintiff asked for an accounting. The defendants moved to dismiss the complaint for insufficiency. *Held,* that the motion be denied. *Maas v. Goldman and Malzman* (1924, N. Y. Spec. T.) 122 Misc. 221.

When one partner takes a renewal of a partnership lease in his own name, he holds it as constructive trustee for the partnership. *Featherstonhaugh v. Fenwick* (1810, Ch.) 17 Ves. 298; *Mitchell v. Reed* (1874) 61 N. Y. 123. The reason given in the older cases is that the second lease is a "graft on the old stock." *Lee v. Vernon* (1776) 7 Brown's Parl. Cas. 432. The holder of the first lease is considered to have an interest beyond the term arising out of the term—a "tenant right of renewal." *Holt v. Holt* (1670) 1 Ch. Cas. 190. And it has even been held that a renewed lease was subject to a mortgage imposed on the first lease. *Knightly, Robinson v. Burdett* (1686, Ch.) 2 Ver. 10. But the English courts do not extend the rule to the purchase of a reversion or additional lands unless there is a contract or special custom of renewal with respect to them, since there is no reversion expectant on a lease corresponding to a "tenant right of renewal." *Acheson v. Fair* (1843, Ir. Ch.) 3 Dr. & War. 512; *Bevan v. Webb* [1905] 1 Ch. 620; *Lloyd Jones v. Clark-Lloyd* [1919] 1 Ch. 424; see *Anderson v. Lemon* (1853) 8 N. Y. 236. This distinction seems unsound since the chance of renewal, cut off by procuring a lease, is equally imperiled by a purchase of the reversion. See *Griffith v. Owen* [1907] 1 Ch. 195 (tenant for life, who, by purchase from the mortgagee of the settled property destroyed the equity of redemption, held for the benefit of the reversion); see *Randall v. Russell* (1817, Ch.) 3 Mer. 190. The real basis for imposing the trust in the lease cases is the rule that a fiduciary shall not use the trust property nor his relation to it for his own advantage. *Keech v. Sandford* (1726, Ch.) Sel. Cas. 61; see *Trice v. Comstock* (1903, C. C. A. 8th) 121 Fed. 620. Good faith and absence of loss to the beneficiary are immaterial. *Magruder v. Drury* (1914) 235 U. S. 106, 35 Sup. Ct. 77; see (1915) 49 AM. L. REV. 607. To avoid the uncertain issue of fraud, the case is treated, without admitting inquiry, as if the new lease was acquired by reason of the fiduciary relationship. *In re Biss* [1903] 2 Ch. 40; *Turner v. Fryberger* (1905) 94 Minn. 433, 103 N. W. 217. But certain fiduciaries are allowed to show that in spite of the relation there is nothing inequitable in their claiming the renewed lease. This depends on the kind of fiduciary relationship. *Magruder v. Drury, supra* (express trustee not allowed to show these facts); compare *Sandy River R. R. v. Stubbs* (1885) 77 Me. 594 (directors of a corporation); see (1907) 7 COL. L. REV. 538. And some courts refuse to follow the rule to the extent of forcing an unwelcome tenant upon a landlord. *Jacksonville Cigar Co. v. Dozier* (1907) 53 Fla. 1059, 43 So. 523. It seems that the instant case is in line with sound principles of business fairness in applying these rules to reversions as well as to leases.

UNFAIR COMPETITION—INTERESTS OF THE PUBLIC AND COMPETITORS—REISSUING OLD PHOTOPLAYS UNDER NEW TITLES.—The petitioner, a producer of photoplays, reissued three old productions under new titles. Under authority of the Act of September 26, 1914 (38 Stat. at L. 717) the Federal Trade Commission declared such practice unfair and forbade further reissues unless the fact of the prior issue

and the old titles be definitely stated. *Held,* that the Commission's order be affirmed. *Fox Film Corporation v. Federal Trade Commission* (1924, C. C. A. 2d) 296 Fed. 353.

To sell or advertise goods under a misleading appearance or title may injure the public and competitors—the public by deception, the competitor by reducing the demand for his particular goods. The injury to the latter may result from (a) a filling of the demand for his particular brand of goods, or (b) bringing such brand of goods into disrepute, (c) filling the demand for his kind or quality of goods, or (d) bringing such kind or quality of goods into disrepute. State legislation prohibiting misleading selling or advertising resulting in these abuses is generally upheld as a constitutional exercise of the police power. *Armour & Co. v. North Dakota* (1916) 240 U. S. 510, 36 Sup. Ct. 440; Freund, *Police Power* (1904) sec. 272; (1917) 26 YALE LAW JOURNAL, 416. In the absence of such legislation the public is protected to some extent by the remedies of the injured competitor, as to practices covered by (a) and (b) *supra. O'Sullivan Rubber Co. v. Genuine Rubber Co.* (1922, C. C. A. 1st) 279 Fed. 972 (injunction); *Coco-Cola Co. v. Vivian Ice, Light & Water Co.* (1922) 150 La. 445, 90 So. 755 (injunction, accounting and damages); Oliphant, *Cases on Trade Regulation* (1923) 354; Nims, *Unfair Competition and Trade Marks* (2d ed. 1917) 79, 233. The tendency of the courts is to give relief even where only a slight loss is shown. One of the major factors inducing the decisions in such cases seems to be the indirect protection thereby given to the public. *Lampert v. Judge Co.* (1911) 238 Mo. 409, 141 S. W. 1095 (one cent compensatory damages and $500 punitive damages); see *Shredded Wheat Co. v. Humphrey Cornell Co.* (1918, C. C. A. 2d) 250 Fed. 960. As to practices covered by (c) and (d) *supra,* the inability of any single competitor to show sufficiently direct injury through their use, had as a practical matter made offending merchants immune from court action. *American Washboard Co. v. Saginaw Mfg. Co.* (1900, C. C. A. 6th) 103 Fed. 281. The principal case is in line with other recent cases and illustrates the effectiveness of the Federal Trade Act in meeting this evil by putting new content in the term "unfair methods of competition" as used in the Act. See also *Royal Baking Powder Co. v. Federal Trade Commission* (1922, C. C. A. 2d) 281 Fed. 744; *Federal Trade Commission v. Winsted Hosiery Co.* (1922) 258 U. S. 483, 42 Sup. Ct. 384.

VERDICTS—DAMAGES—CONSTITUTIONAL LAW—NEW TRIAL ON QUESTION OF DAMAGES ONLY.—In a personal injury action the jury returned a verdict for the plaintiff of $5,000. A statute provided that if the award of damages was excessive or inadequate, a new trial could be ordered limited to the question of damages. The defendant objected to a retrial on the question of damages only, contending that the statute was unconstitutional in that it deprived him of a right to have the questions of liability and damages determined by the same jury. *Held,* that the statute was constitutional. *Robinson v. Payne* (1923, N. J.) 122 Atl. 882.

The weight of authority is to the effect that the court has the inherent power at common law to limit the new trial to the single issue of damages. *Clark v. N. Y. N. H. & H. R. R.* (1911) 33 R. I. 83, 80 Atl. 406; *Simmons v. Fish* (1912) 210 Mass. 563, 97 N. E. 102; *contra: Cerney v. Paxton and Gallagher Co.* (1908) 83 Neb. 88, 119 N. W. 14; see 3 Blackstone, *Commentaries,* *387. In some states the trial court may, as a condition of refusing a motion for a new trial, require the plaintiff to remit the sum deemed excessive, thus avoiding the cost and delay of a new trial. *Arkansas Valley Land Co. v. Mann* (1889) 130 U. S. 69, 9 Sup. Ct. 458; *Devine v. St. Louis* (1914) 257 Mo. 470, 165 S. W. 1014; *Henderson v. Dreyfus* (1919) 26 N. M. 541, 191 Pac. 442; *contra: Seaboard Air Line Ry. v. Randolph* (1908) 129 Ga. 796, 59 S. E. 1110. See *Ford v. Minneapolis Ry.* (1906) 98 Minn. 96, 107 N. W. 817 (unusual practise of compelling defendant to consent to an increase of the verdict as a condition of refus-

ing to grant plaintiff's motion for a new trial). Otherwise if the verdict was the result of passion or prejudice. *Drumm v. Cessnun* (1897) 58 Kan. 331, 49 Pac. 78; *Tunnel Mining Co. v. Cooper* (1911) 50 Colo. 390, 115 Pac. 901; *contra: Goss v. Goss* (1907) 102 Minn. 346, 113 N. W. 690. And an appellate court may affirm the judgment of the lower court on the plaintiff's consenting to remit. *Burdict v. Mo. Pac. Ry.* (1894) 123 Mo. 221, 27 S. W. 453; *contra: Watt v. Watt* (1905, H. L.) 21 T. L. R. 386. The plaintiff has even been compelled to remit. *Rice v. Crescent City Ry.* (1899) 51 La. Ann. 108, 24 So. 791 (no state constitutional provision as to jury trials in civil cases). This practise, however, has been held to violate the seventh amendment of the Federal constitution. *Kennon v. Gilmer* (1889) 131 U. S. 22, 9 Sup. Ct. 696; *cf. Wichita & Colorado Ry. v. Gibbs* (1891) 47 Kan. 274, 27 Pac. 991 (plaintiff's evidence on its face indicated that the verdict was excessive). A recent federal case has further held that the procedure authorized by the New Jersey statute also violates the amendment. *McKeon v. Central Stamping Co.* (1920, C. C. A. 3d) 264 Fed. 385. But the same type of statute has been upheld in a state court as against a similar provision of the state constitution. *Yazoo & M. V. R. R. v. Scott* (1914) 108 Miss. 871, 67 So. 491; see *Powell v. Augusta & Summerville R. R.* (1887) 77 Ga. 192, 3 S. E. 757; (1920) 91 CENT. L. JOUR. 79. It seems that the latter represents the better view, since a fair jury trial is had on the issues both of liability and damages. That the new trial should cover both issues, although a fair trial has already been had on the issue of liability, seems more than is required by the constitutional right. The instant case is therefore sound.

WILLS—HOLOGRAPHIC WILLS.—On the day of his death, the deceased had written a letter to his two sons, discussing several matters and closing with the statement that he had some valuable papers which he wished them to keep so that if "enny thing hapens" they would get his property. The letter was signed "Father." An appeal was taken from a decree directing probate of this letter. *Held,* that the decree be affirmed, since the letter exhibited a testamentary intent and was properly signed. *In re Kimmel's Estate* (1924, Pa.) 123 Atl. 405.

Under the Statute of Frauds the ecclesiastical courts admitted practically any dispositive writing as a will of personal property. See *Ross v. Ewer* (1744, Ch.) 3 Atk. 139. Any mark was sufficient as a signature if it had been made with the intent to authenticate the writing. *Baker v. Dening* (1838, Q. B.) 8 Ad. & El. 94. A testamentary intent was the only requirement. See *Waller v. Waller* (1845, Va.) 1 Gratt. 454; 1 Schouler, *Wills* (6th ed. 1923) secs. 336, 389. If the character of the paper was doubtful on its face, only a readily rebuttable presumption that the intent was lacking was raised. See *Watts v. Public Administrator* (1829, N. Y.) 1 Paige Ch. 347; *Thorncroft v. Lashmar* (1862, P.) 2 Swab. & Tr. 479. To remedy the mischiefs resulting from this laxity of construction, statutes imposed on wills of personalty the same requirements of execution and attestation as for wills of realty. See (1837) 7 Will. IV & 1 Vict. c. 26; *In re Swire's Estate* (1909) 225 Pa. 188, 73 Atl. 1110. But some of these statutes excepted holographic wills. See Wills Act, Pa. Laws, 1917, 403; Pa. Sts. 1920, sec. 8308. Practically any paper, if entirely in the handwriting of the testator, signed and executed with testamentary intent, could still be probated. *Knox's Estate* (1890) 131 Pa. 220, 18 Atl. 1021. But even under these principles, the instant case goes to the extreme of finding a testamentary intent in a letter equivocal on its face. *Cf. McBride v. McBride* (1875, Va.) 26 Gratt. 476. And the holding that "Father" is a sufficient signature is difficult to reconcile with a previous decision by the Pennsylvania court to the contrary. See *In re Brennan's Estate* (1914) 244 Pa. 574, 91 Atl. 220; *Selby v. Selby* (1817, Ch.) 3 Mer. 2. Such difficulties are eliminated by requiring the formality of attestation. 1 Schouler, *op. cit.* secs. 335, 355, 390. Such informal wills as in the instant case override all safeguards against fraud provided by the formal requirements of the Wills Act. See (1922) 9 VA. L. REV. 72.