

tional \$3000, Oviatt and Gibson were to have possession of the lands until the contract price was paid in full. At that time conveyance was to be made. The option holders were to pay 4½% a year upon the unpaid \$80,000 for the use of the land until the completion of the purchase. Oviatt and Gibson assigned their option to the plaintiff. The latter went into possession, paid \$3600 for the first year's occupancy, discovered that the defendant Tyler could not transfer good title, held for another year, gave notice, left the premises, and sued for rescission of the contract. Tyler filed a cross petition for compensation for the use of the property. *Held*, that the plaintiff was entitled to rescind the contract but that he was liable for the use of the premises. *Bredensteiner v. Oviatt*, 202 Iowa 993, 210 N. W. 133 (1926).

For a discussion of the principles involved in this case, see Notes *supra* p. 87.

WILLS—GIFTS TO CLASSES—WHERE INDIVIDUALS ARE NAMED AND PROPERTY IS GIVEN TO THEM EQUALLY.—The testator had been married twice. By his first wife he had one child, the plaintiff. When he and his first wife were divorced she took the plaintiff with her, and after the divorce the plaintiff went by his mother's name. The deceased and the plaintiff never visited with each other. The testator remarried and by his second wife he had seven children. In the will in question the testator "devised and bequeathed all of the residue" of his estate to his wife for life "then after her death, the estate and personal property is to be equally divided between my lawful heirs," naming the seven children by the second wife, but not naming the plaintiff. The latter claims an interest as one of the class of "lawful heirs." *Held*, that the plaintiff took no interest in the estate. *Westerfelt v. Smith*, 202 Iowa 966, 211 N. W. 380 (1926).

The testator divided all of his property into equal shares and bequeathed one of the shares to A, B and C, "children of my deceased daughter" D, "to be held by them jointly." A, unmarried and without issue, died before the date of the will and the decease of the testator. The father of A, her sole heir under the statute, claims the interest bequeathed to A. *Held*, that the testament created gifts to individuals, rather than a gift to a class, and that A's share did not lapse but passed to her heir, the plaintiff. *In re Carter's Estate*, 213 N. W. 392 (Iowa, 1927).

For a discussion of the principles involved in these cases, see Notes *supra* p. 90.

WILLS—LAPSED DEVISE—CONTRARY INTENT AS SHOWN BY THE TERMS OF THE WILL.—The will of the testator directed the executors to sell all of his property, both real and personal, and to pay certain obligations out of the proceeds. He then bequeathed one third of all the money remaining in their hands to his wife. The wife of the testator predeceased him, leaving her daughter by a