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DISCUSSION OF RECENT DECISIONS

CONTRACTS—CONSTRUCTION AND OPERATION—WHEN RIGHTS OF THIRD PARTY BENEFICIARY ARE VOID AS TESTAMENTARY IN CHARACTER BECAUSE DEPENDENT UPON DEATH OF PROMISSOR AS A CONDITION.—In the recent case of *McCarthy* v. *Pieret*[1] the decedent mortgagee, when executing an extension agreement, included a provision that, in the event of her death before maturity, the remaining interest and the principal at maturity were to be paid to certain relatives. The plaintiffs, as third party beneficiaries of this clause, after the mortgagee's death demanded payment of the interest from the mortgagor. Upon proof of the contract, the lower court gave summary judgment for the plaintiffs. The Court of Appeals of New York, however, held the instrument to be an attempt to make a testamentary disposition and, because not executed with the formality required by the Statute of Wills, to be void. The court pointed out that it was evident from the contract that the mortgagee intended to retain full control up to the time of her death and that therefore no interest vested in plaintiff until the death of the mortgagee. The court based its reasoning upon the fact that the mortgagee could have accepted payment and discharged the mortgagor

[1] 24 N.E. (2d) 102 (N. Y. 1940).

or, if necessary, started foreclosure proceedings without joining the beneficiary, because, by the express wording of the contract, the rights of third party beneficiaries were not to come into existence until the happening of a condition, the death of the mortgagee.[2]

The instrument in the instant case does not purport to be a deed but only an executory contract. Most of the cases of contracts performable at death have involved a performance running to the promisee who furnishes the consideration, and they have been held enforceable.[3] Sometimes the performance is intended to run to a third party beneficiary. Among these cases are life insurance contracts, stock purchase contracts, and revocable trusts. In the former, no question is now raised of such contracts violating the Statute of Wills. Their validity is conceded even as to contingent beneficiaries. The nontestamentary classification of such contracts is explained on the ground that no property of the insured passes to the beneficiary, because, prior to death the insured can reach only the cash value, while the face amount of the policy is paid at his death.[4] Although the claim of the beneficiary can be destroyed by the insured, the tenuous distinction between the beneficiary's and the insured's interest has apparently been accepted as removing such contracts from the prohibited class. And the same explanation seems to have been accepted in the stock purchase contracts.[5] Living trust agreements, although revocable, are also given effect despite the fact that the beneficiary is to receive the benefits at the death of the settlor.[6] The fact that posses-

[2] The court said, "Had the mortgagor desired to pay the mortgage he could former, it does not legally appear that the receiver was not entitled to enforce tives would have had no interest . . . Suppose there had been default . . . and foreclosure was necessary. Could the mortgagee have foreclosed or would it have been necessary to join these collateral relatives? To put the question is to answer it. These collaterals had no present interest . . . This to my mind is an attempt to provide for the passing of property at death, in the nature of a will . . . ."

[3] In re Beyschlags Estate, 201 Wis. 613, 231 N.W. 165 (1930). See also In re McIntosh's estate, 182 Iowa 23, 159 N.W. 223 (1916); Fiscus v. Wilson, 74 Neb. 444, 104 N.W. 856 (1905).

[4] Sigal v. Hartford National Bank & Trust Co., 119 Conn. 570, 177 A. 742 (1935) states: "The ordinary life insurance policy somewhat resembles a will . . . but is not a will because it does not operate upon any property of the insured owned by him at death." See also Reed v. Provident Savings Life Assurance Society, 190 N. Y. 111, at 118, 82 N.E. 734 (1937), holding that a life insurance policy is a contract to pay a sum of money upon the death of the insured, in consideration of payment or payments duly made during life.

[5] In re Koss Estate, 106 N. J. Eq. 323, 150 A. 360 (1930), reversing 105 N. J. Eq. 29, 146 A. 471 (1929): "It is obvious from a reading of the contract in question, that there is no specific property to which Gertrude Koss, in her lifetime was ever entitled. Had she remained a participant in the plan until its termination she would have received a certain number of shares of stock, the exact number of which could not be determined. Had she cared to withdraw, she would have been obliged to take only the money contributed and interest. She would lose, not only the contribution, made by the company . . . but all the benefits which would have accrued by reason of management."

[6] Van Cott v. Prentice, 104 N. Y. 45, 10 N.E. 257 (1887); Bear v. Millikin Trust Co., 336 Ill. 366, 168 N.E. 349 (1929).

sion of the property has been transferred to the trustee in the settlor's lifetime substantiates the writing and eliminates the possibility of fraud or forgery. The same can be said of the money which is given by the creditor to the debtor to be paid, pursuant to written agreement, to the creditor if alive or to the beneficiary if he is not, if it is conceded that the contract is no more ambulatory than the revocable trust.

In the instant case the court expressed the opposite opinion—that the mortgagee died prior to the maturity of the debt is identical with that which would go to the mortgagee if she were alive at maturity. Therefore, it is said, this case is not like an insurance contract, and since the beneficiary's interest is conditional on the mortgagee's death before maturity, the beneficiary's interest is not vested in the lifetime of the mortgagee; thus the interest can be passed by will only. This rationale is supposed to dispose of the whole matter. The only comparable cases found have been decided the same way.[7] But it is well known that the New York courts have not been too kindly disposed toward pure donee beneficiaries and at least one case in Rhode Island[8] is unfavorable to them. The Rhode Island court in the case most comparable to the instant case seems to treat the contract as attempting to give the beneficiary an unexecuted gift.[9]

In many jurisdictions the rights of the beneficiary are deemed to arise by force of the contract itself and not because of an executed gift. In such states it would probably be said that the promisee could not, without the beneficiary's consent, release the promisor from his promise.[10] In the instant case the court expressed the opposite opinion—that the mortgagee could release the mortgagor without the beneficiary's consent. Whether the intsrument at hand, therefore, is testamentary or not might well be said to depend upon the attitude of the court respecting the rights of a donee beneficiary.[11] It is submitted that, while the decision is consistent with New York law on third party beneficiaries, it should not be followed in those states where a third party beneficiary acquires an irrevocable interest in the contract when it is made.

C. G. DOYLE

7 Sliney v. Cormier, 49 R. I. 74, 139 A. 665 (1928); Priester v. Hohloch, 75 N.Y.S. 405 (1902).

8 Wilbur v. Wilbur, 17 R. I. 295, 21 A. 497 (1891).

9 Sliney v. Cormier, 49 R. I. 74, 139 A. 665 (1928). Decedent loaned money to a third party and provided in the instrument that in the event of her death before maturity the principal was to be paid to her husband, and in the event of his death before maturity, the principal was to be paid to plaintiff, a niece. It was held that all control was in decedent until death; therefore no present interest passed at the time of the contract, and since it was an attempt to make a testamentary disposition of property without compliance with the Statute of Wills, it was void.

10 Tweeddale v. Tweeddale, 116 Wis. 517, 93 N.W. 440, 61 L.R.A. 509, 96 Am. St. Rep. 1003 (1903); Bay v. Williams, 112 Ill. 91, 1 N.E. 340 (1884).

11 See William H. Page, "The Power of the Contracting Parties to Alter a Contract for Rendering Performance to a Third Person," 12 Wis. L. Rev. 141 (1937).

COURTS — INJUNCTION — JURISDICTION OF MUNICIPAL COURT OF CHICAGO UNDER UNIFORM STOCK TRANSFER ACT TO ISSUE RESTRAINING ORDERS.—An interesting problem arising out of Sections 13 and 14 of the Uniform Stock Transfer Act[1] was recently presented to the Illinois Appellate Court for the first time. In the case of *Trade Bond and Mortgage Company* v. *Schwartz*,[2] the question arose as to the power of the Municipal Court of Chicago to exercise jurisdiction under Sections 13 and 14 to grant the necessary relief therein provided. In that case the plaintiff, after judgment, obtained a writ of injunction or restraining order from the Municipal Court restraining the defendants, owners of the stock certificate, from divesting themselves of ownership. A bailiff's sale followed at which plaintiff purchased the stock. It was admitted that a court of general equitable jurisdiction had the power to grant the restraining injunction under Section 13, but it was contended that the Municipal Court of Chicago was not qualified to grant such an injunction. The Illinois Appellate Court held that it was.

At common law shares of stock in a corporation were held not to be subject to execution.[3] The basis for this holding rested in the fact that shares of stock were chosen in action and of such an intangible nature that there could be no change of possession by a mere attachment of the stock certifiate. Under Sections 13 and 14 of the Uniform Stock Transfer Acts this has been changed so that a creditor may levy under certain conditions as set out therein and to that end may have necessary assistance from court of *appropriate* jurisdiction. Being statutory and in derogation of the common law, these sections should be strictly construed; and this immediately presents the question whether the Municipal Court of Chicago is such a court and should possess authority to grant injunctive relief.

It is well settled that the Municipal Court of Chicago does not have general equity powers[4] and hence if "appropriate" as used in the statute

[1] Ill. Rev. Stat. 1939, Ch. 32, §§ 428, 429. Section 13 of the Uniform Stock Transfer Act provides, "No attachment or levy upon shares of stock for which a certificate is outstanding shall be valid until such certificate be actually seized by the officer making the attachment or levy, or be surrendered to the corporation which issued it or its transfer by the holder be enjoined. Except where a certificate is lost or destroyed, such corporation shall not be compelled to issue a new certificate for the stock until the old certificate is surrendered to it." Section 14 [of the Uniform Stock Transfer Act] provides, "A creditor whose debtor is the owner of a certificate shall be entitled to such aid from courts of appropriate jurisdiction, by injunction or otherwise, in attaching such certificate or in satisfying the claim by means thereof as is allowed in law or in equity, in regard to property which cannot readily be attached or levied upon by ordinary legal process."

[2] 303 Ill. App. 165, 24 N.E. (2d) 892 (1940).

[3] Alexander v. Live Stock National Bank, 282 Ill. App. 315 (1935). See also note, 1 A.L.R. 653.

[4] Ill. Rev. Stat. 1939, Ch. 37, §§ 356-372; Ill. Rev. Stat. 1939, Ch. 110, §§ 125-218. See also Barry v. Knight, 296 Ill. App. 277, 15 N.E. (2d) 999 (1938); People ex rel. Dr. Pierre Chemical Co. v. Municipal Court, 297 Ill. App. 431, 17 N.E. (2d) 999 (1938).

means courts of "equitable" jurisdiction the court in question is clearly without authority to act as it did. Should Sections 13 and 14 apply to courts of general equity jurisdiction only? If the legislature had meant to restrict these sections to courts of general equity jurisdiction, it might easily have specifically designated such courts instead of using the term "courts of appropriate jurisdiction." This is especially true in view of the fact that the former remedy available to a creditor who wished to reach a share of stock belonging to his judgment debtor, was a creditor's bill in equity. Undoubtedly, this remedy is still available to him and in such proceedings he could certainly use the peculiarly equitable writ of injunction to enforce his rights. Had the legislature confined the type of aid available under the Uniform Stock Transfer Act to injunctive process, then, until authority to grant injunctions is vested in other courts, the designation of the type of aid as "injunctive" would have clearly limited the term "appropriate courts" to mean equity courts. The statute would then have done no more than codify existing practice. However the legislature made the problem still more ambiguous by adding that the relief may be injunctive and "otherwise." If the Municipal Court of Chicago can grant relief "otherwise" than by injunction, then it can be one of the courts of appropriate jurisdiction referred to in the statute.

The Municipal Court of Chicago is purely a statutory court and can act only within the statutory provisions.[5] Being a court of record, it has every court's power to render judgment and issue process;[6] and with this power the necessary adjunct—the power to make orders necessary to give effect to those judgments and make them binding and operative.[7] The statute also vests the Municipal Court with power to conduct supplemental proceedings designed to enable creditors to reach at least the personal property[8] of judgment debtors and to that end to enter restraining orders.[9] Such an order, like the one in the instant case, might well be the other type of relief meant by the legislature in the Uniform Stock Transfer Act. The Appellate Court has so construed it and has thus expanded the power and scope of the Municipal Court of Chicago. Apparently only one other court has done likewise among the 28 states which have adopted this statute since 1910.[10] The New Jersey Supreme Court in

[5] Lakeside Fish & Oyster Co. v. Mutual Fish Co., 155 Ill. App. 681 (1910).

[6] In re Rex Petition, 166 Ill. App. 607 (1912).

[7] 7 R. C. L. § 63, p. 1034; 15 C. J. § 108, pp. 811, 812; Phelps v. Mutual Reserve Fund Life Ass'n, 112 F. 453, 61 L.R.A. 717 (1901).

[8] People v. Cohen, 163 Ill. App. 115 (1911).

[9] Ill. Rev. Stat. 1939, Ch. 37, § 424.

[10] The Uniform Stock Transfer Act was adopted in Illinois in 1917. By January, 1940, 28 states and Alaska had adopted it. The following are the states of adoption: Alabama, 1931; Arkansas, 1923; California, 1931; Colorado, 1927; Connecticut, 1917; Georgia, 1939; Idaho, 1927; Illinois, 1917; Indiana, 1923; Louisiana, 1910; Maryland, 1910; Massachusetts, 1910; Michigan, 1913; Minnesota, 1933; New Hampshire, 1937; New Jersey, 1916; New York, 1913; Ohio, 1911; Oregon, 1935; Pennsylvania, 1911; Rhode Island, 1912; South Dakota, 1921; Tennessee, 1925; Utah, 1927; Virginia, 1924; Washington, 1939; West Virginia, 1931; Wisconsin, 1913; Alaska, 1914.

Progressive Building and Loan Ass'n v. *Rudolph*,[11] a case construing Section 13, recognized an injunction by a court of law, issuing under that section. These two decisions if followed and sustained, may provide new remedies for creditors whose debtors own certificates of stock in corporations.

G. R. KEEN

DEEDS—CONSTRUCTION AND OPERATION OF RESERVATION—WHETHER GRANTOR MAY RESERVE LIFE ESTATE TO SPOUSE.—*Saunders* v. *Saunders*,[1] involved a deed made by Lillian F. Saunders quitclaiming her fee in a farm to her two sons. Her husband joined in the deed, which was in ordinary form, waiving homestead and dower. It provided, "The aforesaid grantors hereby expressly reserve unto themselves the use of the above conveyed premises for and during the time of their natural lives." Lillian F. Saunders died on February 1, 1927, and a judgment creditor of her husband sought to levy an execution on his life estate in the farm. The sons filed suit to quiet title, contending that the deed could not operate to vest a life estate in their father upon the death of their mother and consequently he had no interest in the property. The Appellate Court held that the deed vested no life estate in the surviving husband and that on the death of Lillian F. Saunders all her husband's rights were extinguished.[2]

On appeal the Supreme Court, through Mr. Justice Gunn said, "It is a general rule that in a deed of conveyance a reservation by the owner is effective only in favor of the grantor, upon the theory that it holds back some interest from the estate conveyed and that, ordinarily, such a reservation cannot vest an interest in a third party unless words of grant are used."[3] This is the basic general rule and is universally adhered to. However, the majority of states have allowed an exception to the general rule to operate in favor of a reservation of a life estate to a surviving spouse.

The statements referred to above voiced the inclination of the Supreme Court to follow the majority rule and allow such an exception in favor of husband and wife.[4] However, the Appellate Court, dismissing these statements as mere dicta, decided along with the minority of states and held that there was no difference between a reservation to a stranger and one to a surviving spouse.[5]

[11] 113 N. J. L. 204, 172 A. 884 (1934).

[1] 373 Ill. 302, 26 N.E. (2d) 126 (1940).

[2] 300 Ill. App. 368, 21 N.E. (2d) 34 (1939). The opinion of the court is discussed in note, 17 CHICAGO-KENT LAW REVIEW 378, and criticized in 7 U. of Chi. L. Rev. 559.

[3] See Legout v. Price, 318 Ill. 425, 149 N.E. 427 (1925); Johnson v. Bantock, 38 Ill. 111 (1865); DuBois v. Judy, 291 Ill. 340, 126 N.E. 104 (1920).

[4] Douglas v. West, 140 Ill. 455, 463, 31 N.E. 403 (1892); White v. Willard, 232 Ill. 464, 83 N.E. 954 (1908); Bullard v. Suedmeier, 291 Ill. 400, 126 N.E. 117 (1920); DuBois v. Judy, 291 Ill. 340, 126 N.E. 104 (1920).

[5] Lemon v. Lemon, 273 Mo. 484, 201 S.W. 103 (1918).

After reviewing the authorities at length,[6] the Supreme Court concluded that there is a sound basis for holding that a distinction exists between a reservation in a deed in favor of a grantor and his wife and one in which the grantor reserves an interest to a third person not presently interested in the property granted or conveyed. This is put upon the ground that a spouse " . . . has such a present interest in the property by way of homestead, or such an indefeasible interest as heir or by way of dower that the combined interest of husband and wife in the property might be deemed sufficient to support the reservations of a life estate to either or both of them, by their joint execution of a deed which conveyed or waived all of their rights,"[7] without the express words of grant from the one holding the legal title, hitherto considered necessary.

This is apparently an attempt to place this situation within the rule that a reservation to be valid had to operate in favor of the person from whom title passed, upholding this reservation by interpreting the rule to require simply that the reservation be to one of the grantors, and not a stranger to the deed.[8] Whether or not such reasoning is logical in view of the fact that the non-owning spouse reserves an estate which is greater than the rights of homestead and dower need not be considered, for the justice and good sense of the exception seems clear. The non-owning spouse can enter into the conveyance, trading his rights of homestead and dower for the security of a present life estate. Moreover, the intention of the parties is effectuated.

E. R. BERNSTEIN

JUDGMENT—MERGER—FORECLOSURE OF MORTGAGE AS DESTROYING PRIORITY OF LIEN OF JUDGMENT ON NOTE.—The Illinois Appellate Court, in *McDonald v. Culhane*,[1] held that a creditor, who had recovered a judgment at law on a note and then later, in a foreclosure action on a separate real estate mortgage given as collateral security for such a note, obtained a deficiency judgment, had, through merger of the first judgment with the second, lost the priority of the lien of his first judgment, thus permitting an intervening judgment of a third person to become a prior lien. The facts disclosed that Culhane, as receiver for the Rockford National Bank, held a note for $10,000 collaterally secured by certain other notes which in turn were secured by a mortgage all executed by John F. Walsh. On December 7, 1934, Culhane recovered a judgment by confession on the principal note upon which execution was issued several days later and duly returned un-

[6] In addition to those cases cited above, the court examined and commented on Abel v. Schuett, 329 Ill. 323, 160 N.E. 548 (1928); Board of Missions of Methodist Episcopal Church, South v. Mayo, 81 F. (2d) 449 (1936); McDonald v. Jarvis, 64 W. Va. 55, 60 S.E. 990 (1908); Haines v. Weirick, 155 Ind. 548, 58 N.E. 712 (1900); Durham v. Hovey, 195 Mich. 243, 161 N.W. 883 (1917); Hall v. Meade, 244 Ky. 718, 51 S.W. (2d) 974 (1932); Boyer v. Murphy, 202 Cal. 23, 259 P. 38 (1927).

[7] This is the language of the court in the principal case at page 308.

[8] White v. City of Marion, 139 Iowa 479, 117 N.W. 254 (1908).

[1] 303 Ill. App. 101, 24 N.E. (2d) 737 (1940).

satisfied. On August 16, 1935, the mortgage notes held as collateral security were in default and the receiver foreclosed the mortgage.[2] In that proceeding, the court included in the amount found to be due the plaintiff the sum of $13,351.18, being the amount of the earlier judgment. A sale was had and the mortgaged premises were sold, the price being $10,721.49 short of the debt, interest and costs. On January 28, 1936, a deficiency judgment was rendered in favor of Culhane against Walsh, upon which execution was also issued and subsequently returned unsatisfied. Thereafter, from time to time, Walsh paid various sums of money which, the court found, Culhane applied toward the satisfaction of the deficiency judgment so that at the time of this partition suit there still remained due from Walsh the sum of $3,801.09.

Upon these facts the court held that the judgment of December 7, 1934, merged in the deficiency judgment of January 28, 1936, and therefore an interim judgment obtained September 5, 1935, by one Helen Krumnga, against the same defendant, had become a better lien, entitled to priority in the proceeds obtained from the sale of Walsh's interest in the parcel of land involved in the present partition suit. The writer of the opinion particularly stressed as reason for the decision the fact that appellant's course of conduct resulted in a merger of judgments or at least was sufficient to estop him from denying that a merger had taken place.

At common law, the theory of merger was never extended to judgments for the reason that judgments were all of equal dignity.[3] In this country the overwhelming weight of authority subscribes to the common law theory,[4] but there does exist a small minority view that wherever an existing judgment is used as the basis of a cause of action the judgment represents the debt and consequently is merged in the new judgment in like manner as would any other debt.[5] The minority holding, however, is

2 It does not clearly appear whether the receiver held a sale of the collateral and purchased the same or merely assumed the right to exercise control over the same as an additional means of enforcing the original obligation. If the former, it does not legally appear that the receiver was not entitled to enforce both the original and the purchased obligations to secure full satisfaction of both. Seder v. Gould, 274 Mass. 223, 174 N.E. 311 (1931); Lord v. Hartford, 175 Mass. 320, 56 N.E. 609 (1900); Wade v. Chicago, Springfield & St. Louis Railroad, 149 U.S. 327, 13 S. Ct. 892, 37 L.Ed. 755 (1893); Peacock v. Phillips, 247 Ill. 467, 93 N.E. 415 (1910). If the latter, then he should be allowed but one recovery comprising the original obligation, since by his own conduct he has recognized he possessed no other right. Chicago Artesian Well Co. v. Corey, 60 Ill. 73 (1871); Stokes v. Frazier, 72 Ill. 428 (1874).

3 Lilly-Brackett Co. v. Sonneman, 163 Cal. 632, 126 P. 483 (1912). Springs v. Pharr, 131 N.C. 191, 42 S.E. 590 (1902).

4 Lawton v. Perry, 40 S. C. 255, 18 S.E. 861 (1893); 15 R.C.L. 791, § 246; Springs v. Pharr, 131 N. C. 191, 42 S.E. 590 (1902).

5 There is probably no serious objection to the extension of the theory of merger to include judgments where used as a cause of action and the lien upon which the first judgment is founded is preserved. In the opinion of one writer such should be the law. See Freeman, Judgments, II, 1230, § 580; Price v. First National Bank of Atchison, 62 Kan. 735, 64 P. 637 (1901); Gould v. Hayden, 63 Ind. 443 (1878).

subject to certain qualifications, such as the situation found in the instant case, where a creditor has an enforceable right in personam coexisting with a right in rem,[6] or where a note is secured by a mortgage and the creditor resorts first to his note and later to his lien. In such cases the courts are almost uniform in holding that the lien of the first judgment is not lost and does not merge.[7] In this respect the instant case is wholly unsupported by precedent.

It would also appear that the instant decision is grounded on some principle of estoppel. An estoppel is never raised against a party litigant unless he has been guilty of conduct or omissions of conduct amounting to fraud or at least misrepresentation.[8] In no event is a party litigant estopped to present evidence where he has proceeded in the manner sanctioned by law.[9]

Illinois has always recognized the right of a lien-creditor to enforce his debt in either or both the courts of law or equity[10] with but one limitation, that is, he shall have but one recovery.[11] The receiver in the instant case, having pursued both his legal and equitable remedies, collected payments from the debtor and applied them toward the satisfaction of the junior-lien judgment arising from the foreclosure deficiency decree. In so doing he was acting as he had a legal right to do since there was no direction given at the time of payment and the creditor was entitled to make such application as he saw fit.[12] By so doing he may, and perhaps should be held to, have reduced the original obligation pro tanto, but it is hard to see how his conduct in lawfully applying the proceeds should estop him from asserting the validity of his original prior lien for the balance still due. It does not appear that the receiver, in the instant case, was in any way attempting to collect more than the amount lawfully due, so the case may be distinguished from *Todd* v. *Todd*,[13] in which the Illinois Appellate Court refused to allow the secured creditor's earlier legal judgment a priority in other property of the debtor where he had also enforced his lien by foreclosure proceedings because he had failed to credit the debtor with the sums recovered thereby. The court condemned the conduct of the secured creditor in seeking an unfair profit and held his action worked an estoppel.

L. LEIDER

[6] Vanuxem v. Burr, 151 Mass. 386, 24 N.E. 773 (1890); Dies v. Wilson County Bank, 129 Tenn. 89, 165 S.W. 248 (1914).

[7] Palmer v. Harris, 100 Ill. 276 (1881); Merriman v. Barker, 121 Ind. 74, 22 N.E. 992 (1889). See Freeman, Judgments, II, 2092 § 1004.

[8] Van Rensselaer v. Kearney, 11 How. 295, 13 L.Ed. 703 (1850).

[9] Bush v. Stephens, 131 Ark. 137, 197 S.W. 1157 (1917); City of Chicago v. Partridge, 248 Ill. 442, 94 N.E. 115 (1911).

[10] Karnes v. Lloyd, 52 Ill. 113 (1869).

[11] Barchard v. Kohn, 157 Ill. 579, 41 N.E. 902 (1895); Muncie National Bank v. Brown, 112 Ind. 474, 14 N.E. 358 (1887).

[12] Davis Sewing Machine Co. v. Buckles, 89 Ill. 237 (1878); Wellman v. Miner, 179 Ill. 326, 53 N.E. 609 (1899).

[13] 214 Ill. App. 282 (1919).