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Note and Comment

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NOTE AND COMMENT.

CIVIL LIABILITY FOR FALSE TESTIMONY.—A unique issue is raised in the recent decision of *Schaub* v. *O'Ferrall* (Md. 1911) 81 Atl. 789. The plaintiff, an attorney retained by a woman to represent her in a pending divorce suit against her husband, and to recover property due her, in part assigned by her to the attorney, declares in an action on the case against the husband and third persons, including a partner of the husband, the lawyer representing him, and a witness in the divorce proceedings, for procuring, pursuant to a conspiracy between them, false and defamatory testimony, which defeated the previous action and damaged the present plaintiff's reputation. The court sustained a general demurrer, holding that the plaintiff was bound by the decision as to the rights of the parties made in the previous suit.

On the hypothesis that the decision does not rest solely on a question of pleading, the case presents various issues of interest. The plaintiff's loss of property involves the doctrine of *res judicata;* the allegation of slander would seem to present a question depending upon different and distinct rules of law.

On the first ground, no dispute can be maintained touching the immunity of the witness from liability. The authorities are uniform in holding that the fact that a judgment was secured by the perjured testimony of a witness does not render such witness liable to an action for damages prosecuted by the one against whom judgment was obtained. Witnesses must be able to speak freely, unaffected on the stand by the possibility of future intimidation from litigants, when if they do speak falsely, a criminal indictment awaits them. *Godette* v. *Gaskill,* 151 N. C. 52, 65 S. E. 612, 24 L. R. A., (N. S.) 205; *Grove* v. *Brandenburg,* 7 Blackf. 234; *Cunningham* v. *Brown,* 18 Vt. 123; *Damport* v. *Sympson,* Cro. Eliz. 520. The same rule, if not the identical reason, is applicable to the successful party who gave false testimony, so long as the original judgment remains unreversed. 1 FREEMAN, JUDGMENTS (Ed. 4), Sec. 289; 1 CYC. 687; *Gusman* v *Hearsey,* 28 La. Ann. 709, 26 Am. Rep. 104; *Horner* v. *Schinstock,* 80 Kan. 136; *Page* v. *Camp,* Kirby (Conn.) 7; *Curtis* v. *Fairbanks,* 16 N. H. 542. Nor is a party civilly liable for confederating with witnesses, or for suborning witnesses to commit perjury, *Stevens* v. *Rowe,* 59 N. H. 578, 47 Am. Rep. 231; *Dunlap* v. *Glidden,* 31 Me. 435. 52 Am. Dec. 625; *Parker* v. *Huntington,* 7 Gray 36, 66 Am. Dec. 455; *Bostwick* v. *Lewis,* 2 Day 477, whether the original action proceeded to judgment or not. *Young* v. *Leach,* 50 N. Y. Supp. 670, 27 App. Div. 293. When properly limited, the statement of the court in *Taylor* v. *Bidwell,* 65 Cal. 489:—"If the very person who has committed the supposed injury is not answerable civilly, surely the person procuring it will not be amenable," is true as well as logical. The basis for the two latter rules—discouragement of vexatious suits, and speedy termination of litigations—were succinctly outlined by Chancellor KENT in the leading case of *Smith* v. *Lewis,* 3 Johns, 157, 3 Am. Dec. 469.

In equity similar reasoning and doctrines are followed. A bill charging fraud not extrinsic or collateral, but such as was in issue in the original suit, will not suffice to set aside a judgment or a decree between the same parties, rendered by a court of competent jurisdiction. Perjury and subornation of perjury are generally held not collateral, but the true ground for denial of relief in these cases is, as in actions at law, public policy. See note 25 Am. St. Rep. 167; *Gray* v. *Barton,* 62 Mich. 186, 28 N. W. 813; *Ross* v. *Wood,* 70 N.Y. 8; *Pico* v *Cohn,* 91 Cal. 129, 25 Pac 970: *U. S.* v. *Throckmorton,* 98 U. S. 61. *Dringer* v. *Receiver of Erie Ry.,* 42 N. J. Eq., 573; *Folsom* v. *Folsom,* 55 N. H. 78. But some relaxation is observable in a few jurisdictions, which permit judgment to be vacated and a new trial granted because of material perjured testimony. *Peagram* v. *King,* 2 Hawks 605, 11 Am. Dec. 793; *Laithe* v. *McDonald,* 12 Kan. 340; *Fabrilius* v. *Cock,* 3 Burr. 1771; *Nugent* v *Metropolitan St. Ry. Co.* 46 App Div. 105.

Is the law as stated properly applied in the principal case? So far as *res judicata* is involved therein, the above cases are concerned only with the parties to the suit. A transaction between other parties neither benefits nor injures those not interested. 1 FREEMAN, JUDGMENTS (Ed. 4), § 154. The law would have no purpose in extending civil immunity for subornation of perjury to strangers. Such is the principle of *Rice* v. *Coolidge,* 121 Mass. 393, 23

Am. Rep. 279, where a stranger, defamed by false testimony, was given recovery in damages against one not a party to the suit who suborned the witness to commit the perjury. It seems inexplicable that, in the principal case, the attorney of the defendant husband in the divorce proceedings, should be deemed a party thereto. "If a lawyer who brings a suit procures an unjust judgment against his adversary, by suborning witnesses, bribing judge, jury, or arbitrators, or by other corrupt or illegal practices, we know of no legal reason why he should not be responsible for his illegal acts to the party injured. He is not exonerated because, for reasons which do not apply to him, a joint tort-feasor cannot be reached." *Hoosac Tunnel Dock & El. Co.* v *O'Brien*, 137 Mass. 424, 50 Am. Rep. 323. It would seem therefore, that unless the allegation of a conspiracy and the non-liability of some members destroy the case against all, that the attorney, who is joined as defendant in the principal case should be responsible in law for his work in procuring a former judgment by perjured testimony.

Moreover, the doctrine of *res judicata* concerns itself not merely with the parties to the former action and to no others, but only with the issues previously contested and decided. In the principal case, the declaration alleges slander, a fresh cause of action, distinct from the allegation of loss of property, and not *res judicata*. In this regard the case is novel, and presents questions whose determination must rest on principle rather than authority.

The witness is, of course, not liable for the defamation. Her privilege, in a jurisdiction that adopts the English rule, as Maryland has, is absolute. ODGERS, LIBEL AND SLANDER, (1st Am. Ed.) 191; *Seaman* v. *Netherclift*, 46 L. J. C. P. 128. But does it follow, either logically or necessarily, that the exemption extends to the other defendants, who suborned her? If the purpose of the privilege of a witness in court be understood to be grounded on designs of public policy, to protect the witness, to prevent intimidation and secrecy, to obtain justice even at the expense of some injurious results, the answer seems to be evident. The privilege does not emasculate the defamation; it shields the particular individual who utters it. It may be argued that as no one else spoke, no one else is liable for slander. But if C utters a slander at A's request, or pursuant to an authority from A, or to an understanding between them, should A not be responsible? See BURDICK, TORTS (2nd Ed.) p. 300. If then, despite the privilege, the slander still exists, its instigators, it is submitted, are not excused from legal liability. The remarks of the court in *Rice* v. *Coolidge, supra* are pertinent:—"The argument, that an accessory cannot be held civilly liable for an act for which no remedy can be had against the principal, is not satisfactory to our minds. The perjured witnesses and the one who suborns them are joint tort-feasors, acting in conspiracy or combination to injure the party defamed. The fact that one of them is protected from a civil suit by a personal privilege, does not exempt the other joint tort-feasor from such suit. A similar argument was disregarded by the court in *Emery* v. *Hapgood*, 7 Gray 55 Here it was held that the defendant, who instigated and procured an officer to arrest the plaintiff upon a void warrant, was liable to an action of tort therefor, although the

officer who served the warrant was protected from an action, for reasons of public policy."

"But," says the Maryland court, " an act which, if done by one alone, constitutes no ground of an action on the case, cannot be made the ground of such action by alleging it to have been done by and through a conspiracy of several." Such is the law. *Saville* v. *Roberts*, 1 Ld. Raym. 374, 378; *Dowdell* v. *Carpy*, 129 Cal. 168; *Stevens* v. *Rowe*, 59 N. H. 578. But even that does not invalidate the case against the suborners. True, the allegation of a civil conspiracy means little, but its ineffectiveness is not applicable here. For the acts of those who procured the witness to swear falsely are not identical with the act of the witness on the stand. To make them liable for those acts is not obnoxious to the general rules that there can be no civil action for perjury or subornation of perjury in most cases. "The false testimony is not the sole moving factor in the cause of action. The fraudulent purpose or intent, formed before the trial, the fraudulent concoction of the scheme, are the chief bases of the cause of action. The acts of the defendant on the trial are but a part of an entire transaction." See *Verplank* v. *Van Buren*, 78 N. Y. 247, 259. The plaintiff, being defamed, has been injured: the defendants, except the witness, are entitled to no privilege. Why should they not be liable for their unlawful acts? S. W. D.

REVIEW BY THE COURTS OF THE DECISIONS OF THE LAND DEPARTMENT.—The Land Department of the United States is a quasi-judicial tribunal, invested with authority to hear and determine claims to the public lands, and created to supervise all the various steps required for the acquisition of the title of the government. Proofs as to settlement on the lands and their improvement, offered in compliance with the law, are to be presented, in the first instance, to the office of the district where the land is situated, and from its decision an appeal lies to the commissioner of the general land office, and from him to the Secretary of the Interior. It has long been the established rule that the decisions made by the Secretary of the Interior and his subordinate officers, upon questions of fact presented for their determination, in cases within their jurisdiction in the official business of the land office, and in the absence of fraud, misrepresentation, or mistake, are final and conclusive and cannot be reviewed or re-examined by the courts. It is equally well established that while the decisions of such officers are conclusive on questions of fact, it is otherwise with regard to their conclusions of law, and it may be broadly stated that the rulings of the Land Department upon questions of law are not binding upon the courts but may be reviewed in an appropriate proceeding.

The facts which may be conclusively passed upon by the land office are all such as are necessary to the issuance of a valid patent, whether relating to the character of the lands in question or to action on the part of claimants and, in the absence of fraud, imposition or mistake, its determination is conclusive against collateral attack. For specific instances see note to *Hartman* v. *Warren*, 76 Fed. 157, 22 C. C. A. 30.

JUDGE SANBORN in the recent case of *Howe* v. *Parker* (1911) 190 Fed. 738, has made distinct advances upon the former application of these general rules. In the first place, while recognizing that alleged mistakes in findings of fact cannot be inquired into by the courts, he states that if the officers of the Land Department are induced to issue a patent to the wrong party by a *gross mistake of facts proved,* the rightful claimant may in a court of equity avoid the effect of their decision and patent. In other words, that a gross mistake of fact upon the part of the land department amounts to such error as may be inquired into by the courts. And further, that the recital in the Secretary's decision that as a matter of fact certain parties received due notice of proceedings is not conclusive, but can be inquired into where a claimant alleges in the court that no notice was received.

Heretofore it has been held that erroneous rulings by the Land Office in reference to the weight of evidence, admissibility of evidence, or sufficiency of evidence in a contested case, did not constitute such a mistake of law as to be subject to review by the courts, the only remedy being by appeal from one officer to another of the Department. *Shepley* v. *Cowan,* 91 U. S. 330; *Quinby* v. *Conlan,* 104 U. S. 420. Also where there was a mixed question of law and fact to be determined by the Land Department, and the court cannot separate it so as to ascertain what the mistake of law is, the decision of the Department affirming the right of one of the contesting parties to enter is conclusive. *Marquez* v. *Frisbie,* 101 U. S. 473; *Porter* v. *Bishop,* 25 Fla. 749.

The principal case of *Howe* v. *Parker, supra,* makes another advance upon this principle. Judge SANBORN says, "Whether or not the weight of evidence in substantial conflict sustains the one or the other side of an issue of fact is a question which, in cases within his jurisdiction, the final decision of the Secretary of the Interior is conclusive in the absence of fraud or gross mistake. But whether or not there is at the close of a final trial or hearing before him *any evidence* to sustain a charge or finding of fact in support of it, is in his and in every judicial and quasi-judicial tribunal, a question of law. And an injurious error of the Secretary in finally deciding that question presents good ground for relief in equity." In other words that where the Secretary makes a finding of fact in his decision, and a claimant thereafter alleges in the court that there was no evidence whatsoever to support such finding, then there is a question of law which the court can inquire into, and it is not a question of fact, nor is the Secretary's finding conclusive.

The Secretary of the Interior has always been held bound by an established principle of law evidenced by the previous decisions of his Department, the doctrine "stare decisis" applying as well to him as to the courts, and though he undoubtedly has the power to promulgate a new rule of construction or practice, yet such new construction cannot be made retroactive so as to operate upon rights theretofore attached. It is not within the supervisory power of the Secretary to set aside or annul by a retroactive decision, rights acquired under a settled rule and practice, upon the ground that such rule or practice was either inconvenient or erroneous at the time the entry upon the land was made. *Germania Iron Co.* v. *James,* 89 Fed. 811, 817, 32 C. C. A. 348; *James* v. *Germania Iron Co.,* 107 Fed. 597; *Shreve* v. *Cheesman,* 69

Fed. 785, 792; *Cornelius* v. *Kessel*, 128 *U. S.* 546; *Love* v. *Flahive*, 205 U. S. 195.

The principal case, holding along these lines says, "the settled rules and practice and the uniform decisions of the department constitute both rules of law and of property, and equitable titles in entrymen cannot be destroyed by the Land Department in violation of them," but it makes an advance over the old principle in that it would seem to imply that the old rule of construction must control in the courts, irrespective of whether or not there is an attempt to make the new rule retroactive.

No principle is more firmly established in American jurisprudence than that, after the title has passed from the United States to a private party, it is the province of the courts to correct the errors of the officers of the Land Department which have resulted from fraud, mistake or erroneous views of the law, to declare the legal title to lands involved to be held in trust for those who have the better right to them. The power of the Secretary should not be an arbitrary, unlimited or discretionary one, but should be exercised according to law and not in disregard of it. The advances brought out in the principal case are clearly justified and if followed will most certainly tend to a better administration of justice in regard to titles to land in the United States. N. K. F.

RIGHT OF ONE PARTNER TO SUE HIS CO-PARTNER IN CONVERSION.—Although the settlement of the affairs of a partnership is generally left to a court of equity, there are certain well defined exceptions to the rule. By the better opinion a partner may sue at law in contract when a final balance has been struck and the suit will result in the final determination of the rights of the partners. But the rule in tort is much more uncertain. Whether or not a partner may sell all the property of the firm without liability to his copartner for conversion has been an open question. The recent case of *Weiss* v. *Weiss* decided in the New York Supreme Court and reported in 133 N. Y. Supp. 1021 decides that an action at law will lie in such case. The facts of the case were that the plaintiff and the defendant were copartners, owning property as such. Defendant Weiss transferred to another all the property of the partnership without the knowledge, consent or authority of the plaintiff. On demurrer it was held (HOTCHKISS, J., dissenting) that the complaint stated a good cause of action for conversion.

It does not appear from the report of the case whether the partnership was a trading or non-trading firm. If the former, the decision is open to criticism. In *Fox* v. *Hanbury*, 2 Cowp. 455, LORD MANSFIELD held that each partner has a power singly to dispose of the whole of the partnership effects. This may be done even if it terminates the partnership. "The right of each partner to sell, assign or transfer any part or the whole of the partnership property, in the way of the regular business of the partnership, is absolute and unquestioned; this however must be done in the regular course of business of the firm, for outside of this he has no power." PARSONS, PARTNERSHIP, Ed. 3, 163. The following cases support the rule laid down in *Fox* v. *Han-*

bury, supra: *Lamb* v. *Durant*, 12 Mass. 54, 7 Am. Dec. 311; *Tapley* v. *Butterfield*, 1 Metc. 515, 35 Am. Dec. 374; *Arnold* v *Brown*, 24 Pick. 89, 35 Am. Dec. 296; *Graser* v. *Stellwagen*, 25 N. Y., 315; *Mabbett* v. *White*, 12 N. Y. 422; *Woodward* v. *Cowing*, 41 Me. 9, 66 Am. Dec. 211; *Ellis* v. *Allen*, 80 Ala. 515, 2 South 676. Other cases limit and extend the rule in various ways. Such power to assign exists if the transaction is *bona fide*, *Deckard* v. *Case*, 5 Watts 22, 30 Am. Dec. 287; one partner, in absence of dissent by his copartner, may out of firm assets discharge firm liabilities, *Hanchett* v. *Gardner*, 138 Ill. 571, 28 N.E. 788; a sale to pay firm debt is valid, *Schneider* v. *Sansom*, 62 Tex. 201; a sale of the firm property to pay one partner's private debt is valid, where purchaser was unaware of ownership by the firm, *Locke* v. *Lewis*, 124 Mass. 1, 26 Am. Rep. 631; but where purchaser knowingly receives firm assets, he holds in trust for firm creditors, *Johnson* v. *Hersey*, 70 Me. 74, 25 Am. Rep 303.

The rule in the case of non-trading partnerships would appear to be different. One partner has no authority to sell when the object of the firm is not trade, buying and selling, but a business to which the continued ownership of the property sold is indispensable. *Sloan* v. *Moore*, 37 Pa. St. 217; *Cayton* v. *Hardy*, 27 Mo. 536; *Blaker* v. *Sands*, 29 Kan. 551; *Lowman* v. *Sheets*, 124 Ind. 416, 24 N. E. 351, 7 L. R. A. 784. "The tendency of the modern cases, however, is to limit the implied power of sale to the property which is held for the purpose of sale, and not to include the property kept for the purpose of carrying on the business." GILMORE, PARTNERSHIP, 289. In the principal case it neither appears that the firm was a non-trading firm nor that the goods sold were not kept for sale in the regular course of the business.

Conceding that there existed no right in the partner to sell the property, it by no means follows that his co-partner may sue him in conversion. The court base their decision on the supposed similarity between the respective rights of tenants in common and of partners. After an exhaustive review of the English authorities, the conclusion is reached that if one tenant in common or joint tenant destroys, *Barnardistone* v. *Chapman*, Bull. N. P. 34, or sells, *Mayhew* v. *Herrick*, 7 C. B. 229; *Barton* v. *Williams*, 5 B. & A. 395, the common property, he may be sued at law by his cotenant. The cases seem to be in conflict as to whether it was necessary that the sale should be in market overt. However it seems settled in New York that the sale of the whole chattel by one tenant in common entitles his cotenant to an action in trover. *White* v. *Osborn*, 21 Wend. 72; *Osborn* v. *Schenck*, 83 N. Y. 201. This would also appear to be the rule in other jurisdictions. *Delaney* v. *Root*, 99 Mass. 546, 97 Am. Dec. 52: *Wheeler* v. *Wheeler*, 33 Me. 347. After arriving at this conclusion, SEABURY, J., in delivering the opinion of the court in the principal case, says: "I cannot see any reason for applying a different rule to partners from that which is applicable to tenants in common or joint tenants. There are of course important differences between the rights and duties of such co-owners and partners, but no such distinction exists so far as the right to maintain trover is concerned." Not a single precedent is cited for allowing the action of conversion to lie against one partner at the

suit of his copartner, and it is submitted that the differences in their respective rights do not warrant the extension to cases of partners, of the rule of tenants in common and joint tenants. In the case of joint tenants and tenants in common there is no implied power in either or any of them to dispose of the whole chattel, while in the case of partnership, each partner is a general agent for the firm, and as shown above, he may sell the entire property of the firm, or at least such of the goods of the firm as are kept for the purpose of sale. If the sale was within the rights of the copartner, of course no action would lie, and in the cases that have been examined, no instance has been found where an action in conversion was allowed against the partner even where the sale was held to be wrongful.

The cases divide themselves into two general classes: (1) equitable actions against the copartner, or his vendees, or both, to have the sale set aside; *Wilcox* v. *Jackson*, 7 Colo. 521, 4 Pac. 966; *Hunter* v. *Waynick*, 67 Iowa 555: (2) action at law against his vendees; *Cayton* v. *Hardy*, 27 Mo. 536; *Doll* v. *Hennessy Mercantile Co.*, 33 Mont. 80. In the last case it is said in the argument of counsel that one partner cannot sue the other in replevin or trover, citing as authority POMEROY, REMEDIES and REMEDIAL RIGHTS (Ed. 2), pp. 266-8, 270. The following cases by analogy seem to deny the right to maintain conversion. Unless some of the goods have been destroyed, trespass will not lie for a sale by one partner, at the suit of his copartner, *Montjoys* v. *Holden*. Litt. Sel. Cas. 447, 12 Am. Dec. 331; a partner taking goods of the firm by force and delivering them to a third person is not liable therefor to his copartner, *Dana* v. *Gill*, 5 J.J. Marsh. 242, 20 Am. Dec. 255. But where a partner commits a distinct tort against his copartner in no way connected with the partnership business, he is liable in an action at law as any one else would be. *Pierce* v. *Thompson*, 6 Pick. 193; *Gilliam* v. *Loeb*, 131 Mo. App. 70, 109 S. W. 835. The clear result of all the authorities is that conversion will not lie against a partner for the mere unauthorized sale of the personal property of the firm if none of the goods were destroyed. 30 CYC. 468. To the extent that the court in the principal case departed from this rule, it would seem that the decision is wrong. H. R. C.

DOES A TAX DEED, VOID ON ITS FACE, GIVE COLOR OF TITLE?—This question is suggested by *Kit Carson Land Co.* v. *Rosenberry*, (Colo. 1912) 122 Pac. 72. In a brief decision the court answers this question in the negative and, consequently, decides that the defendant cannot predicate his claim to title by adverse possession upon such a tax deed. Upon the question presented there is a sharp division of authority, based more upon an arbitrary pronouncement of public policy, than upon any refinement of reasoning. Many learned courts have vainly attempted to reconcile the decisions, so the brevity of the decision now under discussion would probably not call for comment were it not for the fact that, without citation or discussion of authority, it overthrows what seems to have been the settled law in Colorado. *De Foresta* v. *Gast*, 20 Colo. 307, 38 Pac. 244; *Bennet* v. *North Colorado Springs Land & Improvement Co.* 23 Colo. 470, 48 Pac. 812, 58 Am. St. Rep. 281.

What constitutes color of title? The United States Supreme Court has defined color of title to be "that which in appearance is title, but in reality is no title," *Wright* v. *Mattison*, 18 How. 50. Therefore, "whenever an instrument by apt words of transfer from grantor to grantee, * * * in form passes what purports to be the title, it gives color of title," *Hall* v. *Law*, 102 U. S. 46, *Thomas* v. *Stickle*, 32 Iowa 71, *Veal* v. *Robinson*, 70 Ga. 809, *Dean* v. *Earley*, 15 Wis. 100; and this "even though a person of legal learning and experience may by a critical examination discover defects in the instrument fatal to its validity as a muniment of title," *De Foresta* v. *Gast*, *supra*. The main essential is that the description be sufficiently accurate to define the extent of the adverse claim, *Hoffman* v. *Harrington*, 28 Mich. 90, *Stovall* v. *Fowler*, 72 Ala. 77, *Wilson* v. *Atkinson*, 77 Cal. 485, 20 Pac. 66, 11 Am. St. Rep. 299, *Wilson* v. *Taylor*, 119 Mo. 626. 25 S. W. 199. Any instrument "in form a deed professing to convey the land in controversy, executed by a person having power under a given state of facts to make a deed that would pass title," gives color. *Seemuller* v. *Thornton*, 77 Tex. 156, 13 S. W. 846. But if the deed be void by reason of an ambiguity in the description it will not give color because it does not define the extent of the adverse claim. *Crumbley* v. *Busse*. 11 Tex. Civ. App. 319, 32 S. W. 438, *Brannon* v. *Henry*, 142 Ala. 698, 39 South, 92, 110 Am. St. Rep. 55.

Why should not a tax deed void on its face give color—why should it not start the running of the statute of limitations? What is the purpose of the statute of limitations if not to aid imperfect conveyances? "A person having a good and valid tax title, needs not the protection of the statute of limitations; and the object of the statute was to protect purchasers at tax sales against errors and mistakes of officers," *Cofer* v. *Brooks*, 20 Ark. 542, quoting from the dissenting opinion of Mr. Chief Justice TANEY in *Moore* v. *Brown*, 14 McLean, 211. The office of these statutes and the necessity for a sound construction is very elaborately discussed in *Pillow* v *Roberts*, 13 How. 472, 14 L. Ed. 228. "Statutes of limitation are founded on sound policy. They are statutes of repose, and should not be evaded by a forced construction. The possession which is protected by them must be adverse and hostile to that of the true owner. It is not necessary that he who claims their protection should have a good title, or any title but possession. * * * Statutes of limitation would be of little use if they protected those only who could otherwise show an indefeasible title to the land. Hence, color of title, even under a void and worthless deed, has always been received as evidence that the person in possession claims for himself, and of course adversely to all the world." Upon this question arises the first consideration of public policy, above adverted to, which has served to produce the existing conflict. Practically every decision, hereafter to be cited, supporting the doctrine in the principal case, lays much stress upon the fact that the term of the statute of limitations as applied to tax titles is much shorter than the regular statute of limitations; and that because of this, there must be a stricter construction. But why, if it is sound policy thus to sell land and convey it for the benefit of the State, is it not equally sound to give the purchaser the full benefit of the

statute of limitations? If it is sound policy to deprive a delinquent tax payer of his land after two, three, five or seven years of possession and payment of taxes by the purchaser, upon a defective record, not appearing on the face of the deed (and upon this all courts concur, *Doe* v. *Clayton,* 81 Ala. 391, 2 South, 24, *Webber* v. *Clarke,* 74 Cal. 11, 15 Pac. 431; *Scott* v. *Delany,* 87 Ill. 146, *Hoffman* v. *Harrington,* 28 Mich. 90, *Harrison* v. *Spencer,* 90 Mich. 586, 51 N.W. 642; *Lennig* v. *White* (Va.) 20 S.E. 831; *Bartlett* v. *Ambrose,* 78 Fed. 839, 24 C. C. A. 397, *English* v. *Powell,* 119 Ind. 93, 21 N. E. 458; *Michel* v. *Stream,* 48 La. 341, 19 South, 215, *Bartlet* v. *Kauder,* 97 Mo. 356, 11 S. W. 67, *Ricker* v. *Butler,* 45 Minn. 545, 48 N. W. 407) why is it not equally good public policy to deprive him of his land, under like conditions, when the error appears on the face of the deed? As said in *Bennet* v. *North Colorado Springs Land & Improvement Co., supra.* "The statute * * * is intended as a protection to a person holding in good faith under a mere colorable title—that is, under a title which is really no title."

This brings us to the second consideration of public policy. The courts supporting the principal case all affirm that if the grantee in the tax deed holds in good faith for the statutory period his possession will be protected, but in order to hold in good faith, he must believe his conveyance to be valid. *Nieto* v. *Carpenter,* 21 Cal. 455. (Subsequently over-ruled by *Wilson* v. *Atkinson,* 77 Cal. 485) *Waterhouse* v. *Martin,* Peck (Tenn.) 392 *Saxton* v. *Hunt,* 20 N. J. L. 487, *Davidson* v. *Combs,* 19 Ky. Law Rep. 1380,; and if the tax deed is void on its face the grantee cannot hold in good faith, for in such case the law conclusively presumes bad faith. *Bowman* v. *Wettig,* 39 Ill. 416. On the other hand the opposing authorities answer that bad faith cannot be imputed from a strict application of the maxim *"ignorantia legis neminem excusat,"* but that to amount to bad faith "the knowledge of the true character of the instrument by the occupant must be actual, and not such as would arise from the legal construction of the instrument." *Wilson* v. *Atkinson,* 77 Cal. 485, 20 Pac. 66, 11 Am. St. Rep. 299.

Again, another line of cases, of which *Doe d. Dunn* v. *Hearick,* 14 Ind. 242, is representative, hold that the fact of possession and the *quo animo* at its commencement are the true tests. If this be followed to its logical conclusion, we might say that a void deed, known by the grantee to be void, will evince his intention to hold adversely as surely as though its invalidity were unknown, and thus deduce a third theory entirely obviating the consideration of good faith. It is, however, not known that any case has gone this far.

It is thus apparent that the decisions cannot be reconciled, but only classified. The following cases will be found to hold that a tax deed, void on its face, gives color of title upon which may be predicated title by adverse possession: *Wilson* v. *Atkinson,* 77 Cal. 485, 20 Pac. 66, 11 Am. St. Rep. 299; *Seemuller* v. *Thornton,* 77 Tex. 156, 13 S. W. 846; *Hoge* v. *Magnes,* 85 Fed. 355, 29 C. C. A. 564; *Dorlan* v. *Westervitch,* 140 Ala. 283, 37 South 382, 103 Am. St. Rep. 35; *Pence* v. *Miller,* 140 Mich. 205, 103 N. W. 582; *Wilson* v. *Taylor.* 119 Mo. 626, 25 S. W. 199; *Power* v. *Kitching,* 10 N. D. 254, 86 N. W. 737, 88 Am. St. Rep. 691; *State* v. *Harman,* 57 W. Va. 447, 50 S. E. 828;

Leffingwell v. *Warren*, 2 Black, 599, *Pugh* v. *Youngblood*, 69 Ala. 296; *Gatling* v. *Lane*, 17 Neb. 77; *Stovall* v. *Fowler*, 72 Ala. 77; *Pillow* v. *Roberts*, 13 How, 472; *Deputron* v. *Young*, 134 U. S. 241, 10 Sup. Ct. 539, 33 L. Ed. 923; *Hamilton* v. *Boggess*, 63 Mo. 233: *Edgerton's Admr*, v. *Bird*, 6 Wis. 527, 70 Am. Dec. 473; *Smith* v. *Shattuck*, 7 Pac. (Or.) 335; *Ricker* v. *Butler*, 45 Minn. 545, 48 N. W. 407; *Chi. R. I. etc. Ry. Co.* v. *Allfree*, 64 Iowa 500, 20 N. W. 779: *Stevens* v. *Johnson*, 55 N. H. 405: *Cofer* v. *Brooks*, 20 Ark. 542; *De Foresta* v. *Gast*, 20 Colo. 307, 38 Pac. 244; *Bennet* v. *North Colo. Springs Land & Improvement Co.*, 23 Colo. 470, 48 Pac. 812, 58 Am. St. Rep. 281.

The cases of *Oconto Co.* v. *Jerrard*, 46 Wis. 317, and *Moore* v. *Brown*, *supra*, sometimes cited in opposition to the principle laid down in the above cases, are distinguishable. They hold that a deed upon the face of which it appears that the grantor had no right to convey does not give title.

In support of the principal case may be cited: *Redfield* v. *Parks*, 132 U. S. 239, 10 Sup. Ct. 83, 33 L. Ed. 327; *Keefe* v. *Bramhall*, 3 Mackey, 551. *Bowman* v. *Wettig*, 39 Ill. 416; *Waterson* v. *Devoe*, 18 Kan. 223; *Burns* v. *Edwards*, 163 Ill. 494, 45 N. E. 113: *Hall* v. *Hodge*, 18 Kan. 277; *Mason* v. *Crowder*, 85 Mo. 526; *Sheehy* v. *Hinds*, 27 Minn. 259; *Cutler* v. *Hurlbut*, 29 Wis. 152; *Wofford* v. *McKinna*, 23 Tex. 36; *Hardin* v. *Crate*, 60 Ill. 215.

Burns v. *Edwards*, *supra*, and *Hardin* v. *Crate*, *supra*, may at first glance appear to be erroneously classified. In the former the deed was to a partnership. It was held that this conveyed but an equitable estate, and an equitable title will not give color: in the latter, the grantee had acted on what the Supreme Court had intimated to be the law, but had afterwards decided not to be the law. Under such circumstances the court said it would not presume bad faith. But in both decisions the principle for which they are cited was expressly recognized. A. C. L.

INTERFERENCE WITH EMPLOYMENT BY TRADE UNION.—The question of the right of laborers to quit employment, and of labor unions to call strikes, as shown in court decisions, has brought forth many interesting judicial opinions. In England, a complete reversal of the early law was necessary to attain the present position of the courts, while in the United States the advance has been marked by the application of principles of law to new sets of facts, rather than by any radical changes in the rules of law themselves. An interesting situation has been recently dealt with by the Massachusetts Supreme Court in *Minasian* v. *Osborne, et al.* (Mass. 1911) 96 N. E. 1036.

M. M., a skilled laster had a contract of employment with a shoe manufacturing company, terminable at the will of either. With the consent of his employer, he employed his father, H. M., who could not do the work of a skilled laster, as a helper. No contract existed between the company and H. M. All the employees of the company did "piece work" and M. M. received the payment for all the work that he and his father did. Father and son were, or had been, members of an unincorporated association known as the Lasters' Union, to which all of the other employees belonged, and of

which the defendants are representatives and members. Defendants threatened to call a strike unless the company would forbid the father from working, and on its refusal to do so, the employees went out on an orderly strike which was endorsed by the union. As practically all lasters belonged to the Lasters' Union, the result of the strike was that father and son were thrown out of employment, and they asked for injunction against defendants as officers and representatives of the Union. The court below found that the increased amount of work that the son could do with the aid of his father, would tend in slack times to deprive other workmen of a chance to work, and the Supreme Court held that "the conduct of these defendants, although directly affecting to their detriment the labor habits of the plaintiffs, appears to have sufficient justification in the fact that it is of a kind and for a purpose, which has a direct relation to the benefits of the more uniform distribution of the work, and thus of wages, among equally skilled and competent workmen during dull seasons." The bill was accordingly dismissed.

It is a well settled rule that a court of Equity will not prevent one person leaving the personal service of another. *Arthur* v. *Oakes*, 63 Fed. 310, *Toledo etc. Ry. Company* v. *Pennsylvania Company*, 54 Fed. 746. Only one case (*Farmers' Loan and Trust Company* v. *Northern Pacific Ry. Co.*, 60 Fed. 803) has been decided contrary to this rule in the United States, and that case was modified on appeal. 63 Fed. 310. In regard to enjoining officers of labor unions or combinations from calling or maintaining strikes the rule is fairly well settled that where the strike is lawful, (or, as some courts express it, justifiable) and involves no breach of contract between employer and employee, injunction will not issue. *Thomas* v. *Cincinnati etc. Ry. Co.*, 62 Fed. 803; *Jetton-Dekle Lumber Company* v. *Mather*, 53 Fla. 969; *National Protective Ass'n* v. *Cumming*, 170 N. Y., 315. But where it is unlawful or does involve a breach of contract, courts will usually grant the injunction. As where a strike was ordered to force workmen, against their will, to join the union. *Erdman* v. *Mitchell*, 207 Pa. 79. Or to gratify personal malice of the officers and not to benefit the union. *In re charge to Grand Jury*, 62 Fed. 828. Or where those inciting strikes are not themselves interested but are employed by the union for that purpose. *United States* v. *Haggerty*, 116 Fed. 510.

The question then, both as to granting injunctions and to giving damages, resolves itself into a question of what is a lawful or justifiable strike, and it is the different opinions on this question that cause most of the seeming confusion among the cases. The court in the principal case, in supporting the strike as justifiable, follows its earlier ruling in *Walker* v. *Cronin*, 107 Mass. 555, where the rule applicable to such cases was stated as follows: "Just cause or excuse exists only where injury inflicted is means to some end legitimately desired and incidental thereto and is not the result of a specific intent and immediate purpose of injury to others that benefit may ultimately come to the combination. It is entirely wanting when the immediate purpose of the combination is to inflict injury on others and the benefit, if any, to result to the combination is indirect or remote.

A. R. D.