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# Real Property--Contract to Purchase--Husband and Wife

C. B. F.
*West Virginia University College of Law*

*Be Socialized Without Impairing Individual Rights?*, 12 J. CRIM. L. & CRIMINOLOGY 339 (1921); *People v. Lewis, supra.*

Nonlawyers generally favor eliminating technicalities from juvenile court proceedings. Realization of the ideals widely cherished for staffing juvenile courts with judges and social investigators would perhaps make a completely informal procedure desirable. Good results are more likely to be obtained thus than by bringing minors into a formal and ceremonious court where the suggestion is that the law is about to be invoked to punish hardened malefactors. *State v. Scholl,* 167 Wis. 504, 167 N.W. 830 (1918). The practice of private hearings before judges with practically uncontrolled discretion, however, has been criticized somewhat extravagantly as modern Star Chamber proceedings. Note, 27 COL. L. REV. 968 (1927).

Wigmore concludes that logically and practically juvenile courts are not bound in law to observe jury trial rules of evidence. 1 WIGMORE, EVIDENCE §4d (4) (3d ed. 1940). Modern statutes allow admission of hearsay testimony. Ga. Laws 1943, No. 203, p. 628, § 4; R. I. Laws 1944, c. 1441, § 24.

By the instant case the Pennsylvania court has achieved the same result without specific statutory provisions. The result may be desirable, but most courts have been reluctant to anticipate the legislature in reaching it.

H. C. B.

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REAL PROPERTY—CONTRACT TO PURCHASE—HUSBAND AND WIFE. —P, as joint purchaser with her husband under a contract to buy a tract of land, brought suit after she was divorced, joining her former husband and the vendors of the land, to compel execution of a deed to her of an interest in the land equivalent to one-half of the amount of the purchase money paid during coverture. The final payments of the purchase price had been made after the divorce and the vendors were doubtful as to whom the property should be conveyed as between husband and wife. *Held,* that where husband and wife join in a written agreement to purchase land and to pay the price therefore in installments, and are divorced prior to payment of the entire purchase price, no settlement of their property rights having been made in the divorce suit, the former wife is entitled to only one-half of the total amount of such installments paid before the divorce and has no property interest

in the land itself. *Everly v. Schoemer,* 80 S.E.2d 334 (W. Va. 1954).

It is clear under the West Virginia decisions that had the deed been executed to husband and wife before the divorce, it would have been presumed a gift to the wife of a moiety of the property even though she contributed no money toward the purchase price. She would have been vested with full legal and equitable title to such interest, in the absence of clear evidence to the contrary. *Edwards v. Edwards,* 117 W. Va. 505, 185 S.E. 904 (1936). The court in the instant case recognized that "the principle relating to a gift by a husband to a wife is applicable to this suit." However, the court refused to allow a gift to the wife of a moiety of the property as was done in the *Edwards* case and allowed only a sum of money equivalent to such moiety on the ground that no conveyance had been made.

The question that naturally arises is how can any payment of the purchase price result in any sort of a gift of money to the wife, when such money is given over to the vendors as payment of the purchase price in the name of the wife and husband as joint purchasers of the land? The money upon being paid to the vendors became irrevocably the property of such vendors in payment of the land. It would seem that, even though no conveyance was made giving the wife a legal moiety of the land as in the *Edwards* case, she would have an equitable title to the land held jointly with her husband under the familiar theory of equitable conversion upon the signing of the purchase contract. *West Virginia Pulp & Paper Co. v. Miller,* 176 Fed. 284 (4th Cir. 1909).

The court did not mention the possibility of the wife having any such property interest in the land. It may, however, have had this problem in mind when it referred to W. VA. CODE c. 48, art. 15, § 2 (Michie, 1949), which confers jurisdiction on a court of equity in divorce cases to "make any order or decree concerning the estate of the parties, or either of them as it shall deem expedient." It is true that the present case was in effect a delayed property settlement under a divorce, but "this statute also, clearly contemplates a restoration of the property in kind to the party entitled thereto, and not a money recovery for the value thereof." *Wood v. Wood,* 126 W. Va. 189, 28 S.E. 423 (1943). Therefore, if *P* was entitled to a property interest in the land, it seems that such interest should not be erased and a sum of money be substituted. As mentioned, the court did not even discuss the possibility of the wife's having an equitable interest in the land, so no authority is cited for extinguishing such a right if one in fact existed. It is very

doubtful if the case can be considered stare decisis as to the respective rights and interests of spouses as joint purchasers before a conveyance of the land to them. After a conveyance is completed, the *Edwards* case would control in giving each an equal moiety of the land.

However, one commendable result of the decision is that, as *P* was decreed to have no property interest in the land, a probable future partition suit with her former husband was avoided. Likewise, the value of the land itself apparently had not increased since the divorce, so that a moiety of the purchase price paid was approximately as valuable to *P* as a proportional moiety of the land itself would have been.

C. B. F.

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TAXATION — LIENS — PRIORITIES.—Proceeding under the Ohio wrongful death statute, the administrator attached cash and bonds belonging to taxpayer. Thereafter a lien for unpaid federal income taxes arose against taxpayer, and still later, the attaching claimant reduced his claim to judgment. In a suit to collect taxpayer's unpaid taxes, it was stipulated that the only issue was the relative priority of the attachment lien and the federal tax lien. *Held,* that a tax lien of the United States is prior in right to an attachment lien where the federal tax lien arose and was recorded prior to the date the attaching creditor obtained judgment, though subsequent to the date of the attachment lien. *United States v. Acri,* 75 Sup. Ct. 239 (1955); *Accord, United States v. Liverpool & London & Globe Ins. Co.,* 75 Sup. Ct. 247 (1955) (garnishment lien); *United States v. Scovil,* 75 Sup. Ct. 244 (1955) (landlord's distress lien).

The Supreme Court based the above decisions upon the doctrine of the inchoate and general lien. This doctrine requires a lien, before it can prevail over a federal tax lien, to be specific and perfected. To understand the above cases and the doctrine applied by them, one must look at certain statutes and cases preceding them.

About the time of the Civil War, Congress passed a statute that, while granting first priority to the government as a creditor, created no lien. REV. STAT. § 3466 (1875), 31 U.S.C. § 191 (1946). This statute was only available in the case of an insolvent debtor whose property had passed to a third person (other than a trustee in