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A Review of Recent California Decisions in the Law of Property

IN prior volumes of this REVIEW there have occasionally been published, in addition to the usual notes on recent cases decided by the courts in California, more general reviews, presenting briefly, with or without comment, the current decisions of the courts. There is a certain value in such a cursory treatment of our case law. It serves in some degree to indicate the general course of development of our legal system, to exhibit tendencies and to trace currents of judicial opinion. It may serve also to some slight extent to correlate principles scattered through the decisions.

The present summary and review of the decisions concerning property law decided by our courts since August, 1919, does not pretend to be complete, though it is believed to include all cases of interest, involving novel applications of legal principles, as well as many of those dealing with the minutiae of the law in this field, where they appear to present some new feature. Some cases, however, turning mainly on questions of fact and the sufficiency of evidence, or merely stating well-settled rules without any suggestion of novelty, have been omitted. Cases dealing with the law of waters, mines, and public lands have usually been omitted because these fields have become almost as much the province of the specialist as patent or copyright law.

An observation that forces itself continually upon one reading recent cases in this branch of the law is the absence of fundamental theory in our American law of property. That branch of law presents itself as a series of points decided, rather than as a system consciously or unconsciously based on human experience. Formulae take the place of philosophy. Our machinery for ascertaining the formulae is excellent; the vast mass of statutory and case law is made accessible by good digests, encyclopedias, annotated cases, and

the like. But somehow life seems to be absent from much of modern law. At times even we seem to lose the thread of organic continuity with the past, which our precedent-hunting and precedent-distinguishing profession claims as one of the virtues of its method, and which in spite of its crabbedness made the common-law system an essentially vital one. The ease with which recent cases on all fours may be found creates a tendency to obscure the value of general principle, to break connection with the past, and to give the newest expression, however lax and inaccurate, an immediate currency. Gresham's law operates in other fields than that of economics.

The absence of general theory in our system becomes particularly apparent when situations present themselves not easily capable of being subjected to the application of formulae. Thus in *Duval v. White*, already commented on in this REVIEW,¹ the court applies the unusual principle of abandonment as one of the tests to solve the peculiar problem presented. Owners of oil wells permitted the waste oil escaping from their wells to flow into a stream. Afterwards they decided that the oil had better be used, and in effect permitted a lower riparian owner for a consideration to gather the oil. The court, however, decided that the oil must continue to go to waste in the future as in the past, and one of the grounds on which it rested this conclusion was that the oil is abandoned as soon as it leaves the property on which the well was situated. Had there been some consistent theory in our law upon fundamental doctrines of property and possession, a different result might have been reached. The court does not, indeed, employ the little assistance that may be had in the English language upon this matter. Pollock and Wright's valuable little book on "Possession in the Common Law," for example, demonstrates the exceedingly small place occupied in the common law by the doctrine of abandonment. But such a book as Pollock and Wright on Possession is unorthodox in the eyes of most American judges, though it is mainly in writings of the character of that little treatise that a beginning has been made, however slight, to supply the necessary theoretical bases for common-law legal rules.

Another case involving the theory of possession is *Miller v. Doheny*.² A was in occupation of the surface of land, claiming to

¹ (1920) 31 Cal. App. Dec. 619, 189 Pac. 324; 8 California Law Review, 445.

² (1921) 33 Cal. App. Dec. 809, 195 Pac. 745.

be owner; B, who possessed the paper title, owned a house on an adjoining lot, whose eaves projected over the land claimed by A. Did A, by occupation for the period of the statute of limitations and by the payment of taxes, get title to the strip over which B's eaves projected? The District Court of Appeal held that he did not, for the reason that B was never entirely out of possession. The court had to reconcile its view in this case with an earlier decision where a person who maintained eaves over his neighbor's land for the prescriptive period was held to have acquired an easement only, and not to have acquired title by adverse possession of the air space occupied by the eaves, and of the space above and below them.³ The determining line of distinction was, in the opinion of the court, the difference between an owner's possession and a possession by a wrongdoer. In *Miller v. Doheny* the owner's possession of his eaves had never been disturbed; in *Gillespie v. Jones* the trespassing builder had not disturbed his neighbor's possession of the soil. The owner by virtue of his ownership gets an extended possession. The court's conclusion is an illustration of von Jhering's theory that possession is but a defensive outwork of title.

Though the court cites no authorities in its opinion, three cases in other jurisdictions involving the precise point have come to the notice of the writer of this review. In two of them the courts have answered the question differently from the California court, namely, that the occupier of the soil gets title to the land, and the owner of the eaves at the same time obtains by prescription an easement of eaves drip.⁴ In the other case, the decision was in accord with *Miller v. Doheny*.⁵ Yet the Supreme Court of Massachusetts, which decided in *Randall v. Sanderson* that the owner of the eaves lost possession of the space occupied by them after the occupation by another of the surface of the soil under the eaves, rather inconsistently decided that where a description begins at a point a certain distance from a house, the distance is to be measured from the extreme edge of the eaves and not from the base of the house.⁶ On the other hand, the Supreme Court of Maine took precisely the opposite view on the latter question.⁷ Plainly there are differences in judicial theories as to the extent

³ *Gillespie v. Jones*, (1874) 47 Cal. 259.

⁴ *Rooney v. Petry*, (1911) 22 Ont. Law Rep. 101; *Randall v. Sanderson*, (1872) 111 Mass. 114.

⁵ *Lins v. Seefeld*, (1906) 126 Wis. 610, 105 N. W. 917.

⁶ *Millett v. Fowle*, (1851) 8 Cush. 150.

⁷ *Centre Street Church v. Machios Hotel Co.* (1846), 51 Me. 413.

to which title and possession are to be protected, differences in fundamental outlook. Though one may feel that the California court is right, he may be pardoned a doubt as to his first principles when he finds such able courts as those of Massachusetts and Ontario on the other side.

In the increasing complication of modern life, especially in view of the intrusion of social and community interests into the field of ownership, practical questions sometimes arise whose solution is baffling under existing juristic theory. The plaintiff in the two appeals entitled *Dobbins v. Economic Gas Company*,⁸ for example, finds herself the owner of land minus the valuable incidents of ownership, and without any clear means of protecting her interest. The plaintiff conveyed land to a public-service corporation, and took back a mortgage for a part of the purchase price. She succeeded in foreclosing the mortgage and in selling the mortgaged property, which she purchased at the foreclosure sale. But because the land was devoted by the defendant, a gas company, to a public use, she was unable to secure possession of the land to which she had title. She became an owner without any right of possession, so long as the public-service company uses the land. Her judgment for mesne profits was permitted to stand, however, though in general such an action can be maintained only after recovery of possession or in connection therewith. The court recognized the general rule referred to in a comment in this REVIEW on the case of *Richmond Wharf and Dock Company v. Blake*,⁹ but held it inapplicable to a case where the owner cannot have possession because of a peculiar legal situation. Meanwhile, those who lend money upon mortgage must not only wonder whether they may safely do so where the mortgagor is a public-service corporation, but also what their rights are to be in case of a mortgage given by a private borrower if the latter sells the mortgaged land to such corporation. Certainly the ultimate acquisition of an ownership of the naked fee, subject to the public use, is an inadequate protection, even though an indefinite number of actions for mesne profits or for use and occupation be permitted against the public-service company.

The case of *Dobbins v. Economic Gas Company*, in addition to the matter just referred to, also decided many special questions of interest in the law of property. One of these questions is in connection with the law of adverse possession. The narrow point

⁸ (1920) 182 Cal. 616, 189 Pac. 1073.

⁹ (1919) 181 Cal. 454, 185 Pac. 184; 8 California Law Review, 109.

decided is this: a purchaser from a mortgagor against whom is pending a suit to foreclose a mortgage, with notice of the pendency of the action, does not merely by entering into possession initiate an adverse possession during the pendency of the suit. Some act indicating an adverse claim is necessary in addition to the entry. The point seems well settled both on authority and reason.¹⁰ In connection with his decision on this point, Mr. Justice Olney gave utterance to a dictum more interesting than the point decided. He says (182 Cal. at p. 630): "The truth is that even if no suit were pending at the time of the purchase and acquisition of possession from the mortgagor, the possession of the purchaser would not be adverse to the mortgagee so that he could secure title by prescription. His possession is but that of the mortgagor whose successor in interest he is, and is no more adverse to the mortgagee than would be that of the mortgagor. It is, in fact, merely the possession of the mortgagor transferred."

No fault is found with the proposition thus stated, though it is possible that the reason given rests upon a fiction. But what if there had been no conveyance from the mortgagor? What if a third person had instituted an adverse possession without connecting himself in any way with the mortgagor? It is difficult to see why under the lien theory of mortgage even such an adverse possessor should not be precluded from obtaining title by adverse possession to the mortgaged premises, so long as the statute of limitations had not run on the mortgage debt. Until a mortgage is due, there can be no action by the mortgagee, and where there is no right of action there can be no limitation. In other words, an adverse possessor might conceivably obtain title as against the mortgagor, while leaving the mortgagee's lien undisturbed, for the reason that no action could have been maintained to foreclose the latter by reason of its non-maturity. It has been held that an adverse possessor gains title subject to equitable easements created by the former owner,¹¹ and the Supreme Court of the United States has decided that "a judgment lien is not affected by reason of the adverse possession of a third person, so long as no right of action has accrued by virtue of a sale under the lien."¹² Cases decided

¹⁰ 2 Jones, Mortgages, § 1202; *Chouteau v. Biddle*, (1892) 110 Mo. 366, 19 S. W. 814; *Christopher v. Shockley*, (1917) 75 So. 158 (Ala.); *Denbo v. Boyd*, (1916) 185 S. W. 236 (Mo.)

¹¹ *Nisbet & Potts Contract* [1906] 1 Ch. 386, with comment, 21 *Law Quarterly Review*, 105.

¹² *Pratt v. Pratt*, (1877) 96 U. S. 704.

under the common-law theory of mortgage are scarcely pertinent. Where the legal title passes, even on condition, the mortgagee may maintain actions for the recovery of the land as against persons entering without right. But the reason for the rule ceasing, the rule itself should cease. It would seem most unjust to hold, in the case of long-term mortgages, that the mortgagee should be barred before his right to foreclose is ripe. It is curious that the point has not more frequently arisen. The present case does not involve it; it is merely suggested by Mr. Justice Olney's conservative statement of the law in cases where the mortgagor conveys to a third party.

A neat illustration of the influence of economic conditions upon legal doctrine is afforded by the development in California of the law respecting the duty of the occupier of land to prevent his stock from trespassing. The early cases in this jurisdiction, at a time when mining and stock-raising were the chief industries of the state, practically established the doctrine that the common-law rule, evolved in an agricultural community, making the owner of cattle responsible for their trespasses was inapplicable to our conditions.¹³ This result was aided by certain statutes evincing the policy of the state, but in the main the court's opinion was a reflex of existing economic conditions. Possibly it is going too far to say that the common-law rule never existed in California, but if it did exist, it certainly had little scope for application in the early history of the state. It is not necessary to trace the evolution of the law concerning fences, though a careful historical study of the statutes and decisions with reference to actual industrial conditions would be an interesting, though by no means easy task. The result, however, of the long evolution is the Estray Act of 1915,¹⁴ which, it is held in *Montezuma Improvement Company v. Simmerly*¹⁵ and *Moran v. Freeman*¹⁶ restores the common-law rule, save in six expressly named counties. Thus the duties of owners of land in respect to the maintenance of fences have been steadily modified by legislation and by judicial decisions in response to changing conditions of industry. The result of the changed law in *Montezuma Improvement Co. v. Simmerly* was to give a stock-raiser who had not fenced his own land an action against another stock-raiser who had not done so. Had the law upon this subject been worked out with the interests of the various industries of the state before the law-

¹³ *Waters v. Moss* (1859) 12 Cal. 535, 73 Am. Dec. 561; *Comerford v. Dupuy* (1861), 17 Cal. 308. See note 7 California Law Review, 365.

¹⁴ Cal. Stats. 1915, p. 636.

¹⁵ (1919) 181 Cal. 722, 189 Pac. 100.

¹⁶ (1920) 32 Cal. App. Dec. 811, 192 Pac. 155.

maker's mind, a result more desirable socially might have been attained. The effect of the decision is to permit reciprocal actions between stock-raisers for trespasses on their lands, to substitute the possibility of perpetual legal warfare for a condition of relative peace. The principles which properly control the relation between stock-raisers and farmers are by no means necessarily applicable to disputes between two stock-raisers concerning trespasses of animals. But the legislature in the legislation which the court had before it in the Montezuma Improvement Company's case applied the same principles to both classes. Under existing conceptions concerning the judicial function and its relation to the law-making process, the courts are powerless to make an exception to a statute merely upon the ground of social convenience.

An instance where courts have gone pretty far in the direction of remedying deficiencies by judge-made law is that of the doctrine of "equitable conversion." In *Los Angeles Trust Company v. Bortenstein*¹⁷ this doctrine was applied to secure to the mortgagee of land a sum of money paid to the mortgagor for damages done to the land by operations of the city which caused buildings on the land to be washed away. The money was "a substitute for the land, or for that part thereof destroyed or damaged by the flood," and "must be treated, in equity, as the land itself." The court had some difficulty in distinguishing the case of *Buckout v. Swift*,¹⁸ where it was held that a flood which carried away buildings had the effect of carrying them away from the mortgage on the land, because they became "personalty" as soon as they left the land. Possibly the District Court of Appeal hesitated to differ with a decision of the Supreme Court, but it would certainly have been more satisfactory to declare *Buckout v. Swift* overruled. One may be willing to call money land if that is necessary to work a just result, though possibly the result may be worked out through a more satisfactory analysis; but why should buildings which are part of the land cease to be part of the land for the purpose of working injustice?

Really, the attempt to determine rights and duties under such artificial distinctions as whether particular objects or things are land or personalty, is an impossible task. Its impossibility is well illustrated by the cases on fixtures. Machinery affixed to land is personalty as between vendor and vendee, if that be the agreement, declares the District Court of Appeal in *Byron Jackson Machine*

¹⁷ (1920) 32 Cal. App. Dec. 195, 190 Pac. 850.

¹⁸ (1865) 27 Cal. 433, 87 Am. Dec. 90.

Works v. Hoge,¹⁹ but as against a bona fide purchaser or mortgagee of the land, notwithstanding the agreement of the vendor and vendee that it retain its character as personalty, the machinery is part of the land, the Supreme Court holds in *Oakland Bank of Savings v. California Pressed Brick Co.*²⁰ In *Southern California Hardwood Company v. Borton*,²¹ wall beds in an apartment house are held not to be real property because of the intention of the parties, while pipes in the ground used in connection with an easement are held to be real property in *Robinson v. City of Glendale*.²² Of a somewhat similar character are the cases dealing with the ownership of crops. In *Rector v. Lewis*²³ it was held that while the crops, though harvested and lying on the land, go to the owner of the land when in an action of ejectment possession of the land is obtained from an adverse holder, the value of crops sold by an adverse possessor cannot be recovered against him,—the plaintiff's remedy is to recover the rental value of the land. In all cases of this general character, however, it is to be borne in mind that after all the courts usually care little whether the subject of the litigation is land or chattels; what they are really concerned about are the rights and duties of the parties. It is regrettable that in defining and determining these rights, they frequently employ language which obscures rather than clarifies thought. It may be that our civilization rests upon metaphors, as Meredith said, but even metaphors have a logic of their own—they must not mean one thing this minute and something else the next minute. When text writers and judges in one sentence call a machine real property and in the next deny that it is real property, one gets the sensation that he is listening to a very queer sort of language.

In certain parts of property law, indeed, language has become standardized. Particularly is this true in the law of estates, conditions and future interests. Ordinarily there is nothing to be gained by departing from traditional usage in discussing problems arising in this technical field, while such departure may conceivably cause confusion. No harm, for example, was done in *Hughes v. Scott*²⁴ by calling a remainder a reversion, but anything that serves to confuse the two interests has a dangerous effect, for it is often

¹⁹ (1921) 33 Cal. App. Dec. 425, 194 Pac. 45.

²⁰ (1920) 60 Cal. Dec. 51, 191 Pac. 524. See extended comment, 8 California Law Review, 442; 9 *ibid.* 68.

²¹ (1920) 59 Cal. Dec. 506, 189 Pac. 1022.

²² (1920) 182 Cal. 211, 187 Pac. 741.

²³ (1920) 31 Cal. App. Dec. 507, 188 Pac. 1018.

²⁴ (1920) 32 Cal. App. Dec. 75, 190 Pac. 643.

essential, e. g., in questions of vesting, to determine whether a given interest is one or the other. In the case referred to, a grantor gave land to A, with a direction in the habendum clause of the deed that it should "revert" to the grantor's daughter and her heirs on A's death. The court following the grantor's language, designated the daughter's interest a reversion, adding that it passed out of the grantor at the same time with the life estate to A. The addendum demonstrates that the interest was a remainder, not reversion. For a reversion is "the residue of an estate left by operation of law in the grantor";²⁵ it must be "left" in the grantor to constitute a reversion. The facts of the case, the court held, did not justify the application of the very technical decision in *McGarrigle v. Roman Catholic Orphan Asylum*,²⁶ which decided that a statement, after granting a life estate to A, that it was "the purpose" of the grantor "that after the death of the grantee" of the life estate the land "should become and be the property of the Roman Catholic Girls' Orphan Asylum," since it did not contain words of grant, did not pass any interest, but merely expressed an unexecuted future purpose. *Estate of Ritzman*²⁷ also involved the definition of a vested remainder. It was contended that a will which left the testator's estate to his wife for life, and upon her death to his children, did not, upon the testator's death, pass the children a vested remainder. The Supreme Court held the contention to be without merit. The point was decided more than two centuries ago by the English courts, and there is even more reason today for reaffirming it, when practically the only way of determining a life estate is by death of the life tenant. The only court which ever held to the contrary seems to have been the Supreme Court of New Hampshire. Two decisions by that court to the contrary have been termed "inexplicable aberrations of an able and learned but eccentric court."²⁸ They have been overruled by later New Hampshire decisions.²⁹ It is regrettable that our Supreme Court in deciding the point does not refer to the overwhelming mass of authority sustaining its view. Is it possible that counsel did not supply the material?

*Southern Pacific Company v. Owens*³⁰ was a case in the

²⁵ Cal. Civ. Code, § 768.

²⁶ (1905) 145 Cal. 694, 79 Pac. 447, 1 L. R. A. (N. S.) 315, 104 Am. St. Rep. 84.

²⁷ (July 28, 1921) 62 Cal. Dec. 153, 199 Pac. 783.

²⁸ Gray, *Perpetuities* (3d ed.) § 103 n. 1.

²⁹ Gray, *Perpetuities* (3d ed.), p. 82 note.

³⁰ (April 1, 1920) 182 Cal. 585, 189 Pac. 108.

standardized law of conditions. The grantor sold a lot in what was later the town of Taft, with a condition in the deed against the sale of liquor on the premises conveyed. Later its agent was alleged to have given consent that the town might issue liquor licenses. Obviously this was no waiver of the condition. In *Strong v. Shatto*³¹ was presented for the first time in California the contention that the right to enter for breach of condition attached to a fee simple estate was subject to the rule against perpetuities. The court followed the prevailing treatment of such conditions by American courts. These courts have, usually without discussion, enforced conditions which would have been plainly violative of the rule, if it were applicable to such rights of entry.³² The unlimited power given to a present owner of land by means of a condition to direct its use forever is hostile to the spirit of a simple conveying system, provocative of disputes concerning the title, essentially out of harmony with the rather generally prevailing theory that each generation should solve its own problems. May a lawyer advise a client to lend money secured by a mortgage upon land subject to such a condition, however long ago it may have been reserved? An insolvent mortgagor may wilfully violate the condition for the sole purpose of defeating the mortgage, and the holder of the right to entry under breach of the condition will enter upon the land, taking back the estate free from the claims of the mortgagee, and from all other claims against the owner of the land, subsequent in date to the creation of the conditions. The English courts have invoked the rule against perpetuities, itself a striking example of judicial legislation, practically to get rid of the anomaly of this perpetual potentiality for mischief in modern law. That burden has been left by American courts to be discharged by the legislatures, who have been too busy with administrative matters to bother much with such antiquities of the law. Thus the "antiquities" remain.

The decision in *Strong v. Shatto* is interesting for another reason. While the court does not expressly concede that the rule against perpetuities is in effect in this state, its reasoning proceeds upon the applicability of that rule to future estates in California, and moreover it expressly draws a distinction between the sections of the Civil Code dealing with restraints on alienation and the rule against perpetuities. The Court, speaking through Mr. Justice Sloane, says:

³¹ (Dec. 15, 1919) 30 Cal. App. Dec. 903, 187 Pac. 159.

³² Gray, *Perpetuities* (3d ed.) §§ 299 ff; 1 Tiffany, *Real Property* (2d ed.) p. 603.

"Sections 715, 716 and 717 of the Civil Code state the limitations upon the power of the suspension of alienation. There is no express statement of the rules against perpetuities." The case is some authority, therefore, for the proposition that the common-law rule against remoteness of vesting of future estates, known as the rule against perpetuities, is in force in California, notwithstanding the existence of the other rules, adopted from the New York Revised Statutes, respecting the suspension of the power of alienation. The New York courts have recognized the existence side by side of the two sets of rules, though learned text-writers have argued that the system set up by the Revised Statutes is a substitute for the common-law rule.³³ The argument that the common-law rule against remoteness of vesting is in force in California is fortified by the fact that both the constitution of 1849 and that of 1879 forbid "perpetuities," save for eleemosynary purposes.³⁴ The sections of the New York Revised Statutes were not imported into the California law until the Civil Code went into effect in 1873. Up to that time the common-law rule was in effect, and the legislature, which adopted the code, did not expressly abolish that rule. Whether it could do so under the then existing constitution depends on what was meant by "perpetuities" in the constitution. If sections 715 and 716 of the Civil Code established a new rule concerning "perpetuities" in this state, did the people adopt the legislative definition in the Constitution of 1879? If so, where did the legislature get the power to authorize a suspension of the absolute power of alienation for a gross term of twenty-five years, as it did in 1917?³⁵ These questions seem not to have been discussed in any California case.

Questions respecting the suspension of the absolute power of alienation were involved in *In re Phelps Estate*.³⁶ A particular remainder was held to be obnoxious to the objection that there was an improper suspension of the absolute power of alienation, because an absolute interest in possession could not be conveyed by persons in being. But the particular limitation was held to be severable, and did not make void the entire disposition of the residue of the estate. Incidentally the court holds that a gift by way of future interest of an aliquot portion of a fund to be created by the sale

³³ *Matter of Wilcox* (1909) 194 N. Y. 288; *Walker v. Marcellus O. L. Ry. Co.* (1919) 226 N. Y. 347, 123 N. E. 736; 1 *Tiffany Real Property* (2d ed.) p. 622; 2 *Reeves, Real Property*, p. 1269.

³⁴ Cal. Const., 1849, Art. XI, § 16; Const. 1879, Art. XX, § 9.

³⁵ Cal. Stats. 1917, p. 699.

³⁶ (June 10, 1920) 182 Cal. 752, 190 Pac. 17.

of property to the children of A "then living" at the time of A's death, is a vested, not a contingent interest. As the gift embraces children born after as well as before the testator's death, it might well be that none of the children of A living at the time of testator's death, when A's interest vested, would succeed to any part of the fund. A conveyance by such children together with one from A might convey nothing more than A's interest. But discussion as to what is and what is not a vested or a contingent interest under sections 694 and 695 of the Civil Code is like carrying water in a sieve. One can scarcely understand what purpose there was in still further confusing a most confused topic by adopting the definitions in the Civil Code. The case of *Woestman v. Union Trust and Security Bank of Pasadena*³⁷ held that a trust to endure until the testatrix's sons reached the age of forty years was valid, a decision perfectly correct but that adds nothing to our knowledge on this subject.

*In re Murphy's Estate*³⁸ involved the question of vested remainders. Under any test, the remainder there discussed was plainly vested in the widow and ten children, though it might be divested by the exercise of a power of appointment. The Court held that the power of appointment was not properly exercised, because the will, which it was claimed constituted such exercise, did not refer to the power or to the property covered by it. The court expressly withholds any admission that a power of appointment may exist under the laws of this state, and declines to discuss the extent to which powers of appointment may be executed under the statutory system prevailing in this state. The law upon the entire subject of future interests, including the doctrine of powers, is in a most unsettled condition in California, but possibly that very situation is a desirable one, for lawyers will usually advise their clients in view of the law's uncertainty against the feasibility of intricate settlements of property, which is exactly in harmony with the general spirit of our people. If the law of future interests were to be remodelled today, we venture to say that the system of family settlements would find few advocates.

The cases thus far considered have in general turned upon the nature and exercise of rights of ownership. The next group of cases will be found to deal with the transfer of rights of ownership.

³⁷ (Dec. 24, 1920) 34 Cal. App. Dec. 128, 195 Pac. 944.

³⁸ (May 12, 1920) 182 Cal. 740, 190 Pac. 46.

Before discussing these cases, however, it is proper to call attention to *Bar Due v. Cox*,³⁹ where the act of 1913,⁴⁰ restricting the power of a landowner to erect "spite fences," was held to be constitutional. It is an odd commentary upon our common-law system of judicial legislation that such an unjust doctrine had to be modified by the legislature, and that when modified the law altering it had to run the gauntlet of the courts to determine whether the legislature had the authority to pass it.

There is the usual crop of cases involving delivery of deeds. *Gaschlin v. Sierra*⁴¹ has already been commented upon in this REVIEW.⁴² *Ong v. Cole*⁴³ reasserts that the mere use of the word "deliver" is not conclusive as to the legal effect of a manual tradition of an instrument. In *McCully v. McArthur*⁴⁴ the evidence that there was no intention to deliver was found to be abundantly clear. The cases of *Green v. Skinner*⁴⁵ and *Neely v. Buster*⁴⁶ bring into prominence the doctrine of the necessity of actual acceptance in connection with the delivery of deeds, which one might have supposed to have been settled if it were not for its revival in these cases. *Hibberd v. Smith*,⁴⁷ an elaborate opinion, no doubt held that formal acceptance by the grantee was an essential element to the validity of a conveyance, and that even the recordation of a deed is not enough to give it vitality. But *Hibberd v. Smith* has been allowed to slumber peacefully for thirty-five years, during which time an abundant crop of delivery cases has been garnered. Commencing with the pioneer case of *Bury v. Young*⁴⁸ in 1893, there have repeatedly been before the courts situations where grantors have made tradition of conveyances to lawyers, bankers and others, for the benefit of the grantors' families with direction to withhold recordation and formal tradition to the grantees until the death of the grantors. In sustaining these arrangements, no judge prior to the decision in *Green v. Skinner*, seems to have doubted that the title passed, irrespective of the actual knowledge of the grantee, from the moment of the first delivery, if that were intended

³⁹ (May 24, 1920) 32 Cal. App. Dec. 381, 190 Pac. 1056.

⁴⁰ Cal. Stats. 1913, p. 342.

⁴¹ (June 3, 1920) 32 Cal. App. Dec. 462, 191 Pac. 550.

⁴² 9 California Law Review, 64.

⁴³ (Feb. 9, 1920) 31 Cal. App. Dec. 447, 188 Pac. 812.

⁴⁴ (Nov. 18, 1920) 33 Cal. App. Dec. 529.

⁴⁵ (1921) 61 Cal. Dec. 448, 197 Pac. 60. See comment, 9 California Law Review, 499.

⁴⁶ (1921) 34 Cal. App. Dec. 183, 195 Pac. 736.

⁴⁷ (1885) 67 Cal. 547, 8 Pac. 46, 56 Am. Rep. 726.

⁴⁸ (1893) 98 Cal. 446, 33 Pac. 338, 35 Am. St. Rep. 186.

to divest the grantor's title. In none of the cases has any attempt been made to emphasize the element of acceptance; the sole discussion has been concerning delivery. We suspect that a careful examination of the evidence in the long line of cases beginning with *Bury v. Young* would show that in many of them the grantees had no notice of the conveyances until the death of the grantor. Whether or not that be so, however, *Green v. Skinner* has emphasized a theory inconvenient in its practical application, destined to be productive of a deluge of litigation, tending to insecurity in titles, and lacking the support of the most careful students of the subject.⁴⁹

We believe the court missed an opportunity of placing the law on a more reasonable basis when it accepted as good law the decision in *Hibberd v. Smith*, an authority already somewhat shaken by *Harrigan v. Home Life Insurance Company*⁵⁰ and a case which in its final analysis rests upon the false assumption that a conveyance is necessarily a contract. It is not at all necessary to fit every legal conception into the "greedy category of contract." The facts in *Green v. Skinner* present a particularly unfortunate situation for the application of the requirements of actual acceptance. A father who holds land in joint tenancy delivers to his son a deed of his interest, naming a grandson as grantee. Because the grantee learned of the arrangement only on the day of the grandfather's funeral, his acceptance was too late, for the surviving joint tenant had already become owner.

Covenants for title were involved in *Gaffey v. Welk*⁵¹ and in *Platner v. Vincent*.⁵² The former case is an illustration of the familiar rule that no action or right of recoupment or set-off exists in favor of the purchaser of land by reason of failure of title, though such remedies exist in favor of the purchaser of personalty under a defective title.⁵³ Such remedy exists, in connection with sales of land, apart from cases of fraud, only where there are proper covenants in the deed of conveyance. To bring land and personalty upon the same basis in this and other respects would not only require radical legislation, but a violent wrench in our habits of thought. In the second of the cases mentioned, *Platner v. Vincent*, a deed was made and delivered in California convey-

⁴⁹ See, e. g. 2 *Tiffany, Real Property* (1st ed.) p. 936 note; *Tiffany, Delivery and Acceptance of Deeds*, 17 *Michigan Law Review*, 103.

⁵⁰ (1900) 128 Cal. 531, 546, 58 Pac. 180.

⁵¹ (March 1, 1920) 31 Cal. App. Dec. 643, 189 Pac. 300.

⁵² (Oct. 27, 1920) 33 Cal. App. Dec. 407.

⁵³ 4 Kent, *Commentaries*, p. 471, note b.

ing land in Washington. Under the law of Washington warranties of seisin and of right to convey were implied from the use of the word "grant" in the deed; in California there are no such extensive warranties implied under section 1113 of the Civil Code. The court held that the effect of the contract was to be governed by the law of the place of making, in the absence of any designated place of performance, for the reason that such covenants are personal and not real. The court cited California cases to this effect, though it is the rule generally prevailing in the United States,⁵⁴ and there is nothing to show that Washington regarded the covenants as other than personal. The question whether or not the covenants run with the land or are personal ought to be determined by the *lex situs*.⁵⁵ But if the covenants are clearly personal, the law of the place of contract should govern their validity and effect.

The doctrine of covenants running with the land was applied in *Sacramento Suburban Fruit Land Company v. Whaley*,⁵⁶ though with questionable appropriateness. A mortgage provided that if the mortgagor paid a certain sum per acre on a defined number of acres, the mortgagee would give partial releases covering the number of acres on which the payment was made. Plainly the grantee or a subsequent incumbrancer under the mortgagor should have this privilege as well as the mortgagor himself. As his land was subject to the lien, on general equitable principles he should be permitted to discharge the lien by availing himself of any rights which the original mortgagor had: the rule would be the same even if the property were personal, where there is no possibility of applying a doctrine of covenants running with the property. But the court, as has been said, rests its decision upon the technical doctrine of covenants running with the land. How it can be said that the covenants were contained in a grant of the property, an element essential to the running of covenants at law,⁵⁷ the

⁵⁴ See 9 California Law Review, 234.

⁵⁵ *Dalton v. Talianferro* (1902) 101 Ill. App. 592; *Fisher v. Parry* (1879) 68 Ind. 465; 4 Kent, Commentaries 472, note a.

⁵⁶ (Nov. 24, 1920) 33 Cal. App. Dec. 611; 194 Pac. 1054.

⁵⁷ "Certain covenants contained in grants of estates in real property are appurtenant to such estates and pass with them," etc., Cal. Civ. Code § 1460. The next section, C. C. § 1461, provides that the covenants specified in the title of the Code are "the only covenants which run with the land." See also C. C. § 1462. Now the provision of the mortgage was (1) not a covenant, because the mortgagee did not sign the mortgage (so we may infer from the usual practice); (2) was not contained in a grant; (3) there was no "estate" conveyed to the mortgagor or the mortgagee. It might be added (4) a subsequent incumbrancer is not an "assign."

court does not explain. A mortgage is not a "grant," and conveys no estate under the theory of the nature of a mortgage which prevails in this state. Furthermore, the benefit of covenants which do run vests in the assigns of the covenantee. The mortgagor was not a covenantee, for there is no reason to believe that the mortgagee signed the mortgage. Moreover, the plaintiff was not an assignee but a junior incumbrancer. The case is decided correctly, but on reasons which have no more to do with it than Einstein's theory of relativity. Yet the District Court of Appeal of California is not alone in its application to a like situation of the legal doctrine of covenants running with the land. Decisions directly in point are cited by the court from Iowa and Minnesota.⁵⁸ In *California Packing Corporation v. Grove*⁵⁹ a covenant by the owner of land to sell and deliver crops of peaches to be grown on the land did not bind a subsequent purchaser of the land. If it is desirable that such covenants be permitted to bind subsequent purchasers—one may venture the expression of a belief that economically and socially it would be eminently undesirable—the way is open through legislation.

The equitable enforcement of covenants respecting the use of land was involved in *Walker v. Haslett*,⁶⁰ but as the enforcement was against an original grantee, there was no point decided concerning the enforceability of the covenant against subsequent purchasers. The particular covenant was one to the effect that no building other than a first-class private residence should be built on the lot. The plaintiff was held entitled to an injunction preventing a "duplex" or double house, which presented externally the appearance of a single private residence, from being occupied by more than one family, though it was designed internally for the use of two families. The court declined to consider the objection that plaintiff would suffer no damage by the act of defendant, treating the restrictive covenant as a distinct property right. The injunction, however, was directed to be issued without prejudice to defendant's right to modify or dissolve the injunction, if later conditions, such as a change in the character of the neighborhood, demand it.

In *Miles v. Hollingsworth*,⁶¹ the court had to consider the effect

⁵⁸ *Vawter v. Crafts* (1889) 41 Minn. 14, 42 N. W. 483; *Gammell v. Goode* (1897) 103 Iowa 301, 72 N. W. 531.

⁵⁹ (Feb. 3, 1921) 34 Cal. App. Dec. 409, 196 Pac. 891.

⁶⁰ (Nov. 21, 1919) 30 Cal. App. Dec. 604, 186 Pac. 622.

⁶¹ (December 2, 1919) 30 Cal. App. Dec. 689, 187 Pac. 167.

of such change in the character of a neighborhood upon restrictive covenants. It held that the mere fact that the property had become more valuable for business purposes than for residence purposes did not entitle it to disregard the covenants. The test is whether the surrounding property is actually devoted to business uses or not. It is not entirely clear that the two cases referred to are altogether consistent with the views of the Supreme Court expressed in *Werner v. Graham*,⁶² mentioned in an earlier volume of this REVIEW.⁶³

The creation of public and private easements by conveyances is involved in several cases decided during the period under review. In *Cooper v. Selig*⁶⁴ a grant of land "for the purposes of a highway" was held by the District Court of Appeal not to create an easement merely, but to pass the title to the land. The court was not required to determine the effect of the words used beyond reaching the conclusion that the land and not an easement was conveyed. But it seems well settled in California that such words without a clause of re-entry or other expressions indicating an intent to create a condition do not create a condition subsequent, nor, it seems, a determinable fee.⁶⁵ When this is decided, however, there remains the further question whether the words may not be sufficient to raise a trust, as was suggested in the note on *Fitzgerald v. County of Modoc* in the first volume of this REVIEW.⁶⁶ Where land is devised for the purpose of paying a sum of money to a legatee, or even where it is given on condition for such purpose, courts of equity have long since enforced the disposition as a trust.⁶⁷ And the same principle has been sometimes applied where land was given to a town for public purposes.⁶⁸ The failure to use the property for the purpose for which it was granted probably should not permit the grantor or his successors to enter, but one would think that some representative of the public interest should be able to enforce the provision against the grantee or his assigns. In other words, it is hard to see why such a conveyance should become absolute by a failure to carry out the purposes designated.

⁶² (1919) 181 Cal. 174, 183 Pac. 945.

⁶³ 8 California Law Review, 108.

⁶⁴ (June 18, 1920) 32 Cal. App. Dec. 604, 191 Pac. 983.

⁶⁵ *Fitzgerald v. County of Modoc* (1913) 164 Cal. 493, 129 Pac. 794; 44 L. R. A. (N. S.) 1229, *Victoria Hospital Association v. All Persons* (1915) 169 Cal. 455, 147 Pac. 124. See note 1 California Law Review, 265. See also 1 *Tiffany, Real Property* (2nd ed.) 272, n. 11, 334 n. 72; *Seegel v. Auer*, 148 Pa. 236, 23 Atl. 996, 15 L. R. A. 547.

⁶⁶ See 1 California Law Review, 265.

⁶⁷ (1866) *Stanley v. Colt*, 72 U. S. (5 Wall.) 119, 165, 18 L. Ed. 502.

⁶⁸ *Ashuelot Natl. Bank v. Keene* (1907) 74 N. H. 148, 65 Atl. 826, 7 L. R. A. (N. S.) 758.

*Coon v. Sonoma Magnesite Company*⁶⁹ was similar to *Cooper v. Selig*. There was in that case a clause in a deed saving and excepting a strip of land forty feet wide along a "creek" for a road "to be built at some future time." The Supreme Court held that this was a reservation of an easement rather than an exception from the grant of a defined strip of land. The court refers to the fact that in California by reason of section 1069 of the Civil Code a reservation is construed most strongly in favor of the grantor — a rule changing the common law — but it finally reaches its conclusion by a consideration of the relation and purposes of the parties to the conveyance. The court also determined that the road in contemplation of the parties was not a private railroad but a wagon road. It is not easy to reconcile all the language of this case with *Cooper v. Selig*. For example, Mr. Justice Wilbur says: ". . . in construing contracts and deeds for railroad rights of way, such deeds are usually construed as giving a mere right of way, although the terms of the deed would be otherwise apt to convey a fee." *Parks v. Gates*⁷⁰ also involved the construction of a grant for road purposes. The court, though Mr. Justice Sloane, says: "There is a vast difference between a grant for purposes of 'right of way' for a road and a grant of land 'to be used for a road'. The latter grant may be entirely consistent with the conveyance of a fee simple title, as a road may be maintained as readily on land held in fee as under an easement; but the grant of land as a right of way recognizes nothing but an easement." This, in language unfortunately becoming less usual than of yore, is a "nice" distinction, but we believe one that is perfectly sound. If we are to have certainty in regard to rights of property, we must recognize distinctions of this sort.

An untidy conveyance caused litigation in *Northwestern Pacific R. Co. v. Humboldt Milling Company*.⁷¹ A right of way was granted to the Eel River and Eureka Railroad Company over a described strip of land, so long as the grantee maintained and operated its railroad thereupon and no longer. No mention of successors or assigns was made in the conveyance. The court held that the presumption of a fee simple estate established by sections 1072 and 1105 of the Civil Code was not overcome by the fact that the deed stated that the grant was to continue only so long as the grantee maintained the railroad. The deed was read as if it said "the

⁶⁹ (1920) 182 Cal 597, 189 Pac. 271.

⁷⁰ (June 14, 1921) 61 Cal. Dec. 767, 199 Pac. 40.

⁷¹ (Aug. 3, 1921) 62 Cal. Dec. 179, 200 Pac. 9.

grantee, its successors and assigns." It is difficult to see what other construction could have been given to a conveyance to a corporation. The estate created could certainly not be an estate for life. Must not every conveyance to a corporation be regarded as passing a fee, since a corporation cannot hold a life estate, and the elements necessary to make an estate for years or at will are absent?⁷² Though the estate of the corporation might be defeasible or conditional, it could not be made determinable by conveyance, for even such a limitation on the power of conveyance is void.⁷³

The implied reservation of an easement by a grantor of the servient estate who continues to hold the dominant estate was involved in *Palvutjian v. Terkanian*.⁷⁴ In *Taylor v. Avila*⁷⁵ the Supreme Court had used the following language: "... a grant, bargain and sale deed operates to pass the title in fee, unless it contains in itself some limitation, exception or reservation" and "it estops the grantor thereafter from claiming any right or estate in the land so conveyed." That is exactly what the English courts and those of many, if not most, American jurisdictions have decided with respect to the creation of easements by implied reservation, as distinguished from creation by implied grant,⁷⁶ and the statement expresses in different language the rule of section 1104 of the Civil Code.⁷⁷ But the California courts, notwithstanding that the language of section 1104 of the Civil Code merely gives the grantee of land certain rights over the land of the grantor, have omitted to make any distinction between the effect of a deed as passing rights of enjoyment over the land retained, and its effect as reserving to the grantor rights of enjoyment over the land

⁷² Cal. Civ. Code §§ 761, 762.

⁷³ Cal. Civ. Code §§ 711, 715. At common law a corporation aggregate of which the members were persons capable in law, as a dean and chapter, took a fee simple without the word "successors" by a mere grant to the corporation in its corporate name. On the other hand, a corporation sole or a corporation aggregate, all whose members, save the head, were dead in law, took a fee simple only where words of successions were used. Challis, *Real Property* (3rd ed.) 225; Co. Litt. 94b.

⁷⁴ (April 9, 1920) 31 Cal. App. Dec. 1025, 190 Pac. 503.

⁷⁵ (1917) 175 Cal. 203, 206; 165 Pac. 533.

⁷⁶ 2 Tiffany, *Real Property* (2d ed.) § 363.

⁷⁷ "A transfer of real property...creates in favor thereof an easement to use the other real property of the person whose estate is transferred in the same manner and to the same extent as such property was obviously and permanently used by the person whose estate is transferred, for the benefit thereof, at the time when the transfer was agreed upon or completed."

retained.⁷⁸ The much-discussed case of *Pyer v. Carter*⁷⁹ was cited without particular comment in the earliest case in this jurisdiction upon this subject,⁸⁰ and later cases have not observed that *Pyer v. Carter* is, if not wholly overruled by later cases, at least limited so as to have a very narrow effect. Lord Westbury's slashing criticism of *Pyer v. Carter* in *Suffield v. Brown*⁸¹ has not been mentioned in any California case. The question as to whether there is any difference in effect between an implied grant and an implied reservation has never been discussed by the California courts. It remained for *Palvutjian v. Terkanian* to take back what was said in *Taylor v. Avila*, at least in effect. The learned Justice who wrote the opinion in the last-named case in denying the rehearing in *Palvutjian v. Terkanian* points out a line of distinction which is satisfactory within the lines established by the earlier decisions, but it might be wished that *Taylor v. Avila* had served to mark a departure from earlier views. The Roman lawyers with much wisdom rejected the entire doctrine of the implied grant of easements, and therefore that of implied reservation,⁸² and the English chancellors and common-law judges, followed by many American courts, have in the last half-century limited the scope of the loose-jointed doctrine at least to the extent of rejecting the creation of easements by implication. Practically, under the prevailing doctrine, one who wants to sell the fee simple only of land without creating permanent rights in land retained by him must in his conveyance, by some form of words not yet standardized, exclude the creation of all such rights. The situation becomes even more difficult where, as in California, one continues to retain rights in the land sold by him, notwithstanding the fact that by the language of his conveyance he has transferred all rights in the property.⁸³

*Roger v. Struven*⁸⁴ is a case involving the creation of easements other than by prescription or by express or implied grant. A way was created by estoppel, but, illustrative of the immense com-

⁷⁸ *Jersey Farm Company v. Atlanta Realty Company* (1913) 164 Cal. 412, 129 Pac. 593; *Cheda v. Bodkin* (1916) 173 Cal. 7, 158 Pac. 1025. Cf. *Southern Pac. Co. v. Los Angeles Mill Co.* (1918) 177 Cal. 402, 170 Pac. 832. See note on *Jersey Farm Company v. Atlanta Realty Company*, 1 *California Law Review* 275. In a dissenting opinion in *Nippert v. Warneke* (1900) 128 Cal. 501, 61 Pac. 96, Chief Justice Beatty points out the distinction emphasized in the note referred to.

⁷⁹ (1857) 1 H. & N. 916, 156 Eng. Rep. R. 1472.

⁸⁰ *Cave v. Crafts* (1878) 53 Cal. 135.

⁸¹ (1864) 4 De G. J. & S. 185, 46 Eng. Rep. R. 888. Cf. *Tooth v. Bryce* (1892) 50 N. J. Eq. 589.

⁸² E. C. Firth, "The Quasi-grant of Easements in English and Roman Law," 10 *Law Quarterly Review*, 323.

⁸³ See notes 3 *Illinois Law Review*, 187, 4 *ibid.* 430; 9 *Michigan Law Review*, 709.

⁸⁴ (Dec. 2, 1919) 30 Cal. App. Dec. 701, 186 Pac. 817.

plication of our legal system, the court points out that estoppel by no means presents a universal formula; but there are various sorts of estoppel. The court thought that the way could not be supported under the facts in *Roger v. Struven* upon the doctrine of estoppel by deed, but that, because the grantor had made representations *aliunde* the deed before its execution, there was room for the application of an estoppel in pais.

Even after the student has mastered the broad outlines of the system of legal and equitable servitudes — if it is possible to master even the outlines of this intricate title in the law of property—he will be obliged to consider whether certain rights are after all easements or not. For example, the whole doctrine of natural rights, as illustrated by the rights of the riparian owner to the enjoyment of water, of the landowner to the support of his land from adjoining land, is shot through with different theories from those that control pure easements. *Porter v. Los Angeles*,⁸⁵ commented upon at length in the November, 1920, number of this REVIEW,⁸⁶ was a case involving the natural right of support. Its decision depended upon a technical point of common-law pleading, the difference between trespass and case, and that in turn depended upon the accident of history, the development of a narrow and technical spirit, fostered by events like the "great judicial scandal," which must have had the effect of discouraging anything that looked like the exercise of discretion by judges. Indeed, the line between discretion and arbitrary action is one hard to draw in an illiterate age.⁸⁷

The rights of the public in land, sometimes treated under the head of public easements, give rise to a great number of cases. A few of those reported during the last year as decided by the Supreme Court and District Courts of Appeal of California may be mentioned. *Humboldt County v. Van Duzer*⁸⁸ decides that there is no possibility under the existing system in California of abandonment of a highway by implication. This was formerly possible, but since section 2620 of the Political Code was amended in 1883 a highway can be abandoned only by positive action.⁸⁹ *Haynes v. Indio Levee District*⁹⁰ adds to the list of purposes for which land

⁸⁵ (1920) 182 Cal. 515, 189 Pac. 105.

⁸⁶ 9 California Law Review, 71.

⁸⁷ 2 Holdsworth, History of English Law, 238-244; 3 Blackstone's Commentaries, pp. 408-409; Pollock, Genius of the Common Law, 44.

⁸⁸ (July 26, 1920) 32 Cal. App. Dec. 924, 192 Pac. 192.

⁸⁹ *McRose v. Bottyer*, (1889) 81 Cal. 122, 22 Pac. 393.

⁹⁰ (Mar. 5, 1920) 31 Cal. App. Dec. 693, 189 Pac. 475.

may be dedicated — confessedly a not unlimited list — that of being flooded by the waters of a river diverted by the construction of a dam for public use. The nature of the landowner's rights after permitting his land to be thus damaged is discussed. The case is parallel in some respects to *Dobbins v. Economic Gas Company* above discussed.⁹¹ In *Whitman v. San Diego*,⁹² where there was a mere use of unenclosed land by the public, but no proof of acquiescence by the owner in such use, dedication would not be presumed, and a finding that there was a dedication for the purposes of a street was without justification in the evidence. The decision of the lower court to the effect that there had been a dedication was reversed by the Supreme Court. *Inyo County v. Given*⁹³ decides that while there may be a dedication by estoppel in favor of private property owners, there is no room for the application of the doctrine in favor of a city. *Ferrogiano v. Board of Public Works*⁹⁴ seems entirely to have overlooked *Inyo County v. Given*. A somewhat peculiar situation in the law of dedication was involved in *Hill v. Oxnard*.⁹⁵ The highway in that case was dedicated by means of a restricted dedication, the owner of the soil retaining the trees and the right to maintain them on the highway.

Three cases involving the law of boundaries are worthy of mention. *City of Los Angeles v. San Pedro etc. R. Company*⁹⁶ applies rules respecting boundaries on tide lands to the facts involved in the case. The rule that the water course, not the surveyor's meander lines, govern, and also the rule that if a body of water, e. g., a stream intersects, the lines should be run across the mouth of such intersecting stream, were both involved in the case. *Hill v. Schumacher*⁹⁷ involved the settlement of boundaries by acquiescence. The case holds that the doctrine of parol settlement and acquiescence cannot apply where the boundaries are not in fact uncertain. The principles involved are discussed in two articles published in this

⁹¹ *Supra*, n. 3.

⁹² (Oct. 19, 1920) 60 Cal. Dec. 468, 193 Pac. 98.

⁹³ (July 28, 1920) 60 Cal. Dec. 131, 191 Pac. 688.

⁹⁴ (1921) 35 Cal. App. Dec. 23.

⁹⁵ (Mar. 18, 1920) 31 Cal. App. Dec. 836, 189 Pac. 825.

⁹⁶ (April 8, 1920) 59 Cal. Dec. 463, 189 Pac. 449.

⁹⁷ (Dec. 31, 1919) 31 Cal. App. Dec. 85, 187 Pac. 437.

REVIEW.⁹⁸ *Anderson v. Citizens Savings and Trust Company*⁹⁹ decides that where property is sold according to a map, the grantee takes to the middle of a street designated in the map.¹⁰⁰

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(To be continued.)

⁹⁸ Joseph P. Loeb, "The Establishment of Boundary Lines by Practical Location," 4 California Law Review, 179; Samuel C. Wiel, "Built-up Boundaries Outweigh Paper Boundaries," 4 California Law Review, 293.

⁹⁹ (1921) 61 Cal. Dec. 431, 197 Pac. 113.

¹⁰⁰ Cf. 8 California Law Review, 108-9, and authorities there referred to.