RECENT CASES

ASSIGNMENTS—PRIORITY OF SUCCESSIVE ASSIGNEES OF A CHOSE IN ACTION—As stated by Vice Chancellor Leaming the question presented was: "As between successive assignees of the same chose in action (in this case a legacy), does prior notice to the debtor (in this case a testamentary trustee) of the later assignment, without more, subordinate the rights of the earlier to those of the later assignee?" *Held,* that the prior assignee prevails regardless of notice. *Moorestown Trust Co.* v. *Buzby,* 109 N.J.Eq. 409, 157 Atl. 663 (Ch. 1931).

The leading case of *Dearle* v. *Hall,* (3 Russel Ch. 1, 38 Eng. Rep. 475 (1923)), established the English rule that the assignee, whether prior or subsequent, who first gives notice to the debtor, prevails. In the United States there is a divergence of opinion on the question. See 66 L.R.A. 775. In an early New Jersey case Chancellor Vroom indicated that the English view would not be followed in New Jersey (*King* v. *Executors of Berry,* 3 N.J.Eq. 44, 54 (Ch. 1834)), and this intimation was approved in subsequent opinions. See the cases collected in Vice Chancellor Leaming's opinion. In *Jenkinson* v. *N. Y. Finance Co.* (79 N.J.Eq. 247, 82 Atl. 36 (Ch. 1911)) Vice Chancellor Emery disregarded the earlier opinions and followed the English view. Until the decision in the principal case the *Jenkinson* case has been generally accepted as the law of this state (*Cf. Fidelity Trust Co.* v. *Bolles,* 80 N.J.Eq. 15, 82 Atl. 833 (Ch. 1912); *Board of Ed. of Elizabeth* v. *Zinc,* 101 N.J.Eq. 78, 37 Atl. 713 (Ch. 1927)), although the Court of Errors and Appeals has not passed upon the precise question. Numerous legalistic arguments have been advanced for and against the English view, but the most significant social and economic considerations seem to weigh heavily in its favor. The free alienability of choses in action is seriously impaired by the contrary doctrine of the *Moorestown* decision. The American Law Institute has, however, approved the view that the prior assignee prevails irrespective of notice to the debtor. AM. L. INST.—CONTRACTS, Sec. 173, p. 217. See also SCOTT, CASES ON TRUSTS, (2d ed. 1931) p. 663; 19 YALE L. J. 258 (1910); 19 COL. L. R. 70 (1919); 2 POMEROY, EQ. JUR., Secs. 693-702; WILLISTON, CONTRACTS, Secs. 435-438.

AUTOMOBILES — IMPUTED NEGLIGENCE — JOINT ENTERPRISE — P and H were to divide commissions on a real estate transaction. They hired a U-Drive car. H drove. P was a passenger. They went to Elizabeth to attend to some details of the transaction. As a result of a collision of their car with D's bus, P died, and P's administratrix instituted action against D. The trial court charged the jury that if P and H were engaged in a joint enterprise, H's negligence would bar recovery by P. The jury returned a verdict for defendant and P's administratrix appealed. *Held,* that the trial court properly submitted the question of whether P and H were engaged in a joint enterprise to

the jury. Affirmed. *Petrilla* v. *Public Service,* 9 N.J. Misc. 1178, 157 Atl. 89 (Sup. Ct. 1931).

Joint enterprise may be called temporary or *pro hac vice* partnership. *Yanco* v. *Thon,* 9 N.J.A.R. 624, 157 Atl. 101 (Sup. Ct. 1931). Practically the same rules apply to joint enterprise as to partnership. *Jackson* v. *Hooper,* 76 Eq. 185, 74 Atl. 130 (Ch. 1909). Thus, as to strangers, the negligence of one of several parties engaged in a joint enterprise is imputed to the others. *Van Brunt* v. *Wiener,* 10 N. J. Misc. 298, 158 Atl. 923 (Sup. Ct. 1932); *Hoimark* v. *Consolidated Traction Co.,* 60 N.J.L. 456, 38 Atl. 684 (E&A 1897). As between themselves, however, one party engaged in a joint enterprise is liable to the other for injuries suffered by him as a result of the other's negligence. *Harber* v. *Graham,* 105 N.J.L. 213, 143 Atl. 340, 61 A.L.R. 1232 (E. & A. 1928); *Yanco* v. *Thon, supra;* Note 62 A.L.R. 440. The issue of joint enterprise is usually one of fact for the jury. *VanSciver* v. *Abbott's Alderney Dairy,* 6 Misc. 949, 143 Atl. 153 (Sup. Ct. 1928); *Lange* v. *New York S. & W. R. Co.,* 89 L. 604, 99 Atl. 346 (E. & A. 1916). But there is a contrariety of opinion as to what evidence is sufficient to support an inference of the existence of the relationship. The courts agree that there must be a common purpose and some joint right of control. BLASH. CYC. AUT. L. 1147-1152; 5-6 HUDDY CYC. OF AUT. L. (9th Ed.) 285-291; and Note 48 A.L.R. 1055. *Cf. Braddock* v. *Hinchman,* 78 N.J.Eq. 270, 79 Atl. 419 (E. & A. 1911); *Carr* v. *Sterling Realty Corp.,* 94 N.J.Eq. 128, 119 Atl. 184 (1922) *aff'd.* 95 N.J.Eq. 274, 126 Atl. 926 (E. & A. 1923). Proof that the parties were joint owners or joint bailees usually establishes the latter requirement. *Wiley* v. *Dobbins,* 204 Iowa 174, 214 N.W. 529 (1927); *Farthing* v. *Hepinstall,* 243 Mich. 380, 220 N.W. 708 (1928); *semble, Carero* v. *Breslin,* 3 N.J. Misc. 507, 128 Atl. 883 (1925); Weintraub, *The Joint Enterprise Doctrine in Automobile Law* (1931), 16 CORN. L. Q. 320, 329. Some cases have held that a joint enterprise may exist when the purpose of the adventure is social. *Wentworth* v. *Waterbury,* 90 Vt. 60, 96 Atl. 334 (Vt. 1916); *Beaucage* v. *Mercer,* 206 Mass. 492, 92 N.E. 774, 138 Am. St. Rep. 401 (Mass. 1910). But others require that the purpose be economic. *Coleman* v. *Bent,* 100 Conn. 527, 124 Atl. 224 (Conn. 1924). While it may be desirable to limit the doctrine of joint enterprise to cases in which the purpose of the joint adventure is economic gain, it would seem that the cases in New Jersey fix no such limitation. *VanSciver* v. *Abbott's Alderney Dairy, supra; Harber* v. *Graham, supra; Yanco* v. *Thon, supra.*

DIVORCE—ESTOPPEL TO ATTACK FOREIGN DECREE—Application for alimony *pendente lite* was resisted by defendant husband on the ground that the parties were not married, because complainant's divorce from a former husband had been obtained by fraud practiced on the court of Virginia. She was not a *bona fide* resident of that state at the time of the proceedings. Defendant had given complainant the money to

go to Virginia, knew of the fraud, and later went through a ceremonial marriage with her. *Held,* that defendant is estopped from setting up the invalidity of the decree as a ground for resisting the application for alimony *pendent lite*. *Margulies* v. *Margulies,* 109 N.J. Eq. 391, 157 Atl. 676 (Ch. 1931).

An invalid decree of divorce may be collaterally attacked not only by a party to it, but also by a person who subsequently married one of the parties. BISHOP, MARRIAGE, DIVORCE, AND SEPARATION, (1891) par. 1545, and numerous cases there cited; CHILD, NEW JERSEY DIVORCE (1929) 226. Grounds of estoppel may prevent either from establishing its insufficiency and thus in effect validate the decree. *Kaufman* v. *Kaufman* 160 N.Y. Supp. 19, *aff'd.* 177 App. Div. 162, 163 N.Y. Supp. 566 (1917). The decisions concerned with the effect of that doctrine on faulty decrees are in conflict, resulting from a failure to distinguish between a divorce voidable because of lack of jurisdiction over a party and one void because the *res* is not within the court's control. See Note, 60 L.R.A. 301. Jurisdiction over the *res* depends upon the domicil of at least one of the parties in the state wherein the decree is sought. *Haddock* v. *Haddock,* 201 U.S. 562, 570, 26 Sup. Ct. 525, 50 L. Ed. 867, 5 Ann. Cas.. 1 (1906); *Lister* v. *Lister* 86 N.J. Eq. 30, 97 Atl. 170 (Ch. 1916). In the instant case, therefore, the Virginia court granting the original divorce had no jurisdiction over the marriage relation because the fraud of the complainant went to her residence in that state. *Margulies* v. *Margulies, supra.* Clearly a person in a divorce suit may be estopped to deny the validity of a decree based on his collusion or other wrong, once the court has control over the *res*. See Note, 51 L.R.A. (N.S.) 534, 536. It is submitted, however, that a divorce not founded on jurisdiction over the marriage relation cannot be validated by an estoppel based on the wrongdoing of individuals. *Ashdowne* v. *Ashdowne* 178 N.Y. Supp. 565 (1919); Note, 60 L.R.A 301; *Smith* v. *Smith* 13 Gray 209 (1859); *semble, Hollingshead* v. *Hollingshead* 91 N.J. Eq. 261, 110 Atl. 19 (Ch. 1920); *contra, In re Swales* 60 App. Div. 599, 70 N.Y.Supp. 220, *aff'd.* 172 N.Y. 651, 65 N.E. 1122 (1901); Note, 23 L.R.A. (N.S.) 1255. The court may rightly refuse to aid the wrongdoer by declaring the divorce void at his suit. *Tyll* v. *Keller* 94 N.J. Eq. 426, 120 Atl. 6 (E. & A. 1923); *White* v. *Kessler* 101 N.J. Eq. 369, 139 Atl. 241 (Ch. 1927); *contra* (1932) 1 MERCER BEASLEY L. REV. 68. But that is vastly different from enforcing a void divorce decree against a party and thus recognizing its validity. The marriage *res* in the case under consideration was not in Virginia but in New Jersey, the domicil of the parties. *Haddock* v. *Haddock, supra.* Our court by recognizing the validity of the Virginia decree deprived this state of its rightful control over a New Jersey *res*. *Lister* v. *Lister, supra.* The vice chancellor relied on the cases of *Kaufman* v. *Kaufman, supra,* and *Cesareo* v. *Cesareo,* 134 Misc. Rep. 88, 234 N.Y. Supp. 44 (1929) to sustain his view. They are both clearly distinguishable, for in each the divorce decree sought to be impeached was based on proper jurisdiction over the *res,* the plaintiffs

having been abandoned by their husbands, and having established *bona fide* domicils in the states granting the decrees. *Haddock* v. *Haddock*, *supra* p. 571; *Cheever* v. *Wilson*, 9 Wall. 108, 124, 19 L. Ed. 604 (1869).

EQUITY—EQUITABLE SERVITUDES ON CHATTELS — Complainant, manufacturer of a patented skee-ball alley, sold several devices to X, who signed a written license agreement imposing various restrictions upon the use of the alleys, among which was a prohibition against removal of the alleys from the territory specified in the contract for use in any place where such alleys were in operation. The agreement purported to bind and enure to the benefit of the assigns of the parties. Defendant purchased the alleys from X with full knowledge of the restrictions and operated them at a place where he knew complainant had sold alleys to one entitled to exclusive rights of operation. Complainant filed a bill for injunction. *Held*, the bill should be dismissed. *National Skee Ball Co., Inc.*, v. *Seyfried*, 110 N.J.Eq. 18, 158 Atl. 736 (1932).

Equitable servitudes imposed in connection with sales of real property, where reasonably necessary to protect the vendor or vendee, have been enforced, provided the public interest in free alienability of property was not alversely affected. So covenants restricting the use of aliened realty in favor of retained land have been enforced in equity against subsequent purchasers with notice, although insufficient to create easements or to constitute covenants running with the land. *Tulk* v. *Moxhay*, 2 Phillips 774 (1848); *DeGray* v. *Monmouth Beach Club House Co.*, 50 N.J.Eq. 329 (Ch. 1892), *aff'd* 67 N.J.Eq. 731 (1904). See *Brewer* v. *Marshall*, 19 N.J.Eq. 357 (E. & A. 1868); *Euderle* v. *Leslie Courts Co.*, 102 N.J.Eq. 570 (Ch. 1928); *Jennings* v. *Baroff*, 104 N.J. Eq. 132 (E. & A. 1928); *Wihtoff* v. *Kohl*, 105 N.J.Eq. 181 (E. & A. 1929). This doctrine has been invoked to protect a lessee of a portion of a building against violation by the lessor and a third person of a covenant against letting any other part of the premises for a similar business. *Aiello Bros. Inc.* v. *Saybrook Holding Corporation*, 106 N.J.Eq. 3 (Ch. 1930). Similarly burdens upon one business in favor of another have been enforced against a purchaser with notice as equitable servitudes (*John Brothers Abergarw Brewery Co.* v. *Holmes*, L.R. 1900, 1 Ch. 188 (1899)), and the authorities uniformly recognize covenants not to compete, made in connection with the sale of a business or employment contracts as creating servitudes in gross for the reasonable protection of the purchaser or employer. *Bogardus* v. *Chacalas*, 109 N.J.Eq. 5, 156 Atl. 124 (Ch. 1931); *Langberg* v. *Wagner*, 101 N.J.Eq. 383, 139 Atl. 518 (Ch. 1927); *A. Fink & Sons* v. *Goldberg*, 101 N.J.Eq. 644, 139 Atl. 408 (Ch. 1927). With reference to personal property, the Courts have as a rule been loathe to recognize equitable servitudes, but several cases have presented facts sufficiently strong to induce the courts to extend the basic principle and enforce reasonable restrictions on the use of chattels under sales or

license agreements. *Murphy* v. *Christian Press Pub. Co.,* 38 App. Div. 426 (N.Y. 1899); *Gillighan* v. *Ray,* 157 Mich. 488, 122 N.W. 111 (1909); *Lord Strathcona S. S. Co.* v. *Dominion Coal Co.* [1926] A.C. 108, 39 HARV. L. REV. 655. The principal case is the first in this state in which the precise question was raised. The Court was influenced primarily by the policy in favor of free alienation of personalty, but it is not apparent that the public interest was vitally concerned with the power of defendant to use the skee-ball alleys at a place where another held exclusive rights of operation by agreement with complainant. The conflicting interests being largely *inter partes,* the test of whether the restrictions against use of the devices in competition with other purchasers from complainant were reasonably necessary for the protection of complainants' business might well have produced a contrary result.

EQUITY — INJUNCTIONS — EFFECT OF APPEAL. Complainants prayed for a mandatory injunction compelling delivery of stock held in escrow. The court granted the injunction. (*Helbig* v. *Phillips,* 105 N.J.Eq. 328, 147 Atl. 787 (Ch. 1929)). This action was affirmed on appeal. 107 N.J.Eq. 138, 152 Atl. 919 (E. & A. 1930). Pending the appeal the holder of the stock did not obey the order. *Held,* that this non-action was not a contempt, the order requiring a change in the existing status being *ipso facto* suspended by the appeal. *Helbig* v. *Phillips,* 109 N.J.Eq. 546, 158 Atl. 441 (E. & A. 1932.)

At Common Law the effect of an appeal from Chancery is to remove the record and to deprive the lower court of jurisdiction with reference to the subject matter. *Pennsylvania Railroad Co.* v. *National Docks, etc. Co.,* 54 N.J.Eq. 647, 35 Atl. 433 (E. & A. 1896). In cases involving injunctions this rule sometimes operates with apparent injustice. See *Pennsylvania Railroad Co.* v. *National Docks etc.* Co., *supra; Ashby* v. *Yetter,* 78 N.J.Eq. 173, 78 Atl. 799 (Ch. 1910). To meet this situation legislation was enacted which in its terms appeared to have deprived an appeal of its effect as a stay. Chancery Act, Secs. 112-113, P.L. 1902, p. 546; 1 C.S. 451, 452. A consistent application of the statutory principle would have resulted in injustice in numerous situations. Consequently, our Courts have often, as in the instant case, either ignored the statute or held it inapplicable. The decisions have attempted to classify the cases with consequent confusion. It is submitted that the application of an ancient principle of statutory construction would clarify the situation and give us a satisfactory working rule. Blackstone's principle that Statutes should be construed with reference to the old rule, the mischief and the remedy, suggests that this act, being remedial, should be applied only to situations in which, apart from the statute, the evil sought to be remedied, would be present. 1 BL. COMM. 37; Den, *Lloyd* v. *Urison,* 2 N.J.L. 212, at p. 217-218 (Sup. Ct. 1807); *Randolph* v. *Larned, 27* N.J.Eq. 557 (E. & A. 1876); *State* v. *Scott,* 86 N.J.L. 133, 90 Atl. 235, (Sup. Ct. 1914).

Applying this principle, the result in the instant case seems satisfactory, although it is to be regretted that the court saw fit to adopt the troublesome criterion, so difficult of application, that injunctions which change the existing status are automatically stayed by appeal.

MORTGAGES—ASSUMPTION OF PAYMENT BY SUBSEQUENT OWNER —A mortgagee foreclosed, and on the sale of the property aided the owner, a grantee who had assumed payment of the mortgage, to purchase the property in the name of a corporation, agreeing to release him from "the deficiency resulting from the sale" upon repayment of the additional money loaned to complete the sale. The mortgagee then sued the mortgagor and effected a settlement with him. The mortgagor then filed a bill to recover from the last grantee, who, thereupon, brought in the mortgagee as a party. *Held,* that complainant mortgagor is entitled to recover from the defendant grantee the amount paid by him to the mortgagee despite the new arrangement between the grantee and the mortgagee as to the mortgaged premises and the debt involved. *Cherry* v. *Orth & Coon, Inc.,* 110 N.J.E. 175 (Ch. 1932).

The rights of a mortgagor to restitution as against a grantee who agrees to pay the mortgage debt are in most respects similar to those of a surety against his principal. See *Pruden* v. *Williams,* 26 N.J.Eq. 210 (Ch. 1875). The same is true as between the grantee and his grantee and between the original mortgagor and all subsequent grantees, provided all assume payment of the mortgage debt. *Eakin* v. *Schultz,* 61 N.J.Eq. 156 (Ch. 1900). The mortgagee has the right to recover a deficiency from the mortgagor and through him from a grantee who assumed the mortgage obligation. *Klapworth* v. *Dressler,* 13 N.J.Eq. 62 (Ch. 1860). It is erroneous, however, to look solely to the law of suretyship in these relationships. Thus, the mortgagor or an intermediate grantee can release the ultimate obligor from liability on the bond. *Crowell* v. *Currier,* 27 N.J.Eq. 152 (Ch. 1876); *Young* v. *Trustees of Public Schools,* 31 N.J.Eq. 290, (E. & A. 1879). Again, though always mentioned, the rule of *strictissimi juris* has never been actually applied in these cases. *Firemen's Insurance Co.* v. *Wilkinson,* 35 N.J.Eq. 160 (E. & A. 1882); *Reeves* v. *Cordes,* 108 N.J.Eq. 469 (Ch. 1931). All of the cases are explainable on the doctrine of simple subrogation allowed in equity to avoid circuity of action. Only one early case mentions *Lawrence* v. *Fox,* 20 N. Y. 268 (1859), and *Joslin* v. *N. J. Car Spring Company,* 36 N. J. Law 141 (1873), (*Pruden* v. *Williams, supra*), and none of the later cases invokes the doctrine of contracts for the benefit of third parties. In the instant case the court, following the language of the early cases, enunciates the rules of suretyship and upon them purports to decide the controversy. The use of the rule of *strictissimi juris,* however, would require a different disposition of the case. *Vanderbeck* v. *Tierney-Connelly Co., 77* N. J. L. 664 (E. & A. 1909). Even if the case is considered under prin-

ciples of subrogation, the mortgagor would have the right to invoke the terms of the new arrangement as there was sufficient consideration to support the agreement between the mortgagee and the grantee. The decision of the case seems to be at variance not only with the reasoning it adopts but also with the doctrine of subrogation.

MUNICIPAL CORPORATIONS—MUNICIPAL HOUSING—PARKS AND PLAYGROUNDS—By Chapters 201 and 202, P. L. 1929, pages 376, 380, insurance companies were authorized to establish housing facilities under a plan to be approved by the municipality in which the development was to be located, and upon such approval to exercise the right of eminent domain if necessary to acquire contiguous properties. The Prudential Insurance Company undertook such a development in Newark, and entered into a contract with the city after the approval of the plan by which the city agreed, for a sum not to exceed $1,200,000 to purchase from the company for the establishment of parks and playgrounds such interior lands as were not needed for housing purposes. This action was attacked on *certiorari* and was sustained by the Supreme Court in *Simon* v. *O'Toole,* 9 N.J. Adv. Rep. 379 (1931). On appeal to the Court of Errors and Appeals it was *held,* on the opinion below and by a vote of six to five, that the judgment be affirmed, 10 N.J. Adv. Rep. 124 (1932).

The acts endeavored to make the housing program fall under the police powers and the Supreme Court inferentially agrees. The insurance company was limited to a return from rentals of five per cent upon its investment. A similar undertaking by a municipality was sustained as constitutional in *Willmon* v. *Powell,* 91 Cal. App. 1, 266 Pac. 1029 (1928). The Supreme Court, finding no precedent in this State, relied upon two earlier decisions as in a sense analogous. The analogy, however, seems strained. *Tide-Water Co.* v. *Coster,* 18 N.J. Eq. 518 (E. & A. 1866) sustained the constitutionality of a meadows reclamation project where benefits were to be assessed against owners, but held that the attempt of the legislature to levy the whole cost, irrespective of benefits received, upon the owners was unconstitutional. *North Baptist Church* v. *Orange,* 54 N.J.L. 111 (Sup. Ct. 1891) sustained the propriety of an undertaking by a citizen to bear a part of the expense of opening a street. Most of the other authorities referred to in the opinions cast serious doubt upon the constitutionality of the development scheme. In two advisory opinions the Supreme Judicial Court of Massachusetts denied the constitutionality of a statute which would permit the City of Boston under the guise of a regulation of commerce to acquire lands in excess of those needed for a street improvement, and to construct thereon under city authority buildings to be occupied by merchants and traders, from which the city might obtain a revenue (*In re opinion of the Justices,* 204 Mass. 607, 91 N.E. 405, 27 L.R.A. (N.S.) 483 (1910)); and also denied the constitutionality of a statute authorizing the Commonwealth to furnish homes for

the working classes under a scheme which contemplated rental and eventual purchase by the tenants on the ground that it was not a public undertaking which could be justified as an exercise of the police power to prevent congestion. (*In re opinion of the Justices,* 211 Mass. 624, 98 N.E. 611, 42 L.R.A. (N.S.) 221, (1912)). The same court in *Salisbury Land Improvement Co.* v. *Commonwealth,* 215 Mass. 371, 102 N.E. 619, although conceding the propriety of a beach reservation and public park, held that an authority in addition to acquire other lands and develop and sell or lease them and their appurtenances to private persons lacked so much the character of a public undertaking as to vitiate the whole scheme. In *Brown* v. *United States,* 263 U.S. 78 (1923), the acquisition by federal authorities of lands to which to move a village which would be overflowed by an irrigation reservoir was sustained. While the absence of any speculative feature and of a continuing income in the future, were emphasized as distinguishing the cases, the Massachusetts decisions were inferentially approved. The New Jersey court seems largely to have taken for granted the constitutionality of the housing scheme and to have treated the case essentially as one of fact, depending for its solution upon the determination of whether the City of Newark acted in good faith in its proposed playground and park development, or whether such development was a mere subterfuge. Having resolved this question in favor of the city, the writ was necessarily dismissed. It is to be regretted that the constitutional question was not considered, and that with so strong a dissent no opinion embodying the grounds of such dissent was written for the Court of Errors and Appeals.

STATUTE OF FRAUDS—EFFECT ON DOCTRINE OF UNDISCLOSED PRINCIPAL—Complainant filed a bill for specific performance of a contract for the sale of land against defendant. Defendant pleaded that he had signed the memorandum as "trustee" and, that he had disclosed to complainant at the time of the signing that he was acting in such representative capacity. Evidence was admitted, over complainant's objection, tending to show the true relation of the unnamed principal to the contract. *Held,* that the word "trustee" in the memorandum was an ambiguity which could be explained by extrinsic evidence and that the memorandum was unenforceable under section 5 of the Statute of Frauds in that it did not contain the true name of the party thereby sought to be charged. *Anselmo* v. *Franck,* 109 N.J.E. 480 (Ch. 1932).

That a contract seized by one as "trustee" is ambiguous and may be explained by parol evidence is well settled. *Kean* v. *Davis,* 21 N.J.L. 683, 47 Am. Dec. 182 (E. & A. 1847); *Terhune* v. *Parroti,* 59 N.J.L. 16, 35 Atl. 4 (Sup. Ct. 1896); *Simonton* v. *Vliet,* 61 N.J.L. 595, 40 Atl. 595 (E. & A. 1898); *Davimos* v. *Green,* 83 N.J. Eq. 596, 92 Atl. 96 (Ch. 1914). And it is equally well settled that under section 5 of the Statute of Frauds a written memorandum for the sale of

an interest in lands must contain the full terms of the contract, i.e., the names of the buyer and seller, the subject of sale, price, conditions, etc. *Davimos* v. *Green, supra; Schenk* v. *Spring Lake Beach Imp. Co.,* 47 N.J.Eq. 44, 19 Atl. 881 (Ch. 1890); *Follender* v. *Schwarz,* 107 N.J.Eq. 451, 151 Atl. 55 (E. & A. 1930). Therefore where the memorandum fails to disclose the names of the buyer and seller, the contract is void. *Randolph* v. *General Investors Co.,* 97 N.J.Eq. 493, 128 Atl. 156 (E. & A. 1925); *Davimos* v. *Green, supra; Schenk* v. *Spring Lake Beach Imp. Co., supra; Follender* v. *Schwarz, supra.* The rule has been extended to sales at public vendee, in which the auctioneer is deemed the agent of both parties. *Johnson & Miller* v. *Buck,* 35 N.J. L. 338, (Sup. Ct. 1872); *McBrayer* v. *Cohen,* 92 Wy. 479 (1894); *Hood* v. *Barrington,* L.R. 6 Eq. 218 (1868). Where the memorandum, on its face, discloses no ambiguity and it appears that the parties signed as principals, parol evidence will not be permitted to show that one of the parties signed as agent for a third person, even where this fact was disclosed at the time of the execution of the memorandum. *Jacobson* v. *Lambert,* 109 N.J.Eq. 493, 156 Atl. 763 (Ch. 1931). Aside from Section 5 of the Statute of Frauds it seems that the doctrine of undisclosed principal applies to written contracts, and that the parol evidence rule does not exclude proof that a stranger to the written agreement was in fact the principal of one of the parties thereto. *Smith* v. *Felten,* 63 N.J.L. 30, 42 Atl. 1053 (Sup. Ct. 1899); *Borcherling* v. *Katz,* 37 N.J.Eq. 150 (Ch. 1883). But see *Schenk* v. *Spring Lake Beach Imp. Co., supra; Randolph* v. *General Investors Co. supra.* But one who executes a written contract ostensibly as principal cannot relieve himself of liability by showing that he was acting as agent for someone else. *Sadler* v. *Young,* 78 N.J.L. 594, 75 Atl. 890 (E. & A. 1910). While the language of Section 5 of the Statute of Frauds seems to have been unnecessarily extended by the earlier cases the principal case follows the now established doctrine.

TRUSTS—SITUS OF TRUST OF PETSONALTY CREATED *Inter Vivos* —Complainants, beneficiaries of a trust of personalty created *inter vivos,* brought a bill for accounting and removal of defendant trustee and for the appointment of a new trustee in his stead, alleging misappropriation of the trust fund. Executors of a New Jersey estate held monies presently payable to the trust fund and the bill sought to enjoin such payment. Defendant trustee, a non-resident, was served outside the State. *Held,* that the domicil of the settlor having been in New Jersey at the time the trust was created, the *situs* of the trust is in this State and the Court has jurisdiction to entertain the bill and grant the relief prayed. *Swetland* v. *Swetland,* 105 N.J.Eq. 608, 149 Atl. 50 (Ch. 1930), *aff'd* 107 N.J.Eq. 504, 153 Atl. 907 (E.&A. 1931).

In recognizing the domicil of the settlor as the determinative factor in fixing the trust *situs,* the Court followed the well established rule with respect to testamentary trusts. *Marsh* v. *Marsh's Executors,*

73 N.J.Eq. 99, 67 Atl. 706 (Ch. 1907); *Murphy* v. *Morrisey & Walker,* 99 N.J.Eq. 238, 132 Atl. 206 (Ch. 1926). The learned Vice Chancellor relied upon the questionable fiction of *mobilia sequuntur personam,* and we must therefore infer that he regarded the settlor's domicil as controlling because where the *res* is personalty it fixes the *situs* of the trust property. The decisions of the United States Supreme Court on *situs* of personalty for purposes of taxation must be recognized as largely modifying the maxim that movables follow the person. (See *First National Bank of Boston* v. *Maine,* 52 Sup. Ct. 174 (1932) for the most recent discussion of this subject). If the instant case is intended to establish the *situs* of an *inter vivos* trust at the *situs* of the *res,* it is open to the obvious objection that the administration may be governed by the laws of several states at the same time. See (1931) 44 HARV. L. REV. 161. If, on the other hand, the Court is to fix the *situs* of the trust by the settlor's domicil alone, a vital question becomes arbitrarily determined by a mechanical rule of thumb. There seems no reason why a settlor should be thus restricted and leading jurisdictions have expressly rejected any such formula. *Van Grutten* v. *Digby,* 31 Beav. 561 (1862); *Greenough* v. *Osgood,* 235 Mass. 235, 126 N.E. 461 (1920). There was abundant evidence in the instant case to warrant an implication that the settlor intended the *situs* of the trust to be in New Jersey. The decision, rested upon this recognized ground, would have provided a flexible method of determination and one not so difficult as to endanger predictability. On this reasoning an expressed intent would control *a fortiori. Equitable Trust Co.* v. *Pratt,* 206 App. Div. 689, 199 N.Y. Supp. 921 (1923); CONFLICT OF LAWS RESTATEMENT (AM. L. INST. 1928 (Par. 318). Having ascertained the *situs* of the trust to be in New Jersey, the jurisdiction of the Court of Chancery over matters pertaining to its administration is clear.