

Superior Court Decision . . .

AS DELIVERED BY JUSTICE PORTER.

LIZZIE BIBBS AND ANNA BIBBE vs. BOROUGH OF CENTRE HALL.
In the Court of Common Pleas of Centre County. No. 278, August Term, 1900. (The decision in full and verbatim.)

On September 13, 1897, the plaintiff entered into a written agreement with the Borough of Centre Hall whereby the said borough acquired "the right to take all the water and to exclusively appropriate the same (save as hereinafter excepted and reserved) upon all that certain tract and piece of land situate in Potter township, Centre county, Pa., accurately described by adjoining and containing seventy-six acres, more or less. For this right the borough agreed to pay a rental of fifty dollars per year for five years, and thereafter of seventy-five dollars per year for the balance of a term of ninety-nine years. In addition to the payment of this sum the borough agreed to build a reservoir for the use of the plaintiffs, and to lay certain pipes, etc. For two years the borough paid the sum of fifty dollars in advance under the agreement. It refused to pay the third year, and refused to lay pipes and make the other constructions as agreed. The plaintiffs now sue for the rent for the third year and for damages for the failure to put down the pipes. The amount in dispute was agreed by the parties to be \$149.25.

At the trial the plaintiffs proved the agreement; the failure to pay the rent and to make the constructions contracted for; and that the defendant had laid pipes on an adjoining farm, taking water therefrom, and by means of ditches and pipes had, without entering upon the plaintiff's property, abstracted water therefrom. The defendant borrough by some indefinite testimony challenged the allegation that water was taken from the plaintiff's farm. This phase of the case is unimportant to its present determination.

The defendant then offered to prove that anterior to the lease or agreement a committee of the borough council investigated the amount and location of the water on the plaintiff's property; that a spring, called by the defendant, the Laurel Spring, was pointed out by some one as upon the plaintiff's property; that one, Ritter (a member of the council) represented to the said committee that he knew that this particular spring was upon the Bible property, and that he had been authorized by the owners of the Bible farm to show it to the committee; that no other water upon the farm was sufficient in quantity and elevation to be of value to the borough; that the plaintiffs contended and represented "so far as the borough knew," that the said spring belonged to their property; that the first two annual payments of rent were made upon the belief by the borough that the said spring belonged to the plaintiff; that at the time of laying the pipes to the said spring one of the plaintiffs gave notice that the spring and the water therefrom belonged to the plaintiffs, and required the borough to comply with the lease; that the lease was executed by the borough on the belief that the said water and spring belonged to the plaintiffs and that the borough was purchasing the said water from the plaintiffs and that the contract was not entered into by the borough for any other reason or upon any other condition; that subsequent to the payments of rent the borough was notified by one, Bruss, that the water and the spring were upon the Bruss farm, and that the bor-

rough must pay him; that subsequently the borough by survey discovered that the claim of Bruss was correct, and that the borough is "not using any water from the Bible farm, nor intend to." This offer was excluded. As no further evidence was submitted, the Court directed a verdict for the plaintiffs. The exclusion of the offer and the directed verdict are the bases of complaint hereof. If the offer was properly excluded there was no course open to the Court but to direct a verdict. The question is narrowed then to the ruling upon the offer.

The first item of the offer is seen to be to prove representations on behalf of the plaintiffs that a particular spring was upon their tract and that these representations induced the contract. But the offer does not include any proposition to prove the authority to the alleged agent making such representations, save as they might appear by his own declarations. Enough on this point. The appellant construes the balance of the offer to be to prove a mutual mistake of fact at the execution of the contract by reason whereof the contract should be rescinded. The mistake alleged is, that the spring (called by the appellant the Laurel Spring) was upon the Bible farm, whereas it was upon the Bruss farm. The general rule is that an act done or a contract made under a mistake of a material fact, is voidable and relievable in equity. But the fact must be material to the act of contract, "for though there may be an accidental mistake, or ignorance of the fact, yet if the act or contract is not materially affected by it, relief will not be granted." Riegel vs. Ins. Co., 153 Pa. 147. Assuming that a mistake, relievable in equity, is admissible as matter of defence, in a common law action, the defendant does not explicitly offer to prove a mutual mistake. Furthermore, the evidence for the plaintiffs showed in effect that the spring (called by the defendant the Laurel Spring) was not upon their property; that they knew of no spring by that name, and that they never represented or asserted that the spring described by the defendant was upon their property. This offer does not in terms propose to contradict. Again, the contract which the defendant executed and now desires to rescind, itself does not purport to be a lease of any particular spring. The existence of the spring described by the defendant is not a fact upon which the contract by its terms in any way depends. The language is general. The lease is of all the water upon the land of the plaintiffs, and, as appears by all of the testimony, there are several sources of water supply upon the land. As the mistake offered to be proven is not of a fact which one of the parties asserted, believed or assumed when the contract was made, mutuality is absent. As it is of a fact, not material to, or of the essence of, the contract executed, another defect, equally fatal, appears in the offer. The proposition in this case is rather to prove a mistake made by the borough than a mistake common to both contracting parties. Had the learned trial judge given some intimation of the reasons which induced his action taken in this case, we would have experienced less labor in its review. Whatever his reasons, he reached a right result. The judgment is affirmed.

Local and Personal.

H. E. Harshbarger, of Potters Mills, was in town Saturday evening, and called around to see the Reporter. Mr. Harshbarger is in the threshing business, but stroked off the last bushel of the 1901 crop some time ago. George Meese, merchant of Colyer, makes weekly trips to Lewistown, doing a regular huckster business. He says Lewistown is rapidly improving, and that great preparations are being made for building operations next summer.

J. B. Harper, of Potters Mills, who during the sixties stood to the guns in defence of Uncle Sam's striped breeches, called at these quarters Saturday. Mr. Harper, it will be remembered, last summer by fire suffered the loss of his home along the pike. The forest fires of 1901 will never be forgotten by the old soldier.

Jacob S. Auman, of Potters Mills, drove to Centre Hall Saturday to attend to a bit of business of interest to both the Reporter and himself. Mr. Auman is the all round man of the Richtley Bros.—builts tram roads, repairs trucks and a host of like things that look easy, yet must be understood to do properly. The Richtley Brothers, he says, are doing a big business.

M. L. Emerick is a juror this week, representing the borough in that capacity.

George E. Heckman, farmer west of town, was one of the Saturday evening callers.

Shekler's moving pictures Saturday night were appreciated by those who saw them.

The "ground hog" saw his shadow Sunday, and now, it is said by tradition, six weeks of stormy weather are to follow.

Thomas A. Bennage, of Centre Hall, is looking for a home. He would like to buy a property with twenty or more acres of tillable land.

Sunday and Sunday night it was unusually stormy. The snow was driven at a furious rate by the wind. There was little travel; little church going.

Special services will be held in the Presbyterian church of Spring Mills during the week beginning February 9th, closing with the celebration of the Lord's supper on Sunday, February 16th, at 2:30 p. m. The Rev. John T. Scott, of Bellefonte, will assist the pastor during at least part of the week. All are cordially invited.

TOWN AND COUNTY NEWS.

HAPPENINGS OF LOCAL INTEREST FROM ALL PARTS.

Dr. George Edward Reed was re-appointed state librarian for three years. Dr. Reed is president of Dickinson College.

Ezra Smith, of Bellefonte, has been granted a pension of \$30 per month and Charles F. Romick, of Abdera, one of \$8 per month.

Constable W. H. Runkle and James C. Runkle, of this place, Tuesday went to Williamsport, where they will visit their sister, Mrs. Shreffler.

Mr. and Mrs. Lyeurgus C. Lingle, south of Centre Hall, tonight, Thursday, will entertain a number of their acquaintances in town and throughout the valley.

C. P. Long is making store fixtures at his planing mill at Spring Mills to be used in fitting out a new store room at Stobenville, Ohio, which the Long Brothers expect to occupy before long.

John B. Hagen, contractor and builder, of Farmers Mills, was up to town Thursday last week on the lookout for business in his line, which he found, a notice of which will be found elsewhere.

Mrs. Miller, wife of Rev. J. K. Miller, deceased, of Johnstown, arrived in Millheim last week, and will spend the remainder of the winter with her daughters, Mrs. C. H. Morris and Mrs. M. C. Gephart.

H. G. Strohmeier, marble cutter in this place, recently put up a fine, large monument in the Cedar Hill cemetery, near Salona, to mark the last resting place of Mr. and Mrs. Kommerde, who died in Renovo, 1897.

Mrs. J. B. Robenot, living on the outskirts of Williamsport is afflicted with smallpox. She had gone to the city hospital to have an operation performed for some other trouble, when the physicians discovered her to be afflicted with smallpox. At her home one of the children also has smallpox.

Friday afternoon B. D. Brisbin, of this place, started for Harford, Conn., at which place he will remain for a week. He will be accompanied home by his wife in a few days, who has been in that city with her daughter, Mrs. H. J. Boon, for the past two months.

J. M. Moyer, of Tusseyville, was in town Saturday. Mr. Moyer is a blacksmith and wagon builder, and a hustler all the way around. He has the bearing of a governor, but is far too honest to administer the affairs of a state like Pennsylvania, according to Republican ideas.

The opinion of the Superior court, in the Bible vs. Centre Hall Boro., involving claim for rental, as handed down by Justice Wm. W. Porter, is published in full in this issue. The opinion given is the opinion of the justice, in his words, and not an explanation by the editor of the Reporter.

Fra Grossman, of Penns Cave, took advantage of the good sledding Saturday and made a trip to Centre Hall, a point not often reached by him. Mr. Grossman lives on the Mingle-Arney peach farm, on the North side of Blue Ball, and is anxiously awaiting the opening of the pink peach blossom.

For the past year the price of butter has been higher than for years. The advent of the modern creameries, such as are conducted by the Howard Creamery Co., has been largely responsible for good prices for the product of the cow, at the same time immeasurably improving the quality of butter placed on the market.

W. C. Bunnell, the music dealer, of Milroy, had an upset near Foster Frazier's at Colyer. His sled was loaded with an organ, and in his endeavor to avoid passing over crushed stone, his sled struck the edge of a small bridge, which tilted. Little damage was done, the team soon being captured by J. S. Housman, Esq., who performed the same feat twice before for the "organ man."

George W. Spangler, of Tusseyville, who like pure wine seems to improve with age, graced the Reporter with his presence. Mr. Spangler gives good council to Potter township Democrats, by saying that the ticket in the field should have their united support, because, if for no other reason, had other candidates been successful, they would have desired the same support. That is pure Democratic reasoning, and will undoubtedly prevail.

G. Howard Rishel, who for some year's has been located in New York City, is back in Pennsylvania, having settled in Athens, Bradford county, with his wife, and is doing business for the North Western Life Insurance Co., of Milwaukee. Mr. Rishel is well known in Centre Hall and Potter township, and his many friends here will be glad to know that he is prospering in the insurance business, for which line of work he is admirably well fitted.

COUNTY COURT NEWS.

AS REPORTED BY J. VICTOR ROY, ESQ.

Court convened on Monday at 9 a. m. with Judge John G. Love presiding. The following Sheriff's deeds were offered:

Cyrus Brungart to Commonwealth Trust Co., continued until next Wednesday.

Cyrus Brungart to Clement Dale, acknowledged. The first case called was Robert Kinkead vs. Rosa L. Pierce, both parties from Philipsburg. After the jury was sworn and case opened the plaintiff moved to amend the record. The defendant plead surprise and the case was continued at the cost of the plaintiff.

In the afternoon the case of Lily Fleck vs. Valentine A. Fleck was taken up. This was an action for divorce. The suit was brought under the charge of desertion and cruel treatment. The evidence sustained the charge and verdict was given for the plaintiff.

Judge McClure, of the seventeenth district, who was called for special cases, arrived at 4:15 p. m., and took the bench in the case of Henry J. Rothrock vs. Thomas Rothrock. The particulars of the case seem to be these: In 1878 a confessed judgment was entered against Thomas Rothrock. In 1901 a rule was granted to show cause why the judgment should not be opened. This is the trial of the issue.

TUESDAY MORNING.

Court convened on Tuesday morning with Judge McClure sitting in the Court room and Judge Love in the Arbitration room. The case of Rothrock was resumed. This note was given at the time of the trial of Dr. Thomas Rothrock, in Clinton county, in 1878. It was claimed by the defense that the note was given simply as collateral security for recognition, while plaintiff claimed that it was given as security for money loaned by Henry Rothrock to Thomas Rothrock to bear the expenses of trial. The note was given in the bar-room of the Clearfield House, in Lock Haven, during the first evening of the trial.

Judge Love presided in the case of M. Gephart vs. the Bellefonte Central R. R. Co. This is an action of trespass brought for damages received by Mr. Gephart in a Railroad wreck on the Bellefonte Central, February 9, 1901, by which his left arm was injured. Mr. Gephart is the music dealer in Bellefonte, formerly of Millheim. After part of the plaintiff's testimony was in, a defect in the record was discovered, and the plaintiff moved to amend. The defense plead surprise and the case was continued at the cost of the plaintiff.

WEDNESDAY.

Nearly the whole of Wednesday was taken up with the Rothrock case. After hard legal contests as to the admissibility of evidence, the case went to the jury.

Another jury was called into the box and the case of the Lehigh Valley Coal Co. vs. Jacob F. Folmer, administrator of Patrick Ward, deceased, et al., was taken up. Court then adjourned until Thursday at 9 a. m., when the case was resumed.

The jury in the Rothrock case brought in a verdict for the defendant. The Kulp-Hough cases were continued on account of the sickness of an important witness.

LOCALS.

Prof. Crawford's music class opened Tuesday evening in Grange Arcades. John Miller, of Dubois, former barber in this place, arrived Tuesday evening.

Mr. and Mrs. George Weber, of Lock Haven, who had been visiting Willis Weber, at Rebersburg, returned to their home Tuesday.

Mrs. Samuel Gross for the past few weeks has been suffering greatly from a swelling on her face and neck, caused first by a decayed tooth.

Edward Lucas, who is employed in a large clothing store in Philadelphia, after spending a week with his parents at Centre Hill returned to his post duty.

Woodward's seals will be the next big attraction to be seen at Keith's Theatre, Philadelphia, and the English Pony Ball, which will be seen for the first time in Philadelphia.

F. B. Mills, seedsman, Rose Hill, N. Y., offers 140 varieties of vegetable and flower seeds to every one that sends twelve cents, together with the names and addresses of three friends who are likely to plant seeds.

On Tuesday evening Clark Carson brought a sled load of little girls from Bellefonte to the home of Mr. and Mrs. John W. Conley, east of Centre Hall. They were, Misses Nellie Conley, Helene Moore, Margery Lyon, Sara M. Clure, Louise Braebill, Bettie Orvis, Grace Dale, and May Brown. They were chaperoned by Mr. and Mrs. J. Will Conley and Miss Pearl.

Prospered in the West. . . .

A LETTER FROM FREEPORT, ILL.

There are still quite a number of Centre county people in Stephenson county, Illinois, of whom nothing has been said in my former communications, who are prosperous and deserve notice.

Dr. C. P. Leitzell, of Cedarville, Ill., was born in Stormstown; he is a son of Dr. J. B. Leitzell and with his father located at his present home. He is one of the leading physicians of the county, secretary of the pension board, is quite popular in his profession and society, and enjoys a lucrative practice. Financially, he is well fixed.

Harry B. Leitzell, of Freeport, Ill., was born in Salons, Pa., and is a brother of Dr. J. B. Leitzell. He is another of our popular and successful young men; is quite an expert mechanic in steel and iron works for the Hafer Bros. in their extensive novelty factory. He is one of those reserved men, who attends strictly to his own business; owns a fine home in the city and is held in high esteem as a citizen. He is honest and industrious.

George Smith, of Dakota, Ill., came west about fifteen years ago. He is a son of Joseph Smith, of near Penn Hall and is quite prosperous. For a few years after he came west he conducted a blacksmith shop; he now owns and conducts a hardware store, and in connection with it has an undertaker's establishment; is a model man, a good citizen, and thus far has made a success of all his undertakings in business.

James B. Crawford, of Freeport, Ill., came from Penn Hall, and is doing quite well. He has been here about fifteen years; is engaged with the Hafer Bros. and is a trustworthy man; is very fond of and attentive to his family, a good citizen, strictly temperate and attends well to whatever he undertakes to do.

Oscar D. Emerick, of Freeport, Ill., came west from Centre Hall twelve years ago. At present he has charge of the savings bank department in the State Bank. He is serving his third term as town clerk, an office to which he was elected with very large majorities each time.

George B. Crawford came from Penn Hall, is a farmer and located about fifteen miles west of Freeport. For some years he worked as a farm hand but at

present is conducting a farm and is doing well. His wife is a daughter of Elias Fetterolf, of near Spring Mills.

James Beck, of Dakota, Ill., many years ago conducted a store in the Gap near Howard, came west forty years ago, and for twenty years or more followed farming; was prosperous and after accumulating considerable wealth retired, and is living at ease. He is a very fine man and much respected in the community.

James Conley, son of John Conley, of near Centre Hall, came west some years ago. He spent several years in Freeport, Ill., then married a Miss Stout, who owned a farm near the city, where they now reside and are doing well.

Samuel Lamb, of Ridott, Ill., came west from near Jacksonville at least fifty years ago and by industry and economy on his farm became wealthy. He makes his home with his son William, who lives on the old homestead. Mr. Lamb is about eighty-six years of age, and gets about with ease and comfort; he is a fine man and citizen, without an enemy.

William Askey, of Dakota, Ill., came west at an early day; he is a veteran school teacher, came here from near Jacksonville. He is a respected citizen and is looked upon as one of the best men of his neighborhood; he is comfortably fixed financially.

James Askey and wife, who was a Miss Yeager, came west many years ago from near Jacksonville; he owns a fine farm five miles north east of Orangeville, is wealthy and about to retire from hard work and move to Orangeville, where he owns a fine residence.

Within the last fifteen or twenty years many of the old settlers who came here from Centre county have passed to the unknown future. Among them were Samuel and Solomon Fisher, formerly of Millheim; Solomon Hoy, David Zimmerman, Peter Emerick, Levi Candy, of Hubersburg, and older persons, Lease, Swanzy and Askey, families of Jacksonville. They were all prosperous and greatly respected, and leave families who do honor to their names.

The weather is fine, but very little snow or rain fell this winter; ground dry and roads good.

Death's Doings for the Week.

"That in the midst of life we are in death" was most sorrowfully illustrated on last Saturday night, Jan. 25th, when in the midst of a presentation of Mrs. Jarley's Wax Works given by the Y. P. S. C. E. in the University Inn., Mrs. Margaret McKee was stricken with an apoplectic stroke. She was removed to her home, corner of Beaver Ave. and High St., where she lingered in an unconscious condition until Thursday, Jan. 30th, at 6:30 p. m., when she passed away. Her death has cast a gloom over the whole community, for she was a friend of every one, but it is especially among the poor where she will be missed as she was always their friend and helper, ever ready to do and give to them at all times.

Mrs. Margaret McKee was the wife of the late Prof. James G. McKee, later Vice President of the Penn'a State College, and is survived by a devoted daughter and three sons, viz., Mary G., at home; George and Willie, at Youngstown, Ohio; Arthur, at Cleveland, Ohio. The funeral service was conducted by the Revs. Denniston and Gill at the Presbyterian church on Saturday afternoon.

Mrs. Sallie Schreck, aged widow of the late Peter Schreck, died at her Lemont home aged seventy-nine years. She was a member of the Evangelical church and was buried Thursday morning at the Linden Hall burying ground. She was the oldest citizen of Lemont and was a genial, kind old lady.

John C. Stitzer, of Millburg, died suddenly, Jan. 1st, and was buried on the 4th. The deceased was over seventy years of age and was a member of the Methodist church. A wife and four children survive him, namely, Wm., Williamsport; Clyde, Charles and Grace, at home, three children having preceded him to the eternal world. The following brothers and sisters survive him: H. Y. Stitzer, attorney, Bellefonte; Mrs. Amelia C. Murray, Bellefonte; Wm. Stitzer, Rebersburg; Mrs. Sarah E. Zerby, Colyer.

On the evening of Dec. 31, Mr. Stitzer attended a watch-night service in the church and on his return home complained of pain in his head which grew worse until he became unconscious, and died the day following at 11:30 o'clock. He was a saddler by trade and highly respected by all who knew him.

Death of Mr. Kennedy.

D. C. Kennedy, of Corry, Pa., died suddenly last week from the effect of paralysis. Mr. Kennedy was an active member in the order of Patrons of Husbandry, having given much of his time and energy for the good of the order. In the early winter he spent a week or more with Hon. L. Rhone in canvassing Centre county in the interest of the Grange. He was a member of the executive committee of the State Grange and solicitor for the Patron Relief Association.

Caught in the Belting.

James H. Rine, who is employed in the planing mill of P. B. Critter & Son, Bellefonte, sustained quite a severe injury, says the Daily News. He was putting on a new belt when in some manner his right arm became entangled in the belting and before he could free himself his arm was broken near the shoulder.