beneficial enjoyment of the dominant parcel, then an easement is created by such sale, devise or partition. Discontinuous easements not constantly apparent are only continued or created when they are necessary, and that necessity cannot be obviated by a substitute constructed on or over the dominant premises."

In Pennsylvania, the doctrine, which seems based rather in legal refinement than on practical utility, that ways are not continuous easements, and that, therefore, the same rule as to visibility and permanency, is not to be applied to them as to other easements, is not regarded as law, and more liberality has been shown in sustaining ways than elsewhere. In *Kieffer* v. *Imhoff*, 2 Casey 438 (1856), the right to an alley-way through the servient in favor of the dominant portion of land, which two portions had formerly belonged to one proprietor and had been sold at sheriff's sale, with no mention of the right of way, was sustained, although it was not a way of necessity. Lewis, C. J., said, "It is obvious, therefore, that if the dominant and the servient tenements become the property of the same owner, the exercise of the right, which in other cases would be the subject of an easement, is during the continuance of his ownership, one of the ordinary rights of property only, which he may vary or determine at pleasure. The inferior right of easement is merged in the higher title of ownership: 2 Bing. 83; 9 Moore 166; 3 Bulst. 340. * * * Upon a subsequent severance of the estate by alienation of part of it, the alienee becomes entitled to all continuous and apparent easements which have been used by the owner, during the unity of the estate and without which the enjoyment of the several portions could not be fully had. * * * The owner may, undoubtedly, alter the quality of the several parts of his heritage, and if he does so and afterwards alien one part, it is but reasonable that the alterations thus made, if palpable and manifest and obviously permanent in their nature, shall go to the purchaser in the condition in which they were placed and with the qualities attached to them by the previous owner." The learned judge also approved of the rules of the civil law with reference to servitudes and cited Pardessus, *Traite des Servitudes*, § 288, which (as given in Gale, p. 50) is, "If afterwards these heritages should become the property of different owners, whether by alienation or division amongst his heirs, the service which the one derived from the other and which was simple 'destination *du pue de famille*,' as long as the heritage belonged to the same owner, becomes a servitude as soon as they pass into the hands of different proprietors."

In *Phillips* v. *Phillips*, 12 Wright 186 (1864), Thompson, J., said: "In this, although we do not recognize a way of necessity, we see the reason for the creation of this private way (*i. e.*, that it was the only convenient way), why it was opened, kept open and used by the owner and his family until his death, and the same condition of things, as regards the surroundings continuing, we may presume that it must have been the intention of the owner that it should remain permanent, inasmuch as he made a final disposition by will of both the dominant and servient portions, without the slightest hint of a wish that their relations to each other should be changed." It will be noticed that the court gave a different face to the devise in fee from that given by the Rhode Island court, and as its opinion is derived from a consideration of the whole will, it would seem to be in better accord with the usually-received principles of interpretation.

Pennsylvania Railroad Co. v. *Jones*, 14 Wright 417 (1865), recognises and follows the foregoing case.

In *Overdeer* v. *Updegraff*, 19 P. F. Smith 119 (1871), which was the case of an alley-way, William, J., said: "But if there had been no express reservation of the right to the use of the alley in the conditions of sale, and in the deed delivered to the purchaser, the latter would have taken it subject to the servitude imposed upon it by the decedent for the use and benefit of the occupants of the adjoining lot. It was a continuous and apparent easement and the law is well settled that in such a case a purchaser, whether at private or judicial sale, takes the property subject to the easement."

In *Cannon* v. *Boyd*, 23 P. F. Smith 179 (1873), where an alley-way was claimed over a property which had been sold at sheriff's sale, on behalf of a property sold at the same sale, both properties having belonged to the same owner, Lynd, J., in the District Court, had charged: "The only question in this case is, what was the condition of these two properties at the time of the sheriff's sale? If the condition of the properties was such as to indicate that the occupants of property now owned by the plaintiff used the alley in question and had a right to do so, the verdict should be for the plaintiff." This was affirmed by the Supreme Court.

It will be seen by this short review of cases that there is a considerable conflict of authority, leading to no little uncertainty, but that on the whole it can hardly be said of ways by implication that they are favorites of the common law.

H. B., Jr.

DIGEST.

DIGEST OF THE ENGLISH LAW REPORTS

FOR AUGUST, SEPT., AND OCT., 1876.

From the American Law Review.

Action against Public Officer.—*See* Frivolous Suit.

Annuity.—*See* Residuary Legatee.

Arbitration Clause.—*See* Covenant.

Bailment.

1. Plaintiff left two parcels worth £60 with a servant of the defendant railway company, paid for their deposit without declaring their value, and received therefor a ticket headed "Luggage and cloak office," and bearing on its face, in plain type, a reference to conditions on the back. Among these conditions was one stating that the company would not be responsible for more than £5 value, unless the extra value was declared and paid for, and that "the company will not be responsible for loss of or injury to articles except left in the cloak room." Plaintiff knew there were conditions on the ticket, but did not know what they were. The parcels were left by the servant in an exposed place, instead of putting them in the "Luggage and cloak office," referred to on the ticket, and a thief made off with them. *Held*, that the plaintiff could not recover although the parcels were not put into the cloak-room, because the conditions on the ticket were binding, and the plaintiff must be held to have knowledge of them.—*Harris* v. *The Great Western Railway Co.*, 1. Q. B. D. 515.