judgment of this Court that the adoption of social policy as a part of the law is a legislative and executive function--not one constitutionally delegated to the judiciary.

4. Finally, the Courts of Common Pleas of this Commonwealth as presently constituted simply do not have the manpower resources, the requisite technical knowledge or the time to inspect, investigate, negotiate and enforce landlord-tenant relationships involving questions of habitability.

ORDER

NOW, this 14th day of April, 1977, the plaintiff's demurrers in each captioned case are sustained.

Exceptions are granted the defendant.

KUHN v. LeFEVRE, C.P. FRANKLIN COUNTY BRANCH, EQUITY DOCKET VOLUME 7, PAGE 97

Real Property - Adverse Possession - Tacking - Mention of Alley in Prior Deed

1. Purchasers of lots from a plan on which a private alley appeared acquire rights which are entitled to protection.

2. A conveyance of property which refers to a private alley as a boundary, creates an implied covenant that the alley would be kept open by the buyers for the use of others.

3. While the prescribed twenty-one year period required for adverse possession of real property can be established by tacking a prior owner's period of possession, the adverse possession of an owner must be transferred to successors in some lawful manner.

4. Acceptance of a deed describing boundary lines does not convey inchoate rights acquired by uncompleted adverse possession of property lying outside those boundary lines.

Paul F. Mower, Esq.,and
Joel R. Zullinger, Esq., Attorneys for Plaintiffs

Kenneth F. Lee, Esq., Attorney for Defendants

OPINION AND ORDER

EPPINGER, P.J., November 22, 1976:

In October, 1910, D. O. Allday laid out a plot of lots for the Grandview Realty Company in Chambersburg. The plot is recorded in the Franklin County, Pennsylvania deed records. Section C of that plan is bounded by Grandview Avenue on the West, High Street on the South, Glen Street on the East, and Miller Street on the North. That section consists of seventeen lots and shows a twelve (12) foot alley and two, 16-ft. alleys worked into the plan to give access to the rear of each lot. It is apparent that in the days when these lots were laid out, garages and other out buildings were entered from the rear because almost all of the lots were relatively narrow. There are two corner lots with 61 feet frontages. All the rest of the lots have either 40 foot or 32 foot frontages.

William R. Kuhn and Betty E. Kuhn, husband and wife, (Kuhns), acquired all of Lot No. 12 (40 foot frontage) and the southern 35 feet of Lot No. 13 fronting on Grandview Avenue. Behind these two lots, there is a 12 foot alley.

Ferree L. LeFevre and Mary Jane LeFevre, husband and wife, (LeFevres) acquired Lot No. 9 (32 foot frontage) and the eastern 20 feet of Lot No. 8. These lots front on High Street. The plot shows that the western boundary of Lot No. 9 is the same 12 foot alley that runs at the back of the Kuhn lands. The 12 foot alley separates the lands of the LeFevres and the Kuhns.

The Kuhns have now filed a Complaint in Equity to compel the LeFevres to remove obstructions placed by them in the 12 foot alley and restore it to its original condition so that the Kuhns can have free and uninterrupted use of the alley at the back of their lots and to enjoin LeFevres from continuing each obstruction. Before filing the Complaint, the Kuhns made a written demand on the LeFevres to remove the obstructions from the alley and to discontinue parking in it. The LeFevres have refused to do so, according to the Complaint.

The LeFevres filed An Answer to the Complaint, admitting that they have blocked the alley and refused to comply with the demand of the Kuhns to remove any obstructions. Then, in new matter, the LeFevres allege that

they acquired title to the alley because their predecessors improved the alley, erected large obstructions in it, and from no later than 1950 until 1965, they used it for parking vehicles. Since that, the LeFevres say, they have used it for that same purpose.

To the New Matter, the Kuhns filed a Demurrer. The principal basis of this Demurrer is that the defendants may not rely on adverse possession of the twelve (12) foot alley by their predecessors because the deed from the predecessors to the LeFevres contains no reference to such adverse use. It is also argued that the deed to the LeFevres describes the property as bounded on the west by the alley. The Kuhns claim accordingly that the defendants do not gain the benefit of such prior adverse use and that mere non-use, no matter how long extended, will not extinguish an easement.

It is well established in Pennsylvania that a Demurrer admits as true all facts averred in the challenged pleading. *Borden v. Baldwin*, 444 Pa. 577, 281 A.2d 892 (1971); *March v. Burns*, 395 Pa. 629, 151 A. 2d 612 (1959).

MENTION OF ALLEY IN PRIOR DEED

The question of the effect of the mention of the alley in LeFevre's deed is really a question of whether there has been a dedication of the alley to public use or the creation of private contractual rights in keeping the alley open.

In *Brodt v. Brown*, 404 Pa. 391, 394, 172 A.2d 152, 154, (1961), it was held:

> Where a lot of land is conveyed and the deed makes reference to a plan upon which the lot is laid out which, in turn, calls for a certain street thereon, this constitutes a dedication of the use of the street to the enjoyment of the purchaser as a public way though not yet opened and the map or plan becomes a material and essential part of the conveyance and has the same effect as if incorporated therein.

Where a landowner sells land with reference to a plan which shows public streets and ways, there is a dedication of streets and ways to public use. *Vogel v. Haas*, 456 Pa. 585, 322 A.2d 107 (1974), *Highland Sewer and Water Authority v. Engelbach*, 208 Pa. Super 1, 220 A.2d 390 (1966). A dedication in this sense is essentially an offer and an acceptance

is required, so that without it, the dedication is not complete. *In Re Keifer*, 430 Pa. 491, 243A.2d 336 (1968). In this case, we have no evidence of either an acceptance or rejection of the alley for public use, and therefore the question of whether the alley is a public way is not really an issue. However, this is not the end of our inquiry.

In *Rahn v. Hess*, 378 Pa. 264, 268, 106 A.2d 461, 463 (1954), it was held that,

> . . . where an owner of land subdivides it into lots and streets on a plan and sells his lots accordingly, there is an implied grant or covenant to the purchaser that the street shall be forever open to the use of the public . . .The right passing to the purchaser is not the mere right that he may use the street, but that all persons may use it: *Quicksall, et al v. The City of Philadelphia*, 177 Pa. 301, 304, 35 A. 609; *Snyder et al v. Commonwealth*, 353 Pa. 504, 506, 46 A.2d 247.

Even though the street is never accepted for public use, the private right, or easement, acquired by the purchasers and their predecessors is not affected by the failure of the municipality to act upon the dedication. *Vogel v. Haas*, supra. In this case, both the Kuhns and the LeFevres have deeds that refer to the plan which calls for a twelve (12) foot alley.

Since the original plan showing the alley, there have been numerous conveyances referring to that plan, some as later as 1974 in the Kuhns' deed and 1965 in the LeFevres'. As stated earlier, in both deeds the alley is described as a boundary. Consequently, an implied covenant arose in favor of the purchasers that the alley would be kept open for public use. This conclusion is substantiated by the decision in *Bieber v. Zellner*, 421 Pa. 444, 446, 220 A.2d 17, 18 (1966) where it was said,

> . . . where there is a deed from a grantor which uses as a boundary monument a private road owned by the grantor there is a dedication to the public and *the purchaser of the abutting tract obtains by an implied covenant that he may use the street and that all persons may use it.*

Therefore, the Kuhns, as purchasers of lots from a plan on which a private way appeared acquired rights which are entitled

to protections, unless in some legally recognized way the easement has been surrendered. *Mitchell v. Bovard*, 279 Pa. 50, 123 A. 588 (1924). Moreover, since in the conveyance of the property to LeFevres the alley was mentioned, there is an implied covenant that the alley would be open for public use to others.

TACKING PRIOR ADVERSE USER

As to the question of whether the LeFevres can tack their alleged adverse possession to that of their predecessors, the general rule in the majority of jurisdictions is that in order to tack adverse possession of an area not within a deed description but continguous thereto, the controlling fact is the intended or actual transfer or delivery of possession of that area to the grantee as successor. Annot., 17 A.L.R.2d 1129 (1951).

In *Zubler v. Schrack*, 34 Pa. 38, 41, (1859), our Supreme Court made the following comment:

> No doubt a succession may be kept up by tacking possessions; but each succeeding occupant must show title under his predecessor. If this were not so. the first intruder might abandon his intention of holding adversely and leave the possession, and a succeeding one might enter and claim, without authority, a quality in the predecessor's possession which he had abandoned.

On the second appeal of the *Zubler* case, 46 Pa. 67, 72, (1863), the court held that in order for adverse possession to be continued, the adverse possession of the owner must be transferred to successors in some lawful manner. Adverse possession of an occupier, although not ripened into a complete title, is a step towards title and like property, must be transmitted, so as to vest in a successor a right that has been gained by such occupation.

Since the *Zubler* cases, there have been several Superior Court decisions dealing with this issue. In *Start v. Lardin*, 133 Pa. Super. 96, 1 A.2d 784 (1938), the court held that the establishment of title by adverse possession does not necessitate the possession of the land continuously by only one person because the ". . . rule of tacking applies whereby the possession of successive occupants may, under proper circumstances, be joined together to make out the full statutory period if

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LEGAL NOTICES, cont.

NOTICE IS HEREBY GIVEN in compliance with the requirements of Section 205 of the Business Corporation Law, Act of May 5, 1933, P. L. 364, as amended and supplemented, in behalf of Naugle Motors, Incorporated.

1. The name of the corporation is NAUGLE MOTORS, INCORPORATED.

2. The corporation has been incorporated under the provisions of the Business Corporation Law, Act of May 5, 1933, P. L. 364, as amended and supplemented.

3. The purpose or purposes of the corporation are as follows: To engage in and to do any lawful act concerning any or all lawful business for which corporations may be incorporated under the Business Corporation Law of the Commonwealth of Pennsylvania, Act of May 5, 1933, P. L. 364, as amended from time to time, including, but not limited to, the operation of an automobile and truck sales and service facility, and to own, operate and generally deal in and with all kinds of facilities and appurtenances convenient, desirable or necessary in the conduct and operation of a lawful business enterprise.

4. Articles of Incorporation of the above corporation were filed with the Department of State of the Commonwealth of Pennsylvania on June 30, 1977.

RHOADS, SINON & HENDERSHOT
Attorneys-at-Law
410 North Third Street
P. O. Box 1146
Harrisburg, Pennsylvania 17108

(7-22)

CHARTER AMENDMENT NOTICE

NOTICE IS HEREBY GIVEN that Articles of Amendment were filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on the 16th day of July, 1977, by NJS, Inc., a Pennsylvania Business Corporation, having its registered office at 464 Hollywell Avenue, Chambersburg, Franklin County, Pennsylvania. The said Articles of Amendment are filed under the provisions of the Business Corporation Law of the Commonwealth of Pennsylvania, approved May 5, 1933, P. L. 364, as amended. The nature and character of the amendment are as follows:

> The corporate name of NJS, Inc. shall be changed and the corporation shall hereafter be known as SNJ, Inc.

and for these purposes to have, possess and enjoy all the rights, benefits and privileges of said Act of Assembly.

JOEL R. ZULLINGER of
Davis and Zullinger
5 North Second Street
Chambersburg, Pennsylvania
Attorney

(7-22)

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. . . there is privity between the adverse possessors." *Id.* at 101. Privity merely denotes a succession of relationship to the same thing, whether created by deed, or by other act or by operation of law and that the theory in many jurisdictions is that there is privity where there is an actual transfer of possession with the intent to pass title. Apparently, the court felt that the necessary conveyance of the predecessor's inchoate interest can be accomplished by privity between the grantor and grantee. However, as will be seen, we do not have that in our case.

In *Masters v. Local 457 VMW*, 146 Pa. Super 143, 22 A.2d 70 (1941), the court refused to recognize tacking of two prior owner's possession in order to establish the prescribed twenty-one year period. The court in *Masters* quoted *Zubler II* and wrote,

> In the absence of conveyances by the former possessors of inchoate interests, which may have been acquired by possession, it must be assumed that they occupied the disputed strip of land either permissively, or that they abandoned every intention of an adverse holding before conveyance. *Id.* at 146.

Comparing *Stark* and *Masters*, they may first appear to represent two separate lines of reasoning. However, when taken in light of *Gerhart v. Hilsenbeck*, 164 Pa. Super. 85, 63 A.2d 124 (1949), the cases actually represent a general rule and an exception. *Gerhart* involved a claim of extinguishment of an easement of an alley with the defendants alleging adverse possession of themselves and their predecessors. The court interpreted *Masters* as holding that ". . . acceptance of a deed describing boundary lines confines the premises to the area within the boundaries and that such a deed did not convey inchoate rights acquired by uncompleted adverse possession." *Id.* at 89. But perhaps more importantly, the court held in an apparent reference to *Stark*, the following:

> Their position (defendants) is not tenable. Their deed describes their premises as bounded by the alley. Neither it nor the mortgage purported to convey more land than that within the boundaries fixed by the alley. *There was no attempt in the deed to convey any portion of the alley and there was no evidence of or intention aliunde the deed to convey more than was described in the deed.* *Id.* at 88.

It appears, therefore, that in this case the LeFevres clearly fall within the general rule. Their deed made reference to the alley as a boundary and didn't, on its face, transfer any interest in the alley. We don't think *Stark* applies because in that case, unlike the present case, the courses and distances in the deed description included the disputed land even though it was otherwise described as being bordered by a road; the grantor testified that he did in fact intend to convey the land in dispute and from his point of view, the grantees owned it. As a further indication of the grantor's intent to convey all his interest regardless of the boundary description, it is notable that grantee was the grantor's son. In addition, *Stark* dealt with an appeal from a denial of a motion for judgment n. o. v. after a jury had returned a verdict finding adverse possession.

None of these facts have been alleged in the present case, so there is nothing which establishes or tends to establish an intention on the part of LeFevre's grantors to convey more than the land described in the deed. For the most part, the facts alleged by LeFevres prove that nothing more was conveyed than that within the boundaries of the conveyance. These are not facts which go to show the open and notarious nature of the adverse possession. None of the facts, except for the continued possession and like use, show privity. Consequently, we find that the plaintiff's preliminary objections in the nature of a Demurrer to LeFevres assertion of adverse possession must be sustained.

ORDER OF COURT

NOW, November 22, 1976, it is ordered that the plaintiff's Demurrer to the defendants new matter is sustained. Exception granted to the defendants.

COMMONWEALTH OF PENNSYLVANIA v. WRIGHT, C.P. Fulton County Branch, C.A. No. 5 of 1977

Criminal Law - Burglary and Theft by Unlawful Taking - Tenancy by Entireties Property

1. A tenant by the entirety is licensed and privileged to enter property owned by the actor and his or her spouse as tenants by the entirety.

2. A tenant by the entirety cannot be convicted of the taking of movable property of another when that property is owned by the actor and his or her spouse as tenants by the entirety.

Gary D. Wilt, Esq., District Attorney, Attorney for Commonwealth

Lawrence C. Zeger, Esq., Attorney for Defendant

OPINION AND ORDER

KELLER, J., July 7, 1977:

Gerald E. Wright filed a private criminal complaint before Justice of the Peace Don Knepper on November 3, 1976 accusing Peggy D. Wright of having between 9:00 o'clock A.M. and 12:00 Noon on October 28, 1976 committed the crimes of burglary and theft in the following language:

> "Burglary and Theft by unlawful taking or disposition in that she did then and there unlawfully and knowingly break into the home of Gerald E. Wright and did take the following household property: Bedroom suite, Living room suite, colored television, stereo, tape player, record player, chairs, table, china closet (which was given to Gerald Wright by his mother, this being an heirloom), and numerous other items from the home of Gerald Wright with the intent to deprive him thereof."

District Attorney Gary Deane Wilt on November 11, 1976 approved the complaint. The defendant posted cash bail of $1,000.00 and in due course the matter was forwarded by the issuing magistrate to court and a criminal information filed by the District Attorney alleging Count 1 Burglary, and Count 2 Theft by Unlawful Taking or Disposition. On February 14, 1977 the defendant waived arraignment and entered a plea of not guilty. Subsequently, the defendant waived trial by jury. The case was tried by the undersigned without jury on February 18, 1977, and February 24, 1977. At the conclusion of the Commonwealth's evidence, counsel for the defendant demurred to the Commonwealth's evidence on both counts contending that:

1. The evidence as to the crime of theft established only that the defendant had taken movable property of the parties owned as tenants by the entireties and, therefore, she had not unlawfully taken or exercised unlawful control over movable property of another as provided under Sec. 3921 of the Crimes Code.