tors and Guardian Account, Proposed Schedules of Distribution and Notice to Creditors and Reasons Why Distribution cannot be Proposed will be presented to the Court of Common Pleas of Franklin County, Pennsylvania, Orphans' Court Division for CONFIRMATION: June 2, 1988.

HARNISH: First and final account, statement of proposed distribution and notice to the creditors of Larry D. Harnish, Executor of the Estate of Viola C. Harnish, late of Waynesboro, Franklin County, Pennsylvania, deceased.

MCKELVEY: First and final account, statement of proposed distribution and notice to the creditors of S. David Beltz, Executor of the Estate of Vera J. McKelvey, late of Lurgan Township, Franklin County, Pennsylvania, deceased.

Robert J. Woods
Clerk of Orphans' Court
Franklin County, Pennsylvania

5/6, 5/13, 5/20, 5/27/88

NOTICE OF FILING OF
ARTICLES OF INCORPORATION

Notice is hereby given that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, on the 20th day of April, 1988, for the purpose of obtaining a certificate of incorporation.

The name of the proposed corporation organized under the Commonwealth of Pennsylvania Business Corporation Law approved May 5, 1933, P.L. 364, as amended, is KBR Management, Incorporated - a Close Corporation.

The purpose for which the corporation has been organized is to engage in and to do any lawful acts concerning any or all lawful business for which corporations may be incorporated under the Business Corporation Law of the Commonwealth of Pennsylvania.

LAW OFFICES OF WELTON J. FISCHER
550 Cleveland Avenue
Chambersburg, Pennsylvania 17201
5/13/88

LEGAL NOTICES, cont.

motion to compel in this Opinion and Order is the first step of the procedure. The second step may arise on subsequent motion by plaintiff only if this order to comply is not obeyed. Although contrary to our opinion in *Crawford v. Chambersburg Hospital,* 18 D&C 3d 121 (1980), and more recently this Court's opinion in *Haas v. Foster,* A.D. 1985-259 (Jan. 5, 1987), imposition of sanctions at this stage of the discovery process would in our judgment be premature.

ORDER OF COURT

NOW, this 27th day of November, 1987, the plaintiff's motion to compel defendant, Dr. Glenn Lytle, to answer is granted.

The plaintiff's motion for sanctions is denied.

Exceptions are granted plaintiff and defendant Dr. Lytle.

GSELL, ET AL. V. THOMAS, C.P. Franklin County Branch, E.D. Vol. 7, Page 392

Quiet Title - Probate of Will - Unrecorded Deed - Bona Fide Purchaser - Constructive Notice

1. Constructive notice is not limited to instruments of record, a subsequent purchaser may be bound by constructive notice of a prior unrecorded agreement.

2. Where a sister knew her brother had attempted on a number of occasions to buy their mother's land, she must conduct a vigorous investigation of the title to the property prior to purchase.

3. Where plaintiff blocked roads into land and put up no trespassing signs bearing his name, defendant by inspecting the property would have constructive notice of plaintiffs' claim of ownership.

4. A prospective purchaser of land has a duty to make inquiry as to the status of the title of his vendor and one who fails to make inquiry is not a bona fide purchaser as against an unrecorded deed.

Donald L. Kornfield, Esq., Counsel for Plaintiffs
Thomas J. Finucane, Esq., Counsel for Defendant

KELLER, P.J., November 9, 1987*:

*Editors Note: See, also, Amended Adjudication in this case, dated November 18, 1987, which follows, hereinafter, immediately after the report of the instant Opinion and Order.

On July 11, 1985, plaintiffs, Herbert R. Gsell and Bradley L. Gsell, filed an action to quiet title against Hazel M. Gsell Diehl and the defendant, Marie E. Thomas. On July 22, 1985, plaintiffs filed a petition for special relief pursuant to Pa. R.C.P. §1532, and therein requested that the testimony of Hazel M. Gsell Diehl be taken and preserved on videotape for use at trial.

On July 31, 1985, Hazel M. Gsell Diehl and defendant, Marie E. Thomas, filed preliminary objections to the complaint, and on August 16, 1985, they filed an answer to petition for special relief.

On August 29, 1985, plaintiffs filed a petition to enjoin Thomas J. Finucane, Esq., from representing Hazel M. Diehl and defendant, Marie E. Thomas. On September 9, 1985, Hazel M. Gsell Diehl and defendant Marie E. Thomas filed an answer to petition for injunction. On December 27, 1985, the plaintiffs' petition for special relief was withdrawn by stipulation of counsel for the parties and with approval of court.

On January 30, 1986, we filed our Opinion and Order denying the plaintiffs' petition for injunctive relief.

On February 27, 1986, we filed our Opinion and Order disposing of the preliminary objections to the complaint. Inter alia, we sustained the demurrer of Hazel M. Gsell Diehl, thus removing her as a defendant/party. Plaintiffs were granted twenty (20) days to file an amended complaint. The amended complaint was filed on April 4, 1986. The defendants' answer was filed on April 22, 1986.

On March 23, 1987, defendant filed a motion for hearing, which was granted and the hearing was scheduled for May 19, 1987, and held as scheduled. Counsel for the parties have submitted proposed findings of fact and discussion of law. The matter is now ripe for disposition.

FINDINGS OF FACT

1. The plaintiffs are Herbert R. Gsell and Bradley L. Gsell, adults, living and residing at 486 Perry Road, Fayetteville, Franklin County Pennsylvania.

2. The defendant is Marie E. Thomas, an adult, living and residing at 7881 Lincoln Way East, Fayetteville, Franklin County, Pennsylvania.

3. Hazel M. Gsell Diehl (herinafter referred to as "mother") is the mother of plaintiff Herbert R. Gsell, the mother of defendant Marie E. Thomas, and the grandmother of plaintiff Bradley L. Gsell.

4. Russell W. Gsell, father of plaintiff Herbert R. Gsell and defendant Marie E. Thomas died testate on May 21, 1959, owning an unimproved tract of mountain land (hereinafter referred to as the "mountain ground") lying and being situate in Greene Township, Franklin County, Pennsylvania, which is the subject of this litigation.

5. At the time of Russell W. Gsell's death, all of his property was jointly owned with his wife, i.e., Mother, with the exception of the 45 acre, 80 perch tract of mountain ground which was titled to him individually.

6. Russell W. Gsell's will dated March 16, 1957, left everything to Hazel M. Gsell (Diehl) and she was the executrix named in the will.

7. The will was not probated at the time of Russell W. Gsell's death, but was in the possession of the defendant from 1958 until it was eventually probated in 1985.

8. Plaintiff Herbert has over the years acquired a number of tracts of real estate around the mountain ground and he owns the Caledonia Water Company, which uses a reservoir near the mountain ground. A part of the mountain ground is in the water shed area which serves the reservoir.

9. For many years, plaintiff Herbert had attempted to purchase the moutain ground from mother.

10. For more than ten years the defendant has known that plaintiff Herbert has been attempting to acquire the mountain ground from mother.

11. Plaintiff Herbert and defendant had been on the mountain ground with their father in the past.

12. Defendant had hunted on the mountain ground over the years, the last time being in 1980 when she walked over the land from the "Garden Spot". The "Garden Spot" is a tract of land adjacent to, but not owned by plaintiff Herbert.

13. Defendant did not visit the mountain ground from October of 1984 until May 27, 1985.

14. In 1983, plaintiff Herbert offered to pay his mother $15,000 for the mountain ground; mother had informed defendant of this offer.

15. During the summer of 1984, plaintiff Herbert and mother agreed that she would convey the mountain ground to plaintiffs for the sum of $15,000.

16. On August 15, 1984, letters of administration were granted to Hazel M. Gsell Diehl so that she could administer the estate of Russel W. Gsell.

17. The letters of administration were not advertised.

18. Since more than 21 years had elapsed since Russell W. Gsell's death, there were no claims against the estate and there was no Pennsylvania inheritance tax due. The sole reason for securing the issuance of letters of administration was to provide mother as administratrix with legal authority to convey the mountain ground to plaintiffs.

19. A deed was executed and delivered by mother to plaintiffs on October 4, 1984, and the deed was held by attorney Paul Mower pursuant to instructions from mother that the deed was not to be recorded until she died and that it was to be kept in secret so that plaintiff Herbert's sisters would not find out about the conveyance.

20. Although the deed to plaintiffs reflected a purchase price of $12,000, the actual amount paid by plaintiff Herbert to mother was $15,000; which amount was paid in one installment of $8,000 and a subsequent installment of $7,000. Both installments were deposited in certificates of deposit at the Letterkenny Federal Credit Union in the names of mother and the three daughters, with interest being paid solely to mother.

21. Plaintiff Herbert paid for all costs involved in the administration and conveyance.

22. Plaintiff Herbert had promised to pay his mother's capital gains tax on the sale, but he paid capital gains tax on the $12,000, rather than on the $15,000 actual consideration.

23. The $8,000 and $7,000 C.D.'s were purchased at the Letterkenny Federal Credit Union separately, at plaintiff Herbert's suggestion, to avoid triggering the federal requirement that cash deposits of $10,000 or more must be reported.

24. In October 1984, at plaintiff Herbert's suggestion, the mother took an amount of about $20,000 out of a passbook savings account established in 1971 and invested it in C.D.'s in the names of mother and all the children.

25. In April 1985, mother returned to her home following surgery that involved removal of two clots adjacent to her brain. She required 24-hour care.

26. In April and May of 1985, at the request of mother, defendant endorsed and deposited the three C.D. interest checks each month.

27. Defendant knew that mother had $8,000 to $10,000 in doctor bills that were not covered by insurance, and in addition that there would be some additional expense for an unspecified length of time for mother's home care.

28. Mother agreed to sell the mountain ground to defendant in May 1985. Mother apparently changed her mind about the deed to plaintiffs and requested that defendant pay her $15,000 for the real estate.

29. Defendant had a deed prepared and instructed her attorney to search the deed records. Defendant's attorney informed her that an examination of the deed records showed no adverse conveyances.

30. Defendant also requested that the State Inheritance Tax office be contacted for information on any taxes that might be due.

31. On May 27, 1985, mother executed a deed conveying the mountain ground to defendant.

32. Defendant paid mother $15,000 by check which mother held for a few days and then requested that defendant deposit the check in an account in the names of mother and the defendant.

BAR NEWS ITEM

The Annual Spring Dinner of the Franklin County Bar Association was held on Friday evening, May 13, 1988, at the Holiday Inn, in Chambersburg. The event was well attended, by members and their spouses and other guests. Also, present was Pennsylvania Bar Association President Elect Carl W. Brueck, Jr., and his wife, Nancy, who were also accompanied, by Art Birdsall, who is acting as a moderator for the County Bar Relations, of the state association, and by Mrs. Birdsall. The Birdsalls reside in the Camp Hill area.

President Elect Brueck hales from Pittsburgh, but reported that he is a member of a small firm of practicing attorneys in that city. The president elect addressed the group, briefly, and stated that he intends to be mindful of the needs of the small law firms and also of the needs of attorneys who practice in the more rural areas of the state. In addition, he stated that one of his concerns and an intended emphasis during his tenure of office, is in the area of bettering the professional interrelationships of attorneys, in their daily work. The president elect will begin his term of office, this coming weekend, May 20, 1988.

33. On or about May 29, 1985, the will of Russell W. Gsell was probated and immediately thereafter the deed from mother to the defendant was recorded.

34. Shortly after defendant recorded her deed, her attorney discovered the Russell W. Gsell estate records in the Register and Recorder's Office which indicated that letters of administration had been issued to Hazel M. Gsell Diehl to administrater her husband's estate.

35. Defendant's attorney contacted Paul F. Mower, Esq. and learned that mother had previously conveyed the mountain land to plaintiffs.

36. Upon learning that defendant's deed had been recorded, Attorney Mower contacted mother to question her about defendant's deed. Mother denied executing the deed; however, later called him and indicated that she had, in fact, signed the deed conveying the property to defendant.

37. Until June 2, 1985, plaintiff Herbert and defendant had gotten along well.

38. On June 2, 1985, after plaintiff Herbert returned from a trip, he was confronted by defendant who asked him why he had not recorded his deed.

39. On June 3, 1985, plaintiffs recorded their deed dated October 4, 1984.

40. On or about July 10, 1985, plaintiff Herbert went to see his mother and she gave him a note which read:

> "To whom it may be concern Herbert Lawyer I sold the Mt gound to my Son Herbert I am Not able to come in you can fix up the paper for me to sign but don let Marie lawyer see it after my death Herbert can keep the Paper or make a deed to that effect.
>
> Hazel M. Diehl"

41. Plaintiff Herbert had his attorney prepare an affidavit which, if signed, would have indicated that defendant had known of the earlier deed. However, mother would not sign the affidavit; nor did she ever see it.

42. Despite extensive examination the testimony of mother, who is 83 years of age, was consistently that the conveyance to defendant was voluntary and for a fair consideration and that defendant had no prior knowledge of the prior conveyance to plaintiffs.

43. The mountain ground is unenclosed woodlands.

44. Mother is willing to return plaintiff Herbert's money, and she is sorry about the two deeds and the problems she caused.

45. There was no evidence that defendant ever took advantage of her mother, and mother repeatedly stated that defendant had only done good things for her.

46. Defendant has had a power-of-attorney from her mother since 1983, and she occasionally prepared checks for mother's signature and cashed checks for her.

47. Plaintiffs have been in continual possession of the mountain ground

since October 2, 1984.

48. Shortly after the deed to plaintiffs was executed on October 2, 1984, plaintiffs took substantial steps towards identifying the boundaries of the mountain ground as their property by doing the following:

(a) they blocked off the various entranceways and road to the mountain ground with gates, cables, cut trees and stumps, old brush, rubbish and pipe;

(b) they erected "No Trespassing" signs bearing Herbert R. Gsell's name all along the entire borders of the mountain ground; and

(c) they built a road across the mountain ground which they use in connection with their water company business on adjacent land.

DISCUSSION

Initially we are faced with the question of whether the subsequent probate of Russell W. Gsell's will adversely affects plaintiffs' title to the mountain ground. The Probate Estates and Fiduciaries Code, 20 Pa. C.S.A. §3329, provides:

> No act of administration performed by a personal representative in good faith shall be impeached by the subsequent revocation of his letters or by the subsequent probate of a will, of a later will or of a codicil: Provided, that regardless of the good or bad faith of the personal representative, no person who deals in good faith with a duly qualified personal representative shall be prejudiced by the subsequent occurrence of any of these contingencies.

Without the need to pass judgment upon the good or bad faith of the mother in her capacity as the personal representative, it is apparent that plaintiffs dealt in good faith with mother and, therefore, the subsequent probate of the will may not be permitted to prejudice the plaintiffs' position. Thus, we hold that the subsequent probate of Russell W. Gsell's will had absolutely no effect on plaintiffs' title to the mountain ground.

We now turn to the much more perplexing problem of the execution of two (2) deeds to the same property when the first deed is unrecorded and the second deed is recorded. The Act of May 12, 1985 P.L. 613§1, as amended, 21 P.S. §351, provides:

> All deeds . . . shall be recorded in the office for the recording of deeds in the county where such lands, tenements, and hereditaments are situate. Every such deed, . . . which shall not be acknowledged or proved and recorded, as aforesaid, shall be adjudged fraudulent and void as to any subsequent bona fide

purchaser . . . without actual or constructive notice unless such deed . . . shall be recorded, as aforesaid, before the recording of the deed . . . under which such subsequent purchaser . . . shall claim.

Therefore, since plaintiffs' deed was first in time but unrecorded, it is void as to defendant's subsequent recorded deed if the defendant is a bona fide purchaser for value without actual or constructive notice of plaintiffs' prior unrecorded deed.

Pursuant to the mandate of 21 P.S. §351, supra, we must first address the question of whether the defendant was a bona fide purchaser. It is the duty of a prospective purchaser of land to make a proper inquiry as to the status of the title of his vendor and one who neglects to make an inquiry where it is a duty is not a bona fide purchaser. *Lund v. Heinrich,* 410 Pa. 341, 189 A.2d 581 (1963); *Pa. Dept. of Transportation v. Mendelsohn,* 34 D&C 3d 639 (1984).

The defendant cites *Overly v. Hixson,* 169 Pa. Super. 187, 82 A.2d573 (1951), for the proposition that an exception to the duty to inspect arises when a family member displays some evidence of possession or living on the property along with the one who conveyed title. That case is plainly inapplicable to the case at bar because of the striking factual dissimilarities between the two. In *Overly,* the owner of an unrecorded interest was not in exclusive possession of the property, but was in joint possession with someone within his family who had record title. In the case at bar, plaintiffs were in exclusive possession of the property, and neither of them had record title. As such, the *Overly* exception is inapplicable, and the duty to inspect remains.

The defendant further offers the argument that based on common sense, when a person buys woodlands property from their mother who warrants generally the property and which you know has been in the family, and you never heard anything to the contrary, you would not go running up to the property to check it out. This argument is unpersuasive for two reasons. First, and rather unfortunately, "common sense" and "the law" do not always coincide. Second, and that which should be patently obvious to both parties, this is anything but a normal property conveyance. Based on factors which will later be discussed, the defendant had the duty to engage in an in-depth inquiry concerning the status of the title, and not merely "run up to the property to check it out." That was but one of the least inquiries the defendant should have made.

Since both her legal argument and her common sense argument

which event the Bid shall become null and void and both parties shall thereupon be released of any further liability thereunder. In the event of default, the School District's damages will be difficult of ascertainment and the ten per cent (10%) of the Bid or Purchase Price would constitute a reasonable liquidation thereof and not a penalty.

B. In lieu thereof, however, the School District may elect either or both the following remedies:

(1) Apply the ten percent (10%) of the Bid or Purchase Price towards the purchase price and proceed with an action for specific performance;

(2) Apply said monies toward the School District's loss on the resale of said property and proceed with an action at law for all damages sustained by the School District,

Provided, however, that no such election of (1) or (2) shall be final or exclusive until full satisfaction shall have been received.

5. Bids shall be received by William P. Needy, Business Manager, Shippensburg Area School District, 1:30 p.m. prevailing time, June 17, 1988, at which time and place all bids will be opened and read aloud. The public may attend said opening. A final decision will be made on June 27, 1988, at a duly advertised special meeting of the Board of Directors of the Shippensburg Area School District.

6. All items of proration, including but not limited to real estate taxes, water and sewer charges, and interest, shall be prorated as of the date of final settlement.

7. The School District reserves the right to reject any and all bids.

8. The parcels shall be conveyed by deeds of special warranty. Possession of the property shall be given on September 15, 1988.

9. Formal tender of deed and of purchase price shall be waived as a requirement hereof.

10. The parcels shall be sold subject to limitations of use as provided by existing zoning ordinances of the respective Boroughs and/or Townships involved excepting coal and mining rights as heretofore conveyed and subject to such building restrictions and other exceptions, reservations, and restrictions as may appear of record.

SHIPPENSBURG AREA SCHOOL DISTRICT
By: Mark, Weigle and Perkins, Solicitor
115 East King Street
Shippensburg, PA 17257
Telephone: (717) 532-7388

6/3, 6/10, 6/17/88

have failed to persuade us, we conclude that the defendant had the affirmative duty to inspect the property, and not having done so, she cannot be considered a bona fide purchaser.

Assuming arguendo that the defendant was a bona fide purchaser, we must now consider whether the purchase was "for value." Plaintiffs contend that the consideration given by defendant to mother was illusory because mother returned the money to the defendant a few days after the transaction so that the defendant could open a bank account in the names of mother and defendant. We find no merit in this contention, for the consideration paid by defendant was not illusory. Once defendant tendered the agreed upon consideration and mother received it, mother had the full power to do anything she desired with the money. As a practical matter she could have immediately given the money back to the defendant as a gift. Therefore, we find that the purchase was "for value."

Once again assuming arguendo that the defendant was a bona fide purchaser, we must finally decide whether the defendant had acutal or constructive notice of plaintiffs' prior unrecorded deed. Either actual or constructive notice is sufficient to prevent the subsequent purchaser from acquiring the status of a bona fide purchaser. *Overly v. Hixson,* 169 Pa. Super. at 190, 82 A.2d at 575; *Long John Silver's, Inc. v. Fiore,* 255 Pa. Super. 183, 190, 386 A.2d 569, 573 (1978).

As for the question of actual notice, plaintiffs haver offered only the uncorroborated hearsay testimony of plaintiff Herbert's wife Edna that there was a conversation between mother and Edna during which mother stated that she had told defendant that the mountain ground had been sold to plaintiffs. Although this testimony is inadmissible, we further find that it is unpersuasive. Therefore, we hold that plaintiffs have failed to meet their burden of proving that defendant had actual notice of plaintiffs' prior unrecorded deed.

The question of constructive notice is quite a different story. In deciding whether defendant had constructive notice of plaintiffs' prior unrecorded deed, we have looked at the totality of the circumstances surrounding the parties and the transactions. Because constructive notice is not limited to instruments of record, a subsequent purchaser may be bound by constructive notice of a prior unrecorded argument. *Overly,* at 190; 82 A.2d at 575; *Smith v. Miller,* 296 Pa. 340, 145 A. 901 (1929); *Fiore,* at 190, 386 A.2d at 573. This is true because a subsequent purchaser

could have learned of facts that may affect his title by inquiry of persons in possession or others who the purchaser reasonably believes know such fact. *Lund v. Heinrich,* 410 Pa. 341, 348, 189 A.2d 581, 584 (1963); *Sidle v. Kaufman,* 345 Pa. 549, 557, 29 A.2d 77, 82 (1943); *Fiore,* at 191 386 A.2d at 573.

However, a purchaser of land is not deemed to have notice of matters which lie beyond the range of an inquiry and which reasonableness might not disclose. Where a purchaser could not have learned the facts by an inquiry, he is not prejudiced because he did not inquire. *Medelsohn,* 34 D&C 3d at 644; *Hetherington v. Clark,* 30 Pa. 393, 395 (1858); *Appeal of Lower,* 1 Walk. 404, 5 Leg. GAZ 45 (1873).

We have made a substantial number of findings of fact which, when taken together, show that situations and circumstances existed which did not lie beyond the range of an inquiry and which reasonableness would have disclosed. Defendant could have learned these facts by inquiry and, therefore, is prejudiced for not having so inquired.

The findings of fact we here refer to are:

(a) Plaintiff Herbert has over the years acquired a number of tracts of real estate around the mountain ground and he owns the Caledonia Water Company, which uses a reservoir near the mountain ground. A part of the mountain ground is in the water shed which serves the reservoir. (Finding #8)

(b) For more than ten years the defendant has known that plaintiff Herbert has been attempting to acquire the mountain ground from his mother. (Finding #10)

(c) In 1983, plaintiff Herbert offered to pay his mother $15,000 for the mountain ground; mother imformed defendant of this offer. (Finding #14)

(d) In April and May of 1985, at the request of the mother, defendant endorsed and deposited the three C.D. interest checks each month. (Finding # 26)

(e) Defendant had a deed prepared and instructed her attorney to search the deed records. Defendant's attorney informed her that an examination of the deed records showed no adverse conveyances. (Finding #29)

(f) Defendant also requested that the State Inheritance Tax Office be contacted for information on any taxes that might be due. (Finding # 30)

NOTICE OF ADVERTISING AND SUBSCRIPTION RATE CHANGES

To All To Whom It May Concern:

Please take NOTICE that, pursuant to action of the Board of Directors of Franklin County Legal Journal, taken at meeting on January 21, 1988, the following changes in subscription and advertising rates for the Franklin County Legal Journal will go into effect on July 1, 1988.

	Old Rate	New Rate
Subscriptions:		
In county (including bound volume, if published):	$25.00/year	$27.00/year
Out of county:	$20.00/year	$23.00/year
Commercial Advertising:		
½ page, full year:	$560.00	$575.00
¼ page, full year:	$395.00	$410.00
¼ page, alternating weeks:	$220.00	$235.00
Other:	To be decided, as need arises.	
Legal Notice Advertising:		
Per line rate:	57¢	60¢
Estate Notices:	$25.00	$27.00
Fictitious Name Notices:	$16.50	$18.00

6/3, 6/10, 6/17, 6/24

which event the Bid shall become null and void and both parties shall thereupon be released of any further liability thereunder. In the event of default, the School District's damages will be difficult of ascertainment and the ten per cent (10%) of the Bid or Purchase Price would constitute a reasonable liquidation thereof and not a penalty.

B. In lieu thereof, however, the School District may elect either or both the following remedies:

(1) Apply the ten percent (10%) of the Bid or Purchase Price towards the purchase price and proceed with an action for specific performance;

(2) Apply said monies toward the School District's loss on the resale of said property and proceed with an action at law for all damages sustained by the School District,

Provided, however, that no such election of (1) or (2) shall be final or exclusive until full satisfaction shall have been received.

5. Bids shall be received by William P. Needy, Business Manager, Shippensburg Area School District, 1:30 p.m. prevailing time, June 17, 1988, at which time and place all bids will be opened and read aloud. The public may attend said opening. A final decision will be made on June 27, 1988, at a duly advertised special meeting of the Board of Directors of the Shippensburg Area School District.

6. All items of proration, including but not limited to real estate taxes, water and sewer charges, and interest, shall be prorated as of the date of final settlement.

7. The School District reserves the right to reject any and all bids.

8. The parcels shall be conveyed by deeds of special warranty. Possession of the property shall be given on September 15, 1988.

9. Formal tender of deed and of purchase price shall be waived as a requirement hereof.

10. The parcels shall be sold subject to limitations of use as provided by existing zoning ordinances of the respective Boroughs and/or Townships involved excepting coal and mining rights as heretofore conveyed and subject to such building restrictions and other exceptions, reservations, and restrictions as may appear of record.

SHIPPENSBURG AREA SCHOOL DISTRICT
By: Mark, Weigle and Perkins, Solicitor
115 East King Street
Shippensburg, PA 17257
Telephone: (717) 532-7388

6/3, 6/10, 6/17/88

(g) Shortly after defendant recorded her deed, her attorney discovered the Russell W. Gsell estate records in the Register and Recorder's Office which indicated that letters of administration had been issued to Hazel M. Gsell Diehl to administer her husband's estate. (Finding # 34)

(h) Defendant has had power-of-attorney from her mother since 1983 and she occasionally prepared checks for mother's signature and cashed checks for her. (Finding #46)

(i) Shortly after the first deed to plaintiffs was executed on October 2, 1984, plaintiffs took substantial steps towards identifying the boundaries of the mountain ground as their property by doing the following:

1) they blocked off the various entranceways and roads to the mountain ground with gates, cables, cut trees and stumps, old brush, rubbish and pipe;

2) they erected "No Trespassing" signs bearing plaintiff Herbert R. Gsell's name all along the entire borders of the mountain ground.

3) they built a road across the mountain ground which they use in connection with their water company business on adjacent land. (Finding #48)

There are four basic points which flow from these particular findings of fact. First, findings a), b) and c) establish that defendant was aware of plaintiff Herbert's water company being situated near and partially dependent upon a part of the mountain ground. Since she was aware of plaintiff Herbert's intense desire to acquire the mountain ground, it is not unreasonable to expect her to have conducted a much more vigorous investigation of the title to the property.

Second, findings d) and h) show that since the defendant had power-of-attorney and was endorsing and cashing checks for her mother, she should have reasonably inquired about the source of the C.D. interest checks before she and mother reached their agreement on the sale/purchase of the mountain ground. Such a reasonable inquiry should have either produced a true answer from mother or prompted a more diligent investigation by defendant.

Third, findings e), f) and g) establish that the defendant was business-wise enough to instruct her attorney to check the deed records and to contact the tax office. We cannot comprehend why the estate records were not searched until after the defendant had recorded her deed. Defendant claims that it was not a full title search. With the knowledge that she possessed concerning

plaintiff Herbert's desire to own the property, along with the unusual C.D. interest checks, a full title search including estate records of the deceased owner should have been performed.

Fourth, and finally, we reach the "straw that breaks the defendant's back". Finding (i) establishes that had the defendant conducted a reasonable inspection of the property, she would have been met by blocked road, newly built roads, and a multitude of "No Trespassing" signs bearing plaintiff Herbert's name. At the very least this manifestation of a claimed ownership would have compelled defendant to proceed with vast caution and a direct confrontation with her brother. As the Superior Court of Pennsylvania held in *Allison et ux. v. Oligher et ux,* 141 Pa. Super. 201, 202, 14 A.2d 569, 570 (1940),

> "the recording is not important as visible possession was notice of the title sufficient to put purchasers on notice and require inquiry upon their part."

In Pennsylvania, clear and open possession of real property generally constitutes constructive notice to subsequent prospective purchasers of the right or claimed right of the party in possession. Such possession, even in the absence of recording, obliges any prospective subsequent purchaser to inquire into the possessor's claimed interests, equitable or legal, in that property. *McCannon v. Marston,* 679 F. 2d 13 (3d Cir. 1982).

The law on the subject of the duty to inquire has been settled at least as far back as *Woods v. Farmere,* 7 Watts 382, 387 (1838), where it was said by Chief Justice Gibson,

> ". . . it certainly evinces as much carelessness to purchase without having viewed the premises, as it does to purchase without having searched the register."

Although we have found that the transaction between defendant and mother was "for value," and that the defendant did not have actual notice of plaintiffs' prior unrecorded deed, we conclude that the defendant was not a bona fide purchaser and that she had constructive notice of plaintiffs' prior unrecorded deed. Therefore, we hold that plaintiffs' deed to the mountain ground takes priority over defendant's later deed to the same property.

ORDER OF COURT

NOW, this 9th day of November, 1987, IT IS ORDERED AND DECREED THAT:

NOTICE OF ADVERTISING AND SUBSCRIPTION RATE CHANGES

To All To Whom It May Concern:

Please take NOTICE that, pursuant to action of the Board of Directors of Franklin County Legal Journal, taken at meeting on January 21, 1988, the following changes in subscription and advertising rates for the Franklin County Legal Journal will go into effect on July 1, 1988.

	Old Rate	New Rate
Subscriptions:		
In county (including bound volume, if published):	$25.00/year	$27.00/year
Out of county:	$20.00/year	$23.00/year
Commercial Advertising:		
½ page, full year:	$560.00	$575.00
¼ page, full year:	$395.00	$410.00
¼ page, alternating weeks:	$220.00	$235.00
Other:	To be decided, as need arises.	
Legal Notice Advertising:		
Per line rate:	57¢	60¢
Estate Notices:	$25.00	$27.00
Fictitious Name Notices:	$16.50	$18.00

6/3, 6/10, 6/17, 6/24

1. The deed of Hazel M. Gsell Diehl to Herbert R. Gsell and Bradley L. Gsell dated October 4, 1984 and recorded on June 3, 1985 in Franklin County Deed Book Vol. 931, Page 39 is a valid conveyance of the mountain land described in said deed effective October 4, 1984.

2. The deed of Hazel M. Gsell Diehl to Marie E. Thomas dated May 27, 1985 and recorded on May 28, 1985 in Franklin County Deed Book Vol. 930, Page 284 is an invalid conveyance of the mountain land and is herewith cancelled.

3. The Recorder of Deeds of Franklin County is ordered to cancel the deed of Hazel M. Gsell Diehl to Marie E. Thomas date May 27, 1985, and recorded in Franklin County Deed Book Vol. 930, Page 284.

Costs shall be paid by the defendant.

AMENDED ADJUDICATION

NOW, This 18th day of November 1987, the Court finds in favor of Herbert R. Gsell and Bradley L. Gsell, plaintiffs, and against Marie E. Thomas, defendant.

IT IS ORDERED AND DECREED THAT:

1. The deed of Hazel M. Gsell Diehl to Herbert R. Gsell and Bradley L. Gsell dated October 4, 1984 and recorded on June 3, 1985 in Franklin County Deed Book Vol. 931, Page 39 is a valid conveyance of the mountain land described in said deed effective October 4, 1984.

2. The deed of Hazel M. Gsell Diehl to Marie E. Thomas dated May 27, 1985, and recorded on May 28, 1985 in Franklin County Deed Book Vol. 930, Page 284 is an invalid conveyance of the mountain land and is herewith cancelled.

3. The Recorder of Deeds of Franklin County is ordered to cancel the deed of Hazel M. Gsell Diehl to Marie E. Thomas dated May 27, 1985, and recorded in Franklin County Deed Book Vol. 930, Page 284.

4. The Prothonotary of Franklin County shall immediately notify all parties or their attorneys of the date of filing this Amended Adjudication.

5. Costs shall be paid by the defendant.

Pursuant to Pa. R.C.P. 227.1 the motion for post-trial relief shall be filed within ten (10) days after notice of this adjudication.

This Amended Adjudication is filed in compliance with Pa. R.C.P. 1066, 1067, 1038 and 227.1.

BECHTEL V. WENGER, C.P. Franklin County Branch, No. A.D. 1985-86

Slip and Fall - Rule 4010 - Psychological Evaluation

1. A plaintiff's psychological state may be relevant to his cause of action in the areas of damages or causation.

2. Defendant must demonstrate a foundation for the need for psychological testing.

H. Anthony Adams, Esq., Counsel for Plaintiff
Daniel K. Deardorff, Esq., Counsel for Defendant

WALKER, J., August 1, 1986:

This action arises out of injuries suffered by the plaintiff while on the defendant's property. The plaintiff alleges that he slipped on a puddle of grease in the defendant's garage and, in attempting to break his fall, he pulled a metal plate down which fractured his arm. During the defendant's deposition, the defendant stated that the plaintiff had offered him $500 to break the plaintiff's arm. During the plaintiff's deposition, the plaintiff admitted to having tried to kill himself by self-inflicted wounds in 1981. Furthermore, the plaintiff's medical records indicate that he was suffering from severe anxiety and taking medication prior to this incident.

The defendant requested that the plaintiff submit to psychological tests and the plaintiff refused. The defendant filed a petition for this court to compel the examination; both sides subsequently briefed and argued the matter. The issue we are left to decide is whether, for the purposes of compelling the plaintiff to undergo testing, the plaintiff's mental state is "in controversy", within the meaning of Pa. R.C.P. 4010.

The defendant's motion to compel the plaintiff to undergo a psychiatric examination is granted.

The plaintiff argues that a physical or psychological examination, under Pa. R.C.P. 4010, is warranted only when it relates to the plaintiff's claim for physical or psychological damages. Otherwise, he contends, the physical or mental state is not "in controversy".

This is an unreasonably restrictive interpretation of Rule 4010. First, the rule is not limited to instances when only the plaintiff's physical or mental state is in controversy; it applies to *any* party. For example, a defendant may be ordered to undergo a psycho-