warranty of habitability relating to residential leases in *Pugh v. Holmes*, 486 Pa. 272, 405 A.2d 897 (1979), saying that the breach had to be the result of a defect which would prevent the use of the dwelling as a place of habitation. The court said that at a minimum the premises had to be safe and sanitary, but not perfect or aesthetically pleasing.

We do not believe the Gallaghers have set forth a cause of action for breach of warranty of habitability. There are no allegations of a defect which poses a substantial threat to their health and safety; that the home is unsafe or unsanitary and therefore unfit to live in or that the defects in the roof have caused it to function improperly to let the elements in. We find no allegation constituting, if proven, a major impediment to habitation.

The test of whether the house is defective, for the purposes of the implied warranty of habitability, is one of reasonableness in the construction of the house. We conclude those defects alleged are not of such magnitude to give rise to the strict liability which grows out of a breach of this warranty. So we will sustain the demurrer to this count.

Plaintiffs also ask for fees paid to an architect to ascertain the extent of the alleged defects in their dwelling, and defendant has moved to strike this claim. We are referred to two cases. Plaintiffs say they are entitled to recover this expense, relying on *Neville Chemical Co. v. Union Carbide Corp.*, 422 F.2d 1205 (3d Cir., 1970). Defendant says they are not, citing *Becker v. Borough of Schuylkill Haven*, 200 Pa. Super. 305, 189 A.2d 764 (1963). The latter holds that plaintiffs cannot recover the trouble and expense of establishing his rights. In *Neville*, a plaintiff was held to be entitled to recover expenses of technical research in determining its liability to customers who had bought a defective product from plaintiff manufactured by defendant. Thus, this expenditure was not one to establish plaintiff's right against defendant. Since the rule in *Neville* has no application in our case, we hold plaintiffs are not entitled to recover the architect's fees. Accordingly paragraph 16(a) is stricken.

Included in the complaint is a claim for damages due to annoyance, inconvenience and discomfort. The claim appears in the assumpsit count, in paragraph 16(e), and by incorporation in the trespass count. The defendant has moved to strike paragraph 16(e), and we grant the motion in the assumpsit count because, in the time impressed upon us to decide these matters and still permit the case to go to trial this month, we could find no authority for the recovery nor were we persuaded

by the argument that the reasoning of *Siegel v. Struble Brothers, Inc.*, 150 Pa. Super. 343, 28 A.2d 352 (1942), may be extended to apply to such a claim in assumpsit. However, there is authority to recover this type of damage in trespass. *Dussell v. Kaufman Construction Co.*, 398 Pa. 369, 157 A.2d 740 (1960).

Defendant's motion for more specific pleading with respect to the claim for negligent installation of the heat pump is overruled.

ORDER OF COURT

July 31, 1981, the defendant's motions to strike paragraph 16(a) and paragraph 16(e), the latter only as to the assumpsit count, are granted and the demurrer is sustained. All other preliminary objections are overruled.

Since the demurrer is sustained on the ground that there are no allegations in the complaint that would bring the plaintiff's claim within the implied warranty of habitability and the court is without knowledge whether such facts exist, the plaintiffs are granted 20 days in which to file a second amended complaint. If plaintiffs desire to proceed without filing a second amended complaint they may file a statement expressing that intention foreshortening the 20 day period and the defendant may then file an answer.

COMMONWEALTH v. SEIDERS, C.P. C.D. Fulton County Branch, No. 53 of 1980

Criminal Law - Post Verdict Motions - Evidence - Out-of-Court Statement

1. Out-of-Court statements of one conspirator are admissible against another conspirator, providing the statements were made during the existance of the conspiracy and in furtherance thereof.

2. A charge of conspiracy need not be alleged in order to admit in evidence out of court statements by a co-conspirator.

3. The commission of a crime generally terminates the conspiracy; however, the conspiracy is deemed to continue until the object of the conspiracy is totally fulfilled.

disregard that testimony.

3. On direct examination Commonwealth witness, James F. Chestnut, testified without objection that the co-defendant stated Kenny was driving and wanted to know where Kenny was.

4. On cross-examination of Mr. Chestnut defense counsel asked, "You asked him who was driving the car, and he said Kenny?" The witness responded, "Right."

In our judgement such a record cannot support defendant's present objection.

Finally, we feel constrained to observe that the evidence of the guilt of the defendant, Kenny Seiders, was virtually overwhelming. We are not persuaded that the exclusion of the co-defendant's statement would have been likely to effect the verdict of the jury.

The defendant's final contention that the verdict was against the weight of the evidence is based on the fact that the victim's identification of the defendant was contradicted by the defendant and his live-in girlfriend in that the victim testified he saw the defendant's face as he fled the scene of the tire theft, and he had a beard; whereas the defendant and his witness testified he did not have a beard at the time of the theft. Defendant neglected to note that Trooper Jeffrey Tinker testified on cross-examination that he was not sure how long defendant's hair and beard were on July 18, 1980, *but he looked as if he hadn't shaved for two weeks* (italics ours).

It is hornbook law that "the fact-finder is free to believe all, part, or none of the evidence." *Commonwealth v. Arms*, 489 Pa. 35, 39 (1980). In the case at bar the jury obviously elected to believe the testimony of the victim and Tpr. Tinker, and disbelieve that of the defendant and his witness; and that was the perogative of the trier of fact.

We find no merit in the contention, and it will be dismissed.

ORDER OF COURT

NOW, this 18th day of September, 1981, the post-trial motions of the defendant are dismissed.

The Fulton County Probation Department shall prepare a Pre-Sentence Investigation Report, and sentence will be de-

TO: Members of Franklin County Bar Association
RE: Family Law Statewide Institute

On Thursday, November 5, 1981, in the Jury Assembly Room, Franklin County Courthouse, your Bar Association is sponsoring a Pennsylvania Bar Institute Program from 9:30 in the morning to 4:00 o'clock in the afternoon. The topics covered in this family law institute will be the divorce code and equitable distribution, new support rules, tax aspects of separation and divorce, and custody and visitation.

As you may or may not know, the Bar Association, thanks to the joint efforts of our Library Committee and the Pennsylvania Bar Association Trust, have purchased a Sony video tape play back unit with recording capabilities and a Sony television set, and some other accompanying equipment, to allow us to present our own video presentation.

This presentation will be a video presentation and the video faculty will be David E. Auerbach, Esquire, from Media; David L. Creskoff, Esquire, from Philadelphia; Bonnie D. Menaker, Esquire, from Harrisburg; and Charles C. Shainberg, Esquire, from Philadelphia.

The tuition is $45.00 ($36.00 if admitted after 1/1/71); ($22.50 for Judges and their law clerks). All registrants will receive a course manual. As you can see, this video presentation is cheaper than the live presentation.

Since I will have to make provisions for an additional TV set in the event that we have any more than 30 registrants, I must know whether or not you will be attending. To reserve your admission, please make a check payable for your tuition to the Pennsylvania Bar Institute and either enclose it to me or directly to the Pennsylvania Bar Institute. In any event, if you enclose your admission check to the Pennsylvania Bar Institute, you must notify me of your registration. This presentation will be new in two instances, (1) It is a video presentation and (2) It will be held in the Jury Assembly Room of the Franklin County Courthouse. Hopefully, we will find that the Jury Assembly Room will suit our purposes; if not, we'll have to move to some location such as the Holiday Inn, which may add additional expenses and which might be more inconvenient.

In any event, **register now to reserve your admission.**

Respectfully,

RICHARD K. HOSKINSON, *Chairman*
Franklin County Bar Association
Continuing Legal Education Committee

P.S. We'll be holding a video presentation on the Economic Recovery Tax Act of 1981 on Thursday, December 10, 1981, from 9:00 in the morning until 5:00 P.M. at the same location. I will give you additional information on this presentation in the near future.

ferred until it is completed and filed. The defendant shall appear for sentencing on the call of the District Attorney.

Exceptions are granted the defendant.

COMMONWEALTH v. SHOOP, C.P. C.D. Franklin County Branch, No. 111 of 1981

Criminal Law - Unlawful sale of liquor and beer - forfeiture of liquor and beer - Burden of proof

1. Possession of liquor and beer is not illegal unless it is shown that an unlicensed person keeps it for sale.

2. The burden is on the Commonwealth to prove intent to keep liquor for sale.

3. Size of inventory alone will not prove keeping for sale.

4. There are no provisions in the Liquor Code that make it unlawful to keep malt or brewed beverages for sale.

David W. Rahauser, Esq., Assistant District Attorney

Blake E. Martin, Esq., Public Defender

OPINION AND ORDER

EPPINGER, P.J., September 30, 1981:

Leroy M. Shoop was an employee of Detrich Brechbill Post No. 612 of the American Legion in St. Thomas, a dry township in Franklin County. On January 18, 1981 agents of the Pennsylvania Liquor Control Board were served liquor and beer by the defendant at the Legion. Then the agent went to a Justice of the Peace and obtained a search warrant for the premises to look for other liquor and beer, alleging that the agents had been served but that defendant would not accept money. It was stated in the affidavit that they had seen others pay money for drinks.

The search warrant was obtained and on January 20, 1981 the Legion was raided. Apparently no sales were observed on