NOTICE IS HEREBY GIVEN pursuant to the provisions of the Act of Assembly of May 24, 1945, P.L. 967 and its amendments and supplements of intention to file with the Secretary of the Commonwealth of Pennsylvania at Harrisburg and with the Prothonotary of the Court of Common Pleas of Franklin County, Pennsylvania, on November 15, 1982, an application for a certificate for the conducting of a business under the assumed or fictitious name of THE FASHION BOUTIQUE with its principal place of business at 59 South Gate Mall, Chambersburg, Pa. 17201. The names and addresses of all persons owning or interested in said business are Priscilla K. Nearons, R.D. 2, Shippensburg, Pa. 17257.

Edward I. Steckel
406 Chambersburg Trust Bldg.
Chambersburg, Pa. 17201

11-5

NOTICE IS HEREBY GIVEN pursuant to the provisions of the Act of Assembly of May 24, 1945, P.L. 967 and its amendments and supplements of intention to file with the Secretary of the Commonwealth of Pennsylvania at Harrisburg and with the Prothonotary of the Court of Common Pleas of Franklin County, Pennsylvania, on or after November 8, 1982, an application for a certificate for the conducting of a business under the assumed or fictitious name of WITTLE SHOP OF CHIPS, with its principal place of business at 5 S. Potomac Street, Waynesboro, Pa. 17268. The names and addresses of all persons owning or interested in said business are Harry L. Naylor, Route 1, Box 62, Cascade, Md., 21719.

11-5

NOTICE IS HEREBY GIVEN THAT Articles of Incorporation have been filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on the 21st day of October, 1982, for the purpose of obtaining a Certificate of Incorporation of a proposed close business corporation to be organized under Sec. 373 of the Business Corporation Law of the Commonwealth of Pennsylvania, Act of May 5, 1933, P.L. 364, as amended.

The name of the proposed corporation is KYNER'S AUTO SALES, INC.

The purposes for which it is organized are: The sale, lease or exchange of motor vehicles, either at retail or wholesale, and to engage in and to do any lawful act concerning any lawful business for which businessnes may be incorporated under the Business Corporation Law.

William C. Cramer, Esq.
414 Chambersburg Trust Bldg.
Chambersburg, Pa. 17201

11-5

PLEASE NOTE!!!

Our Continuing Legal Education Contact, Attorney Rob Graham (717) 264-1100 has just informed the editor that the notice of PBI Video Presentation, "Collection and Enforcements of Judgments," has been delayed. Thus, we are inserting this brief reminder that the presentation will be made on November 9, 1982, beginning at 8:30 A.M. at the Franklin County Courthouse Jury Assembly Room. Cost: Appears to be $55.00, with reduced charge for Judges, their law clerks, and younger attorneys. Please see Rob for more details.

guilty pleas to be liberally allowed would have represented an incomplete charge and would have been confusing and misleading to the jury.

To permit any defendant to appear in open court accompanied by his counsel and make an on-the-record statement to a judge for the purpose of inducing that judge to accept a guilty plea; to then exercise the privilege granted him by the Rules of Criminal Procedure to withdraw his guilty plea before sentence; and to then permit him to testify at trial in direct contradiction of his prior statement to the court with impunity, and without being confronted with the prior inconsistent statement would be to encourage the perpetration of fraud upon the court and demean the entire judicial system. We have no intention of countenancing such outrageous conduct by giving it the imprimatur of judicial approval at the trial level.

In our judgment no error was committed; the jury's verdict was not contrary to the evidence presented at trial and the defendant's motions for a new trial and in arrest of judgment will be denied.

ORDER OF COURT

NOW, this 24th day of September, 1982, the defendant's post-trial motions in arrest of judgment and for a new trial are denied.

The Probation Department of this Court shall prepare and file a Pre-Sentence Investigation Report. The defendant will appear for sentencing on the call of the District Attorney after the filing of the Pre-Sentence Investigation Report.

Exceptions are granted defendant.

DALEY, ET AL. v. HORNBAKER AND WIFE - C.P. Franklin County Branch, Vol. 7, Page 282

Equity - Forged Signature - Tenant by Entirety - Estoppel of Claim.

1. Where husband and wife owned real estate as tenants by entireties and wife forged husband's name on a deed, the deed was ineffective and after

husband's death, the entire estate vested in wife.

2. A deed to real estate before the grantor obtains title operates as an agreement to convey, which may be enforced in equity when the grantor subsequently acquires title.

3. A deed which contains a forgery cannot pass title against the one who had no participation in the forgery.

4. A party cannot set up his own fraud to avoid an instrument; nor can his personal representative.

Gregory L. Kiersz, Esquire, Attorney for Plaintiffs

Dennis A. Zeger, Esquire, Attorney for Defendants

OPINION AND ORDER

EPPINGER, P.J., September 27, 1982:

Melvin and Mary Jane Hornbaker, who were husband and wife, owned a parcel of real estate. On February 20, 1981, before the death of either, Mary Jane made a general warranty deed of the property to her grandson David and his wife Debra. She forged her husband's name to the deed which was recorded February 20, 1981.

The personal representatives of the elder Hornbakers have brought this equity action to compel David and Debra to reconvey the land to Mary Jane Hornbaker's estate. The latter respond that regardless of the forgery of Melvin's signature, when he died, the entire title vested in Mary Jane, and since her signature was genuine, they own what she had at the time of her death; the entire interest in the real estate.

A deed by its very nature is the conveyance of a present interest by a present act and not a promise for future action. Only the interest owned by the grantor when the conveyance was made is transferred to the grantee. *Harris v. Steele*, 258 N.E. 2d 363 (C.A.N.C. 1979) and *Schooler v. Schooler*, 173 F.2d 299 (U.S.C.A.D.C. 1949).

At the time the deed was executed, Mary Jane was a tenant by the entirety[1]. She possessed no severable interest

[1] In Pennsylvania, "an estate by the entirety is a form of co-ownership in real and personal property held by a husband and wife with the right of survivorship. Its essential characteristic is that each spouse is seized. . . of the whole or the entirety and not a share, moiety, or divisible part. . . it is well established that an estate by the entirety may only be destroyed or terminated by the joint acts of the husband and wife, and not by the act of one of them." *Gallagher Estate*, 352 Pa. 476, 478, 43 A.2d 132 (1945).

which she was entitled to convey without the consent and signature of her husband. *Beihl v. Martin*, 263 PA. 519, 84 A. 953 (1912). See also *Holmes Estate*, 414 Pa. 403, 200 A.2d 745 (1964). If the deed was ineffective, because Melvin did not sign it, after its execution, he and Mary Jane retained title, and when Melvin died, the entire estate vested in Mary Jane as defendants' claim.

> "The general rule is that if a grantor of real estate having no title, a defective title, or an estate less than that which he assumed to grant, subsequently acquires the title or estate which he purported to convey, or perfects his title, such after-acquired or perfected title will inure to the grantee or to his benefit or to his successors, by way of estoppel of the grantor or those claiming under him, particularly where the conveyance was with covenants of warranty." 31 C.J.S.,Estoppel Sec. 21, p. 309.

See also 7 P.L.E., Estoppel Sec. 7, p. 184; *Seese v. Tissue*, 10 Fay L.J. 150 (1947); *Suburban Golf Club of Elizabeth v. State Highway Commissioner*, 92 N.J. Super 125, 222 A.2d 301 (1966); *Logan v. Neill*, 128 Pa. 457, 18 A. 343 (1889).

In *Jordan v. Chambers*, 226 Pa. 573, 75 A. 956 (1910) the same result was reached when the court said that a deed to the premises before the grantor obtains title does not of itself vest title by estoppel against the grantor, but operates as an agreement to convey which may be enforced in equity when the grantor subsequently acquires title.

This same principle has been applied more recently in *Hennehont Co. v. Kroger Co.*, 221 Pa. Super 65, 289 A.2d 229 (1972). There it was held under the doctrine of estoppel by deed that a lessor without title could not repudiate a lease after he acquired title, even though he did not have the power to lease the land at the time it was made.

This case submits a second issue. Melvin's signature was forged by Mary Jane. Generally once it is established that fraud goes to the execution of a deed, it may be declared "void" by a court of equity. *Noland v. Plainsmen Petroleum,*

Inc. 265 N.W. 2d 252 (S.C. N.D. 1978). See also *Carlo v. Gustafson*, 512 F. Supp 833 (D.C. Alaska 1981), citing *Germania v. U.S.*, 165 U.S. 37, 17 S. Ct. 337, 41 L. Ed. 754 (1897). Some courts have stated that "a forged deed is absolutely void. . ., the deed and its record is wholly ineffective for any and all purposes." *Bibby v. Bibby*, 114 S.W. 2d 284, 287 (Tex. Civ. App. 1938). See also *Barbee v. Armory*, 106 W. Va. 507, 146 S.E. 59 (1928).

A Pennsylvania decision, *Reck v. Clapp*, 98 Pa. 581, 585 (1881) held only that a deed which contains a forgery cannot pass title against the one who had no participation in the forgery. Or as stated in 26 C.J.S., Deed Sec. 54(g), p. 732 "no title passes by deed which is forged, *as against one who did not participate in or who had no knowledge of the forgery*," (emphasis added). That rule would apply to Melvin, but not to Mary Jane.

This is so because when a court of equity declares that a forged deed is null and void, it does so to protect the innocent party. The cheated party alone, or one claiming under him, is the only person who can take advantage of the invalidity of the fraudulent conveyance. *Davidson v. Little*, 22 Pa. 245, 60 Am. Dec. 1 (1853). "The law does not look with favor upon a defense based on the unlawful act of the party interposing it." *Conemaugh Gas Co. v. Jackson Farm Gas Co.*, 186 Pa. 443, 445, 40 A. 1000 (1898). A grantor should not have the right to rescind a contract for his own wrong. *Medoff v. Vandersall*, 271 Pa. 169, 116 A. 525 (1921). A party cannot set up his own fraud to avoid any instrument or contract executed or entered into by him, so neither can his personal representative after his death. *Pringle v. Pringle*, 59 Pa. 281 (1868).

Finally, when a decedent is estopped from asserting a claim during her lifetime, persons claiming under her as these plaintiffs do are estopped also, because they stand in her position and have no rights or interest in her property higher than those which she could have claimed herself. *McClatchy Estate*, 433 Pa. 232, 249 A. 2d 320 (1969); *Grossman, Appellant v. Hill*, 384 Pa. 590, 122 A.2d 69 (1956). These rules do not apply if it is necessary to discharge a debt owed by the decedent to a creditor. *Weil v. Marquis*, 256 Pa. 608, 610, 101 A. 70 (1917).

ORDER OF COURT

September 27, 1982, the various prayers of the plaintiffs

FIRST NATIONAL
bank and trust co.

13 West Main St.
WAYNESBORO, PA. 17268
717-762-3161

TRUST SERVICES
COMPETENT AND COMPLETE

CITIZENS OF National Bank
AND TRUST COMPANY
WAYNESBORO, PENNSYLVANIA
17268

Telephone (717) 762-3121

THREE CONVENIENT LOCATIONS

POTOMAC SHOPPING CENTER — CENTER SQUARE
WAYNESBORO MALL

in the various counts in these proceedings are denied. It is ordered that the costs be paid by the plaintiffs.

THOMAS v. BLIZZARD, and JONES v. SMITH, C.P. Franklin County, Branch, No. F.R. 1982-403-S; No. F.R. 1982-300-S

Paternity - Statute of Limitation - Equal Protection - Blood Tests

1. A six-year statute of limitations on paternity suits for children born out of wedlock does not violate the Equal Protection Clause of the U.S. Constitution.

2. The state has a legitimate interest in preventing prosecution of stale or fraudulent claims and the problems of proof in paternity suits allows for greater restrictions on these suits.

3. Blood tests do not prove paternity and do not negate the state's interest in avoiding stale or fraudulent claims.

John R. Walker, District Attorney, *Attorney for Plaintiffs*

E. Franklin Martin, Esq., *Attorney for Defendant, Charles D. Blizzard*

William F. Kaminski, Esq., *Attorney for Defendant, Michael T. Smith*

OPINION AND ORDER

EPPINGER, P.J., October 29, 1982:

These cases in which each defendant denied responsibility for the support of children born out of wedlock because the six year statute of limitations had run before the actions for support were filed were consolidated for argument.

In *Thomas v. Blizzard* the plaintiff gave birth to two children, one on February 21, 1966 and the other on December 2, 1972. Defendant denies that he is the father of either but did pay support for the first child in 1967. The complaint was filed June 7, 1982.

In *Jones v. Smith* the plaintiff gave birth to a child on September 10, 1975. Defendant denies paternity and has never paid support. The complaint was filed April 10, 1982.

All actions to establish the paternity of a child born out of wedlock must be commenced within six years of the child's birth. If the father has voluntarily contributed to the support

of the child, or acknowledged paternity in writing an action may be commenced at any time within two years of such contribution or the acknowledgement of paternity. 42 Pa. C.S.A. Sect. 6704(e). The exceptions do not apply in this case.

Plaintiffs contend that the six-year statute of limitations violates the Equal Protection Clause of the United States Constitution when it limits children's right to support if they are born out of wedlock and there is no such limit when the action is brought on behalf of children born of a marriage.

Plaintiffs rely on *Williams v. Wolfe*, Pa. Super , 443 A.2d 831 (1982). In that case, when the child was born, the defendant would have been subject to a criminal fornication bastardy charge for which there was a two-year statute of limitations. The Court held that the defendant was not protected by the two-year criminal statute and that an action could be brought under the civil statute with its six-year limitation period. The rationale was that the civil action was not barred because the repeal of the criminal statute of limitations never extinguished the civil right to support but only the ancillary criminal enforcement remedy.[1]

However, the opinion of the Court in *Williams* does not deal with the issue raised here. A concurring opinion by Judge Brosky does and points to other jurisdictions that have found that a limitation on the right to support for children born out of wedlock violates the Equal Protection Clause of the Constitution. He says: "To subject a child born out of wedlock to a limitations period, however reasonable, is to limit the child's unqualified right to receive support from his father." *Id.* at 836. The Judge recognizes, however, that this matter is for the attention of the Legislature, not for the Courts. *Id.*

In *Mills v. Habluetzel*, U.S. , 71 L. Ed 770, 102 S. Ct. (1982) the Court held that a Texas one-year limitation period for bringing paternity actions where children were born out of wedlock was unconstitutionally short. The Court indicated that a state which grants child support opportunities for legitimate children must also grant those opportunities to illegitimate children and the latter must be more than illusory, although not coterminous with the procedures accorded legitimate children.

The Court pointed out that paternal support suits brought on behalf of children born out of wedlock contain an element not present where the children are born to couples that are