materials were furnished within the statutory period before the purchaser acquired his interest.[29] Even greater protection is given to a purchaser at a judicial sale arising from the foreclosure of a mechanic's lien. Another mechanic's lienor who supplied labor or materials before the sale but did not file his claim until afterwards cannot enforce his lien against the purchaser at the execution sale. The purchaser's rights are considered to have stemmed from the foreclosed lien, and therefore, the date of the purchaser's deed is immaterial.[30]

In view of the present high level of building construction and improvement, the priority of mechanic's liens is an area which might reasonably be expected to grow in importance. Although this field is largely statutory, judicial interpretations have been frequently sought and given. The quality of flexibility has been apparent in this process and it would seem likely that any further changes may be accomplished by such interpretation rather than by statutory revision.

CHARLES E. STEINMETZ (June 1958)

[29] *Ibid.*
[30] Soltow v. Roth, 204 Iowa 665, 215 N.W. 705 (1927).

# EDITORIAL NOTES

### *Articles of Interest in Other Law Reviews*

*The Death of a Lawyer*, 56 COL. L. REV. 606 (1956), is concerned with the problems which arise upon the death of a lawyer, the legal problems affecting interests of the clients of the deceased lawyer, and of the rights of the lawyer's estate to compensation, and the ethical problems with respect to the handling and disposition of the lawyer's practice. Copies of the issue are obtainable for $1.25 each from Columbia Law Review, Kent Hall, Columbia University, New York 27, New York.

### *Supplemental Notes to Articles Previously Published*

1. *Rights of Action for Prenatal Injuries* appeared in 3 DRAKE L. REV. 72 (1954). At that time it was stated that only four states had allowed an unborn infant to maintain a common law action for prenatal injuries and then only if the infant was viable (quick) at the time of the injury and was born alive. It was stated that the trend has been toward allowing these actions. In 5 DRAKE L. REV. 62 (1955) a notation was made that Illinois and Connecticut had now been added to the states which allowed this action to be maintained.

Recently the Georgia Court, which had previously allowed this action, made a further extension and allowed a child injured 6 weeks after conception to maintain the suit. This was in the case of *Hornbuckle v. Plantation Pipe Line Co.*, 93 S.E.2d 727 (Ga. 1956), in which the child's mother was injured in an auto accident. The child was born with a deformed right foot, right ankle and right leg. The Court held that the child was to be considered in being from the time of its conception, and a cause of action could be maintained for any injury after conception.

Iowa has not as yet directly passed on whether an infant has a cause of action for prenatal injuries, although the language in several cases assumes that no such cause of action can be maintained.

2. *Confessions—What Constitutes a Violation of Due Process of Law?* appeared in 4 DRAKE L. REV. 123 (1955). The case of *State v. Triplett*, ..... N.W.2d ..... (Iowa 1956) involved a conviction aided by the use of a tape recorded confession. This was apparently the first time the Court has passed on the use of a tape recorded confession and the conviction was upheld. The defendant was held in custody for a number of days without any charges being made and without legal counsel, although there was evidence that he refused the aid of counsel. The jury was also allowed to take the recorded confession into the jury room and listen to the confession during its deliberation. The defendant had been convicted of second degree murder in the killing of an 8 year old boy. There was strong corroborating evidence in addition to the confession.

3. In *The Iowa Title Standards I*, 2 DRAKE L. REV. 76, at page 90, Title Standard 4.11 is discussed. That standard states that a contract to sell by both joint tenants results in a severance of the joint tenancy so that if one tenant dies before the conveyance, the purchaser must secure deeds from the personal representative of the deceased as well as from the surviving tenant.

After adoption of the Title Standards, the case of *In re Sprague's Estate*, 244 Iowa 540, 57 N.W.2d 212 (1953) held that an installment land contract executed by both tenants resulted in a severance of the joint tenancy.

A recent decision, *In re Baker's Estate*, 78 N.W.2d 863 (Iowa 1956) further supports Title Standard 4.11. By a 5-4 decision the court has now held that a contract to sell real estate owned in joint tenancy and executed by both tenants resulted in a severance of the joint tenancy, and in an equitable conversion of the realty into personalty. Each tenant then owned a one-half interest in the proceeds as a tenant in common. The majority said that this result follows unless an intent to hold the proceeds in joint tenancy is clearly manifested, and no such intent was shown in this case. The contract of sale stated that it was binding on the "heirs, executors, administrators, and assigns of the respective

parties" and the court felt that was an indication that the proceeds were meant to be held in tenancy in common.

The majority view also states that the four unities rule followed at common law (unities of interest, title, time and possession) was inapplicable in Iowa, and that the joint tenants may by mutual agreement sever the joint tenancy.

While the almost universal rule is that a conveyance by one of the joint tenants results in a severance of the joint tenancy, the Drake Law Review article, written under supervision of Prof. Robert W. Swenson, had contended that the same result did not necessarily follow when both tenants execute a contract of sale, as there is then no destruction of the unity of title. The article stated that Standard 4.11 was adopted without any authority to support it. The dissenting opinion in this case adopted the view that no severance occurred when both of the two joint tenants executed the contract to sell.

4. The case of *Bell v. Lainson,* 74 N.W.2d 592, serves as a supplement to both the article *Powers of the Grand Jury* in 2 DRAKE L. REV. 26 and *Habeas Corpus in Iowa,* 3 DRAKE L. REV. 30. This case held that habeas corpus cannot be used to question the correctness of the grand jury's action.

5. *Some Aspects of the 1953 Iowa School Reorganization Law* appeared in 3 DRAKE L. REV. 57 (1954). School reorganization problems continue to plague the courts. Two recent cases have denied the right of individuals to appeal the decisions of joint county boards. (See footnote 42). In each case the plaintiffs objected to the school district boundaries set by the board. The first of these was *Everding v. Board of Education,* 76 N.W.2d 205 (Iowa 1956). The plaintiffs were the board of directors of an existing independent school district. The court held that this fact made no difference as the only right of appeal from the decision of the joint county board lay in the aggrieved county board of education, and no individual had the right of appeal.

In the case of *Signer v. Crawford County,* 76 N.W.2d 213 (Iowa 1956), the Court held that individual residents and landowners within a proposed community school district had no right to appeal orders of joint county boards fixing boundaries of the school district. The Court also held that the individuals had no right to maintain certiorari against the joint county board of education on the ground that the notice of election upon creation of the district was illegally published.

6. *Measuring Damages to the Estate in Wrongful Death Cases,* 5 DRAKE L. REV. 98 (1956), noted that no recovery for the decedent's pain and suffering may be had in wrongful death cases unless the action is commenced before the victim's death. In the recent case of *Fitzgerald v. Hale,* 78 N.W.2d 509 (Iowa 1956),

the Iowa Supreme Court reconsidered its prior position and held that an executrix could recover for the pain and suffering sustained by the decedent regardless of the fact that the action was not brought until after death. Although in this case death did not result from the wrongful act, the wording of the opinion leaves little doubt that pain and suffering will hereafter be treated as a proper element of damages in wrongful death cases.

In arriving at its decision the Court discusses at length the distinction between so-called "death acts" and "survival acts." Its conclusion is that Iowa Code § 635.9 (1954) provides only for the *distribution* of damages recovered for a wrongful death and that the actual basis for the action by the personal representative is found in the survival statute which provides that "All causes of action shall survive. . . . " The cause of action is in turn founded on the wrongful act with the result that the death caused thereby merely adds to the consequential damages and does not constitute a separate cause of action in itself.

From the foregoing it would seem to follow that the measure of damages in cases where death results from a wrongful act will be: (1) All those elements which the decedent might have recovered had he survived including loss of earnings, and (2) The present value of the estate which the decedent would reasonably be expected to have accumulated had he lived out the natural term of his life. This latter, of course, is merely a statement of the measure of damages allowed by the court for many years. There is no indication in *Fitzgerald v. Hale* that this concept is to be altered in subsequent cases.

7. Within the past year, there have been four noteworthy cases decided by the Iowa Supreme Court in the torts area and each has either established new law or changed the prior law in an important area. The first was *Stuart v. Pilgrim,* 74 NW2d 212 (Iowa 1956), rehearing denied March 9, 1956, which was discussed in 5 DRAKE L. REV. 127 and in which the court held that the contributory negligence of the driver of a car is not imputed to the owner in a suit by the owner against a negligent third party.

The next case of importance was *Best v. Yerkes,* 77 N.W.2d 23 (Iowa 1956), discussed in this issue at p. 30, which indicates that contribution among joint tort-feasors will be allowed.

Following next was the case of *Acuff v. Schmidt,* 78 N.W.2d 480 (Iowa 1956), which held that a wife has a cause of action for loss of consortium due to the negligent injury of her husband by the defendant third party. Iowa thus became one of the first states to recognize the wife's right to maintain this action. This was by a 5-4 decision of the court.

The most recent case has been *Fitzgerald v. Hale,* 78 N.W.2d 509 (Iowa 1956) discussed in note 6, *supra.*

In addition, in the case of *Bremmer v. Journal-Tribune Publishing Co.*, 76 N.W.2d 762 (Iowa 1956), the court recognized that a cause of action for invasion of the right of privacy exists in Iowa, although under the facts of the case the plaintiff could not recover.