IV, par. 15; The Disregard of the Corporate Fiction, Maurice Wormser (1929); 43 Harv. L. Rev. 1154. It becomes readily apparent from the foregoing discussion that one cannot answer the question as to when the corporate entity will be disregarded in a particular case. Justice Cardozo in the Berkey case, *supra,* said, the whole subject is "still enveloped in the mists of metaphor". Each case must be decided on its own facts and must be regarded as "*sui generis.*" *Industrial Research Corp.* v. *General Motors Corp., supra;* 4 Minn. L. Rev. 219, 227. See generally, Latty, Subsidiaries and Affiliated Corporations (1936); reviewed by Wormser in 31 Ill. L. Rev. 700 (1937).

The rule in the principal case to the effect that the separate corporate entities of the parent and subsidiary corporations will not be disregarded, unless the subsidiary was formed for the purpose of prepetrating a fraud, is both fair and practical if the court means to limit the rule to the instrumentality concept of liability. "There is in many cases much loose talk about 'ignoring the corporate fiction' and 'looking at the substance rather than the form.' But the corporate capacity is a legal fact, not a fiction." Ballantine, *supra,* at page 20. However, if the Supreme Court means to preclude liability on the basis of agency, it is unfortunate. The doctrine of agency is equally applicable in parent-subsidiary relationships as it is in partnership or other personal relationships. It has been said that "problems of responsibility for fraud or for the acts of a corporation used as an agent are to be solved not by 'disregarding' the corporate personality, but by the application of the usual principles of liability for the acts of other persons or for collusion with them." Ballantine, *supra,* at page 20.

SAM TOPOLOSKY.

DEEDS

BONA FIDE PURCHASER UNDER ESCROW DEED

The plaintiff made a warranty deed, naming her daughter as grantee. She intended to give it to her (plaintiff's) son, who was to hold it until her death, on which event it was to be given to grantee. The grantee's husband wrongfully got possession of the deed and had it recorded. The grantee then obtained a loan from the Ohio Valley Bank, giving the latter her promissory notes. In making the loan the bank relied on her record title to the land, but it did not take a mortgage. The defendant, in charge of liquidating the bank, procured judgment on the notes and levied execution against the property. The

plaintiff claimed title and asked that the conveyance be cancelled of record. The Court of Common Pleas gave judgment for the plaintiff, which judgment was reversed by the Court of Appeals of Scioto County. The case went to the Supreme Court of Ohio on error. Judge Day, giving the opinion of the court, said that an escrow deed is deposited at the grantor's own risk; that if such a deed is wrongfully obtained by the grantee, the conveyance is deemed valid and absolute as to innocent purchasers for value from the grantee; that a person innocently extending credit to the record owner in reliance on his apparent title occupies the position of an innocent purchaser for value; and that if such creditor reduces his claim to judgment during the debtor's record ownership, he acquires a valid judgment lien on the property. Judgment of the Court of Appeals, was affirmed. *Michlethwait* v. *Fulton*, 129 Ohio St. 488, 196 N.E. 166 (1935).

It is well settled that as between grantor and grantee in an escrow situation, the grantee has at best merely a conditional title prior to the satisfaction of the condition. Many of the privileges and incidents of ownership remain in the grantor until the condition is satisfied. Tiffany, Real Property, 2nd Ed., 1920, Vol. II, p. 1771. A transferee from the grantee who is not a bona fide purchaser for value gets no better title than the grantee had. *Fiesthamel* v. *Campbell*, 205 Pac. 25, 55 Cal. App. 774 (1921); *Otero* v. *City of Albuquerque*, 22 N. M. 128 (1916); *Clevenger* v. *Moore*, 126 Okla. 346 (1927); *Berry* v. *Anderson*, 22 Ind. 36 (1846). But the problem is complicated when the grantee of an escrow deed conveys to an innocent purchaser for value before satisfaction of the condition. Can such a purchaser take free from the condition? If so, is the mere fact that he is an innocent purchaser for value sufficient to give him good title as against the escrow grantor or is some element of fault on the part of that grantor also necessary to support this result?

The Ohio cases are not entirely uniform on these points. The case of *Ogden* v. *Ogden*, 4 Ohio St. 182 (1854) holds that an innocent purchaser gets no better title than that of the escrow-grantee. There is a suggestion in the opinion that if the escrow-grantor were negligent, the innocent purchaser would be protected. This leads to the conclusion that an innocent purchaser from the grantee will not take free from the condition unless there has been some negligence or other fault on the part of the escrow-grantor. In the later case of *Resor* v. *O. & M. R. R. Co. et al.*, 17 Ohio St. 139 (1866) a judgment was given for an innocent mortgagee of an escrow-grantee as against the escrow-grantor on a theory of estoppel. The court applied an estoppel on the

grounds that the escrow-grantee had been put in possession of the premises as well as given the deed. In a similar situation an estoppel was applied and an innocent purchaser held to have good title in *Schurtz* v. *Colvin*, 55 Ohio St. 274 (1896). In this case it was said that an innocent purchaser for value from a fraudulent grantee is always protected in his title as against the wronged grantor. Here, also, the escrow-grantee had been let into possession of the land. In the Micklethwait case the escrow-grantee was in joint occupancy with her grantor—both residing in the same house. The court regarded the grantor as having been negligent, but by dictum asserted that the purchaser would be protected regardless of that fact.

The broad statements in the Schurtz and Micklethwait cases are to the effect that the use of the escrow device, without any other circumstances, is sufficient to estop the grantor from denying delivery as against a bona fide purchaser for value from the escrow-grantee who had obtained possession of the deed before satisfaction of the condition. This is inconsistent with the decision in the Ogden case and it is a broader proposition than was necessary to support the decision in either the Schurtz or the Micklethwait case. It is significant that in the Ogden case the grantee did not have possession or occupancy of the premises. In both the Schurtz and Resor cases the grantee was put in possession of the premises and in the Micklethwait case the grantee occupied the premises jointly with the grantor. This difference in fact might justify the difference in result between the Ogden and the other three cases. In most jurisdictions, possession of the premises by an escrow-grantee is an important factor in the protection of an innocent purchaser from such a grantee. Tiffany, Real Property, 2nd. Ed., 1920, Vol 2, p. 1771. On this approach the holdings in the Schurtz and Resor cases are not necessarily inconsistent with the Ogden case.

In the Micklethwait case the problem was complicated by the joint occupancy of the grantor and grantee. It would seem that the grantor's presence on the premises might have been regarded as notice of the grantor's rights, to the extent of placing the purchaser under a duty to make inquiry as to the existence of any rights in the grantor. In the absence of a diligent inquiry, the purchaser should not have acquired rights superior to those of the grantor, and the court should have held for the grantor as in the Ogden case. Even if the occupancy of the grantee in the Micklethwait case is stressed to the point of invoking the estoppel doctrine which was applicable in the Resor and Schurtz cases it should not be supposed that an innocent purchaser from an escrow grantee is always to be protected. The Ogden case might still

be followed in a situation where the escrow-grantee was not permitted to occupy the premises.

Although some question might be raised as to whether a judgment creditor is a bona fide purchaser, he has been treated as such in *Rathmell* v. *Shirey*, 60 Ohio St. 187 (1899), and in *Crooks* v. *Crooks*, 34 Ohio St. 610 (1878).

JOHN W. TANNER.

EQUITY

JURISDICTION OF EQUITY TO RELIEVE ONE CONVICTED OF A CRIME ON PERJURED TESTIMONY WHERE STATUTE OF LIMITATIONS BARS LEGAL RELIEF

The plaintiff was convicted on perjured testimony of the crime of assault to rape. Ohio Gen. Code. Sec. 13449-2 provides that a motion for a new trial on newly discovered evidence must be filed within 120 days following the rendering of the verdict. This statute had run when the plaintiff discovered new facts showing that his conviction was on perjured testimony. Relief was sought in equity to vacate the judgment and to secure a new trial. A demurrer to the bill was overruled and judgment entered for the plaintiff. Error was prosecuted to the Court of Appeals and the ruling of the trial court reversed. To grant the relief prayed for would be overruling the expressed intent of the legislature, and 'while one maxim of equity recites that it will not suffer a wrong to be without a remedy, another states that equity follows the law." *State* v. *Vaughn*, 21 Ohio L. Abst. 585 (1936).

The court had a hard problem before it but not one entirely dissimilar from that which equity was faced with in working out the doctrine of part performance to remove the bar of the Statute of Frauds, *Butcher* v. *Stapely*, 1 Vern. 363 (1685). Probably the first case advancing fraud as the rationale of this doctrine was *Mullet* v. *Halfpenny*, Prec. Ch. 404 (1699). Equity from that time on has given relief in certain types of cases notwithstanding the expressed legislative intent, and in this state even applies the equity doctrine to law cases. *Wilbur* v. *Paine*, 1 Ohio 251 (1824), *O'Hara* v. *O'Hara*, 16 Ohio C.C. 367, 9 Ohio C.D. 293 (1898), *Hodges* v. *Ettinger*, 127 Ohio State 460.

Similarly, the problem of the Statute of Limitation arose early in equity, and the general rule was laid down that equity follows the