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convey the property to the vendor was legally ineffective. Consequently, title to the property was no longer in the vendor at the time of the exercise of the option and the specific performance action, and therefore specific performance was impossible.

In *Back v. Ohio Fuel Gas Co.*,[4] the plaintiff had purchased certain land. He now brings an action to quiet title, claiming that he is a bona fide purchaser for value as to defendant's claim which arose out of an instrument given by plaintiff's predecessor in title which was in the general form of a deed but conveyed to defendant the oil and gas in and under the land, with the right of operating upon the land to obtain such oil and gas. Defendant recorded the instrument in the record of leases and claims that such act gave plaintiff constructive notice. The court, accepting the defendant's argument, rejected plaintiff's claim that it was a deed and that he did not have constructive notice in that it was not recorded in the record of deeds.

One specific performance action growing out of a contract of employment should be noted. In *Masetta v. Nat. Bronze & Aluminum Foundry Co.*,[5] the supreme court held, in a class suit by a discharged employee for himself and others similarly situated, that a mandatory injunction would not be granted to specifically enforce an employment contract made as the result of collective bargaining for the purpose of causing reemployment of the discharged employees. Although it is recognized that an employer cannot obtain an order from equity to require an employee to work, it is unfortunate that the court used the discredited mutuality of remedy doctrine as a partial basis for the decision in the present case. The result could have been reached independently of that doctrine.

EDGAR I. KING

EVIDENCE

Two Issue Rule

It has long been the rule in Ohio that in a civil case, where the issues are such that a finding on either of them in favor of the successful party entitles him to a judgment rendered on the general verdict, such judgment will not be reversed for error in instructions of the court relating exclusively

[1] 92 Ohio App. 324, 110 N.E.2d 9 (1951).
[2] *Id.* at 328, 110 N.E.2d at 11.
[3] 63 Ohio L. Abs. 293, 109 N.E.2d 549 (App. 1951)
[4] 160 Ohio St. 81, 113 N.E.2d 865 (1953).
[5] 159 Ohio St. 306, 112 N.E.2d 15 (1953).

to the other issue.[1] This is the well-known *two-issue* rule.[2] In *State v. Johnson*,[3] the Court of Appeals of Cuyahoga County held that the *two-issue* rule has no application in *criminal* cases, and an error prejudicial to the rights of the defendant committed in submitting one of the issues presented to the jury requires reversal of the judgment of conviction.

Misconduct of Juror

In *Peart v. Jones*,[4] the plaintiff recovered a substantial verdict in a civil action for assault and battery. At the hearing of defendant's motion for a new trial, it appeared that one of the jurors was offered a bribe by a third person if she would cast her vote for the plaintiff for the full amount he was asking. The juror did not report the incident to the trial judge until several days after the verdict was rendered. She was one of the nine who signed the verdict, but, in an affidavit signed by her, she stated that the attempt to bribe her did not in any way affect or influence her duty as a juror. The trial judge overruled defendant's motion and judgment was entered for the plaintiff. This was affirmed by the court of appeals. The Ohio Supreme Court reversed the judgment and remanded the cause for new trial. The basic and underlying principle of the right of trial by jury is that such trial shall be heard and determined by a jury of persons completely unbiased and uninfluenced by extrinsic considerations. The court rejected the argument that a new trial should be denied since the evidence was so overwhelmingly in favor of the plaintiff that a bribe could have had no effect, and stressed the point that if a bribe has been offered it is impossible to determine at a later time whether the verdict was influenced thereby.

Privilege: Records of City Police Department

In re *Story*[5] was an action originally instituted in the Court of Appeals of Cuyahoga County in which a writ of habeas corpus was sought to discharge petitioner from custody of the sheriff. Petitioner was the chief of the police department of Cleveland. He was held in custody pursuant to an order of a notary public for refusal to produce any part of certain records which were described in a *subpoena duces tecum*. This had been served upon him in connection with the taking of a deposition in a civil action brought by the administrator of a decedent against two police officers for

[1] Ochsner v. Traction Co., 107 Ohio St. 33, 140 N.E. 644 (1923).
[2] First announced in Sites v. Haverstick, 23 Ohio St. 626 (1873).
[3] 64 Ohio L. Abs. 425, 112 N.E.2d 62 (App. 1952).
[4] 159 Ohio St. 137, 111 N.E.2d 16 (1953).
[5] 159 Ohio St. 485, 111 N.E.2d 385 (1953), 5 WEST. RES. L. REV. 111 (1954).

damages for the wrongful death of such decedent claimed to have been caused by the two police officers of the City of Cleveland. Those officers, at the time of the shooting of the decedents, had been engaged in a search for another party suspected as a bank robber. It was conceded that the city was immune from any suit on account of the death of the decedent. The city's attorneys, however, were defending the two policemen in the civil action and all of the records had either been turned over to, or were made available to, those attorneys for aid in defending that action. The court of appeals discharged the petitioner from custody and the case was taken to the supreme court on appeal as a matter of right. The sole question was whether the petitioner, having custody and control of the records of the police department, made for the detection and prevention of crime, was generally privileged from disclosing the records upon the taking of a deposition in a civil suit. The court held that such records were not privileged; that no protection of the public or other compelling reason was shown to justify a different rule with respect to this evidence in possession of the city and its chief of police from that with respect to similar evidence in the possession of any other individual or corporation. The court pointed out its decisions construing the attorney-client privilege were not applicable to the facts of this case.

Physician-Patient Privilege

In *Strizak v. Industrial Comm'n*,[6] the plaintiff sought compensation for an alleged injury to his eye. At the trial, the plaintiff testified fully to the cause, nature and results of his injury. A physician also gave testimony favorable to his claim. The defendant called as a witness in its behalf a physician whom, previously, the plaintiff had consulted professionally concerning the condition of his eye. The defendant sought to examine the witness, not as the attending physician, but solely as an expert witness to testify in answer to a hypothetical question based on an assumed state of facts. The witness clearly understood that his opinion was not to be based on any matters confided to him by his former patient, or on information acquired by him while attending his patient in his professional capacity. Over objection by the plaintiff, on the ground that the opinion elicited by the question would be violative of the privileged communications statute,[7] the trial court permitted the witness to answer the question. The jury returned a verdict for the defendant and judgment was entered thereon. This was reversed by the court of appeals. In reversing this judgment and affirming that of the trial court, the supreme court held that the opinion

[6] 159 Ohio St. 475, 112 N.E.2d 537 (1953).

[7] OHIO REV. CODE § 2317.02 (OHIO GEN. CODE § 11494).