templation of the statute." Many well known authorities are cited as sustaining the rule announced. CORSON, P. J., dissenting, cites *Moelle* v. *Sherwood,* 148 U. S. 21; *United States* v. *California &c. Land Co.,* 148 U. S. 31, and *Boynton* v. *Haggart,* 120 Fed. Rep. 819, 57 C. C. A. 304.

The deed involved in the principal case is the ordinary quitclaim deed. It is not one of those that may be said plainly to give notice by their terms of the doubtful character of the title—as, for example, where the grantor conveys "such interest only as he now has, whatever that may be, in the aforesaid lands" (*Va. & Tenn. Coal &c. Co.* v. *Fields,* 94 Va. 102), nor on the other hand is it one of those that, while quitclaim deeds in general form, yet purport by their terms to convey the whole estate in the real property particularly described (*Wilhelm* v. *Wilken,* 149 N. Y. 447), so that questions sometimes discussed in cases of this character are not involved.

The doctrine that the form alone of the ordinary quitclaim deed affects the purchaser under it with notice which prevents his being a purchaser in good faith while supported by recent decisions in many states, "does not," as Mr. JUSTICE FIELD says in *Moelle* v. *Sherwood,* "seem to rest upon any sound principle." That courts should deprive the grantee in such a deed of the protection of the recording acts, without regard to his actual good faith, and for the benefit of one who has negligently failed to record the evidence of his title, seems in accord neither with the spirit of the registry acts nor with the principles by which courts are ordinarily controlled. While quitclaim deeds are often obtained for speculative purposes the true test of their effect should be the fact of a purchase in good faith. *Merrill* v. *Hutchinson,* 45 Kan. 59, *Babcock* v. *Wells,* 25 R. I. 23.

Recent statutes in some states have abrogated the extreme doctrine that a grantee in a quitclaim deed is charged with bad faith as a presumption of law; in Maine, for example, it is provided (L. 1903 ch. 220) that conveyances of the right, title or interest of the grantor, if duly recorded, shall be as effectual against prior unrecorded conveyances, as if they purported to convey an actual title; and in North Dakota (L. 1903 ch. 152) that the fact that the first recorded conveyance of a subsequent purchaser for a valuable consideration is in the form of a quitclaim deed, shall not affect the question of good faith or be of itself notice to the grantee of any unrecorded conveyance.

COMPETENCY OF A CHILD AS A WITNESS.—Appellant was convicted of rape on a child of the age of seven years. Upon the trial the appellant objected to the admission of the testimony of the prosecutrix against him for the reason that the evidence showed that the witness was only seven years of age, and as article 34, Penal Code, 1895, provided that no person could be punished for any offense committed before he or she arrive at the age of nine years, the witness could not take the oath subject to the pains and penalties of perjury, as required by the state constitution. After exception taken by appellant the prosecutrix was permitted to testify. *Held,* error, although BROOKS, J., filed a dissenting opinion. *Freasier* v. *State* (1904), — Tex. Crim. App. —, 84 S. W. Rep. 360.

The ancient rule of the common law appears to have been that no infant under the age of nine years could be sworn (*Commonwealth* v. *Hutchinson,* 10 Mass. 225; *State* v. *Edwards,* 79 N. C. 648); but the rule does not seem to have been well established, for in *Brasier's Case* (1779), 1 Leach C. C. (3rd ed.) p. 237, it was ruled that no testimony whatever can be received except upon oath, and that an infant though under the age of seven years may be sworn in a criminal case provided such infant, upon strict examination by the court, possess sufficient knowledge of the nature and consequences of an oath. If the rule as first stated was ever well established it has since fallen into disuse and become obsolete. Intelligence, ability to comprehend the meaning of an oath, and the moral obligations to speak the truth, and not age, are the tests by which the competency of a child to give testimony is determined. And when it appears that the witness is so qualified he should be admitted to testify, no matter what his age. *Wheeler* v. *U. S.,* 159 U. S. 523; *White* v. *State,* 136 Ala. 58; *Minton* v. *State,* 99 Ga. 254; *State* v. *King,* 117 Ia. 484; *State* v. *Wilson,* 109 La. 74; *Trim* v. *State,* — Miss. —, 33 So. Rep. 718; *State* v. *Scanlan,* 58 Mo. 204. And this is so even where there is a statute making infants not punishable with perjury. *Johnson* v. *State,* 61 Ga. 35. The tests as to competency vary; some courts holding that in addition to a competent amount of understanding, the witness must have received such a degree of religious instruction as will enable him to comprehend the moral obligations imposed upon him by the oath. *State* v. *Belton,* 24 S. C. 185; *State* v. *Michael,* 37 W. Va. 565. Others hold the witness competent if able to give intelligent answers although ignorant of God and the Bible. *White* v. *Commonwealth,* 96 Ky. 180; *State* v. *Levy,* 23 Minn. 104. By statute in some states it is provided that where an infant is of tender years and does not understand the nature of an oath, but has general intelligence, he may at the discretion of the presiding judge be permitted to testify, without being sworn. Michigan, C. L. 1897, § 10215. *People* v. *Walker,* 113 Mich. 367, New York, Code Crim. Pro. § 392; *People* v. *O'Brien,* 74 Hun. 264. The question of competency is for the trial court (*State* v. *Doyle,* 107 Mo. 36; *People* v. *Stouter,* 142 Cal. 146; *Castleberry* v. *State,* 135 Ala. 24); and will not be reviewed except in cases of an abuse of discretion, or a manifest misapprehension of some legal principle. *Peterson* v. *State,* 47 Ga. 524; *Ridenhour* v. *Kansas City Cable Ry. Co.,* 102 Mo. 270; *Shannon* v. *Swanson,* 208 Ill. 52.

Art. 1, § 5, of the constitution of Texas provides that "all oaths or affirmations shall be administered in the mode most binding upon the conscience, and shall be taken subject to the pains and penalties of perjury." The penal code enactment has already been given. Under these provisions it would seem, and the principal case holds, that the testimony of a child under nine years of age in a criminal case is incompetent, and a conviction based in whole, or in part, upon such testimony cannot be sustained. That a deplorable situation arises under this state of facts cannot be denied. It is equally true that the courts cannot give relief, but that any relief must come through legislative enactment or amendment of the constitution. The words are plain; there is no ambiguity of language and therefore the courts are given no opportunity to put any construction upon the language other than the meaning

apparent on the face of the instrument. *Lake Co.* v. *Rollins*, 130 U. S. 662, 670. The courts of Texas have apparently not been consistent in their decisions relative to the competency of children to testify under oath, for in *Reyna* v. *State* (1903), — Tex. Crim. App. —, 75 S. W. Rep. 25, and in *Click* v. *State* (1902), — Tex. Crim. App. —, 66 S. W. Rep 1104, children below the age of eight years were permitted to testify under oath. An examination of the statutes and constitutions of many of the states fails to disclose like statutory provisions except in Illinois, where it is provided (Starr & Curtis Ann. St. Vol. 2, p. 2825, ¶ 5) that all oaths shall be taken subject to the pains and penalties of perjury; that no person below the age of ten years shall be convicted of a crime or misdemeanor (Starr & Curtis Ann. St., Vol. 1, p. 1357, ¶ 462) and yet the testimony of children under this age is there received unchallenged. *Shannon* v. *Swanson, supra.*

COMPENSATION FOR PARTY WALLS AS BETWEEN SUBSEQUENT GRANTEES.—In the recent case of *Loyal Mystic Legion et al.* v. *Jones* (1905), — Neb. —, 102 N. W. Rep. 621, the facts were that a party wall had been erected under an agreement between the builders and their adjoining lot owner, which provided that the wall should be one-half upon the lot of each party and that the adjoining owner—the non-builder—"his heirs, executors, administrators or grantees" might use the wall for any building he "or his grantees may erect," provided that he "or his grantees before proceeding to join any other buildings to the said party wall and before making any use thereof or breaking into the same should pay or secure to be paid to said parties of the first part [the builders] or their grantees one-half of the actual cost of said party wall or so much thereof as shall be joined or used as aforesaid." This agreement having been executed, acknowledged and recorded, the lots were conveyed to others by the contracting parties and the question before the court was whether, when the wall was used by the present owner of the non-builder's lot, compensation should be made to the present owner of the builder's lot or to an assignee of the original builder. It was held that, as the contracting parties intended "that whoever became the owner of either lot should stand in the shoes of the makers of the party wall agreement, with respect to its provisions," the present second builder should compensate the first builder's successor in title.

In arriving at this conclusion, however, the principles of covenants running with the land are expressly disregarded by the court, reliance being placed upon the provision in the agreement that the money for the use of the wall should be paid to the builders or "their grantees," the court saying, "it is not necessary to say that the personal obligation to pay for the wall runs with the land in order to carry into effect the provisions of the contract under consideration." And particular emphasis is laid upon the fact that the present agreement names "grantees" instead of "assigns"—the latter term being said by the court to be appropriate to transfers of personalty rather than realty. But this latter distinction seems unnecessary in the consideration of such cases for the term "assigns" has been used from early times as applicable to