to and filed with the pleading are not uniform. An exhibit is no part of a pleading in an action at common law. *Gulf C. & S. F. Co. v. Cities Service Co.,* 270 Fed. 994. Missouri has almost an iron-bound rule in keeping with the common law. Exhibits mentioned and other records referred to are not part of the pleading and resort cannot be had thereto in order to aid the latter. *Johnson v. Crowley,* 207 S. W. 235. *State ex rel. Siegel v. Grimm,* 314 Mo. 242, 284 S. W. 490. Insurance policies fall under the same rule. See *Mattero v. Cent. Life Ins. Co.,* 202 Mo. A. 293, 215 S. W. 750. Other states which hold that an exhibit attached to a pleading does not become a part of the pleading are Illinois, Ohio, South Carolina, Mississippi, Colorado, and Wyoming. However, a majority of the states hold the other way, the ratio being about two to one. Under the various provisions governing pleading in these jurisdictions, where an exhibit is annexed to a pleading with proper references in the pleading, the effect is as if the instrument sued on were set out in the pleading. These exhibits include contracts, *Phinney v. Andrus,* 109 Wisc. 397, 178 N. Y. S. 760; *Shelton v. Eisemann,* 79 So. 75 (Fla.), *Ord v. Burreston,* 52 Utah 201, 173 Pac. 132; deeds, *East San Mateo Land Co. v. So. Pac. Ry. Co.,* 30 Cal. A. 223, 157 Pac. 634; and letters, *Hubb-Diggs Co. v. Mitchell,* 256 S. W. 702 (Tex.). It is agreed in all the states that an exhibit will not supply the substantial allegations essential to the statement of a cause of action or defense. One of the very few cases *contra* is *Union Sewer Pipe Co. v. Olson,* 82 Minn. 187, differentiated on the ground that the pleading was framed for that purpose and with that end in view. J. J. C., '30.

VENDOR AND PURCHASER—NON-MARKETABILITY OF TITLE AS GROUND FOR RESCISSION.—The purchaser of a tract of land sought to rescind the contract of sale and recover payments made thereunder because of alleged defects in title objected to by his attorney, which defendant made no attempts to cure. There was a judgment for plaintiff which was affirmed on appeal. *Larson v. Thomas,* 215 N. W. 927 (S. D., 1927).

There is an implied covenant on the part of the vendor to convey a good marketable title to the land, *Green v. Ditsch,* 143 Mo. 1, 44 S. W. 799.

The question in the case related to the conditions under which a purchaser could refuse to accept a conveyance on the ground that the title was not marketable although it was in fact good. One test as to when a title is marketable is firmly established both in England and the United States. Whenever there is a reasonable probability of future controversy the contract will not be enforced. *Fleming v. Burnham,* 100 N. Y. 1, 2 N. E. 905; *Jefferies v. Jefferies,* 117 Mass. 184. A vendee will not be compelled to buy a law suit. *Smith v. Hunter,* 241 Ill. 514, 89 N. E. 686; *Brokaw v. Duffy,* 165 N. Y. 391, 59 N. E. 196; *Ives v. Kimblin,* 140 Mo. A. 293, 124 S. W. 23; *Birge v. Bock,* 44 Mo. A. 330. The bare possibility that the title may prove defective gives the purchaser no right to refuse to accept the title. *Atteberry v. Blair,* 244 Ill. 363.

The conflict in the cases arises in determining who is to decide whether or not there is a reasonable probability of a future controversy over the title. In the principal case the respondent laid stress on the opinion of counsel as a determining factor in ascertaining the marketability of a title, and the court decided that a purchaser might reject a title on an opinion of counsel given in good faith if any of the questions involved were doubtful questions of law which would be objected to by most, if not all, reputable and competent attorneys. The case of *Eggers v. Busch,* 154 Ill. 604, 39 N. E. 619, is very similar to the principal case in its facts. The court there said, "A material defect in the title to land is such a defect as will cause a reasonable doubt and just apprehension

in the mind of a reasonable, prudent, and intelligent person, acting upon competent legal advice. . . ."

Elsewhere, as in Missouri, the doctrine is recognized that a vendee is entitled to a marketable title, but the mere opinion of a competent attorney does not determine the marketability of a title. In *Green v. Ditsch, supra,* the court said, "While there is an implied covenant in an executory contract for the sale of real estate, that the grantor has a marketable title, yet there is no implied covenant that the title will be such as the grantee will be willing to accept, or as his attorney may pronounce marketable." The case is cited in this connection in *Wiemann v. Steffer,* 186 Mo. A. 584, 172 S. W. 472. See also *Atkinson v. Taylor,* 34 Mo. A. 442, where the question is held to be for the court. The opinion left open the question of whether a court of law can pass upon the marketability as distinguished from the validity, of a title.

In *Kent v. Allen,* 24 Mo. 98, it was held that the doctrine of marketable titles is purely equitable. "Courts of law being the proper and peculiar tribunals for the decision of all legal questions, doubtful titles are not recognized by them. . . . This being a suit at law, and the validity of title arising, the question must be determined whether it is good or bad." E. K., '29.

TRUSTS—RIGHT TO STOCK DIVIDENDS AS BETWEEN LIFE TENANT AND REMAINDERMAN.—This was a suit to construe a will of one J. M. Hays, brought by his three children, life beneficiaries of a trust estate, against the testamentary trustees and remaindermen. The sole question was whether or not a stock dividend is to be considered as income or as an addition to the corpus of a trust estate. *Held,* that in the absence of an expressed intention to the contrary, stock dividends are not "income" payable to the life beneficiaries of a trust estate created by will but are accretions to the corpus of the estate. *Hayes v. St. Louis Union Trust Co.,* 298 S. W. 91. (Mo., 1927.)

The mooted point of this case presents another of those perplexing and all too frequent legal problems which bid fair never to have a uniform line of decisions governing them. There are three prevailing doctrines in the United States on the subject presented in the instant case. First, there is the so-called Massachusetts rule, which when broadly stated declares that stock dividends belong to corpus, as distinguished from cash dividends which of course are income. *Minot v. Paine,* 99 Mass. 101, 96 Am. Dec. 705; *Rand v. Hobbell,* 115 Mass. 461, 15 Am. Rep. 121; *Leland v. Hayden,* 102 Mass. 542. The theory of the rule is that in the case of stock dividends there is merely a readjustment of the corporate structure and no actual severance of corporate earnings from other corporate property as in the case of cash dividends. The act of declaring a stock dividend is evidence of the corporate intent to treat its surplus profits to that extent as part of its permanent capital, and thus such dividends should be treated as corpus. Secondly, there is the Pennsylvania rule which makes no distinction between cash and stock dividends and necessitates the determination of the period during which the earnings being distributed accrued. If such period preceded the life interest, the dividends, of whatever nature, are corpus for the purposes of the case; if accrual was subsequent to the commencement of such term, they are "income"; if the accrual period was partially before and partially after, there is to be an apportionment between the two funds. *Earp's Appeal,* 28 Pa. 368. *In re Stokes,* 240 Pa. 288, 87 Atl. 975; *Boyer's App.,* 224 Pa. 144, 73 Atl. 320. The reason behind this rule is that all those profits which have accrued prior to the commencement of the life term and which have served to increase the value of the stock are just as much part of the capital as the original capital and are to be regarded, so far as the estate is concerned, as part of the principal from which the future income is to arise; as regards profits earned dur-