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Deeds, Delivery, Retention by Grantor

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MORE ON CODE REVISION

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Judge G. Grimson of Rugby, North Dakota, has been designated by the Supreme Court as chairman of a committee to revise the rules of practice and procedure in the District and Supreme Courts, in administrative bodies exercising quasi-judicial functions, and in the probate courts and county courts with increased jurisdiction. A sub-committee on rules of practice and procedure in the District and Supreme Courts, consisting of A. M. Kvello, Nels G. Johnson, E. T. Conmy and J. J. Kehoe, has been appointed, and a sub-committee on rules of practice in administrative bodies, of which Clyde Duffy, I. A. Acker and M. K. Higgins are members, has been designated, with Mr. Duffy as sub-chairman. County Judges J. J. Funke, E. C. Lebacken, Henry Lemke, F. G. Kneeland and C. A. Bone, have been appointed on the revision of the Probate Code, and rules of practice and procedure in the Probate Courts and in County Courts with increased jurisdiction. Judge Grimson, Mr. Duffy and Judge Funke will all welcome suggestions from the Bench and Bar, as will also any of the members of the committees mentioned.

The Commission has no authority to make any substantial changes in the law, but whenever we can clarify legislative intent by better expression, elimination of mistakes, inconsistencies, conflicts, or useless statutes, we are directed to do so and make the report to the Legislature in the form of a revised Code.

Very shortly now, the committees of the State Bar Association will be receiving letters of suggestion from the Commission in connection with the work which these committees will be expected to do. We should appreciate all of the committees functioning just as soon as possible, because we want to get a report to the Legislature when it next convenes, if that is humanly possible.

We welcome suggestions and comments; we would be glad to have any members of the Bench or Bar stop in at the offices of the Commission in the Supreme Court library to see how the work is progressing. Please keep your suggestions coming.

CODE COMMISSION.
By C. L. Young,
Clyde Duffy,
A. M. Kuhfeld,
Commissioners.

DEEDS, DELIVERY, RETENTION BY GRANTOR

Action by grantee against administrator of the estate of grantor to determine ownership of property. Grantor died and at the time of his death was the record title owner to the property.

For several years prior to his death grantor had been keeping company with the plaintiff, grantee. Administrator noticed a sealed envelope in a safety deposit box with the plaintiff's name written thereon. The contents of the envelope proved to be a warranty deed from grantor to the plaintiff conveying the pro-

perty. The plaintiff's mother testified that the deceased visited at her home and that on one occasion her daughter and the deceased were looking at a paper. The daughter handed it to the mother, who examined it, recognized that it was a deed from the deceased to the plaintiff, and handed it back to the daughter. The daughter, in turn, handed it back to the grantor and asked him to put it away for her. This was the same instrument that was later found in the safety deposit box. In response to a question on cross examination regarding what grantor said, the mother testified: "He told me he was going to give it to her; it was going to be hers."

There is no question as to the execution of the deed. The only question presented is whether or not the deed was delivered so as to pass title to the plaintiff prior to the death of grantor. Held, the instrument was intentionally delivered to the grantee. It was absolute on its face and therefore immediately conveyed absolute title. Keefe v. Fitzgerald, 288 N. W. 213 (N. D. 1939).

"If a deed be duly delivered in the first instance, it will operate, though the grantee suffer it to remain in the custody of the grantor. If both parties be present, and the usual formalities of execution take place, and the contract is, to all appearance, consummated without any conditions or qualifications annexed, it is a complete and valid deed, notwithstanding it be left in the custody of the grantor." Kent's Commentaries, Vol. 4, p. 455, (14th Ed.).

In an English leading case, Doe v. Knight, 5 Barn. & Cress. 671 (Eng. 1826), the grantor signed the deed and used the words, "I deliver this as my act and deed." The court intimates that this was sufficient delivery to make the deed operative.

A deed is of no effect unless it is delivered. Delivery of a deed may be by words or acts or both combined. An indispensable element to be considered in determining whether a deed has been delivered is the intention of the grantor. N. D. Comp. Laws Ann. (1913) § 5497; Arnegaard v. Arnegaard, 7 N. D. 475, 75 N. W. 797, 41 L. R. A. 258, (1898); O'Brien v. O'Brien, 19 N. D. 713, 125 N. W. 307, (1910); Magoffin v. Watros, 45 N. D. 406, 178 N. W. 134, (1920); McGuigan v. Heur, 66 N. D. 710, 268 N. W. 679, (1936).

The fact that the deed was immediately returned to the grantor may be considered as a circumstance bearing upon whether or not there was a delivery. But if delivery actually took place the return of the deed to the grantor for some specific purpose such as for safe keeping, did not destroy the effect of the legal delivery. Goodman v. Goodman, 212 Cal. 730, 300 Pac. 449, (1931); Upton v. Merriman, 116 Minn. 358, 133 N. W. 977, Ann. Cas. 1913B, 491, (1911); 16 Am. Jur. 511.

Where a party executes and acknowledges a deed, and afterwards, either by acts or words, expresses his will that the same is for the use of the grantee, especially where the assent of the

grantee appears to the transaction, it shall be sufficient to convey the estate, although the deed remains in the hands of the grantor. Stevens v. Hatch, 6 Minn. 64 (1861). A completed delivery is not affected by the fact that the grantee hands the deed back to the grantor, for record, safe keeping, or for any other purpose. 8 R. C. L. 987, § 54. A delivery of a deed in escrow cannot be made to the grantee and that if such delivery is in fact made, it becomes, in law, an absolute delivery. Worrall v. Munn, 5 N. Y. 229, 55 Am. Dec. 330, (1851).

If the grantor makes a manual delivery to the grantee of a deed absolute in form, intending to part with all authority and dominion over the instrument, he makes an absolute delivery and title passes immediately in accordance with the terms of the deed notwithstanding any intention or understanding that its operation be delayed until the happening of a contingency. An exception is, of course, made by statute with regard to deeds which are in fact mortgages. N. D. Comp. Laws Ann. (1913) § 6729. In the Keefe v. Fitzgerald case the instrument was intentionally delivered to the grantee. It was absolute on its face and therefore immediately conveyed absolute title.

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CONDITIONAL SALES, ELECTION OF REMEDIES

Plaintiff's assignor sold an automobile to one Emanuelson. After the down payment there was left $650 payable in monthly installments for which the buyer gave his promissory notes, which were assigned together with the contract to plaintiff. Emanuelson defaulted on several installments. Plaintiff commenced an action on the notes and twice garnished Emanuelson's wages. Emanuelson sold the car to defendant, and three days later went into voluntary bankruptcy. Plaintiff dismissed its action for the overdue installments, released the garnishments, and brought suit in replevin. On an appeal from the trial court the Supreme Court held, "The seller's suit for the price under a conditional sale contract is not inconsistent with his reserved title and right to repossess under the buyer's default. Hence, it is not such an election of remedies as to bar a subsequent exercise of the right of repossession." The Supreme Court stated, "The Contract is, not that the seller shall keep the title until he sues for the price or gets a judgment, but that it shall remain in him until he gets his money. Is it not then to defeat rather than effectuate plainly expressed contractual intention to decide that the seller's suit for the price or a piece of it transfers title to the buyer?" Midland Loan Finance Co. v. Osterberg et al, 201 Minn. 210, 275 N. W. 681 (1937).

There is a split of authority on the question of whether or not the election of one of the remedies, a suit for the purchase price, or retaking of the property, bars the other under a con-