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Joint Tenants, Homestead, Husband and Wife, Conveyancing

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select and appoint the membership of these Advisory Boards and Appeal Agents.

I call upon the membership of our profession, and especially those who may be selected, to accept these appointments and perform the duties of the respective offices. I am sure that the Bar will respond.

H. G. NILLES,
President.

LAW SCHOOL NEWS

The School of Law of the University of North Dakota began its forty-second year September 16, 1940. There are now twenty-three first year students; twenty-two second year students and fifteen third year students. Several pre-law students and law students are in active duty with the National Guards or have joined the Aviation Corps of the United States Army and that of the United States Navy.

Mr. S. Theo. Rex, a part-time law teacher and a Reserve Officer, was granted an indefinite leave of absence for military reasons. The courses in Municipal Corporations and Domestic Relations, which he taught, will be taught by Mr. C. F. Peterson, another member of the Grand Forks Bar. Mr. Peterson secured his law degree from this institution in 1915. Mr. Philip R. Bangs and Carroll E. Day are also serving as part-time professors. The personnel of the full-time law teachers has not changed. During the summer Professor John W. Kehoe assisted the Committee on Practice and Procedure to revise the rules of practice and procedure in the District Courts and the Supreme Court. Professor Ross C. Tisdale is preparing an article for The American Bar Association on the "Bill of Rights of the Constitution of North Dakota."

During the week of September 23 to 28, Mr. Carleton B. Putnam, of the West Publishing Company, gave a series of lectures on the Use of Law Books.

The University of North Dakota Law School Alumni Association had its annual Homecoming dinner on October 12. Honorable Geo. F. Shafer, Class of 1912, is President and Honorable John Moses, Class of 1915, is Secretary of the Association.

JOINT TENANTS, HOMESTEAD, HUSBAND AND WIFE, CONVEYANCING

There are three situations in which the question with which this article is concerned may arise, namely:

1. Husband and wife are tenants in common. Can they convey to themselves as joint tenants in North Dakota?

2. The property is a homestead. Can the husband convey to himself and wife as joint tenants in North Dakota

3. The property is not a homestead. Can the husband convey to himself and wife as joint tenants in North Dakota?

N. D. Comp. Laws Ann. (1913) § 5262 defines joint tenancy:

"A joint interest is one owned by several persons in equal shares by a title created by a single will or transfer, when expressly declared in the will or transfer to be a joint tenancy, or when granted or devised to executors or trustees as joint tenants."

N. D. Comp. Laws Ann. (1913) § 5265 reads as follows:

"Every interest created in favor of several persons in their own right is an interest in common, unless acquired by them in partnership for partnership purposes, or unless declared in its creation to be a joint interest as provided in section 5262."

Blackstone, 2 Com. 180 et seq., describes the properties of a joint tenancy, as follows: "The properties of a joint estate are derived from its unity, which is fourfold: the unity of interest, the unity of title, the unity of time, and the unity of possession; or in other words, joint tenants have one and the same interest, accruing by one and the same conveyance, commencing at one and the same time, and held by one and the same undivided possession."

Tiffany on Real Property, New Rev. Ed. (1940) at page 282, says: "The character of an estate created by a conveyance by the owner to himself and another whether it creates an estate in severalty, in common, in joint tenancy or by the entireties is a disputed question."

New York has held such a conveyance to create a joint tenancy. Saxon v. Saxon, 46 Misc. Rep. 202, 93 N.Y.S. 191 (1905). The same state held such a conveyance ineffective in Dressler v. Mulhern, 77 Misc. Rep. 476, 136 N.Y.S. 1049 (1912). In Murphy v. Whitney et al, 140 N. Y. 541, 35 N.E. 930, 24 L.R.A. 123 (1894), a right of survivorship was found, based on contract rather than on a joint tenancy. Wood v. Logue, et al, 167 Iowa 436, 149 N.W. 613 (1914) arrives at the same conclusion.

The law is now well settled in New York that a husband can convey to himself and wife as joint tenants. Matter of Klatzl, 216 N. Y.83, 110 N.E. 181 (1915); Matter of Farrand, 126 Misc. Rep. 590, 214 N.Y.S. 793 (Surr. Ct. 1926); Matter of Horler, 180 App. Div. 608, 168 N.Y.S. 221 (1st Dept. 1917).

Rhode Island holds likewise. Lawton v. Lawton, 48 R.I. 134, 136 Atl. 241 (1927). That case is based upon § 20, c. 297, Gen. Laws 1923 of Rhode Island, which provides that "lands may be conveyed by a person to himself jointly with another person." That certainly removes any difficulty from that case. Massachusetts has a similar statute and holds, of course, that a joint estate may be conveyed from a husband to himself and wife. Ames v. Chandler, 265 Mass. 428, 164 N.E. 616 (1929). There are many cases supporting this liberal view. Eisenhardt v. Lowell, 98 P. (2d) 1001 (Colo, 1940); Stonewall v. Danielson, 204 Iowa 1367,

217 N.W. 456 (1928); Stewart v. Todd, 190 Iowa 283, 180 N.W. 146 (1919); Edmonds v. Commissioner of Internal Revenue, 90 F. (2d) 14 (C.C.A. 9th, 1937), says the liberal view is supported by the weight of authority. Irvine v. Helvering Commissioner of Internal Revenue, 99 F. (2d) 265 (C.C.A. 8th, 1938), repeats that statement. Courts which do not uphold the joint tenancy view of such a conveyance have reached varying results. Dutton v. Buckley, 116 Or. 661, 242 Pac. 626 (1926, held that there was a transfer of half interest to the wife with reverter in the other half contingent upon her survival, subject to grantor's debts. Hicks v. Sprankle, 149 Tenn. 310, 257 S.W. 1044 (1924), declared that such a conveyance passed the entire estate to the wife. See also: Young v. Brown, 136 Tenn. 184, 188 S.W. 1149 (1916).

Now, let us look at the stricter view. "Since the sole owner of land cannot convey an interest in the property to himself, a warranty deed to himself and another as joint tenants, and not as tenants in common, fails to convey the estate intended, since unity of title and unity of time are lacking, and a tenancy in common results, the interest of the grantor in which passes upon his death intestate, to his heirs." Deslauriers v. Senesac, et al, 331 Ill. 437, 163 N.E. 327, 62 A.L.R. 511 (1928). "A person cannot convey or deliver to himself that which he already possesses, so that he cannot by deed, convey an estate to himself or take an estate from himself, for, while livery of seisin has been rendered unnecessary by statute, the deed, the muniment of title, must still be delivered." Deslauriers v. Senesac, et al, supra. "A tenancy in common, and not a joint tenancy, is created by the acquisition of individual interests by two or more persons in a parcel of property by different conveyances and at different times." Deslauriers v. Senesac, et al, supra. The case mentioned indicates a negative answer to to the three questions propounded at the beginning of this discussion. Courts in Michigan and Wisconsin hold squarely with the Illinois decision cited above. Pegg v. Pegg, 165 Mich. 228, 130 N.W. 617, 33 L.R.A. (N.S.) 166, 24 Ann. Cas. 1912C, 925 (1911); Wright v. Knapp, 183 Mich. 656, 150 N.W. 315 (1915); Michigan State Bank v. Kern, 189 Mich. 467, 155 N.W. 502 (1915); Breitenbach v. Schoen, 183 Wis. 589, 198 N.W. 622 (1924).

Now we are faced with the question: What would the North Dakota court do if the question were presented to it? We have no statute in this state, such as they have in Rhode Island and Massachusetts, permitting a man to convey to himself or to himself jointly with another. Consequently, we are bound by common law rules. While livery of seisin is replaced by recording, a man cannot very well make or receive delivery of a deed to himself, and delivery of the deed is a prerequisite to an effective conveyance, as is also acceptance.

1. If husband and wife are tenants in common and make a deed to themselves, their interest would yet not become a joint tenancy for the reason that their estate arose, not by any deed that they might choose to execute to themselves, but by the conveyance or conveyances originally constituting them tenants in com-

mon. There will not be unity of time or unity of title, because the husband's interests arises by virtue of his grantor's conveyance, and the wife's interest by virtue of her grantor's conveyance to her, but if they receive title by the same deed, and section 5265 of the N. D. Comp. Laws Ann. (1913), prevents their receiving a joint tenancy, they cannot convey a joint tenancy to themselves, for the same reasons that an individual cannot convey to himself.

2. If the homestead is in the husband's name, he cannot convey to himself and wife as joint tenants, because unity of time and interest will be lacking. See: N. D. Comp. Laws Ann. (1913) § 5262 quoted above. The unity will be lacking because he gets his title through the conveyance to him by his grantor. She gets her interest by virtue of the homestead statute and her husband's conveyance to her, which must of necessity be subsequent. The grant by the husband to himself and wife does not operate to vest any interest in him. It does, however, under some of the above holdings operate to pass some estate to her, although not the one intended.

3. What has been said under "2" above is equally true where the property is not a homestead. It is the writer's opinion that being or not being a homestead is immaterial to the problem here involved, particularly since the homestead laws of this state treat husband and wife alike.

Is it necessary to convey to a third party and have them convey back to husband and wife, to achieve the desired result in the above mentioned situations? Husband and wife can convey to each other. It is questionable whether either can convey to himself or herself, or whether both together can convey to themselves. While the weight of authority, at least numerically speaking, permits direct conveyancing, there is strong authority to the contrary. Oregon, Tennessee, Illinois, Michigan and Wisconsin, perhaps others, do not permit the intention of the grantor in such case to prevail. North Dakota has not the benefit of a statute authorizing such direct conveyancing. It seems to the writer that the only safe way is to convey through a third party until the North Dakota court passes upon the proposition, or until the legislature authorizes a man to convey to himself or to himshelf and another jointly.

CYRUS N. LYCHE,
Third Year Law Student.

APPEAL TO THE CONSCIENCE OF THE PRACTICING BAR

The impact of the war will inevitably produce vast and profound, if not revolutionary changes in our economic and political arrangements, putting in jeopardy our democratic way of life. The ominous shadow of these changes that press upon us, due to the ascendancy of Force in so large a part of the world, gives rise to the question: What can we do about it? More particularly: What can the lawyer, as a lawyer, do about it? That leads to the deeper question of the role of Law in the successful functioning