WestVirginiaUniversity
THE RESEARCH REPOSITORY @ WVU

Volume 48 | Issue 1 Article 14

December 1941

Deeds--Construction as to Grantees--Official or Representative Capacity

D. C. H.
West Virginia University College of Law

Follow this and additional works at: https://researchrepository.wvu.edu/wvlr

Part of the Property Law and Real Estate Commons

Recommended Citation

D. C. H., *Deeds--Construction as to Grantees--Official or Representative Capacity*, 48 W. Va. L. Rev. (1941).
Available at: https://researchrepository.wvu.edu/wvlr/vol48/iss1/14

This Recent Case Comment is brought to you for free and open access by the WVU College of Law at The Research Repository @ WVU. It has been accepted for inclusion in West Virginia Law Review by an authorized editor of The Research Repository @ WVU. For more information, please contact ian.harmon@mail.wvu.edu.

H.: Deeds--Construction as to Grantees--Official or Representative Ca

The court leaves open the question of whether the statute contemplates only a previous conviction of a felony under the law of West Virginia, or is all-embracing of felonies under any law. A further question remains whether a sentence by court-martial to the United States penitentiary instead of to confinement in the Disciplinary Barracks would have met the requirements of our statute, which only requires a previous conviction of a crime punishable in a penitentiary.

M. S. K.

DEEDS — CONSTRUCTION AS TO GRANTEES — OFFICIAL OR REPRESENTATIVE CAPACITY. — *A,* as receiver of the *X* National Bank, sold several tracts of land to *B* at a public sale. *B* later refused the conveyance on the ground that *A* had no title to the land sold. The property had been purchased by *A's* predecessor in office at a sale to enforce the bank's lien thereon, the conveyance having been made to "*C,* Receiver of the *X* National Bank, an insolvent national banking association." *B* demurred to *A's* bill for specific performance. *Held,* that such a deed conveys the land to the grantee in his individual capacity, and "Receiver of the *X* National Bank", *etc.,* is only *descriptio personae. Hardesty v. Fairmont Supply Co.*[1]

The court announced that it was merely following the rule laid down in *Donahue v. Rafferty* and *Hyman v. Swint,*[2] two earlier West Virginia cases. The former decision did not specifically concern the construction of a deed, but of certain other papers; yet it was held therein that the designation "Rt. Rev. P. J. Donahue, Bishop of Wheeling" was not inconsistent with a fee in Donahue personally. *Hyman v. Swint* arose on a demurrer, the actual holding being that there was nothing in a conveyance to the "Rt. Rev. P. J. Donahue, Bishop of Wheeling" which contradicted the averment in the bill that Donahue held title to the property in his individual capacity. However, the general statement was made that "where property is conveyed to one whose name in the deed is followed simply by his title or name in office, the legal title vests in him individually."[3] This generalization may not have been warranted by either the facts or the holding in that particular litigation.[4]

---

[1] 14 S. E. (2d) 436 (W. Va. 1941).

[2] Donahue v. Rafferty, 82 W. Va. 535, 96 S. E. 935 (1918); Hyman v. Swint, 94 W. Va. 627, 119 S. E. 866 (1923).

[3] 94 W. Va. at 633.

[4] In Rinehart v. Ireland, 120 W. Va. 599, 199 S. E. 871 (1938), the result appears to be that a conveyance to "E. A. Rinehart, Reciver of Y County

While the *Hyman* case held that a deed to the "Rt. Rev. P. J. Donahue, Bishop of Wheeling" may have conveyed to Donahue individually, the court in the present case holds that a conveyance to "*C*, receiver of the *X* National Bank", *etc.*, can convey to the grantee in an individual capacity only. In arriving at this conclusion, the court may have been unnecessarily influenced by the generalization in the *Hyman* case. "Words designating the representative or official capacity of the grantee may be only *descriptio personae* and will be construed accordingly, unless it can be inferred to the contrary from the instrument, especially where there is an absence of all proof tending to show the existence of a trust estate, and there is none created by the deed."[5] Can it not be inferred from the words "Receiver of the *X* National Bank", *etc.*, that they are intended to be more than merely descriptive?[6] Furthermore, the instant case now determines that a conveyance to "*C*, Receiver of the *X* National Bank", *etc.*, is plain and unambiguous, and that parol testimony is not admissible to show the capacity in which the grantee took the land. Heretofore, such a deed would have been susceptible of two reasonable interpretations as to the capacity in which the grantee took and evidence would have been admissible to show the capacity intended.[7]

Bank" conveyed to Rinehart in his official capacity, though the point was not specifically mentioned.

[5] 18 C. J. Deeds, § 240.

[6] Johnson v. Calnan, 19 Colo. 168, 34 Pac. 905 (1893) ("trustee" after the name of the grantee more than *descriptio personae*, and parol evidence admissible); Troy & N. C. Gold Mining Co. v. Snow Lumber Co., 170 N. C. 273, 87 S. E. 40 (1915) (conveyance to "T, trustee of X corporation" conveyed to T as trustee; Hart v. Seymour, 147 Ill. 598, 35 N. E. 246 (1893) (conveyance to "T, trustee of Z association" *prima facie* conveyed absolute title to grantee). *Cf.* Andrew v. City-Commercial Savings Bank, 205 Iowa 42, 217 N. W. 431 (1928).

The existence of much of the authority contra may be explained by (1) the incapacity of the purported beneficiary to take and hold title, Fowler v. Coates, 201 N. Y. 257, 94 N. E. 997 (1911); Towar v. Hale, 46 Barb. Ch. 361 (N. Y. 1866); (2) or the failure of the instrument to disclose the principle, Love v. Love, 72 Kan. 658, 83 Pac. 201 (1905); Jackson v. Roberts, 95 Ky. 410, 25 S. W. 879 (1894); Greenwood L. & P. J. R. R. v. New York & G. L. R. R., 134 N. Y. 435, 31 N. E. 874 (1892); Title Guarantee & Trust Co. v. Fallon, 101 App. Div. 187, 91 N. Y. Supp. 497 (1905); (3) or the use of "heirs and assigns" rather than "successors and assigns" in the habendum clause, Towar v. Hale, 46 Barb. Ch. 361 (N. Y. 1866); Van Schaick v. Lese, 31 Misc. 610, 66 N. Y. Supp. 64 (1900).

[7] The Hyman case was to the effect that if the trust relationship had been averred and established in Donahue, then he would not have held title individually, but in trust for his diocese. MEECHEM, PUBLIC OFFICES AND OFFICERS (1890) 615. There is a presumption that public officers and agents intend to bind the public in their official dealings with third parties. The receiver of a national bank is an officer of the United States. Kennedy v. Gibson, 8 Wall. 498, 19 L. Ed. 476 (U. S. 1869); United States v. Weitzel, 246 U. S. 533, 38 S.Ct. 381, 62 L. Ed. 872 (1918).

The *Hyman* case left such a deed presumptively a conveyance to the grantee individually, though this presumption might be destroyed by proof of a fiduciary relationship.[8] The present case holds that such a deed can mean only one thing, and outside evidence cannot change this.[9] Thus, the presumption in the *Hyman* case has become conclusive.

D. C. H.

INSURANCE — RETENTION OF PREMIUMS AFTER LOSS — NON-EXISTENCE OF PERSON QUALIFIED TO RECEIVE PAYMENT. — *P* insurance company issued to *A* its national standard automobile liability policy. *A* paid the premiums for one year, and four months later died intestate. The policy terms permitted assignment, if written notice were given within thirty days after the death of the named insured, to cover (a) his legal representative, and (b) any person having proper temporary custody of the automobile as insured until appointment and qualification of such legal representative, but in no event for a period of more than thirty days after such death. Written notice of *A's* death was given but no legal representative for *A's estate* was appointed for more than two months after *A's* death. *B* received injuries while riding in *A's* car more than two months after *A's* death and filed suit against *A's* estate. Thereupon *P* paid the unearned balance of the premium into court and brought this action for a declaratory judgment. *Held,* that the delay and retention of the unearned balance of the premium affected no waiver of the condition subsequent; therefore the policy was terminated. *New Century Casualty Co. v. Chase.*[1]

If the insurer learns of a ground of forfeiture other than the nonpayment of premiums before a loss occurs, it seems that it must notify the insured within a reasonable time, under penalty of being held to have waived its forfeiture rights,[2] on the ground

---

[8] Syl. 1: "A deed made to the 'Right Reverend P. J. Donahoe [sic], Bishop of Wheeling", conveying to him land . . . vests in P. J. Dohahoe [sic] individually the legal and equitable title thereto, in the absence of evidence to the contrary." *Accord*: Hart v. Seymour, 147 Ill. 598, 35 N. E. 246 (1893).

[9] The unusually strict construction which the common law placed on sealed instruments should not apply today in West Virginia where the seal has become unnecessary in the execution of a deed. W. VA. CODE (Michie, 1937) c. 36, art. 3, § 1.

---

[1] 39 F. Supp. 768 (S. D. W. Va. 1941).

[2] Hanover Fire Ins. Co. v. Dallavo, 274 Fed. 258 (C. C. A. 6th, 1921) (insurance company waived forfeiture where company had notice of breach of condition long before the loss, but retained premiums and left policy outstanding); Southern States Fire Ins. Co. v. Kronenberg, 199 Ala. 164, 74 So. 63 (1917) (where fire company before loss is notified of forfeiture or breach of