May 1955

Deeds--Estoppel By Deed--Effect of Reference

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that the court will refuse to render or enter a declaratory judgment or decree when such judgment, if rendered, would not terminate the controversy, remove the uncertainty giving rise to the proceeding, or serve any useful purpose. Sheldon v. Powell, 99 Fla. 782, 128 So. 258 (1930); Cook v. Sikes, 210 Ga. 722, 82 S.E.2d 641 (1954); Jackson, A Note on Declaratory Judgment Pleading and Practice, 48 W. Va. L.Q. 135 (1942). In Pantelides v. Pantelides, 54 N.Y.S.2d 841 (1945), it was held that the use of a declaratory judgment, although discretionary, is dependent on circumstances rendering it useful and necessary, and in absence of necessity for resort thereto, it should not be employed; nor should it be used where a full and adequate remedy is already provided by another well known form of action. Brindley v. Meara, 209 Ind. 144, 198 N.E. 301 (1935); James v. Alderton Dock Yards, 256 N.Y. 298, 176 N.E. 401 (1931). See Somberg v. Somberg, 263 N.Y. 1, 188 N.E. 137 (1933).

Therefore, the general proposition that a "declaratory judgment action will lie to adjudicate custody" is qualified when such proceeding is based on a factual situation equivalent to that found in the principal case, due to the absence of an "actual controversy" within the meaning of the Declaratory Judgment Act, and the action would serve no useful purpose inasmuch as a declaratory judgment decree would not be entitled to any higher degree of full faith and credit in the Minnesota courts than the original custory award in Smith v. Smith, 76 S.E.2d 253 (W. Va. 1953).

M. J. S.

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DEEDS—ESTOPPEL BY DEED—EFFECT OF REFERENCE.—Father of P was seised of a one-half undivided interest in tracts of land No. 1 and 2, and mother of P was seised of the other one-half undivided interest in tracts No. 1 and 2, and of the whole of tract No. 3. By deed the father and mother conveyed to P the father’s "undivided interest" in the three tracts (the father’s only apparent interest in tract No. 3 being his inchoate dower right). By a later deed P conveyed to D with covenants of general warranty, "all those certain tracts [1, 2, and 3]... of surface land situate on Peter Cave and Bartram Fork Creek of Little Lynn Creek... and being the same land conveyed by Sarah B. Wellman [mother] and B. F. Wellman [father], her husband... and bounded and described as follows... ." There followed metes and bounds descriptions
of the three tracts. Subsequently the mother died intestate leaving \( P \) as her sole heir, \( P \) taking thereby her undivided one-half interest in tracts No. 1 and 2, and the whole of tract No. 3. \( P \) sued to recover possession of tract No. 3, and for a partition of tracts No. 1 and 2. Held, that by the terms employed by \( P \) in his deed to \( D \), \( P \) did not purport to convey an interest in futuro, but only the interest which he possessed in the property at that time; therefore \( P \) was not estopped by deed to assert the title he subsequently acquired by inheritance. *Wellman v. Tomblin*, 84 S.E.2d 617 (W. Va. 1954) (3-2 decision). (The father of \( P \) predeceased \( P \)'s mother, dying before the deed from \( P \) to \( D \) in question here. Petition for appeal in case No. 10656, at p. 12; consequently when \( P \) made the conveyance to \( D \), \( P \) had no interest at all, in so far as appears, in tract No. 3 because his father's inchoate dower right, which had been conveyed to \( P \), had been extinguished by the death of \( P \)'s father before the death of \( P \)'s mother).

As the dissenting opinion indicates, the propriety of this decision turns on the quantum of interest intended to be conveyed by the deed to \( D \). In determining this, the intent of the parties, if ascertainable, prevails; and, generally it is necessary to consider the entire instrument in order to ascertain the intent. *Id.* at 620. By the use of the word "all" and the metes and bounds description, did the parties understand such to be merely a physical description of the land conveyed, or did they intend and contemplate such to mean the entire interest in the land conveyed?

To resolve this issue the majority opinion looked to the deed referred to as the source of \( P \)'s title as controlling. In so doing, the court recognized the general rule of construction, that in cases of doubt or ambiguity deeds will be construed most strongly against the grantor and in favor of the grantee, to be the rule in West Virginia. However, as an exception to or limitation upon this general rule, the court repeats with approval the dictum in *Kent's Representatives v. Watson's Heirs*, 22 W. Va. 561 (1888), that "an estoppel is never extended beyond what is called for by the plain import of the terms employed by the grantor in a conveyance of any kind." *Id.* at 568. The court, however, does not explain the "plain import" of the metes and bounds description of tract No. 3, or the seemingly apparent intention of the parties to deal at least to some extent with tract No. 3. Note that \( P \) had no interest whatsoever, so far as can be determined, in tract No. 3 when the deed to \( D \) was executed. The entire description in a deed should be considered in determining the land conveyed and

In considering the deed referred to determinative, the court cites with approval *Carter's Adm'r v. Quillen*, 239 Ky. 583, 39 S.W.2d 1012 (1931), to the effect that "where the reference is intended to show more than merely the source of title, it may require the grantee to resort to the deed referred to in order to determine the extent of his acquisition." (Italics supplied.) What determines when the reference is intended to show more than source of title. The reference back in the deed construed in the *Quillen* case concluded: "... to which reference is hereby made for a more definite and particular description of the said lands. ..." *Id.* at 584, 39 S.W.2d at 1012. The court in the *Quillen* case quotes with approval from *Perry v. Buswell*, 113 Me. 399, 94 Atl. 483, 484 (1915) as follows: "References to prior conveyances are made for varying purposes. They are made sometimes for the purpose of showing the source of title, sometimes to show the identity of the land conveyed; sometimes, and generally by way of caution, to afford a more definite description. It is probably true that in the larger number of cases the reference is made to show source of title." (Italics supplied.) In *Remuda Oil Co. v. Wilson*, 264 S.W.2d 192, 195 (Tex. 1954), the court, commenting on the *Quillen* case, supra, stated in part: "In that case the court noted that references to prior conveyances are made for varying purposes and that for such a reference to have the effect there held [be controlling] it must be clear that the reference is for the purpose of affording a definite description." (Italics supplied.) In the *Remuda Oil* case the court found a reference expressly stated in the deed to be for "all purposes" to have such effect. In *Clark v. Roller*, 104 Va. 472, 51 S.E. 816 (1905), the court, in holding that the reference to the deed by which the grantor derived his title did not control, stated in part: "It is clear, we think, from the language of the deed, that the entire tract ... of land conveyed by Stover to Hall was conveyed by him [Hall] to the plaintiff, and that the language of the old deed, *viz.*, 'to which the said ... Hall has legal title under conveyances from ... Coleman and ... Haviland ...' relied on by the defendant to show that only so much of the tract was intended to be conveyed as was actually within the limits of the old grant of Coleman and Haviland, was not intended to describe the interest or amount of land conveyed, but was used for the purpose
of showing from what source the land was derived, and as a help to trace the title.” The court went on to state that, if the language in the deed did leave any ambiguity, it would have to be resolved in favor of the grantee under the rule of construction that deeds are construed most strongly against the grantor and in favor of the grantee.

In the case of *Phoenix Mutual Life Ins. Co. v. Kingston Bank & Trust Co.*, 172 Tenn. 335, 112 S.W.2d 381 (1938), the land conveyed by the deed of trust was described by reference to natural objects and adjoining tracts, and by a somewhat defective metes and bounds description, and the description concluded: “and being the same property conveyed to . . . Brown by . . . Johnson by deed dated October 26, 1905, and which is of record . . . and also the same property conveyed to . . . Brown by . . . Crumblin . . . by deed dated October 26, 1905, which is of record . . ." The tract of land described by the reference to natural objects and adjoining tracts, which description the court held superseded the defective metes and bounds description, was found to include land conveyed to Brown by deeds other than those to which reference had been made. Kingston Bank & Trust Company contended that the reference to the previous deeds was controlling in the description, and that the land conveyed by the deed was only that acquired by Brown by the deeds to which reference had been made. The court in holding otherwise, stated that there was no specific reference for description to earlier deeds in the deed of Brown that was before it for construction; that there was only a general reference to the two earlier deeds, and the reference may have been merely to show the chain of title. The court further stated: “It has been rather generally held that a particular description of the property and estate conveyed, which is definite and certain, will control a general reference to another deed as the source of title.” The description in this case seems no more certain than that in the West Virginia case here under consideration. In *Jones v. Webster Woolen Co.*, 85 Me. 210, 27 Atl. 105 (1892), the description was in essence as follows: A certain lot or parcel of land situated in Lewiston on Sabatties Stream, and with certain stated boundaries, and being the same agreed to be conveyed by me to Bleakie, by an agreement of a certain date, and recorded in a certain record book. The description in the agreement referred to was of a lesser parcel of the same land that was described in this deed. In holding that the description in the deed controlled the court stated in part: “. . .The reference is general, rather than particular, and was designed to
identify locality, rather than to make more certain any limits or bounds in the deed. It would be a hazardous policy to allow a grantor to lessen the amount of land apparently conveyed by his deed by a general reference to some other deed or paper. Imposition could be easily practiced under such a rule, as grantees rarely pay much attention to such references, or know whether they affect their interests or not." (Italics supplied.)

It is admitted that the cases considered in this comment are not specifically pointed toward the quantum of interest conveyed. The cases seem to make no distinction between quantum of interest and physical quantity of land in so far as the descriptive language used is concerned. Our court states that the intention of the parties controls as to the quantum of interest conveyed. There seems to be no reason why the same language should not manifest the same intention as to quantum of interest that it manifests toward physical quantity of land. The cases seem to draw a line as to the effect of such a reference back between a general reference and a specific or particular reference, holding particular references to be controlling, but not giving such weight to a general reference. For a reference to be particular there apparently must be some language in addition to a bare statement of source of title, from which the court can find an intention of the grantor to include the document referred to within the present description. On this basis, it appears that the West Virginia court has given a general reference a controlling effect. The possible consequences of such a decision seem adequately pointed out in the quoted portion from the *Webster Woolen Co.* case, *supra*.

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**Divorce—Future Installments of Alimony or Maintenance Automatic Lien.**—In a vendors' action for specific performance and to quiet title with regard to an alleged defect founded upon a decree for divorce and maintenance money for the support of minor children, the Iowa court held that an installment or support money judgment does not constitute an automatic lien upon real estate for future unpaid installments. *Slack v. Mullenix*, 66 N.W.2d 99 (Iowa, 1954).

The cases throughout the United States are in conflict as to whether a decree for alimony or maintenance money will in itself operate as a lien on the defendant's realty. "That the decree will