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December 1935

Deeds--Estoppel--Confirmation of Married Woman's Conveyance

of the local statute would seem to place it in the latter group. Prior to the instant case it was apparently settled law in West Virginia that an indictment as a principal would not sustain a conviction for an accessory.[14] It is difficult to reconcile this rule with the present holding.

DEEDS — ESTOPPEL — CONFIRMATION OF MARRIED WOMAN'S CONVEYANCE. — W, living apart from her husband, executed an oil and gas lease of her own realty in 1930 for four years and as long thereafter as oil and gas should be produced, but did not acknowledge it in the form required by the West Virginia statute.[1] In 1931 the statute was changed so as to permit a married woman to execute a deed as if she were a single woman.[2] The lessee paid delay rentals until 1933, when W executed a deed purporting to lease the same property to the plaintiffs, who brought this action to enjoin the former lessee from operating. *Held*, that although in the view of the court the lease of 1930 was void,[3] W and her assignees were estopped to deny the validity of that lease. *Hanley v. Richards.*[4]

Although the result reached by the court is palpably sound, it seems that a consistent use of terms strictly applied would not permit "estoppel" to give this "void" deed effect as a conveyance.[5] This result might well have been attained by treating the

fact and a principal felon, by making such accessory, in every felony, punishable as if he were the principal in the first degree, and punishable in the county in which the principal felon might be indicted."

[14] State v. Roberts, *supra* n. 5; State v. Cremeans, *supra* n. 5; see State v. Lilly, 47 W. Va. 496, 497, 35 S. E. 837 (1900); State v. Powers, 91 W. Va. 737, 747, 113 S. E. 912 (1922).

[1] W. VA. CODE (1923) c. 73, § 6 .

[2] W. VA. REV. CODE (1931) c. 48, art. 3, § 3.

[3] Bennett v. Pierce, 45 W. Va. 654, 31 S. E. 972 (1898).

[4] 178 S. E. 805 (W. Va. 1935).

[5] W. VA. REV. CODE (1931) c. 36, art. 1, § 1: "No estate of inheritance or freehold, or for a term of more than five years, in lands, or any other interest or term therein of any duration under which the whole or any part of the corpus of the estate may be taken, destroyed, or consumed, except for domestic use, shall be created or conveyed unless by deed or will." A lease of land for the purpose of extracting oil or natural gas is, in effect, a grant of a part of the corpus of the land. Haskell v. Sutton, 53 W. Va. 206, 44 S. E. 533 (1903).

In Drake v. O'Brien, 83 W. Va. 678, 99 S. E. 280 (1919), the lessee took possession under a parol oil and gas lease and paid the royalties for many years. The court held it to be an implied tenancy from year to year, saying it could not be more than that, for lack of deed or will creating it. In 1931

deed as voidable, subject to the married woman's ratification upon attaining the status of *feme sole*. Respectable authority indicates that a married woman's contract is of sufficient force to support ratification after her disability has been removed by statute,[6] by divorce,[7] or by death of her husband.[8] The married woman's contract might well be considered analogous to the infant's contract and similarly voidable at her election when her disability is removed.[9] Treating the deed as voidable, W's acceptance of delay rentals would be an implied ratification or confirmation rendering the deed valid,[10] and thus satisfying the requirements of the West Virginia statute without straining the meaning of "void".[11] Such a technique would have the further advantage of making it unnecessary to invoke the principles of estoppel, for it is questionable whether such principles are properly applied in a case of this kind.[12]

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the following phrase was added in the above statute: "Or any other interest or term therein of any duration under which the whole or any part of the corpus of the estate may be taken, destroyed, or consumed, except for domestic use." The legislature apparently intended that *no* oil and gas lease should be created unless by deed or will. The effect of the principal case, however, would be to establish an oil and gas lease for four years and as long thereafter as oil and gas should be produced, merely by the acceptance of delay rentals, the deed being void.

[6] Steinberger v. Young, 175 Cal. 81, 165 Pac. 432 (1917).

[7] Simon's Estate, 20 Pa. Super. Ct. 450 (1902).

[8] Brown v. Bennett, 75 Pa. 420 (1874); Price v. Hart, 29 Mo. 171 (1859); Pettus v. Gault, 81 Conn. 415, 71 Atl. 509 (1908); *cf.* Mills v. Tabor, 182 N. C. 722, 109 S. E. 850 (1921).

[9] Many types of infants' contracts were early held to be void, but recently the generally accepted view has been that all infants' contracts, with slight exceptions, are voidable. See 1 WILLISTON, CONTRACTS (1920) §§ 223, 226, 227. This change has been made on the ground that the infant, on arriving at his majority, should be allowed to determine whether he will be bound and that he is sufficiently protected by his right of avoidance. See Coursolle v. Weyerhauser, 69 Minn. 328, 332, 72 N. W. 697, 699 (1897). Likewise the married woman should be given this privilege upon attaining the status of a *feme sole*.

[10] Darrough v. Blackford, 84 Va. 509, 5 S. E. 542 (1888).

[11] Some courts, reasoning consistently, hold that since the married woman's contract is void it cannot be ratified after discoverture. Rawlings v. Neal, 126 N. C. 159, 35 S. E. 254 (1900). However, other courts have held that her void deed during coverture can be ratified. Jourdan v. Dean, 175 Pa. 599, 34 Atl. 958 (1896). These latter authorities evidently mean it is not void for the purpose of ratification. If the court means that in the principal case, the desired result can be effected. Our court has recognized the fact that void may not mean void for all purposes. Ketterman v. Railroad Company, 48 W. Va. 606, 37 S. E. 683 (1900); Swann v. Thayer, 36 W. Va. 46, 14 S. E. 423 (1892).

[12] Nims v. Sherman, 43 Mich. 45, 4 N. W. 434 (1880); see also *supra* n. 5.