

April 1936

Real Property--Rule of Caveat Emptor--Quasi-Contractual Liability of Vendor for Failure of Title in Deed Without Warranties

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



Part of the [Property Law and Real Estate Commons](#)

Recommended Citation

Real Property--Rule of Caveat Emptor--Quasi-Contractual Liability of Vendor for Failure of Title in Deed Without Warranties, 42 W. Va. L. Rev. (1936).

Available at: <https://researchrepository.wvu.edu/wvlr/vol42/iss3/15>

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.

REAL PROPERTY — RULE OF *Caveat Emptor* — QUASI-CONTRACTUAL LIABILITY OF VENDOR FOR FAILURE OF TITLE IN DEED WITHOUT WARRANTIES. — A purchaser of real estate under a conveyance without warranties sued the vendor to recover the purchase money, after the title which had been obtained by the vendor under a tax sale was declared void. The purchaser knew that she was buying a tax title. *Held*, that “the vendor is not liable for failure of title to real estate under a conveyance thereof without warranty in the absence of fraud, mistake, or other equitable consideration.” *Baker v. Letzkus*.¹

If the syllabus is the law of the case,² the West Virginia court has apparently extended the generally-accepted view of the rights of a purchaser under a deed without warranties. A decided preponderance of American authority supports the proposition that the instrument of conveyance determines the rights of the parties in the absence of fraud alone, and for relief, the purchaser is remitted to the rights he has secured under the covenants.³ The basis for this rule would seem to lie (1) in the unwillingness of courts to remake the arrangement the parties made for themselves⁴ and (2) the parol evidence rule.⁵ Typical statement of the rule involves language to the effect that *caveat emptor* applies to real property transactions, or that the purchaser has assumed the risk by not requiring that covenants be included, the former being designed to refute any argument in favor of an implied warranty, the latter to defeat any suggestion of quasi-contractual right.

If it is believed that transfers of realty and personalty are analogous,⁶ and that the rule of *caveat emptor* works undue hard-

¹ 182 S. E. 761 (W. Va. 1935). See, s. c., 113 W. Va. 533 (1933).

² *Hardman, A Problem in Interpretation* (1936) 42 W. VA. L. Q. 110, at 120; *Curtiss, The Syllabus is Not the Law of the Case* (1931) 5 U. OF CIN. L. REV. 385.

³ *Listing v. Rodes*, 96 W. Va. 38, 41, 122 S. E. 282 (1924); *Johnston's Adm'r v. Mendenhall*, 9 W. Va. 112 (1876); *Western Mining & Mfg. Co. v. Peytona Cannel Coal Co.*, 8 W. Va. 406 (1875); *Commonwealth v. McClanachan's Executors*, 4 Rand. 482 (Va. 1826). *Simonton, Observations on Covenants for Title* (1928) 34 W. VA. L. Q. 257; 2 TIFFANY, REAL PROPERTY (2d ed. 1920) § 430; 2 WILLISTON, CONTRACTS (1920) § 926.

⁴ For a forceful statement of this principle, see *Commonwealth v. McClanachan's Executors*, *supra* n. 3. But see *McClung v. McClung*, 78 W. Va. 486, 89 S. E. 148 (1916); *Kinports v. Rawson*, 29 W. Va. 487 (1887); *Wamsley v. Stalnaker*, 24 W. Va. 214 (1884), where a remedy beyond that provided for in the covenant is allowed in equity by way of injunction against collection of purchase money.

⁵ WIGMORE, EVIDENCE (2d ed. 1923) § 2434.

⁶ Comment (1926) 15 CALIF. L. REV. 53, discusses the similarity between real property transfers and transfers of personalty in relation to the question of implied warranties, there being generally an implied warranty of title as

ships on the purchaser, a change from the usual rule should be made; but if so, it would seem that the change should be made by statute since it would affect conveyancing, a field as to which it is desirable that parties be able to ascertain the law in advance.⁷

Before the existence of a quasi-contractual obligation in this type of situation may be determined, the "bargained for" exchange must be ascertained in order to see whether or not there has been a failure of consideration. Thus, if the agreement was to transfer merely what title the vendor actually had, there obviously has been no failure; but, as Williston says, if "it appears that both parties entered into the transaction on the mistaken assumption, not regarded as doubtful, that the vendor had title, rescission is permitted. . . ."⁸

STATUTE OF LIMITATIONS — INDORSER'S WARRANTY AS EXPRESS OR IMPLIED PROMISE — APPLICABILITY OF TEN-YEAR STATUTE TO NEGOTIABLE INSTRUMENT. — A bank indorsed the note of a Pennsylvania township to plaintiff "without recourse". Plaintiff sued the township on the note, but was denied recovery on the ground that the note was invalid, as having been improperly executed according to the laws of Pennsylvania. Plaintiff then gave notice of a motion for judgment in West Virginia against defendant, receiver of the bank, based on the provision of the Negotiable Instruments Law that a person negotiating a note by a qualified indorsement warrants "that the instrument is genuine and in all respects what it purports to be."¹ Defendant demurred to the notice, contending that this was an action on a contract not in writing, and therefore barred by the five-year statute of limitations.² *Held*, that the ten-year statute of limitations was ap-

to sales of personalty. Uniform Sales Act, § 13. *Cogar v. Burns Lumber Co.*, 46 W. Va. 256, 33 S. E. 219 (1899).

⁷ If a statute were passed raising an implied warranty of title in cases of transfer of realty, *quaere* as to the effect of knowledge of defects on the part of the purchaser. In the case of personalty, knowledge will defeat the operation of warranties of title whether express or implied. WILLISTON, SALES (2d ed. 1924) §§ 206, 207, 208. But as to realty, knowledge of a defect will not defeat the effect of an express warranty of title. *Bossieux v. Shapiro*, 154 Va. 255, 153 S. E. 667 (1930).

⁸ WILLISTON, CONTRACTS § 926; see also § 1566.

¹ W. VA. REV. CODE (1931) c. 46, art. 5, § 6.

² W. VA. REV. CODE (1931) c. 55, art. 2, § 6. "Every action to recover money . . . shall be brought within the following number of years next after the right to bring the same shall have accrued, that is to say . . . if it be