Deeds of Trust--Suit by Trustee to Cancel the Trust Deed

A. William Petroplus
West Virginia University College of Law

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

Part of the Estates and Trusts Commons

Recommended Citation
A. W. Petroplus, Deeds of Trust--Suit by Trustee to Cancel the Trust Deed, 37 W. Va. L. Rev. (1931).
Available at: https://researchrepository.wvu.edu/wvlr/vol37/iss2/11

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.
Deeds of Trust — Suit by Trustee to Cancel the Trust Deed.—The plaintiff, trustee under a deed of trust, sought to have it canceled on the ground that the debt secured thereby had been discharged by an assignee of the original beneficiary. Plaintiff also asked that the land covered by the trust deed be subjected to sale to satisfy the creditors of the trust debtor, and that a prior judgment acquired by the plaintiff be given preference. Plaintiff took a decree pro confesso. On application of the beneficiary the court vacated the decree insofar as it affected his rights. Plaintiff appealed, but the court affirmed the order below in Taylor v. Thomas on the theory that after accepting a trust, it was the duty of the trustee to execute it, unless released by the beneficiary or a court of equity, and that a trustee could not act in the interest of himself or others to the detriment of his beneficiary. Two judges dissented on the ground that the bill did not attack the trust, but merely alleged that the trust had been fully discharged.

This seems to be the first case of its kind in West Virginia. That the act of a trustee cannot defeat the trust is well settled. A trustee cannot set up a claim to the trust property adverse to the cestui que trust, or deny his title. A trustee has no right to obtain the property for himself by any device whatsoever. Proceedings for the compulsory release of the trust must be brought by the trust debtor, and the trustee is an impartial party who must look after the interest of all parties concerned. The West Virginia Court has not hesitated to apply the general principles of trusts to situations involving a trust deed. But the case in question does not involve a breach of a fiduciary relation. An ordinary deed of trust creates a very limited type of trust. The trustee is empowered to sell the land on the default of the cestui when requested to do so by the beneficiary. Beyond that he owes no active duty. If in his belief the debt has been discharged, why should he not be permitted to bring a bill to have the deed canceled by the court? Applying for an adjudication of the rights of the

---

1 155 S. E. 546 (1930).
3 Morris v. Morris, 48 W. Va. 430, 37 S. E. 570 (1900); Erwin v. Harris, 41 N. C. 215 (1849).
4 Sunnybrook Zinc Co. v. Metzler, 231 F. 304, 238 F. 1007 (aff’d), 151 C. C. A. 659 (1919).
5 Marshall v. Porter, supra n. 2.
6 Lively v. Winton, 30 W. Va. 554, 4 S. E. 451 (1887).
parties can hardly be an attack upon the trust, or a breach of the very limited fiduciary relation.

In Miller v. Mitchell the court defined the powers of a trustee as limited by the instrument creating the trust. He has no power to receive payment of the debt, and discharge the debtor, where the deed has not expressly conferred such power. In the ordinary trust deed, where property is conveyed merely as security for a debt, no such power is conferred. True though it is that a trustee cannot by his sole act discharge himself from his duties, yet it is difficult to understand why he should be denied the privilege of going into a court of competent jurisdiction to have the trust declared discharged.

It would seem that West Virginia has misapplied the doctrine that a trustee cannot derive a benefit from his position at the expense of his cestui que trust, by extending it to a situation where a trustee seeks an adjudication of the rights of the parties where he has a substantive interest.

—A. William Petroplus.

HUSBAND AND WIFE — ANTE-Nuptial TORT BY HUSBAND AGAINST WIFE — EFFECT OF SUBSEQUENT MARRIAGE. — The plaintiff, in 1929, commenced an action against the defendant, claiming damages for personal injuries caused by his negligent driving of a motor car in 1928, in which car the plaintiff was a passenger. Three months after the suit was started they were married. Defendant was allowed to amend his defense by adding "Parties have, since the issuance of the writ, inter-married and are now husband and wife." It was admitted that the real defendant in the action was the insurance company with which the defendant was insured. Held: that her right of action was not such a "thing in action" as would become her separate property within the meaning of the Married Women's Property Act, but was barred by the general disability of the husband and wife to sue each other for a tort. Gottliffe v. Edelston.

This English case in denying relief for personal injuries against a spouse follows the recognized weight of authority in the United States. Decided as it is, at a time when many claim

7 58 W. Va. 431, 52 S. E. 487 (1905). See also Fidelity Insurance Co. v. Shenandoah Railway Co., 32 W. Va. 244, 9 S. E. 180 (1889).
8 Perry on Trusts (7th ed. Baldes 1929), § 274.

1 2 K. B. & P. 378 (November 5, 1930).