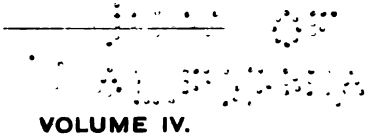
Lackawanna Legal News,

CONTAINING

REPORTS OF CASES DECIDED BY THE COURTS OF THE FORTY-FIFTH AND OTHER JUDICIAL DISTRICTS OF PENNSYLVANIA, AND OTHER MATTERS OF INTEREST TO THE LEGAL FRATERNITY.



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List of Cases and Index to Proper Names.

Louisa Lyman vs. Lewis Smith, et ux.

Common Pleas of Lackawanna County. No. 15. May Term, 1897. In Equity.

Real Estate—Deed—Signing—Delivery.

Where a deed has been surreptitiously obtained and placed on record without an actual delivery, there may be such acts of acquiescence with knowledge of the facts, as warrant an inference of the ratification of the possession and benefit of the deed as to amount to a delivery of it.

Though a deed be not signed by the grantor, but by somebody for her, if she subsequently acknowledge it as her act and deed before a magistrate, it is the same as though she had in fact signed it.

Where an undelivered deed has been obtained by the grantee for a special purpose, upon promise to return it, and the grantee, without doing so, subsequently, with the assent of the grantor, makes a loan upon the property, as though he were the owner of it, encumbering it with a judgment or mortgage, this works a delivery. The grantor cannot concede to the deed its legal effect in this way and at the same time withhold it.

BILL IN EQUITY.

The facts appear in the opinion of the court.

WATSON, DIEHL & KEMMERER for plaintiff.

CHARLES E. OLVER for defendant.

ARCHBALD, P. J., Sept. 9, 1898. The facts in this case are as follows:

FINDINGS OF FACT.

1.—In October, 1889, Louisa Lyman, the plaintiff, was the owner of a lot of land on Eynon street, in the city of Scranton, which was fifty feet wide in front and one hundred and thirty-four deep, and rectangular in shape. Her family consisted of her husband, Henry Lyman, and four children, Lewis Smith, a child by a former marriage, and Carrie, Stephen and August Lyman, children by the present one.

2.—Being seriously sick and having had some difficulty with her husband, in anticipation of her possible death, she conceived the idea of dividing up the lot referred to into two parts, each twenty-seven and one-half feet wide, the easterly half to go to the three children of her second marriage and the westerly half—the land now in dispute—to her son Lewis. In pursuance of this, she directed Lewis to have two deeds made out by her attorney, Mr. Watson, the one for the one-half to Carrie, Stephen and August, and the other for the other half to Lewis himself, and this having been done the deeds were brought to her, and

without being executed were kept by her with other papers in her trunk for future use. Both deeds bear date October 8, 1898, the time when they were drawn up, and are stated to be for the consideration of one dollar and natural love and affection.

3.—Mrs. Lyman in a few months recovered from her sickness, but still had in mind at some time to make the division and disposition of the lot which she had planned. Her husband, however, was not willing to sign the deeds, and they were good for nothing, as she knew, without it. He was finally brought to do so by the following occurrence. Sometime in January, 1890, he and Lewis got into difficulty; he had been drinking and upon starting to abuse his wife Lewis interfered, and he stabbed him twice in the back with a knife; upon this he was arrested and taken before an alderman, where it was suggested by Mrs. Lyman as a settlement of the case that if he would sign the deeds and transfer to her two shares of building association stock, which he held, the criminal charge would be withdrawn; to this he agreed and he thereupon signed both the deeds and the alderman took his acknowledgment of them, and he also turned over to his wife the two shares in the building association as she asked. This happened January 20, 1890.

4.—The certificates of acknowledgment executed by the alderman state as to each deed that it was duly acknowledged by both Mr. and Mrs. Lyman and that the acknowledgment of the latter was taken in due form separate and apart from her husband. The deeds are also witnessed by the alderman, who is now dead, and by Officer John D. Thomas, the policeman, in whose custody her husband then was, and purport to be signed by Mr. and Mrs. Lyman. The signatures are not, however, in the handwriting of these parties, but each signature is made by a mark, thus:

her
LOUISA x LYMAN. [Seal.]
mark

his
HENRY x LYMAN. [Seal.]
mark

Mrs. Lyman is able to write her name in German, though not in English, and did not sign either of the deeds. She denies also that she ever acknowledged them, but in the face of the certificate

of acknowledgment by the alderman and the attendant circumstances I cannot so find.

5.—After the deeds had been acknowledged at the alderman's office by Mrs. Lyman and her husband, they were handed to Mrs. Lyman, who took them home, and the same day, at the request of her son, Lewis, who was laid up in bed with his wound, she permitted him to examine them to see whether her husband had actually signed, and after he had done this she took them back from him and put them upstairs in her trunk with her other papers. From that time until the occurrence next to be related the deeds were kept in the same place in her possession and under her control. Lewis suggested several times that the deed to him ought to be put on record for fear it might get lost or destroyed, but his mother declined to part with it.

6.—Some time in 1892 Mrs. Lyman began the erection of a dwelling house on the easterly half of the lot, not on the part described in the deed to Lewis, but on the other half. Not having enough money to finish it she concluded to try and borrow some on the two shares of building association stock which she had obtained from her husband. N. G. Goodman was secretary of the association, and Anthony Bauman its attorney and also one of the directors. The business was mainly transacted for her by Lewis, who went to see these gentlemen and found that they did not like to make the loan to his mother because she was a married woman and that another person as surety would have to be obtained. To meet this requirement a certain Mrs. Fisher was asked to go security, but before the arrangement was carried out Lewis learned from the representatives of the association that they would make a loan to him in place of his mother upon the transfer of the two shares to him and on the strength of his mother's deed to him for the westerly half of the property. He reported this to his mother and the deed not being on record he asked her to let him take it to show Mr. Bauman. This she was somewhat reluctant to do, but finally consented and went and got the deed from her trunk and gave it to him, stating at the time that she wanted him to return it to her again, which he promised that he would do. This took place November 7th, 1892, in the presence of the two other children, Stephen and Carrie.

7.—The same day that Lewis obtained possession of the deed in this way he took it to the representatives of the building association who examined it and suggested that it ought to be put on record, and he accordingly took it to the recorder's office and had it recorded; but he did not let his mother know that he had done this, and she did not learn of it until some considerable time later; just when is not clear. When he returned home he told her that she would not need to have Mrs. Fisher as security, as the loan could be made in his name. To effect this she had the two shares of building association stock transferred to him and he gave the association a judgment note for four hundred dollars January 3, 1893, on which he secured one hundred and seventy-five dollars, the amount loaned. It was known to the representatives of the building association that the loan was really that of Mrs. Lyman, and she paid them the dues and money due upon it until all but a small portion of it had been paid.

8.—In parting with the deed as described in the last paragraph Mrs. Lyman did not intend to deliver it to her son, and he knew that she did not. It was taken as has been stated to show to the representatives of the building association in connection with the loan which he was seeking to obtain for her, and was to be returned to her again after this had been done; and it was entrusted to her son solely upon this confidence and assurance.

9.—But before the loan from the building association was finally secured, Mrs. Lyman understood that it was made upon the strength of the deed as a conveyance to her son in fee of the westerly half of the lot as therein described. He did not return the deed to her after it had been recorded, but put it in his own trunk and has kept possession of it from that time until the present. His mother asked him to return it several times, but she did not do this until certain difficulties had arisen between them as to other matters some two or three years later.

10.—In July, 1895, Lewis decided to go into the draying business, and, needing money for that purpose, sought a loan from Charles W. Olver, an attorney at this bar. Mr. Olver said he could get him the money if he had the property security. A few days later, in company with his mother, Lewis went again

to Mr. Olver and showed him his deed and finally obtained a loan for $350, giving a bond and mortgage on the property. Out of this $24.70 were paid to satisfy the judgment of the building association. Mrs. Lyman was aware at the time of the use of the property made by Lewis in this way as security for this second loan and it was done with her consent.

11.—Mrs. Lyman has been in possession of the westerly as well as the easterly half of the lot in dispute ever since her first purchase of it, and has paid the taxes upon both halves, the lot being assessed as a whole in her name. Her son Lewis, after he went into the draying business in the summer of 1895, was permitted by her to build a shed upon it for his wagon, and occupied it for a while in that way, but that is all the use or possession of it which he has had.

12.—The amount involved in this case is less than one thousand dollars.

The law applicable to the foregoing facts is as follows:

CONCLUSIONS OF LAW.

1.—Although Mrs. Lyman did not herself with her own hand sign the deed to her son Lewis for the westerly half of the lot, yet it having been signed in her name with a mark and she having duly acknowledged it to be her act and deed, she thereby adopted the signature so made for her and it is the same as though she had in fact signed it. Bartlett vs. Drake, 100 Mass. 174.

2.—But the deed so executed by Mrs. Lyman with her husband was not effective to pass the title until it had been duly delivered.

3.—The mere handling and examination of the deed by the defendant to see whether it had been signed by the plaintiff's husband, as described in the fifth paragraph above, was not a delivery.

4. —Neither was there any delivery of the deed at the time it was obtained by the defendant from his mother, as stated in the sixth paragraph; and had she persisted in her rights as they then stood she could have compelled the defendant to restore the deed to her and have had the same declared of no effect for want of a delivery.

5.—But after Mrs. Lyman was informed that the loan from

the building association to her son was made on the strength of the deed as a conveyance to him of the westerly half of the lot, her acquiescence in this was a ratification of his possession of the deed and an assent on her part that it should become operative, and this worked a delivery of it.

6.—The same is true with regard to the effect of the permission of Mrs. Lyman that the defendant, her son, should make a loan of $350 and secure it by a mortgage of the land.

7.—Even where a deed has been surreptitiously obtained and placed on record without an actual delivery there may be such acts of acquiescence with knowledge of the facts as warrant an inference so as to amount to a delivery of it.

8.—The defendant, Lewis Smith, could not secure the loan from the building association by a judgment which should be a lien upon the land in dispute as he did, except the title as conveyed to him by the deed from his mother actually vested in him, and his mother in consenting to the loan and the manner of securing it, in effect consented that the deed which he held should become operative and this was the equivalent of a delivery.

9.—The same is true with regard to the mortgaging of the property to secure the loan of $350 made with her knowledge and consent in July, 1895.

10.—There have been such acts of acquiescence by the plaintiff in the possession and use by the defendant of the deed in question as amount in law to a delivery of it; the plaintiff could not consent as she practically did that the deed should become operative as a conveyance of the legal title to her son and at the same time maintain that it had failed of its legal effect for want of a delivery.

11.—The bill should be dismissed, but without costs.

DISCUSSION.

Notwithstanding the stout denial made by the defendant I have no serious difficulty in finding that he obtained the deed in controversy upon the representation that he merely wanted to show it to the attorney of the building association and would return it again to his mother when this had been done. This is testified to by the two other children who were present, as well as by Mrs. Lyman herself, and receives virtual confirmation out of the defendant's own mouth. After asserting in one

part of his testimony (p. 105) that he was hunting one day with his mother in her trunk for a bill and upon coming across the deed suggested to her that it ought to go on record for fear it would be lost or destroyed, and that this was the way she came to give it to him; at pages 125 and 126 he says it was put on record at the suggestion of Mr. Bauman, the attorney of the building association, so that he could get the loan which he was after for his mother. The inconsistency in these two versions is sufficient to warrant the rejection of both of them, but the truth is to be found in the last one, which does not make in the defendant's favor and which falls in with the other credible testimony in the case.

There was then no delivery at the time the defendant got the deed and put it on record, but how are we to regard the subsequent acts of Mrs. Lyman acquiescing in its possession and benefit? It is said in Hadlock vs. Hadlock, 22 Ill. 384, that where posession of a deed which has never been delivered has been surreptitiously obtained and placed on record, nothing short of an explicit ratification or such acquiescence after a knowledge of the facts as would raise a presumption of an express ratification, could give the deed validity. But what is thus recognized as sufficient to do so is clearly to be found in the present case. I pass over loose declaration as to the ownership of the property and other items of evidence which are disputed and involved in controversy; there is enough in those which are not. Mrs. Lyman knew, for instance, that when the building association accepted her son's judgment for the loan for which she had been negotiating, they did it upon the strength of the deed for the one-half of the property which, with her assent, he produced and showed them. So when the loan of $350 was made from Mr. Olver's client some two years and a half later, and a mortgage was given on the property to secure it, she again knew the use that was being made of it. Now, there can be no other conclusion drawn from this acquiescence on her part than that she was content to have the deed operate to convey the title just as it purported to do. It was already in the possession of the defendant and did not have to be again handed to him, so that all that was needed was for her to express her assent to its becoming operative and a legal delivery would be effected. This no doubt she did not do in words, but she did by her acts, which were just as expressive. The mere fact that she allowed the defendant to keep possession of the deed for the three or four years that he did would itself warrant the inference of a delivery; but when we add to this the acts of ownership over it which she permitted him to exercise, first encumbering it with a judgment and then with a mortgage, no other conclusion can well be drawn. She could

not assent that the title should vest, as it had to, to make these encumberances worth anything and at the same time maintain, as she now seeks to do, that there never had been a delivery which was the very essential to the title passing. In other words, she could not concede to the deed its legal effect and at the same time withhold it. As said by Kennedy, J., in Simonton's Estate, 4 Watts 180; "An agreement to deliver a deed as an escrow to the person in whose favor it is made and who is likewise a party to it will not make the delivery conditional. If delivered under such an agreement it will be deemed an absolute delivery and a consummation of the execution of the deed; for in traditionibus chartarum, non quod dictum, sed quod factum est, inspiciatur."

It may be urged, however, that conceding that the want of a delivery in the beginning was cured by the subsequent acquiescence of the plaintiff, yet the deed was obtained under such confidences and assurances as created a trust in her favor that the property would be conveyed to her after the purpose for which the defendant was allowed to have it had been accomplished. The plaintiff herself touches upon this at page 48 of the notes of testimony, where she says, speaking of the loan made in July, 1895, of Mr. Olver: "Q. What did he speak about borrowing money on? A. He wanted to borrow the money on one-half of the lot, and after that I should get a deed. Q. What did he say about the deed at that time? A. After he paid for the horses he came up to me and asked me if I wanted to get the deed back and I told him yes, that I wanted the deed back. Q. What did he say? A. He didn't say anything; he went away." This would apparently go to show a recognition of the defendant that the same confidence on which he originally obtained the deed continued at that time, and that the land was still in reality, according to the understanding between them, his mother's. Whether a parol trust in lands could be established in this way I will not stop to consider. The difficulty at best with it is that, except as to the circumstances under which the deed was obtained and the assurances then made, it rests upon the testimony of the plaintiff alone with a substantial denial by the defendant who contends that the land is and always has been his own. Without corroboration from other sources it does not seem to me that there is enough to warrant me in accepting and acting upon the testimony which we have. This, at least, is my present conclusion, and as it removes from the plaintiff the last hope for a decree in her favor there is nothing to do but to dismiss the bill.

CONCLUSION.

Let a decree be drawn in accordance with the foregoing findings unless exceptions thereto be filed within twenty days.