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Evidence--Conditional Delivery of Deeds to Grantee--Parol Evidence

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EVIDENCE — CONDITIONAL DELIVERY OF DEEDS TO GRANTEE — PAROL EVIDENCE. — The Supreme Court of Appeals of West Virginia on demurrer to a bill to cancel certain deeds, deeds of trust, and notes, *held*, that the grantee might show by extrinsic evidence that the delivery of the deeds to the respective grantees was to become effective only on the happening of a future contingency or condition, although the deeds were absolute on their faces. *Brown v. Cabel.*[1]

It has long been settled law in a majority of states that if a deed is delivered to the grantee to take effect on condition, the condition is void and the delivery of the deed is absolute. To this effect are a number of decisions in West Virginia.[2] While the doctrine has been criticized severely both by legal authors and by judges it has proved singularly persistent. In the principal case this doctrine and the cases supporting it were not referred to yet the decision seems, in effect, to overrule such previous decisions. The common reason for the rule usually given is that to permit extrinsic evidence would violate the parol evidence rule.

Virginia has abolished the doctrine, and contrary to the great weight of American authority allows the conditional delivery of a sealed or unsealed instrument to be shown by extrinsic evidence.[3] The parol evidence rule presents little difficulty, as written contracts, from early times, however full and complete, have been set aside and defeated by oral proof that prior or contemporaneous thereto it was agreed the written contract was not to take effect at all under certain conditions; and the delivery of deeds is an extrinsic fact almost always proved by parol evidence. The parol evidence rule seems to be an excuse and not a reason.[4]

That attempts to deliver to the grantee on condition are not uncommon is shown by the fact that our Court of Appeals has passed upon the question five times in less than twenty years.[5] Laymen are not, in civil matters, presumed to know the law,[6] and

[1] 161 S. E. 438 (W. Va. 1931). Seemingly in some manner the conclusion had been reached in West Virginia that the doctrine applies only to deeds of real estate and not to bonds, notes and the like. Newlin v. Beard, 6 W. Va. 110 (1873); Stuart v. Livesey, 4 W. Va. 45 (1870). However the cases laying down the doctrine involved the latter type of instrument. Whiddon's Case, Cro. Eliz. 520 (1596); Williams v. Green, Cro. Eliz. 884 (1602).

[2] See the cases collected in Note (1928) 34 W. VA. L. Q. 194.

[3] Whitaker v. Lane, 108 Va. 317, 345, 104 S. E. 252 (1920).

[4] See Simonton, *Transferring Title to Land by Deed* (1930) 36 W. VA. L. Q. 343, 349 for an indictment of the alleged reasons for the rule.

[5] *Supra* n. 2.

[6] In Landsdown v. Landsdown, Mosley 364, 25 Eng. Reprint 441 (1730) the Chancellor is reported as saying: "That maxim of law, *Ignorantia juris non*

the elimination of this trap into which so many blunder with disastrous consequences seems sustained by justice and common sense. Yet one cannot but regret that the court did not see fit to overrule its previous decisions in express terms.

—DONALD M. HUTTON.

HIGHWAYS — REASONABLE HIGHWAY USES — ERECTION OF SCREENS TO HIDE BILLBOARDS. — The Superintendent of Public Works of New York State has evidently taken to heart the amusing satire by Stephen Leacock depicting George Washington marching today through New Jersey and across the Delaware to Philadelphia, guided by modern billboards.[1] And the Superintendent's means of remedying the situation is indeed a novel one. Land adjoining a highway had been leased for the purpose of erecting a billboard, and immediately the state erected a screen or board upon the highway right of way to hide the billboard. In a suit to compel the state to remove the screen the state defended upon the ground that its object was "to prevent motorists from seeing the billboard and thus afford no reason for their taking their eyes off the wheel". The court, however, found that this was not the purpose of the screen, and, since it was not erected for a highway purpose, compelled the state to remove it.[2]

Whether the state has a fee in the right of way or only an easement, modern cases seem to hold that the adjoining property owner is entitled to compensation, if the highway is used for a public purpose, but a different purpose than that for which the property was originally taken. In either case the state takes only for the particular purpose set out at the beginning.[3] As the taking of

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excusat, is in regard to the public; ignorance cannot be pleaded in excuse of crimes, but does not hold in civil cases."

Martindale v. Falkner, 2 C. B. 719 (1846), Maule, J., "There is no presumption in this country that every person knows the law, it would be contrary to common sense and reason if it were so."

Thayer, *Presumptions and the Law of Evidence* (1889) 3 HARV. L. REV. 141, 165: "Many of these maxims and ground principles get perversely and inaccurately expressed in this form of a presumption, as when the rule that ignorance of the law excuses no one is put in the form that everyone is presumed to know the law."

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[1] 155 HARPER'S MAGAZINE 382 (1927).

[2] Perlmutter v. Greene, 249 N. Y. Supp. 495 (1931).

[3] Spencer v. R. R. Co., 23 W. Va. 406 (1884); Davis v. Spragg, 72 W. Va. 672, 79 S. E. 652 (1913); Barney v. Keokuk, 94 U. S. 324, 24 L. Ed. 224 (1877). See DILLON, MUNICIPAL CORPORATIONS (5th ed. 1911) § 1136,