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DEEDS - EFFECT OF NONCOMPLIANCE WITH STATUTE REQUIRING GRANTOR TO SET FORTH IN DEED NAME UNDER WHICH HE DERIVED TITLE

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DEEDS — EFFECT OF NONCOMPLIANCE WITH STATUTE REQUIRING GRANTOR TO SET FORTH IN DEED NAME UNDER WHICH HE DERIVED TITLE — In a suit between plaintiff and defendant Girola Bros., plaintiff obtained a judgment and levied upon certain property. Plaintiff purchased the land at an execution sale and recorded the sheriff's deed conveying the property to him. Prior to the commencement of the action, defendant Girola Bros. had changed its name to Madalay, Inc., and under the latter name had conveyed the property, subsequently levied on by plaintiff, to defendant M. Girola, pending the action by plaintiff. This deed was recorded. It set forth Madalay, Inc., as grantor, but failed to set forth the name in which Madalay, Inc., derived title to the realty as required by section 1096 of the Civil Code of California.[1] The plaintiff brought this action to quiet title to the land, claiming the prior conveyance to defendant M. Girola was void because it failed to comply with section 1096. The contention of the defendants was that a conveyance in disregard of the statute could be attacked only by a subsequent purchaser for value without notice of the change of name by the original owner. *Held*, because of noncompliance with the statute, the deed from Madalay, Inc., to M. Girola was inoperative to pass legal title; property remained in the grantor and was subject to plaintiff's levy of execution, title passing to him by virtue of the sheriff's sale and deed. *Puccetti v. Girola*, 20 Cal. (2d) 574, 128 P. (2d) 13 (1942).[2]

The common-law rule is that the real owner of property may make a valid conveyance of it under any name he may care to assume.[3] The question in the principal case is to what extent the statute changed that rule. In holding that it abrogates the common-law rule, the court said, "Its language is mandatory and nowhere suggests that compliance is excused when a subsequent purchaser has notice of the change in name."[4] This interpretation, that title does not pass as between grantor and grantee due to the failure to set forth the name in which the grantor received title, is debatable. Another possible interpretation is that the purpose of such a statutory provision is to protect a subsequent grantee from the grantor who has previously conveyed the property under

[1] Cal. Civ. Code (Deering, 1941), § 1096, provides: "Any person in whom the title of real estate is vested, who shall afterwards, from any cause, have his or her name changed, must in any conveyance of said real estate so held, set forth the name in which he or she derived title to said real estate."

[2] Also noted 31 CAL. L. REV. 100 (1942).

[3] 1 DEVLIN, LAW OF DEEDS, 2d ed., § 188 (1897); BREWSTER, CONVEYANCING, § 43 (1904); PATTON, LAND TITLES, § 183 (1938); David v. Williamsburgh City Fire Ins. Co., 83 N. Y. 265 (1880); Blackman v. Henderson, 116 Iowa 578, 87 N. W. 655 (1901); Klorfine v. Cole, 121 Ore. 76 at 85, 252 P. 708, 254 P. 200 (1927). In Fallon v. Kehoe, 38 Cal. 44 (1869), the grantor in his true name conveyed property which he had received title to under a nickname. In holding the conveyance was valid as against a subsequent grantee to whom the property was allegedly conveyed under the nickname, the court stated, 38 Cal. at 48-49, "We apprehend there can be but little doubt on this point, and we do not understand counsel as controverting the proposition, that, if the true owner conveys property by any name, the conveyance, as between the grantor and grantee, will transfer the title."

[4] Principal case, 128 P. (2d) at 15.

another name. Accordingly, if such a grantee actually knows of the change in the grantor's name, the grantee may search the record for conveyances by the grantor in either name. Such was the position of the plaintiff in this case. Since he was aware of the grantor's change in name, the failure of the grantor to comply with the statute logically should make no difference. This suggested interpretation would be comparable to that which the courts have generally given the recording statutes.[5] To support its conclusion that the provision of section 1096 is mandatory and that compliance is not excused when the subsequent purchaser has notice of the change in name, the court pointed out that this section is not found among those under "Effect of Recording or Want Thereof" but rather that it is found under "Mode of Transfer" and that the provisions of this article have been interpreted as mandatory.[6] Two cases arising under one of these provisions, section 1095, were cited as an example, but an examination of them shows that this section was merely a statement of the rule prevailing prior to its enactment.[7] The conclusion does not necessarily follow that section 1096 was meant as a mandatory provision too, when it is considered that to treat it as such is to abrogate the common-law rule on this point. This suggests that section 1095 and section 1096 perhaps merit different treatment. As the court points out, section 1096 was originally enacted following a suggestion of the court in *Fallon v. Kehoe*,[8] a case involving two conveyances of the same land by the grantor under different names. The court decided that the recording of the first deed was notice to subsequent purchasers, under the California law as it then stood. It is worthwhile to note that the court in that

[5] 3 TIFFANY, REAL PROPERTY, 3d ed., § 1262 (1939): "The requirement of record has almost invariably been regarded as intended for the protection of subsequent purchasers only, so that a failure to record the instrument in no way affects the passing of title as between the parties thereto." See also cases there cited. In Bird v. Dennison, 7 Cal. 297 (1857), the court said that the purpose of the recording acts is to give notice to subsequent purchasers, and that an unrecorded deed is good as between the parties. See also, Hunter v. Watson, 12 Cal. 363 (1859); Beattie v. Crewdson, 124 Cal. 577, 57 P. 463 (1899).

[6] See Cal. Civ. Code (Deering, 1941), part II, c. 4, art. 4, "Effect of Recording or of the Want Thereof," and part II, c. 2, art. 1, "Mode of Transfer."

[7] Cal. Civ. Code (Deering, 1941), § 1095 provides: "When an attorney in fact executes an instrument transferring an estate in real property, he must subscribe the name of his principal to it, and his own name as attorney in fact." This provision was enacted in 1872. In Mitchell v. Benjamin Franklin Bond & Indemnity Corp., 13 Cal. App. (2d) 447, 57 P. (2d) 185 (1936), cited in the principal case, the court held that a deed in the name of the attorney in fact does not pass the principal's title to the property described in the deed, even if "attorney for [a named principal]" is added to the signature. In that case the court, after merely citing § 1095, Morrison v. Bowman, 29 Cal. 337 (1865) (the second case so cited by the court in the principal case), and Echols v. Cheney, 28 Cal. 157 (1865), said, 13 Cal. App. (2d) at 448, "The law is well settled that a deed in the name of an attorney in fact, even if to the signature is added the words 'attorney for (a named principal),' does not pass the principal's title to the property described in such deed." The two cases decided in 1865, prior to the enactment of § 1095, show that the same rule prevailed then as after the enactment.

[8] 38 Cal. 44 (1869).

case says, "It would have been better, perhaps, if the statute had contained a provision to the effect that when the owner of land conveys it by a different name from that in which he acquired it, the deed should contain a proper reference to that fact, for the security of subsequent purchasers or incumbrancers. . . . If the statute provided that if the land be conveyed by a different name from that in which the grantor acquired it, the record of the deed should not impart notice to subsequent purchasers or incumbrancers, unless it contained proper recitals, showing why the deed is made in a different name, the difficulty would be completely remedied."[9] The emphasis is placed upon the effect of giving notice to subsequent purchasers by compliance with the as then only proposed statute. It would seem that such an interpretation of section 1096 would be reasonable. Hence, as to a third party with notice of the grantor's change of name, title would be in the grantee even though the grantor failed to comply with the statute. This interpretation, as pointed out, would be consistent with that of the recording acts, and likewise with that of other statutory requirements relating to the mode of transferring title.[10]

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[9] Id. at 50-51.

[10] PATTON, LAND TITLES, § 200 (1938): "But the weight of authority is that the purpose of such statutes [requiring witnesses] is merely to entitle the instrument to be recorded, and that, though compliance therewith is essential to a valid record . . . a failure to comply with the statute does not change the common-law rule that a deed without witnesses is good as between the parties . . . and parties having notice of it." See Parret v. Shaubhut, 5 Minn. 323 (1860).