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What Constitutes the Valid Delivery of a Deed

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"A deed" , says Littleton, "is a writing or instrument sealed and delivered to prove the agreement of the parties to what is contained therein." Without discussing the merits of this definition from the standpoint of modern statutory law it will be assumed at the outset that the grantor in the deed has done all that is necessary for him to do, to make the instrument a valid deed ; with the exception of delivering it. This delivery is therefore the last of a series of acts which together make up the completed instrument ; and from which it derives its force and validity. But delivery is not from the fact of its being the last of the series, to be regarded as of less importance than any of its predecessors; for its presence, like the last link in a chain spanning the gulf, is vital, and the law, far from indulging any presumption on the ground of what has already been done, declares in unqualified terms that a deed without

delivery is void and can convey nothing.

The delivery of a deed, like the disposition of property by will, is treated by the law with great leniency ; for each is bound only by such rules as are absolutely necessary to prevent fraud and imposition ; and in each formality has given place to intent as the criterion by which courts are to be guided. This movement has made it necessary for the courts to take under judicial interpretation a great variety of acts and circumstances from which the intent of the grantor may be derived ; and hence the oft repeated saying in the books that a deed may be delivered by some act without words, or by words without any act of delivery, or by words and acts together. It would be impossible to make anything more than a general classification of the circumstances under which a deed may be delivered ; and such a classification has been attempted as above set forth.

The first division of the subject, namely, when the deed is found in the hands of the grantor, will now be discussed.

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A deed found in the hands of the grantee, named therein, is prima facie evidence of a delivery ; (97 N. Y. 13, 27 Penn. St. 30.) and, while clear and convincing evidence to the contrary is required to rebut this presumption , (88 111. 378.) and the fact that it is only a presumption indicates that there may have been a mere tradition of the deed to the grantee, for purposes other than delivery ; and such, indeed, may be the case ; then the tradition may have been made to await the determination of the grantee as to whether or not he will accept the deed. (4 Keyes 315.)

This situation is illustrated in the case of Ford v. James when a deed was placed in the hands of the grantee to await his acceptance ; and in the course of the opinion the court said,- "he did not deliver it to James as and for the deed of the grantor, but merely left it with him as a depository, until he should determine w whether or not he would take the land : this constitutes no legal delivery."

"A deed may be deposited with the grantee or handed

to him for any purpose other than as the deed of the grantor or as an effective instrument between the parties, without becoming at all operative as a deed." (24 Wend. 279. 1 Conn. 494.)

A deed may also be placed in the hands of the grantee for the purpose of examination ; to be returned if found defective ; or it may be there in the process of transmission to a third party to hold as an escrow; or again it may be held by the grantee to await the action of some third party. (20 N. Y. 77, 13 N. J. Eq. 454. 23 Wend 43. 8 Mass. 230. 108 111. 336. 13 O. St. 253. 28 N. Y. 333.)

This situation does not at all conflict with the well known principle that a deed can not be delivered to the grantee, therein named, as an escrow, for, if done, it will take effect instanter and the condition will be void. (4 Watts, 180. 23 J. & S. 98. 21 Mass. 518.)

In the one case there has been no delivery and no intent to deliver ; but a mere tradition, which like the offer in any contract, is subject to revocation before acceptance, or before what amounts to acceptance ; the grantee has not received the deed as grantee; but as a mere agent of the grantor, and subject to his direction.

In the case of delivery as an escrow, the grantor has bound himself, from the moment of placing the deed within the hands of the depositary, to observe the condition upon which it was so deposited ; and to permit the deed to take effect upon the performance of the same. (30 Wis. 644. 31 Amer. Dec. 563. 5 N. Y. 629. 111 Wash. 318.) This is believed to be the distinction as supported by the weight of authority ; though the courts are not in entire harmony upon this point. (Contra 4 Day 66. 37 Mich. 264.) A deed absolute upon its face and in the hands of the grantee may also be shown to be a mortgage, and the following quotation from the Supreme Court of Pennsylvania may be of value on this point :-- "It is true the written defeasance bears date a few days after the date of the conveyance. If they bear even date they constitute in law a mortgage ; but when the defeasance is of a later date it is a question of fact for the jury to determine under the parol evidence whether the conveyance was a mortgage." (101 Penn. St. 71.)

"While a subsequent independent agreement to reconvey, on repayment of the purchase money, will not change an absolute conveyance into a mortgage, yet the fact that

the defeasance bears a later date does not preclude a party from showing by parol that it was executed in pursuance of an agreement under which the deed was made and delivered ; thus forming a part of the same transaction."

Although it is competent to show that a deed found in the hands of the grantee was obtained surreptitiously, a court of law can give no aid to a grantor who has once made a valid delivery of his deed, though it be done under false representations of the grantee or through some mistake of fact or law. (21 N. Y. 279. 58 N. Y. 627. Tiedeman's Real Property, Sec. 812.)

Under these circumstances, in order to divest the title, it will be necessary to appeal to equity ; but, if in the meantime the rights of an innocent purchaser have intervened, the latter's title will be indefeasible.

Whether, therefore, in any given case a valid delivery has been made is a question of intent ; and this by the great weight of authority is held to be the crucial test ; but since the intent can be but an inference drawn from the facts in each case, these res gestae may be such as to permit of but one conclusion ; and under such circumstances the court would be warranted in taking the case from the jury and directing a verdict. (121 Ill. 91.

118 Mass. 154. 79 N. Y. 525. 30 Me. 110. 13 O. St. 253. 28 N. Y. 333.

As to what acts of the parties will lead to an inevitable conclusion of an intent to deliver, the court in Souverbye v. Arden said : "But if there be no such agreement or intention made known at the time and both parties are present and the usual formalities of execution take place and the contract is to all appearance consummated and the deed is left in the power of the grentee or in the custody of his particular friend, without special instruction, there is no case to be found in law or equity in which such a deed is not held binding." (1 John ch. 255.)

At the present day, however, even in the face of such formality, it has been held that parol evidence may be introduced to show a prior agreement, on the part of the parties ; not that the deed shall not take effect, but that until something be done it shall not be considered as having been delivered ; and in this connection it may be well to quote the very pertinent and succinct language of an early New York case as follows : "Whether a deed has been delivered or not is a question of fact upon which from the very nature of the case parol evidence is

admissible." (108 Ill. 336. 111 Wash. 293. 11 Barber 351.)

"But whether a deed when delivered shall take effect absolutely or only upon the performance of some condition, not expressed therein, cannot be determined by parol evidence."

The delivery of a deed differs from an offer in a parol contract in that the one is irrevocable before acceptance and the other may be revoked ; but they are similar in the fact that both require acceptance : in the one case before title can pass to the grantee, and in the other before the contract can be binding upon the offeree or the offeror. (Anson on Contracts 31.)

A deed in the hands of the grantee, however, is prima facie evidence of acceptance ; but this presumption may be rebutted by parol evidence to the contrary, and until there has been an acceptance, express or implied, the title remains in the grantor, subject to the claim of his creditors. After there has once been a valid delivery of a deed, the title cannot be made to revert by a redelivery of the deed; for a title can be transferred only by deed. (42 N. J. L. 279. 39 N. H.505. 35 N. H. 99. 95 Ill. 279. 47. Barb. 505. 45 N. H. 505. 4 Wend.

474. 1 Ohio 321. 2 Wend. 617.)

11

When found in the hands of a Stranger to be delivered upon the performance of a Condition.

Chancellor Kent, in the Commentaries says that the delivery of a deed in escrow is "a conditional delivery to a stranger to be kept by him until certain conditions be performed and then to be delivered over to the grantee."

Whether a deed when placed in the hands of a third party is to take effect as an escrow or is to pass title at once, must in all ceses depend upon the intent with which the deed was deposited ; but when this intent is a matter of inference, then the weight of authority holds that if the delivery depends upon a condition it is an escrow ; and if upon the happening of an event it is, in the phrase of the courts, the "grantor's deed presently." Passing over, for the present, the criticism made by later cases upon this attempt to distinguish between a condition and an event ; and to base decisions upon such distinctions, an effort will be made to show that even by the earlier cases these distinctions, if

there were any at all, were merely nominal; and that, in fact, deeds delivered to third persons to be delivered to the grantees named on the performance of a condition or the occurrence of an event, were treated in every respect as escrows. (34 N. Y. 360. 30 Wis. 651. 111 Wash 301. 3 Met. 414. 8 Met. 439. 54 Pa. 26. 72 Pa. 441. 15 Wend. 660. 5 Conn. 320 111 Wash. 300.)

In the case of Foster v. Mansfield which is often cited as an authority for the above doctrine, Shaw C. J. said : "When the future delivery is to depend upon the payment of money or the performance of some other condition it will be deemed an escrow." (3 Met. 414. 54 Penn 26. 72 Penn. 441.) "When it is merely to wait the lapse of time or happening of some contingency and not the performance of any condition it will be deemed the grantor's deed presently; still it will not take effect as a deed until the second delivery; but when thus delivered it will take effect by relation from the first delivery."

"But this distinction is not now very material because when the deed is delivered as an escrow and afterwards and before the second delivery the grantor becomes incapable of making a deed, the deed should be

considered as taking effect from the first delivery; in order to accomplish the intent of the grantor which would otherwise be defeated by the intervening in capacity."

This opinion as far as its authority goes shows beyond question that the phrase, "grantor's deed presently" in such general use, does not mean that an absolute title passes to the grantee when the deed is delivered to the depositary; for if this were so the succeeding sentence: "Still it will not take effect as a deed until the second delivery but when thus delivered it will take effect by relation from the first delivery", would be absolutely devoid of sense. What possible necessity could there be for the legal fiction of relation if the title has already passed ?

Again, in the case of Stewart v. Stewart in which the grantor deposited with a third party a deed conveying property to his children, to be delivered upon his death, the court held,- "It never was the intention of Stewart to devise his estate but to convey it by deed." (5 Conn 320.)

"The instrument of conveyence has two witnesses only and is therefore deficient in legal formalities indis-

pensable to a devise : besides it is strictly speaking a deed taking effect from its execution. I do not mean that it was consummate nor is it necessary it should be, but that it was efficacious to the passing of the interest conveyed from the delivery of the deed to the trustee or agent."

Again, in the case of Tooley v. Dibble, in which the facts were essentially those of the preceding case, with the addition that a quit-claim deed was given by the son between the first and second delivery of the deed in question :- it was held that the deed of the son passed title as against the heirs of the father ; but would not have done so against the intervening rights of third persons; and this would have been the exact situation had the deed been expressly deposited as an escrow; to pass title upon the death of the grantor; and, indeed, the opinion of the court contains the words : "If not technically an escrow it was in the nature of one and on the death of defendant's father it took effect by relation, etc." (2 Hill, 641.)

There can certainly be no better illustration of an event, pure and simple, than the death of the grantor ; but in the absence of an express intent to the contrary

the courts have almost uniformly treated this as an escrow ; that is, have applied to it the doctrine of relation. (72 Penn. 434. 77 Ill. 475. 34 O. St. 610. 37 Mich. 264. 34 N. Y. 92. 5 Conn. 316.)

I think, therefore, we may agree with Chief Justice Shaw, in holding that there is no material distinction between a deed to be delivered upon a condition or event; both are subject before the condition or event to the intervening rights of third parties ; neither are subject to the intervening claim of the grantor or his privies; the one may take effect by relation if necessary to avoid the intervening incapacity of the grantor, by reason of death or otherwise; the other will always take effect, by relation, but the result as regards the grantee's title will be precisely the same. (13 N. J. Eq. 459. 4 Kent, 454. 30 Wis. 644.)

There seems to be, at least, two criticisms made by some authorities upon the practice of courts in holding that a deed to be delivered by the depositary upon the death of the grantor should be treated as an escrow.

It is obviously necessary that in order to pass title, by the deed, the courts must resort to the legal fiction of relation; but, the critics argue, this doc-

trine of relation is only a fiction, which as between the parties is intended to avoid something which may, not something which will necessarily happen to make the second delivery impossible. (Taft v. Taft XXXIII A.L.J. 266.) It would seem that in Wheelwright v. Wheelwright the court in showing why the doctrine of relation should apply to a deed to be thus delivered, prove by the examples given, not that relation may take place when the death of the grantor is the event upon which the second delivery is to be made; but that if his death intervene between the first delivery and the event upon which the second delivery is to be made, that thus there may be a relation. (2 Mass. 254.)

The second criticism is to the effect that such doctrine encroaches upon the domain of the testamentary disposition of property; and in Hathaway v. Payne, Denio C. J. said :- "If it were an original question, I should suppose that such a transaction was of a testamentary character and that it would be inoperative for want of the attestation required by the Statute of Wills" (34 N. Y. 113. 30 Wis. 644. 2 Ves. Jr. 231.) "But the cases establish the rule as I have stated and they should not now be disturbed."

In the case of Pintzman v. Baker, the theory is advanced that when the event upon which the delivery is to take place is one which is certain to happen, that the title passes at once"; qualified only by the right of the grantor to use and occupy or take and receive the rents and profits during his life or until the event shall have happened upon which the second delivery is to be made." (30 Wis. 644.)

In support of this doctrine the court refers to Hathaway v. Payne and Tooley v. Dibble ; but in the one case the deed was held to be good by relation and in the second case as shown above the quit-claim deed was held to convey title only as against the claim of the grantor and his heirs. (34 N. Y. 113. 2 Hill 641.) This position is further criticised by Campbell C. J.? in Taft v. Taft when he says :- "A deed of conveyance in present terms, is inconsistent with the retention of a life estate and from the time when the deed is delivered as a conveyance the whole title goes with it and it becomes irrevocable." (59 Mich. 34 N. Y. 92.)

There are many propositions regarding an escrow in which the courts are in substantial harmony and these will not be briefly noticed. In accord with the prin-

ciple that the delivery of a deed may be proved by parol, it is competent to prove by parol the condition on which an escrow is to be delivered, though it would be otherwise were the condition unwritten and part of a contract required by the Statute of Frauds to be in writing. (42 Wis. 437.) As indicated above, a deed when delivered as an escrow is irrevocable nor can the grantor gain control of it except as the condition permits ; and especial stress is laid upon this principle when the event upon which delivery is to be made is the grantor's death. (Cases cited above. 30 Wis. 651. 34 N. H. 360. 34 N.Y. 92. 42 O. St. 47. 66 Me. 316.)

A deed in order to be deposited as an escrow must not be in the possession actual or constructive of either the grantor or grantee; and thus the necessity of the depositary being a stranger ; though he may be regarded as the agent of both parties in the sense that he is as much bound to deliver the deed on performance of the condition, as he is to withhold it until performance. (4 Wis. 453. 7 Ohio, 223.)

It is, however, rather the performance of the condition than the second delivery which passes the title, for though as a rule, the title is said not to pass un-

til the second delivery, still, if for any reason the grantor becomes incapacitated to deliver a deed before the condition is performed, the deed will be considered valid as of the time of the first delivery, when the condition is afterwards performed. (14 Ohio 308. 30 Wis. 644. 1 John. ch. 279.) It should be observed, however, that where the deed is not to be delivered until something has been done after the death of the grantor, it is void and can pass no title as against the heirs of the grantor. (Taft v. Taft 59 Mich.)

If an escrow be delivered before the performance of the condition it cannot affect the title in the grantor; even if afterward it be recorded and then transferred to an innocent purchaser ; for no deed can be delivered without the consent of the grantor ; though upon the second point the authorities are not in entire harmony. (22 Me. 569. 10 Penn. 285. 4th Edition III Wash. 303.)

III

When found in the hands of a stranger to be delivered without condition.

That a deed, thus delivered, may pass a present title, its delivery to the depositary must be with the intent so to do ; and though no formal words are necessary, still, the mere fact of handing the deed to the depositary will raise no presumption of an intention to deliver, as it will when delivered in person to the grantee or to his agent. (15 Wend. 656. 3 Ohio St. 377.) In this case it becomes as necessary for the grantor to part with all right and title to the deed as if it were delivered to the grantee ; for the depositary now becomes a mere bailee of the deed for the grantee and subject to his direction. (30 Wis. 644. 34 N. H. 476. 14 Ohio, 310.)

With regard to the acceptance of a deed in the hands of a third party, whether it is to be delivered to the grantee with or without any condition, the general principle may again be stated that no offer under seal can be revoked by the grantor or his privies at any time be-

fore acceptance ; though in the case of an escrow the failure of the condition may, per se, permit such revocation.

The rights of third parties, however, are governed by a different rule ; for until there has been an acceptance the property is subject to such rights (47 Barb. 505. 45 N. H. 505.) An acceptance may be actual, as when the grantee actually assents, or it may be presumed either from the acts of the grantee with knowledge of the deed or from the nature of the deed itself as being beneficial to grantee, or from the situation or condition of the grantee as in the case of infancy or insanity.

The rule as above laid down cannot be changed by the fact that the acceptance did not take place until after the death of the grantor. (9 Mass. 307. 54 Penn. St. 26.) When there has been no express assent and the deed is beneficial to the grantee, and, whether the latter knew of it or not, the law will then raise a presumption of assent, which however, is not, per se, sufficient to pass the title ; but is merely prima facie evidence of assent and may be rebutted by showing a dissent. (4th Edition 111 Wash. 291. 3 Ohio St. 377. 31 Conn. 428. 28 Iowa 240.) Where property is thus

deeded to a grantor, under disabilities, this presumption then becomes a rule of law and the property vests at once, so as to bar the claims of third parties. (30 St. 587. 47 N. H. 479. 39 111. 413. 28 lowa 241). The relation of the depositary to the grantee may be such as to make the assent of the former sufficient to vest the title in the grantee ; as for example, an acceptance of a deed by a father or mother for his or her infant child.)47 N. H. 479. i John. ch. 456.)

There is also a class of cases in which from the beneficial nature of the grant, the law raises a conclusive presumption of acceptance ; namely, those conveyances which insolvent debtors make for the benefit of creditors ; by delivering absolutely and unconditionally a deed of assignment to a third person to be delivered to the creditor. Such a deed, though not accepted, will take precedence of an attachment intervening between the delivery to the depositary and the actual acceptance. (16 Peters 19. 18 Conn. 257.)

IV

When found in the hands of the Grantor.

It is trite law that when there has once been a valid delivery of a deed, no act of the grantor can destroy the title in the grantee ; but, since delivery is always a matter of intent, the facts and circumstances of each case must be weighed, to determine not only that the intent once existed but that it existed at the time the acts relied upon were done.

On this subject Chancellor Kent says : "If both parties be present and the usual formalities of execution take place and the contract is to all appearances consummated without any condition or qualification annexed, it is a complete and valid deed, notwithstanding it be left in the custody of the grantor;" and, indeed, it is well established that the grantor after delivery may keep the deed as the mere bailee of the grantee.
(IV Kent Com. 455. 41 N. Y. 416. 116 Penn St. 98.)

Cases often arise where no formal delivery can be proved and even where nothing was said by the parties present in regard to delivery ; but, notwithstanding, an

intent that the property should pass may be gathered from other circumstances ; as, for instance, where a deed of lands is prepared for execution, signed by both parties, sealed and acknowledged, it has been held delivered though the witnesses present declared there had been no formal delivery, and the deed was found among the papers of the grantor after the latter's death. (15 Wend. 545. 126 Mass. 454.) No deed, however, which did not vest a title in the grantee during the life of the grantor, and which was found in the passession of the grantor at his death, can be of any avail as a conveyance. (41 N.Y. 416. 32 A.L.J. 251.) At the time when delivery is made neither the grantee nor his agent need be present ; for, although, as a rule, delivery and acceptance must be contemporaneous acts, still, in the case of voluntary conveyances the acceptance when made will relate back to the time of delivery and take effect as of that time to the exclusion of all claims except those of third parties ; and in case the grantee be under any disability, then the presumption of acceptance will be made a rule of law and will bar the claims even of third parties.

Therefore, where there has once been a valid delivery of the deed, an acceptance of the same even after the

death of the grantor will operate to cut off the rights of those claiming under the grantor. The great struggles in the courts, however, arise over the interpretation of acts of the grantor in delivering ; and not so much over those of the grantee in accepting ; for as has often been said the deed derives its force and validity from its delivery rather than from its acceptance.

There is a decided tendency in the courts to favor the operation of a deed of voluntary settlement, and to give greater force to the acts of both grantor in delivering and of the grantee in accepting the same. In the case of Souverbye v. Arden, Chancellor Kent says : "A voluntary settlement fairly made is always binding in equity upon the grantor, unless there be clear and decisive proof that he never parted or intended to part with the possession of the deed ; and, even if he retain it, the weight of authority is decidedly in favor of its validity unless there be other circumstances besides the mere fact of his retaining it, to show that it was not intended to be absolute." (1 John. Ch. 240. 12 John. ch. 536.) This, however, in the light of later decisions is an extreme view and the courts of New York now refuse to be guided by the doctrine ; "because" as was

said in a late case of that state "it wholly dispensed with any evidence of delivery" and, indeed, the view of the New York courts seems to be supported by the weight of authority. (41 N. Y. 416. 97 N. Y. 22.)

In Critchfield v. Critchfield far from its being necessary to prove that a deed, beneficial on its face to the grantee and found in the possession of the grantor, was not intended by the grantor to pass title the courts say : "The presumption arising from the acknowledgement before the magistrate that the deed had been duly signed sealed, and delivered was rebutted by the fact that the grantor took the deed away from the office and kept it in his own possession."

In Patterson v. Snell, the court say : "The possession and production of a deed by the grantee is prima facie evidence of its having been delivered and for like reasons, in the absence of all contradictory testimony the presumption arises, when found in the possession and produced by the grantor, that it has not been delivered." (67 Maine.)

In the case of Cannon v. Cannon A, with his wife executed voluntary deeds to B and C without their knowledge. (26 N. J. Eq.) He gave the deeds to his wife

telling her to be careful of them but without other instructions or authority to deliver them ; and, during his absence from home, and without his knowledge or consent, his wife induced B and C to convey the property to her, and it was held that the deed to B and C never passed title.

Again, in the case of Powers v. Russell these words occur in the opinion : "When a registered deed purporting to have been delivered has been lost, the presumption is that it was delivered to the grantee ; but this presumption, which would arise from the loss is rebutted if the original deed is produced and is then in the custody of the grantor."

The Illinois courts, however, hold a doctrine more in accord with Souverbye v. Arden above. (32 A.L.J. 251.) These cases, therefore, seem to indicate that the mere possession of the deed though it be a voluntary one by the grantor will not support any presumption of acceptance; because in such a case there can be no presumption of delivery but rather the contrary. There are however, certain acts of the grantor which, standing alone, the courts will regard as prima facie evidence of delivery; and prominent among these is the recording of

a deed; for by such an act the grantor necessarily intends to give notice to the world that the title to certain property has been taken from him and put in his grantee; and in the absence of controlling evidence to the contrary the courts will regard the grantor as having delivered the deed. (23 Wend. 43. 107 Ill. 87. 3 Ohio St. 377. See 117 N. Y., 258.) But the recording must be done during the life and with the consent of the grantor and the presumption of a delivery arising from the record is repelled when it appears that the grantee never was in possession and that the grantor and his heirs have remained in undisturbed possession for more than forty years without recognizing any rights under the deed. (67 Me. 559. 71 N. Y. 474.) The fact that the deed is a pure and unqualified gift or is a conveyance to grantees under any disabilities will greatly strengthen the presumption of a delivery arising from the record of the deed. With regard to the necessity of an assent by the grantee where the conveyance is of the above character, I desire to quote somewhat at length from the very forcible opinion of Judge Thurman in the case of Mitchell v. Ryan. (3 Ohio St. 377.) In the course of his opinion the Judge said : "It is

true that judges have said with more solemnity than I think the occasions warranted, that no one can have an estate thrust upon him against his will; and that consequently a delivery of a deed to a stranger for the use of the grantee is of no effect until assented to by the latter."

"How much weight this argument is entitled to may be judged by the fact that estates are every day thrust upon people by last will and testament and it would certainly sound somewhat novel to say that the devises were of no effect until assented to by the devisees."

"If a father should die devising an estate to his daughter and the latter should afterwards die without a knowledge of the will it would hardly be contended that the devise became void for want of acceptance; and that the heirs of the devisee must lose the estate."

"Add to these the estates that are thrust upon people by the statute of descent and we begin to estimate the value of the argument that a man shall not be made a property holder against his will; and that courts should be astute to shield him from such a wrong."

"When the grant is a pure unqualified gift I think the true rule is that the presumption of acceptance can be rebutted only by proof of dissent; and it matters not that the grantee never knew of the conveyance for as his assent is presumed from its beneficial character, the presumption can be overthrown only by proof that he did know and rejected it."

"If this is not so how can a deed be made to an infant of such tender years as to be incapable of assent?"

"Is it the law that if a father makes a deed of gift to an infant child and delivers it to the recorder for the use of the child and to vest the estate in it, the deed is of no effect until the child grow to years of intelligence and give its consent ?" "May the estate in the meantime be taken for the subsequently contracted debts of the father or will the statute of limitations begin to run in favor of the trespasser upon the idea that the title remains in the adult?" "I do not so understand the law. In such a case the acceptance of the grantee is a presumption of law arising from the beneficial nature of the grant and not a mere presumption of an actual acceptance."

"And for the same reason that the law makes the

presumption it does not allow it to be disproved by anything short of actual dissent.

Lastly it may be said that the mere signing and acknowledging of an instrument, will not, unless accompanied by other acts, be sufficient to constitute a delivery. (24 Penn. St. 100. 5 Hump. 349. Cannon v. Cannon 26 N. J. Eq.)

It would be impossible even to outline the variety of circumstances in which evidence may be given to support and rebut presumptions of the grantor's intent, and it is but mere repitition to say that when a deed is retained by the grantor the real test is, can the grantee get possession of it ? Can he enforce it against the grantor's will ? Did the grantor <u>intend</u> that at all events and immediately it should operate ?