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The Law School

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Notes

THE LAW SCHOOL

One hundred and forty-six students enrolled in the Law School this year. Thirty-five are Seniors; forty-eight are Middlers; fifty-four are Juniors; and nine are elective students taking work in the Law School and the College. The total number of students, exclusive of electives, exceeds the number enrolled last year by one. The decrease in the number of elective students is a temporary one due to a change which has recently been made in the method of electing law.

Of the one hundred and thirty-seven students, other than electives, one hundred and twenty-six are college graduates, representing thirty-five different colleges. Twenty-three of these colleges are located in Pennsylvania and twelve are located in other states.

Sixty-eight students, other than electives, enrolled in the school for the first time; fifty-four entered the Junior class; thirteen entered the Middler class; and one entered the Senior class. Of these sixty-eight students, sixty-five are college graduates; one has completed more than three years of college work; one has completed two years of college work; and one, who was educated in Europe, has completed work which is more than the equivalent of a college education in the United States.

During the past year the school was examined and approved by the Council on Legal Education of the American Bar Association and by the State Education Department of New York.

Professor Reese has been elected President Judge of the Courts of Cumberland County; Professor Metzger has been appointed Secretary of Revenue; Professor Irwin has been appointed a member of the State Board of Examiners of Public Accountants. F. Eugene Reader, of Beaver Falls, Pennsylvania, and Dr. Wilbur H. Norcross, of Carlisle, have been added to the faculty.

W. H. HITCHLER

CONVEYANCE BY WIFE DIRECTLY TO HUSBAND AND WIFE—INTERPARTY AGREEMENT ACT

The recently decided case of *In re Vandegrift's Estate*[1] in the Superior Court of Pennsylvania is an interesting case of first impression in this jurisdiction. The question raised and decided is: "May a married woman, who is the sole owner of real property, convey it, with the joinder of her husband, to her husband and herself, without the intervention of a trustee, so as to create in the husband and wife an estate by entireties?" The case holds that she may so do. The opposing contention was that the husband and wife held as tenants in common.

The case is doubly interesting in that it contains the first appellate court recognition of the principle laid down in *Blease v. Anderson*,[2] that husband and wife may hold realty as tenants in common rather than as tenants by entireties. The present case admits, "***that a husband and wife may take and hold as tenants in common, as individuals and not as a common-law unity, if that be the actual intent***." In this admission, the court is indubitably correct.

The court further admits that at common law such a conveyance could not be made because the common law required distinct and separate grantors and grantees. The conclusion that our law permitted such a result was based on the effect of the Uniform Interparty Agreement Act.[3] That act states: "That a conveyance, release or sale may be made to, or by two or more persons actly jointly, and one or more, but less than all of these persons, acting either by himself or themselves or with other persons, and a contract may be made between such parties." The basis for the court's interpretation of this section as allowing the present conveyance is that the words "other

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[1]161 A. 898 (1932).

[2]241 Pa. 198.

[3]May 13, 1927, P. L. 984; 21 P. S. secs. 551-556.

persons" in the act should be held to include the husband or wife of a grantor in a deed of conveyance.

Admitting the validity of this conclusion, it does not follow that the act permits the conveyance in question. The grantors in the present deed were of necessity the husband and wife, not the wife alone, even though the land was owned by the wife. If the wife had been the sole grantor the deed would have been invalid by virtue of the act of 1893.[4] Hence we have a deed by two grantors to the same two persons as grantees. The Interparty Act does not permit the grantors and grantees in the conveyance to be identical. On either the side of the grantors or the grantees must be less than all those on the other side. The act distinctly states "****to, or by two or more persons acting jointly, *and* one or more, *but less than all these persons* ****." The two or more persons who acted jointly were husband and wife as grantors. The act then requires that one of these, since there were but two, must be lacking in the grantees. This requirement was not met in the instant deed and it was therefore not permitted by virtue of this act. Nor can the decision be justified by treating the deed as though it contained but one grantor, the wife. The court in its opinion treats the husband and wife grantees as those designated by the act as "and one or more, but less than all of these persons, acting either by himself, or themselves or with other persons." Treating the conveyance as though it were made by the wife alone results in the conclusion that the act would be totally inapplicable for it requires plurality of persons on the other side. The same objection could not be made to a deed by the husband to himself and wife since the deed would be valid if he were the sole grantor. In that event less than all who were on one side of the conveyance would be on the other side. But the wording of the act cannot be ignored because it would produce an unusual result. We conclude

[4] P. L. 344.

that the act does not validate the conveyance because of the exact coincidence of grantors and grantees.

The result reached by the decision is desirable, avoiding as it does the adoption of a more cumbersome and expensive procedure to reach the same result. The court might better have justified its conclusion, however, by adopting the reasoning of the dissenting opinion in *In re Klatzl's Estate*[5] which later became the ruling of the court by adoption as the majority holding in *Boehringer v. Schmid*.[6] The New York court avoided the common law rule requiring distinct and separate grantors by saying that the grantor did not convey to himself as grantee but to a unity or entity which was composed of the consolidation of the grantor and another. In Michigan[7] the court decided that the result of a conveyance by the husband to himself and wife jointly was to create a tenancy in common, treating the grantor husband as having reserved to himself a one-half interest in the property. This result was not intended and should not be the result unless the intended result could not be reached.

The instant case is also novel in that it appears to be the first case interpreting the Uniform Interparty Act. It would seem that the act has not had an auspicious inaugural in the courts.

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INCONTROVERTIBLE PHYSICAL FACTS RULE IN PENNSYLVANIA

The doctrine of "Incontrovertible Physical Facts", is one that has received much attention from the courts of Pennsylvania in the past few years. Although fore-

[5]110 N. E. 181 (N. Y. 1915).
[6]173 N. E. 220 (N. Y.).
[7]Wright v. Knapp, 150 N. W. 315 (Mich. 1915).