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SHOWING FORGERY OR NON-DELIVERY OF A RECORDED DEED
AGAINST AN INNOCENT PURCHASER

The following statement, taken from a recently published textbook on Pennsylvania real property law, challenges the attention of every student of that law: "So far as innocent third parties, i.e., purchasers for value without notice, are concerned, the general rule is well settled that where a deed appears to be signed, sealed, delivered, acknowledged and recorded, a purchaser has a right to act on the faith that this was all done as it purports to be in proper form by the proper parties. This because of the recording acts (*Piper v. Queeny*, 282 Pa. 135—1925)."¹

It is our purpose to examine this statement, first, for its meaning and second, for its correctness.

Several matters are self-evident. It asserts that a right exists only in purchasers for value without notice that everything was not done in the proper form and by the proper parties. Either the failure to pay value or the presence of notice would prevent the asserted right arising. The right is said to exist only where the deed has been recorded because the statement reads: "This because of the recording system . . ." One of the essentials for the creation of the asserted right is said to be that the deed be sealed but this would seem to be a mere inadvertence since conveyances of land by natural persons no longer require a seal.²

Several matters are not self-evident, however. What is meant by the statement: "a purchaser has a right to act"? The word "right" is often equivocal but here it must mean that the purchaser will be protected if he so acts, that his so acting will entitle him to the protection of the courts, that his so acting will give him a legally enforceable claim against the real owner.³ What is meant by the statement: "on the faith that this was all done as it purports to be in proper form by the proper parties"? This certainly asserts that the purchaser can rely on the fact that the one who appears to be the grantor in the recorded deed has actually signed and delivered the deed so as to make it an effective conveyance of title. In other words, it asserts that forgery of the grantor's signature and lack of delivery cannot be shown against an innocent purchaser for value under a recorded deed, for to assert either forgery or lack of delivery would be asserting that it was not in proper form by the proper party. The statement does not require that the deed must have been recorded at the instance of the grantor but merely that it be recorded.

If forgery of his signature and non-delivery may not be shown by the owner as against an innocent purchaser for value under a recorded deed, most unusual protection is afforded by our recording acts. Such a rule goes beyond such statutes

¹ LADNER, *CONVEYANCING IN PENNSYLVANIA* (2nd Edition, 1941) p. 162.

² Act of April 30, 1925, P.L. 404, 21 PS 10.

³ See *RESTATEMENT OF PROPERTY*, section 1.

as the following one in Massachusetts: "The record of a deed . . . shall be conclusive evidence of the delivery of such instrument in favor of purchasers for value without notice claiming thereunder."⁴ This statute prevents assertion of non-delivery but does not prevent assertion of forgery of the grantor's signature. Such a rule would go well beyond the protection afforded to holders in due course of negotiable instruments for while there is a conclusive presumption of delivery of a completed negotiable instrument in favor of such holders, forgery may be asserted when the elements of estoppel are not present.⁵

Is the statement a correct exposition of the law of Pennsylvania? If the case of *Piper v. Queeny*, 282 Pa. 135 (1925), cited as authority for the statement, so holds, we need look no further, whether or not we believe the holding to be the proper one. But the cited case does not so hold nor does it even suggest such a rule of law. No purchaser for value relying on a recorded deed was involved. In fact, no one other than the original parties was in any way involved. The case holds that a deed may be cancelled where failure of an intended consideration is shown to exist, even though the deed be sealed. The only statements at all relevant to the question with which we are concerned were that: "While the execution and recording of a deed is prima facie evidence of delivery, such presumption may be rebutted;" "The recording acts are intended for the protection of the grantee, not the grantor, and in an action of this character, the former may contend that execution and recording were not conclusive of delivery;" and, "Where one undertakes to prove a deed, depending on it 'as a valid instrument,' and the delivery is denied by substantial evidence, the appellant is under the necessity of proving more than the mere record." It is submitted that nothing in the case, in any remote fashion, even suggests that recording of an apparently properly executed deed gives an innocent purchaser for value a right to act in reliance on the fact that all was done as it purports to be in proper form by the proper parties.

Is the statement justified by the wording of any of our recording acts, these being the alleged basis for the rule? An exhaustive search discloses no recording act in Pennsylvania that in any way justifies such a conclusion. Our recording statutes, from the earliest one in 1715⁶ to date,⁷ with but rare exception, state merely that unrecorded deeds shall be invalid as against enumerated persons, such as purchasers, mortgagees, etc. These statutes are negative in their operation dealing only with the effect on non-recording and do not state what the effect of recording shall be. Even those rare ones that do state affirmatively that the effect of recording shall be thus and so,⁸ do not use language that could be tortured so as to

⁴Mass. Laws Annotated, 1933, vol. 6, chap. 183, sec. 5.

⁵Act of May 16, 1901, P.L. 194, sec. 16 and 23, 56 PS 21 and 28.

⁶Act of May 28, 1715, 1 Sm. L. 94, 21 PS 41 and 471.

⁷Act of June 12, 1931, P.L. 558, 21 PS 351.

⁸Act of April 3, 1840, P.L. 233, 21 PS 46 and Act of April 24, 1931, P.L. 48, 21 PS

affect in any manner the right of an alleged grantor to show forgery of his signature or that there had been no delivery of the deed.

Is the statement justified by any of the decisions of the Pennsylvania courts? We submit that there is no such justification and that all of the decisions are to the contrary.

For example, in *Boardman v. Dean*,⁹ it was said in speaking of a recorded deed: "It may well be, that stronger evidence is required to rebut the presumption of delivery when the deed is set up by a bona fide purchaser who has advanced his money upon the faith of it, than when it is set up by the grantee himself, or one who stands in his shoes." Or, as was said in *Davis v. Martin*¹⁰ where the rights of an innocent purchaser were involved: "The recording acts add nothing to a deed which the original instrument lacks . . . Its record in the recorder's office adds nothing to its intrinsic efficacy as an instrument of evidence; it is merely notice to the world of a claim of title which must be taken for what it is worth."

One of the earliest cases holding that lack of delivery may be shown even as against a bona fide purchaser for value is *Van Amringe v. Morton*.¹¹ The court there points out that there might be what it unfortunately calls a later "ratification" of delivery which would validate the passage of title. Such, of course, would not be a ratification of anything but would itself be a delivery—i.e., a manifestation of an intention that title should pass to the grantee. Another well considered case holding that non-delivery of a recorded deed may be shown against a bona fide purchaser is *Smith v. Markland*.¹²

The cases are just as numerous and just as unanimous in holding that forgery of a grantor's signature in a recorded deed may be shown even as against a bona fide purchaser for value. One of these is *Reck v. Clapp*.¹³ There an innocent purchaser for value had taken a conveyance from the grantee without notice of an alteration in a deed amounting to a forgery. The court said: "Of course, a purchaser who examines the record is protected by them as far as they can protect him, but he necessarily takes the risk of having the actual state of the title correspond to that which appears of record." Other cases in which the holding is the same are numerous.¹⁴

It has been held, however, that duress in the form of a threat to kill inducing the execution and delivery of a deed may not be shown against a bona fide purchaser.¹⁵

⁹34 Pa. 252 (1859).

¹⁰8 Pa. Super. Ct. 133 (1898).

¹¹4 Wharton *382 (1839).

¹²223 Pa. 605 (1909). See also *Cameron v. Gray*, 202 Pa. 566 (1902).

¹³98 Pa. 581, 1 Pennypacker 339 (1881).

¹⁴*Michener v. Cavender*, 38 Pa. 334 (1861); *Smith v. Markland*, 223 Pa. 605 (1909); and *Balch v. Shick*, 147 Pa. Super. Ct. 460 (1942).

¹⁵*Elder v. Hamilton*, 195 Pa. 559 (1900).

Several subsidiary questions remain to be noticed, briefly. Could the innocent purchaser for value under a recorded deed that was invalid for lack of delivery or because it was a forgery, assert an estoppel against the grantor? Many cases in Pennsylvania concede that title to realty may be lost by estoppel and seem not to require any fraudulent intention to escape the application of the Statute of Frauds. For example, in *Van Amringe v. Morton*¹⁶ in holding that non-delivery could be shown against an innocent purchaser, it was said also: "unless something were done by the grantor which enabled the grantee to deceive the purchaser, no title passes any more than if forged." Here the court concedes that there might be an estoppel. Other cases are to the same effect.¹⁷ In proper cases, where the court finds that there was a duty to speak imposed by the circumstances, mere silence may thus create an estoppel.¹⁸ It would unduly lengthen this note to discuss in any detail what facts would or would not thus create an estoppel against the grantor. But knowledge that an undelivered deed or a forged one had been placed on record without any action on the part of the grantor thereafter to erase this erroneous impression, such inaction extending beyond a reasonable time, might well be held to estop him from asserting the non-delivery or forgery.¹⁹

Would possession of the land involved being in the grantor when the record title appeared to be in a grantee from him, in itself be sufficient notice of his rights to prevent the purchaser being an innocent one and thus also prevent the assertion of any estoppel? While the question is not free from doubt in this state, there are indications that such retained possession would act as notice to a later purchaser.²⁰

The conclusion is inescapable, therefore, that lacking the elements of an estoppel, purchasers for value without notice do *not* have a right to act on the faith that a deed was signed by or delivered by the proper party in proper form.

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¹⁶4 Wharton *382 (1839).

¹⁷*Smith v. Markland*, 223 Pa. 605 (1909); *McKnight v. Bell*, 135 Pa. 358 at 374 (1890); and *Logan v. Gardner*, 136 Pa. 588 at 600 (1890).

¹⁸*Logan v. Gardner*, 136 Pa. 588 at 600 (1890).

¹⁹*Cf. Clevenger v. Moore*, 259 Pac. 219 (Okla. 1927) and cases cited therein.

²⁰See *Van Amringe v. Morton*, 4 Wharton *382 (1839); *Blight v. Schenck*, 10 Pa. 285 (1849) and *Smith v. Markland*, 223 Pa. 605 (1909).