(108 Tex. 340)

TAYLOR v. SANFORD. (No. 2483.)

(Supreme Court of Texas. April 4, 1917.)

1. Deeds 🔑56(2)—"Delivery"—Requisites—Intention.

Where a deed is disposed of by the grantor so as to clearly evince an intention that it shall have effect as a conveyance, it is a sufficient delivery, since no form of words or action is prescribed to constitute delivery, and the question in all cases is the question of the grantor's intention.

[Ed. Note.—For other cases, see Deeds, Cent. Dig. § 118.

For other definitions, see Words and Phrases, First and Second Series, Delivery.]

2. Deeds 🔑59(2) — Delivery — Mailing — Death of Grantor.

Where the grantor executed a deed and filed it for record, and the following day mailed it to the grantee, with a letter clearly showing that he intended it as a gift to her, in contemplation of his death, there was sufficient delivery to make the deed effective.

[Ed. Note.—For other cases, see Deeds, Cent. Dig. § 137.]

3. Deeds 🔑56(3)—Delivery—Power to Regain Possession.

The fact that the grantor had power to recall a deed from the mail in which he had placed it, addressed to the grantee, and thereby prevent its physical delivery to her, does not prevent mailing the deed with intention to give it immediate effect from being a delivery.

[Ed. Note.—For other cases, see Deeds, Cent. Dig. § 119.]

4. Deeds 🔑56(7) — Delivery — Regaining Possession.

Where a deed had become effective by delivery, regaining possession thereof by the grantor, before it reached the possession of the grantee, would not defeat it.

[Ed. Note.—For other cases, see Deeds, Cent. Dig. § 125.]

5. Deeds 🔑64—Acceptance—Necessity.

A deed of gift to property which imposed on the grantee the assumption of the payment of notes against the property, and her conveyance of other property to the grantor, requires an acceptance by the grantee.

[Ed. Note.—For other cases, see Deeds, Cent. Dig. §§ 142, 143.]

6. Deeds 🔑65 — Acceptance — Death of Grantor.

Where the grantee of a deed of gift accepted the deed as soon as she learned of it, such acceptance was sufficient, though the grantor had died before the acceptance.

[Ed. Note.—For other cases, see Deeds, Cent. Dig. § 144.]

7. Deeds 🔑194(4)—Acceptance—Presumption—Gift.

A delivered instrument plainly amounting to a deed of gift should operate by presumed assent until a dissent or disclaimer appears.

[Ed. Note.—For other cases, see Deeds, Cent. Dig. §§ 579, 634.]

Error to Court of Civil Appeals of Seventh Supreme Judicial District.

Suit by J. M. Sanford, as administrator of the estate of R. H. Sanford, deceased, against Annie Lee Taylor, to cancel a deed. Judgment for the plaintiff was affirmed by the Court of Civil Appeals (150 S. W. 262), and defendant brings error. Reversed, and judgment entered for defendant.

A. S. Rollins, of Amarillo, and J. C. Hunt, of Canyon, for plaintiff in error. Madden, Trulove & Kimbrough, of Amarillo, for defendant in error.

PHILLIPS, C. J. The suit was by J. M. Sanford, administrator of the estate of R. H. Sanford, deceased, to cancel a deed of R. H. Sanford to Annie Lee Taylor conveying certain property in Canyon, Texas. The deed was executed and acknowledged by R. H. Sanford on June 14, 1911. It recited that Miss Taylor was to assume the payment of three vendor's lien notes against the property, aggregating $750.00, principal, and that a part of its consideration was the conveyance by Miss Taylor to Sanford of a lot in the town of Hamlin, in Jones County, and a 40 acre tract of land in Presidio County. Sanford was the sheriff and tax collector of Randall County. Miss Taylor was his office clerk and stenographer. There was evidence tending to show that Sanford and she had been engaged to be married. She had loaned Sanford some of her private means, which had not been repaid. Sanford was due the State of Texas and Randall County approximately $1000.00 for taxes which he had collected and for which he had not accounted, and was in a state of some financial embarrassment. He committed suicide on June 15, 1911, the day following his execution of the deed to Miss Taylor.

After executing the deed on June 14, Sanford immediately filed it for record in the office of the County Clerk, and, on the same day, following its record, mailed it to Miss Taylor who at that time was visiting her home in another county of the State. He likewise immediately mailed her in the same or a separate enclosure two deeds for her execution conveying to him the lot in Hamlin and the tract of land in Presidio County, mentioned in his deed to her. Accompanying the deed to Miss Taylor was the following letter from Sanford addressed to her.

"Canyon, Texas, June 14, '11.

"Dear Lee: I am sending you some deeds to sign, herewith, also enclosed a lot of other papers which are yours. Yours to keep. I want you to have them as I am deeding to you my house and the 4 lots where Cannon lives. The deed I am putting on record here and as soon as it is recorded it will be sent to you. I want you to have the house as it will make you a good living and also furnish you a home. Keep it darling as a gift from me. Under no circumstances don't give it up unless you sell it in order to support yourself. You will see from the deed that there are three notes standing against it that will fall due, one this fall on Sept. 10th, for $250.00. Also the interest on the other two will become due at that time, the 2nd note will be due one year from that date and one year later the last one will be due. Of course you can pay them sooner if you choose. Please execute the two deeds to the Hamlin and the Presidio property as drawn, sign them before a notary

> public and send them to the Co. Clerk at Anson and Marfa to have recorded. Send a dollar with each and have them returned to me here. This is to show a consideration in your deed and is made a part of the consideration. I know you will not feel like you should accept this from me, but you must as it is my wish and I can't think of doing otherwise. It costs me more to write this than you will ever know, but the only satisfaction that I am to get is to know that I am leaving you provided for as my foster and adopted sister. * * * I will send you a draft for $400.00. Will send it to the bank there or may send it direct. This will leave you in good shape as the house is well worth $4,000.00 and should rent for from $30.00 to $40.00 per month. I am sure you can get it insured for $3000.00 next time after this policy runs out. I will just leave everything I have in the house and that you and Mack can dispose of: When you return to see about it, bring this letter and show it to him, and he will understand all. I have foreseen this for some time, but thought I could get it all shaped up. I see that I cant and it is no fault of mine. If I could have gotten it all adjusted, we would have gotten married and lived as happy as is the lot of any couple. I could not marry you tho unless I could provide for you as I wanted to and now this is the only course for me to pursue. You know how some of the people here feel toward me since the city election, and but for that I could go through. They will swear anything and can and will ruin me if I try to stay. Now Darling I know you will forgive me for all the little worries I have caused you in the last few months when it seemed to you that I had changed toward you. It was not that but I just could not tell you. It hurt me more than it did you. No matter what some may think, I know you to be a pure Christian girl sure as there are only very few. Remember me kindly always. Goodbye Darling, Lovingly, Dick.
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> "The $400.00 is bal. payment on the $500.00 I owe you. Dick."

Miss Taylor received the deed and other documents at Canyon on June 19th, where she immediately went on learning of Sanford's death, his letter or letters to her having been forwarded to her at that place. Her testimony upon the trial was that it was her intention, as soon as she learned of the deed, to accept the property under it and on the terms therein stipulated. She paid off one of the vendor's lien notes against the property, and on July 21, 1911, executed and acknowledged the two deeds which Sanford had sent her for execution in mailing his deed to her. Neither of her deeds was delivered nor tendered for delivery to anyone representing Sanford's estate prior to the time of the trial of the present suit, but during its trial both were tendered by her in open court, the trial occurring in November, 1911.

The only question in the case is whether there was a delivery of the deed from Sanford to Miss Taylor.

[1] The law prescribes no form of words or action to constitute the delivery of a deed. It will not divest a grantor of his title by declaring his deed effective when his purpose was to withhold it from the grantee. Neither will it deprive the grantee of his rights where it was the grantor's intention to invest him with the title, though there be no manual delivery of the instrument. The question in all such cases is that of the grantor's intention. If the instrument be so disposed of by him, whatever his action, as to clearly evince an intention on his part that it shall have effect as a conveyance, it is a sufficient delivery. 2 Jones, Law of Real Property, § 1220; 1 Devlin on Deeds, § 269.

[2-4] That such was Sanford's intention with respect to the deed in controversy is, we think, unmistakable. It is clear that the deed was executed, caused to be recorded, and was mailed by him in contemplation of his death, and so as to at once invest Miss Taylor with the title. It is equally certain that he intended the property as a gift to her. Nothing could be more plainly revealed. The property was Sanford's, and, no rights of creditors being involved, he had the power to give it away if he chose. If such was his intention, the law should effectuate it, rather than indulge in nice distinctions and thereby thwart what was plainly his purpose. That it was within Sanford's power, at any time before his death, to recall the deed from the mail where he had placed it for transmission to the grantee, and thereby prevent its physical delivery to her, is immaterial. He did not recall it. Nor did he make any attempt to do so. On the contrary, everything about the transaction shows that at the time his letter was written,—the day before his death, he regarded it as an executed gift. With this true and clearly evidencing an intention that the deed should have immediate effect, it is of no consequence that it did not reach the hands of the grantee before his death, or that it was within his power to regain its physical possession. If what the law regards as a delivery had been accomplished, his regaining physical custody of the instrument would not have defeated it. Brown v. Brown, 61 Tex. 56; Henry v. Phillips, 105 Tex. 459, 151 S. W. 533.

[5-7] True, the gift imposed upon Miss Taylor the assumption of the payment of the three notes against the property and her conveyance to Sanford of the lot in Hamlin and the 40 acre tract in Presidio County, and required her acceptance of it, since no person can be made a grantee of property against his will. But she accepted it. She could not be expected to either accept or reject the gift until she knew of it; and since she did not know of it until after Sanford's death, her acceptance of it then sufficed. Burkey v. Burkey, 175 S. W. 623. As a rule of reason and common sense, a delivered instrument plainly amounting to a deed of gift should operate by a presumed assent until a dissent or disclaimer appears. Dikes v. Miller, 24 Tex. 417.

The judgments of the District Court and Court of Civil Appeals are reversed, and judgment is here rendered for the plaintiff in error.