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DEEDS - EFFECTIVENESS OF DEEDS DELIVERED WITH BLANK FOR NAME OF GRANTEE

DEEDS — EFFECTIVENESS OF DEEDS DELIVERED WITH BLANK FOR NAME OF GRANTEE — In an action upon an oral contract to recover the purchase price of an equity in realty, it appeared that the plaintiff executed a deed with a blank left for the name of the grantee and delivered it to the defendant, where-

upon the latter refused to make the promised payment, and suit was brought. The Statute of Frauds being interposed as a defense, on the theory that the contract, being oral, was unenforceable in the absence of a showing of part performance, it was *held*, that the delivery of the incomplete deed, giving the defendant implied authority to fill in name of the grantee, was a valid transfer of title to the defendant, and hence the Statute of Frauds did not bar recovery by the plaintiff. *Gilbert v. Plowman*, 218 Iowa 1345, 256 N. W. 746 (1934).

It is a well settled rule that an instrument which purports to be a deed in which the name of the grantee is lacking is inoperative as a conveyance, so long as the blanks remain unfilled.[1] But, that the insertion of the name of an identifiable grantee will validate such a deed, where it is made under proper authority, is also clearly established.[2] Parol authority is now considered sufficient for this purpose,[3] but as to when such may be effectively exercised the cases are not in agreement.[4] Thus, some courts, recognizing the common law doctrine that a deed cannot be effectively delivered until complete, refuse to give effect to an instrument unless it has been filled in before or at the time of the delivery to the grantee.[5] Other jurisdictions will recognize a deed as valid though filled in after it has come into the purchaser's possession.[6] Deeds filled in by the grantee himself have been upheld under this theory.[7] The ruling of the instant case is notable in that it seems to go further than any cases previously decided along this line. Recognition of implied authority in the grantee to complete a blank deed deliv-

[1] Donnelly v. Dumanowski, 329 Ill. 482, 160 N. E. 759 (1928); Nash v. Kirschoff, 166 Minn. 464, 208 N. W. 193 (1926); Harth v. Pollock, 97 Ore. 663, 193 Pac. 202 (1920); also cases collected in 32 A. L. R. 737 (1924), and 75 A. L. R. 1108 (1931).

[2] Brown v. Ulmer, 110 Kan. 504, 204 Pac. 1007 (1922); Fisher v. Heller, 166 Minn. 190, 207 N. W. 498 (1926); Wright v. Heyting, 118 Wash. 436, 203 Pac. 935 (1922). As to the effect of filling in a deed without authority, see, Sanders v. Kirk, 140 Okla. 26, 282 Pac. 145 (1929).

[3] Burk v. Johnson, (C. C. A. 8th, 1906) 146 Fed. 209; Halliwill v. Weible, 64 Colo. 295, 171 Pac. 372 (1918); Swartz v. Ballou, 47 Iowa 188, 29 Am. Rep. 470 (1877); 8 CAL. L. REV. 121 (1920). Written authority has been required in Williams v. Courton, 172 Ark. 129, 287 S. W. 745 (1926); Collins v. Kares, 52 S. D. 143, 216 N. W. 880 (1927); 24 MICH. L. REV. 69 (1925); authority under seal was held necessary in Macurda v. Fuller, 225 Mass. 341, 114 N. E. 366 (1916).

[4] 2 TIFFANY, REAL PROPERTY, sec. 434 (1920); BREWSTER, CONVEYANCING, sec. 39, p. 48 (1904).

[5] Allen v. Withrow, 110 U. S. 119, 3 Sup. Ct. 517 (1883); Serois v. Serois, 308 Ill. 453, 139 N. E. 874 (1923); Derry v. Fielder, 216 Mo. 176, 115 S. W. 412 (1908). To the effect that the deed must be filled in before the grantor's death, see: Stalting v. Stalting, 52 S. D. 318, 217 N. W. 390 (1927). *Contra*, Sayles v. Queirolo, 71 Misc. 566, 130 N. Y. S. 806 (1911).

[6] Board of Education v. Hughes, 118 Minn. 404, 136 N. W. 1095, 41 L. R. A. (N. S.) 637 (1912); Montgomery v. Dresher, 90 Neb. 632, 134 N. W. 251 (1917); Einstein v. Holladay-Klotz Land & Lumber Co., 132 Mo. App. 82, 111 S. W. 859 (1908); Exchange Nat. Bank v. Fleming, 63 Kan. 139, 65 Pac. 213 (1901).

[7] Wright v. Sconyers, 150 Okla. 3, 300 Pac. 672, 75 A. L. R. 1098 (1931); Vosburg v. Carter, 34 N. M. 194, 279 Pac. 563 (1929).

ered to him has been given in earlier Iowa cases,[8] but for the most part its application has been limited to situations where the grantor was trying to set aside the incomplete deed against a bona fide purchaser,[9] or where the transferee was seeking to justify the insertion of his own name.[10] The policy of extending the implication to this case where the defendant's name was never placed in the deed, for the purpose of protecting a grantor who has issued an incomplete instrument, appears to be open to question.[11] The principal case would seem to be an extension of an earlier doctrine of the same court, doubtful at best, that the delivery of a blank deed to a purchaser for value vests an equitable title in the transferee.[12]

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[8] Owen v. Perry, 25 Iowa 412, 96 Am. Dec. 49 (1868); Swartz v. Ballou, 47 Iowa 188, 29 Am. Rep. 470 (1877).

[9] Hall v. Kary, 133 Iowa 465, 110 N. W. 930, 119 Am. St. Rep. 639 (1907); Logan v. Miller, 106 Iowa 511, 76 N. W. 1005 (1898); Augustine v. Schmitz, 145 Iowa 591, 124 N. W. 607 (1910).

[10] Fisher v. Paup, 191 Iowa 296, 180 N. W. 167 (1920); McClain v. McClain, 52 Iowa 272, 3 N. W. 60 (1879); Devin v. Himer, 29 Iowa 297 (1870).

[11] In Creveling v. Banta, 138 Iowa 47 at 55, 115 N. W. 598 (1909), the court says of the rule:

> "What was evidently feared by Dillon, J., in *Simms v. Hervey*, 19 Iowa, 273, 297, if this rule were adopted has transpired, and deeds or mortgages to land are now 'floated' almost as readily as commercial paper, and the name of the grantee inserted when it finds an owner who concluding to retain the land elects to insert his name as grantee. The practice, while not conserving a single laudable purpose, has proven an efficient help in the perpetration of fraud and the concealment of property from the pursuit of creditors."

[12] Gilmore v. Shearer, 197 Iowa 506, 197 N. W. 631, 32 A. L. R. 733 (1924); Liljedahl v. Glassgow, 190 Iowa 827, 180 N. W. 870 (1921). A similar rule is found in Nebraska Wesleyan University v. Smith, 113 Neb. 208, 202 N. W. 625 (1925).