

CHAPTER IV.

THE DATE.

- § 32. The date not essential, though desirable. § 34. Date in deed and certificate of acknowledgment.
33. Presumption of delivery at date. 35. True date may be shown.

§ 32. The date not essential, though desirable.—As deeds are now drawn in most of the states the first recital in the premises is the date.

While it has been for centuries the usual practice to put a date to a deed, the date was not at common law necessary to the conveyance. So that if the date were omitted entirely, or were an impossible time, as the 31st of February, it has been considered that the conveyance is nevertheless valid.¹

Most of our modern statutes permitting short forms of deeds^{1a} provide among other things that they shall be "dated." How far the date in such cases would be considered essential cannot be stated in the absence of decisions on the point, but, while it is believed that the omission of the date would not affect the validity of such conveyances, it is clearly best to date them.

And even though other deeds than these are valid without dating, still they ought regularly to be dated on the day of their execution. The rights of parties are often made to depend upon an accurate statement of time, and the date may become important in determining questions of priority or in ascertaining whether all the statutory

¹ Goddard's Case, 2 Rep. 4 b.

^{1a} Ante, § 30.

requirements in force at the time of the execution of the instrument have been complied with.²

The date may be stated in any part of the deed, but in "indentures" the appropriate place is at the beginning; in "deeds poll," near the end in the testimonium clause.

It is better in stating the date to write it out in words rather than to express it in figures. Mistakes are more likely to occur where figures alone are used than where words are used, either alone or in addition to figures, and a date in figures would seem to be less regarded than one in a different form.³

§ 33. Presumption of delivery at date.—The all-important time in regard to deeds is the time of delivery, and the date of a deed is often of value in fixing this time.

The delivery of a conveyance having been shown,⁴ it very often becomes of great importance, in view of conflicting claims to the property described in the conveyance, to determine when delivery took place.

In the absence of direct evidence on this point resort is had to a presumption of law, and it is a general rule that if a date is stated in the deed, that will be taken *prima facie* as the date of the execution and delivery.⁵

§ 34. Date in deed and certificate of acknowledgment.
—When the date of the deed and that of the certificate of

² *Smith v. Porter*, 10 Gray 66.

³ *Jackson v. Schoonmaker*, 2 Johns. 230, 233.

⁴ As to what constitutes delivery, see ch. XIX.

⁵ *Purdy v. Coar*, 109 N. Y. 448; 4 Am. St. R. 491; 17 N. E. 352; *Faulkner v. Adams*, 1890, 126 Ind. 459; 26 N. E. 170; *Crossen v. Oliver*, 1900, 37 Ore. 514; 61 Pac. 885; *Farwell v. Des Moines Mfg. Co.*, 1896, 97 Iowa 286, 299; 66 N. W. 176; 35 L. R. A. 63, 69. (One question in this case was whether a certain person was the owner of land when assessments were made; the general rule as to date is applied, and it is held that, though the deed was not recorded till some time after it bore date, it must be presumed *prima facie* to have been delivered at its date.)

acknowledgment⁶ are the same the presumption of delivery at that date is strengthened, as the certifying officer is required by statute in many states to name the true date, and generally would have no object in expressing it falsely.⁷

But it very often happens that the date of the deed and the date of the certificate of acknowledgment differ.

In such cases the general rule appears to be that the former (i. e., date expressed in deed) will, in the absence of evidence to the contrary, be taken as the true date.⁸

The reason generally given for this rule is that the deed may be delivered before its acknowledgment or without acknowledgment—the acknowledgment, generally speaking, being unnecessary to its validity.⁹

But this doctrine is not accepted by all courts, and it has been held in some jurisdictions that, as the deed is not usually delivered till it has been acknowledged, there will be no presumption that there was delivery till the acknowledgment has taken place.¹⁰

⁶ See post, ch. XVIII.

⁷ *Cover v. Manaway*, 115 Pa. St. 338; 8 Atl. 393; 2 Am. St. R. 552. (In this case it was attempted to be shown that the deed was not executed till some years after the time stated as its date.)

⁸ *Conley v. Finn*, 1898, 171 Mass. 70; 50 N. E. 460; 68 Am. St. R. 399. (Here there was a difference of twenty years between the date of the deed and that of acknowledgment—the acknowledgment being after the death of the grantee.) And see *L. E. &c. Ry. Co. v. Whitham*, 1895, 155 Ill. 514; 40 N. E. 1014; 46 Am. St. 355; 28 L. R. A. 612; *Smith v. Scarborough*, 1895, 61 Ark. 104; 32 S. W. 382.

⁹ See post, § 261.

¹⁰ *Loomis v. Pingree*, 43 Maine 299, 308; *Fontaine v. Savings Inst.*, 57 Mo. 552. This is the rule in Michigan: *Blanchard v. Tyler*, 12 Mich. 339; 86 Am. Dec. 57; *Johnson v. Moore*, 28 Mich. 3; *Hoard v. Stone*, 58 Mich. 578, 583; 26 N. W. 141. But in any case the presumption may be overcome by other direct evidence or by circumstances; e. g., in *Eaton v. Trowbridge*, 38 Mich. 454, 458, where the acknowledgment was three years after the date of the deed, and the grantee had died after the date of the deed and before the date of acknowledgment; it was held that the fact that the grantor acknowledged the deed after the death of the grantee was a circumstance which overcame the

§ 35. True date may be shown.—The date not being essential, it is a well-settled rule that the true date may be shown by parol, without regard to the date recited, and the actual date of delivery may be shown though it be different from the date of the conveyance.

Applying this principle, it was held in *Swedish American Bank v. Germania Bank*,¹¹ where the controversy was as to the amount of indebtedness secured by a deed given as security, that the deed might be shown to have been delivered and to have taken effect at a later time than the date named in it, at which later time a much larger sum was due than at the date recited in the deed.

This deed was expressed to have been given and received "as security for money owing," but it is worth noting that a slight variation in the form of expression might have materially affected the result. If, for example, the form had been: "Owing at the date above named," or a similar expression had been used, the date as named would, it seems, have been taken as the time for fixing the amount of indebtedness.¹²

The statutes of many states require that certain instruments, more especially mortgages, shall be recorded within a limited time "after the date thereof" or "after execution." In such cases the true date may be shown, and the time intended by such statutes would seem to be

presumption which would ordinarily prevail in Michigan—because if the conveyance had not been delivered before the acknowledgment, that is, before the grantee's death, the ceremony of acknowledgment would have been without effect. As there is a conflict of opinion on this point, it is interesting to note the recent recommendation of the California Commission for the revision of the codes and the amendment made to California Civil Code, § 1055, changing the time when a grant is presumed to have been delivered from that of its date to that of the date of its certificate of acknowledgment, "this latter presumption being, in the opinion of the commissioners, more usually in accord with the facts."

¹¹ 1899, 76 Minn. 409; 79 N. W. 399.

¹² *Joseph v. Bigelow*, 4 Cush. 82.

the date of delivery rather than the date recited in the instrument, should they differ.¹³

¹³ *Shaughnessy v. Lewis*, 130 Mass. 355; *Hornbrook v. Hetzel*, 1901, 27 Ind. App. 79; 60 N. E. 965.