CHAPTER VI.

RECITALS.

§ 47. **Recitals—In general.**—There are many kinds of recitals in deeds; they may be very brief (as in the instances cited above, § 44); they may be in the nature of a preamble, beginning with "Whereas" and ending just before the words "Now this indenture witnesseth,"[1] or, they may contain a more or less extended history of the title to the property conveyed—as, after the description of the property—"being the same premises conveyed to ——— by ———, by a deed duly recorded in, etc." Though this last kind of recital seems not used as often as it formerly was, it is nevertheless still used by many conveyancers. If such a recital were made accurately and carefully in successive conveyances of the same property—each recital carrying back the title one step—in the end the recitals combined would form a connected history of the title.

Recitals, while generally introductory, and found in the "premises," are not always so; the term is applied to statements regarding the estate or title found in other parts of the deed.

[1] See, for example, ante, § 36. As to recitals in deed poll, see ante, § 22.

§ 48. **Recital often used to show purpose of conveyance.**—A recital may set forth the purpose of the grantor in making the conveyance; in such a case it may throw light upon ambiguous terms occurring in other parts of the conveyance, and may be used in construing it where the meaning is not clear.

For example, where a landowner conveys land to a trustee by a deed reciting that he is "desirous of making arrangements to liquidate said debts, and to secure a permanent support and maintenance for the use of his wife and children," and by a later clause in the deed directs the trustee, on the death of the wife, to convey the lands to "all the children" of the wife—the court, in construing the instrument, regards the expressed intention of the grantor as contained in the recital and holds that "children" means only the grantor's children, and does not include the wife's children by a second marriage—in spite of the later clause mentioning all the wife's children.[2]

§ 49. **Notice from recitals.**—It should be remembered in investigating titles that one important effect of a recital in a conveyance is that of giving notice to all who derive title through the conveyance.

If a purchaser of land accepts a conveyance which refers to the fact that some previous owner has granted an interest in the land, he has notice of that fact when he reads his own conveyance, and it makes no difference that the grant by the former owner is unrecorded. If, for instance, the vendee's deed contains a recital that this conveyance "is subject to the oil lease" given by a former owner to a third person, the vendee must take notice of the third person's outstanding interest in the land under the "lease"; and if in legal effect the lease referred to is a sale of a part of the land, the vendee must, by virtue of

[2] McCoy v. Fahrney, 1899, 182 Ill. 60; 55 N. E. 61 (in this report the deed is set out at length, and the general form of recitals in such a case is shown).

such a recital, be regarded as having notice of a prior unrecorded absolute grant of the oil in the land bought by him.[3]

The person accepting a conveyance containing such recitals and references cannot plead ignorance of them; he is presumed to have read his deed, and is chargeable with notice of the facts recited in it which affect his title. If, for example, he actually knows of one mortgage on the land (and is willing to buy the land, or take a mortgage on it, subject to the mortgage he knows of), and accepts a conveyance which refers to two mortgages, he must take his title subject to the two mortgages, though one of them is unrecorded, and though he did not read the reference to the two in his conveyance.[4]

Such are cases where the recital of some fact affecting the title is in the conveyance under which the purchaser immediately holds. But the principle applies to recitals in all conveyances under which he must derive title; hence he is chargeable with notice of matters affecting the title recited in a conveyance to his grantor, though not recited in the conveyance to himself.[5]

The land he buys may thus be subject to some restriction as to its use contained in a deed from some former owner,[6] or it may be subject to a trust,[7] or, by the recital in the consideration clause of a conveyance by a former owner, through which conveyance the present grantee must derive his title, that the consideration is "to be paid," the land in the present grantee's hands may be subject to a vendor's lien for the purchase-money.[8] In general, therefore, a purchaser of real property is charged

[3] Jennings v. Bloomfield, 1901, 199 Pa. 638; 49 Atl. 135.
[4] Hamilton v. Nutt, 34 Conn. 501.
[5] Cordova v. Hood, 17 Wall. 1; Town v. Gensch, 1899, 101 Wis. 445; 76 N. W. 1096; 77 N. W. 893; Baker v. Mather, 25 Mich. 51.
[6] Whitney v. Union Ry. Co., 11 Gray 359; 71 Am. Dec. 715.
[7] Dean v. Long, 122 Ill. 447, 460; 14 N. E. 34.
[8] Cordova v. Hood, 17 Wall. 1; Deason v. Taylor, 1896, 53 Miss. 697.

with notice of recitals in each conveyance in the chain of title to the property; and, if any of such conveyances contain references to others not in the direct chain of title, he is chargeable by such reference with notice of these conveyances and their contents.[9]

§ 50. **Recitals in conveyances by sheriffs, administrators, etc.**—Deeds of executors, administrators, guardians, sheriffs and others who are acting in representative or official capacities, usually contain one or more formal recitals setting forth the authority under which the grantor acts, and briefly giving a history of the proceedings leading to the conveyance.

Such official deeds (especially those of sheriffs) are often required by statute to contain recitals of certain facts, and it being thus the duty of the grantor to make such recitals, they are, when made, prima facie evidence of the truth of the facts stated.[10]

While it is regarded as the better practice to have all such deeds contain recitals, yet administrators' or sheriffs' deeds are not generally held invalid if the usual recitals are lacking or incomplete, for the existence of the facts giving authority to convey may be shown otherwise than by the recitals.[11]

There are, however, decisions holding that a sheriff's deed on execution must recite everything necessary to make a valid title—and a deed which does not recite the existence of a judgment, execution and levy is fatally defective.[12]

[9] White v. Foster, 102 Mass. 375, 380; Bank v. Delano, 48 N. Y. 326; Gaston v. Dashiell, 55 Texas 517; Smith v. Lowry, 113 Ind. 37; 15 N. E. 17.

[10] Bray v. Adams, 1893, 114 Mo. 486, 491; 21 S. W. 853; Longworth v. Bank, 6 Ohio 536; Miller v. Miller, 89 N. C. 402.

[11] Hill v. Reynolds, 1899, 93 Maine 25; 44 Atl. 135; Bartlett v. Bartlett, 1890, 34 W. Va. 33; 11 S. E. 732.

[12] Byers v. Wheatley, 3 Baxt. (62 Tenn.) 160.

§ 51. **If not required recitals may yet be useful.**—Irrespective of statutes, recitals explaining the capacity in which the grantor acts and his authority for acting are quite customary in certain kinds of deeds.

Where an instrument has created a trust and has given the trustee power to convey the property, if he afterward carries out or executes the power thus given him, the conveyance by which he does so ought regularly to indicate not only the capacity in which he executes it, but also should show by recital the facts which warrant its execution.

For example, a deed by an executor under a will giving him power to convey may be expressed, as to the recitals, as follows:

This indenture made this (date) between A B, of etc., executor of the last will and testament of C D, late of ——, deceased, of the first part, and X Y, of ——, of the second part, witnesseth: Whereas, the said C D, by his said last will bearing date the — of —, 19—, devised the lands hereinafter mentioned to his executor aforesaid, in trust, to hold the same during the minority of his son, N D, and on his attaining his majority, or on his death, if it should sooner occur, to sell and convert the same into money for the purposes in said will specified, with power in such case to sell in such manner as he should deem proper; and, Whereas, the said N D died on ——, before attaining his majority, now this indenture witnesseth: That the said party of the first part, by virtue of the power and authority to him given in and by said last will and testament, and in consideration of the sum of, etc. (words of grant, description).

And the form may be varied to adapt it to other circumstances—as where the trust is created and the power given by another instrument than a will.

Such recitals may be of importance to the grantee from the trustee, for should his title be attacked on the ground that the conveyance to him was not authorized by the existing circumstances, a recital of those circumstances showing that it was proper for the trustee to make the

conveyance, will be, in many states, prima facie evidence that the proper circumstances did exist.[13]

[13] Savings Society v. Deering, 66 Cal. 281; 5 Pac. 353; Beal v. Blair, 33 Iowa 318; Tartt v. Clayton, 109 Ill. 579.