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# Delivery of Deed After Death of Co-Grantor

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## PROPERTY

### DELIVERY OF DEED AFTER DEATH OF CO-GRANTOR

In 1911, a husband and wife, as grantors, signed and acknowledged warranty deeds to certain lands owned by each. Instead of being given to an escrow agent as therein provided, the deeds were placed in a bank lock box. The wife then sold part of her lands and her husband died in 1915 leaving her as his sole heir at law. In 1934, the wife delivered the deeds to the named grantee. Later, she died leaving two nephews as her next of kin. They brought this suit to quiet title to the lands, claiming that the deeds were void at the time of delivery. *Held*, the deeds were good conveyances. *Miller v. Miller*,—Ind.—, 38 N.E. (2d) 343 (1942).

7. The original patent had expired. *Williams Manufacturing Company v. United Shoe Machinery Corporation*, 316 U.S. 364, 370 (1942).
8. T.N.E.C. Monograph No. 31,160.
9. Infringement suit dismissed because of the patentee's misuse of the patent by permitting its use only with the unpatented material sold by the patentee. *Morton Salt Company v. G. S. Suppinger Company*, 314 U.S. 488 (1941); *B. B. Chemical Co. v. Ellis et al.*, 314 U.S. 495 (1941); See also, *Ethyl Gasoline Corporation et al. v. United States*, 309 U.S. 436, 456 (1940); *Leitch Manufacturing Company v. Barber Company*, 302 U.S. 458, 463 (1938); *Carbice Corporation v. American Patents Corporation*, 283 U.S. 27, 31 (1931); *Motion Pictures Patents Company v. Universal Film Manufacturing Company*, 243 U.S. 502, 518 (1917).
10. *Motion Picture Patents Company v. Universal Film Manufacturing Company*, 243 U.S. 502, 511 (1917); *George Kendall, Leander M. Ware, and George L. Jencks, Plaintiffs in Error v. Joseph S. Winsor*, 21 How. 322, 328 (U.S. 1858).
11. *Beidler v. United States*, 253 U.S. 447, 453 (1920); *Bauer & Cie v. O'Donnell*, 229 U.S. 1, 10 (1912).
12. *United Shoe Machinery Corporation et al. v. United States*, 258 U.S. 451, 455 (1921). (The United Shoe Machinery Co. occupies a dominant position in the production of shoe machinery and supplies a very large percentage of such machinery used by manufacturers.)

The court held that while the deeds express the intent to deliver to an escrow agent to hold until the deaths of the grantors, no consideration can be given thereto other than to say that these statements are mere surplusage and cannot nullify the clear purpose of the wife at the time the deeds were delivered. *Light v. Lane*, 41 Ind. 539 (1873). A deed is consummated by the delivery by the grantor and its acceptance by the grantee. *Harwood v. Masquelette*, 95 Ind. App. 338, 181 N.E. 380 (1932); *Cassidy v. Ward*, 70 Ind. App. 550, 123 N.E. 724 (1919); *Sims v. Smith*, 99 Ind. 469 (1884). Until delivery these deeds were merely inoperative scraps of paper. 16 AM. JUR., DEEDS, § 23, at 450. Being neither void nor voidable there is no question of ratification or disaffirmance. It is immaterial how she originally signed, whether as grantor or releasor, as a married or unmarried woman. At the time of delivery her former signature was adopted by her as an unmarried woman and as a grantor for the purpose of conveyance. *Sims v. Smith*, 99 Ind. 469 (1884); *Nye v. Lowry*, 82 Ind. 316 (1882). The date of delivery is the date at which the legal status of the grantor is to be determined. *Harwood v. Masquelette*, 95 Ind. App. 338, 181 N.E. 380 (1932); and a deed signed when under a disability is good if delivered after the disability is removed, the date of delivery being the date of the transaction. Tested by these rules it is apparent that the sale of a part of the land between the time the deeds were written and the time of their delivery by the wife did not destroy the efficacy of the deeds, and the fact that the deeds at delivery included more real estate than then owned by the grantor did not destroy the operative effect of the deeds as to the lands owned by the grantor. 16 AM. JUR., DEEDS, §329, at 623.

The decision herein conforms with previous Indiana cases and is in line with decisions of other jurisdictions on similar facts. *Saunders v. Blythe*, 112 Mo. 1, 20 S.W. 319 (1892); *Doe v. Howland*, 8 Cow. 277 (N.Y. 1828); *Goodman v. Goodman*, 20 Ohio App. 419, 152 N.E. 200 (1926); *Jourdan v. Jourdan*, 9 S. & R. 268 (Pa. 1823).