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Deeds -- Construction -- Use of Fee Simple Form Versus Intent To Convey Life Estate

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NOTES AND COMMENTS

Deeds—Construction—Use of Fee Simple Form Versus Intent To Convey Life Estate.

The recent case of *Oxendine v. Lewis*[1] demonstrates anew the danger in the attempted use of a printed fee simple form deed to convey other than a fee. In *Oxendine* the grantor inserted both before and after the metes and bounds description words that unequivocally showed an intent to convey only a life estate.[2] However, he had also inserted the word "her" before the word "heirs" in the printed premises, habendum, and warranty, thus completing the fee simple design of the form deed. Stating that where the granting clause, habendum, and warranty are in harmony repugnant clauses will be deemed surplusage, the court held that a fee had been conveyed.

Although in reaching its decision the court followed the more recent cases in this area,[3] the principle enunciated has not always been the law in North Carolina. In 1908 this state departed from the strict common law rule that the words in certain technical portions of the deed controlled the estate transferred.[4] The court, following the purport of G.S. § 39-1,[5] adopted the liberal view that the intention of the parties as gathered from the entire instrument was determinative.[6] Adhering to this view, the court allowed a life estate given by the habendum to take effect notwithstanding a fee simple was specified in the granting clause;[7] this holding was extended when the court held that words following the description which showed that only a life estate was in-

[1] 252 N.C. 669, 114 S.E.2d 706 (1960).

[2] In the blank space left for the description of the land he inserted the following: "A life estate in and to the following described tract of land, to wit: . . . . [Description of land followed.]

"It is distinctly understood . . . that the said Malinda Oxendine Hunt is to have a lifetime right and full control of the possession of the property herein conveyed, and the remainder, subject to said lifetime right, is retained by Roy Oxendine." *Id.* at 670, 114 S.E.2d at 707-08.

[3] Jeffries v. Parker, 236 N.C. 756, 73 S.E.2d 783 (1953); Artis v. Artis, 228 N.C. 754, 47 S.E.2d 228 (1948).

[4] At common law a subsequent clause could not cut down a fee given in the granting clause. Hafner v. Irwin, 20 N.C. 570 (1839).

[5] N.C. Gen. Stat. § 39-1 (1950). The statute states: "When real estate is conveyed to any person, the same shall be held and construed to be a conveyance in fee, whether the word 'heir' is used or not, unless such conveyance in plain and express words shows, or it is plainly intended by the conveyance or some part thereof, that the grantor meant to convey an estate of less dignity."

[6] Triplett v. Williams, 149 N.C. 394, 63 S.E. 79 (1908).

[7] *Ibid.*

tended to be conveyed would control the fee transferred in both the granting clause and the habendum.[8]

On the basis of the above decisions North Carolina was recognized as one of the leaders of the "modern view"[9] that if the intention of the parties was apparent from an examination of the four corners of a deed this intent would be given effect despite violation of any technical rules[10] of construction. This liberal view as applied in these earlier cases had two distinctive characteristics: first, the formal parts of a deed, both individually and collectively, were given no more weight in ascertaining the intent of the grantor than the non-formal parts; and second, there was a common sense recognition of the fact that in most instances the inserted words more aptly disclosed the intent of the grantor than did the formal printed parts. In regard to this last point, the court stated in *Jefferson v. Jefferson*[11] that to disregard the inserted matter

> would be to ignore a part of the need which in comparison with the more formal technical expressions used elsewhere might be considered the clearest expression of intent to be found in the instrument, and explanatory of its seemingly contradictory expressions.[12]

In 1948 this liberal rule was abandoned. Perhaps this was done because of difficulty in application, or perhaps in an effort to force more precise draftsmanship; whatever the reason, the court adopted the current view that where the more formal parts of the deed (granting clause, habendum, and warranty) are in harmony, no other language will be considered.[13] Consequently, our court no longer relies upon the valid principle that written words should be given effect over printed matter.

To the extent that the adoption of this strict rule may force more precise draftsmanship and deter the use of form deeds for purposes

[8] Jefferson v. Jefferson, 219 N.C. 333, 13 S.E.2d 745 (1941). In this case the court stated that, although not brought out by the record, it seemed probable that the draftsman used some printed form deed which he endeavored to adopt for his purposes. Thus the case is factually similar to *Oxendine*.

[9] Annot., 84 A.L.R. 1054, 1063 (1933); 2 ARK. L. REV. 114 (1947); 11 N.Y.U. INTRA. L. REV. 201 (1956).

[10] Some of these "technical rules" are: the regarding of the formal divisions of the deed as separate and independent, each with its special function, Troy & North Carolina Gold Mining Co. v. Snow Lumber Co., 170 N.C. 273, 87 S.E. 40 (1915); allowing the granting clause to prevail over other portions of the deed, Krites v. Plott, 222 N.C. 679, 24 S.E.2d 531 (1943); allowing the first of repugnant clauses to control, Bryant v. Shields, 220 N.C. 628, 18 S.E.2d 157 (1942).

[11] 219 N.C. 333, 13 S.E.2d 745 (1941).

[12] *Id.* at 338, 13 S.E.2d at 748.

[13] Artis v. Artis, 228 N.C. 754, 47 S.E.2d 228 (1948). This raises the question of whether a deed can be divided into "formal" parts and "other" parts, or must every word be within one of the "formal" sections. The language of the principal case indicates that there may be parts of a deed which do not fall within any of the common law groupings.

other than those for which they are intended, the *Oxendine* holding is both commendable and understandable. Inequities may result,[14] but the mere fact that a rule results in an injustice in one particular case does not warrant discarding it. This rule would be suitable in the situation where the entire deed is handwritten or typed; in a case like the principal one, however, it would seem that the injustice outweighs the merits.

The dissent of Justice Bobbitt points out another danger inherent in *Oxendine*—a new interpretative problem has been bred. The rule that the granting clause will prevail when the habendum and warranty clauses are in harmony therewith presupposes a working knowledge of what is encompassed within the term "granting clause." This case highlights the need for a precise understanding of where the granting clause begins and ends, as here the words transferring a life estate were inserted immediately after the printed premises of the form deed and before the metes and bounds description; in previous cases the limiting words appeared after the description.[15]

There is a dearth of information in North Carolina as to exactly what constitutes the granting clause; this probably is a result of the fact that prior to *Oxendine* there had been no need to discuss the subject. Generally, the operative words of conveyance which appear in the premises are referred to as the "granting clause."[16] In the principal case, however, the court took the position that only the operative words *printed* in the premises could be considered within the granting clause, thus excluding the inserted material. *Artis v. Artis*[17] stated that "ordinarily the premises and granting clauses designate the grantee and *the thing*[18] *granted* . . . ."[19] Following this it would seem that when the inserted words are taken into consideration, the thing granted was

[14] Although the court may force lawyers to be more precise, it is not going to prevent a layman from using a form deed and trying to adopt it for his purposes. To require of the layman the same degree of skill that is required of the lawyer obviously will result in some injustice.

[15] In *Oxendine* limiting words appeared after as well as before the description.

[16] THOMPSON, A PRACTICAL TREATISE ON ABSTRACTS AND TITLES § 302 (2d ed. 1930).

[17] 228 N.C. 754, 47 S.E.2d 228 (1948).

[18] It is not clear whether the "thing" granted refers to the estate granted or to the land itself. Bryant v. Shields, 220 N.C. 628, 18 S.E.2d 157 (1942), on which the definition is based, seems to indicate that it refers to the actual land granted. However, for authority indicating that the granting clause designates the estate granted see BALLENTINE, THE PREPARATION OF CONTRACTS AND CONVEYANCES 73 (1929) ("interest conveyed"); BURBY, LAW REFRESHER—REAL PROPERTY 93 (1958) ("quantum of the estate"); 7 THOMPSON, COMMENTARIES ON THE MODERN LAW OF REAL PROPERTY § 3522 (perm. ed. 1939) ("interest conveyed"); SACKMAN, TITLES § 3.4 (1959) ("character of the estate conveyed").

[19] Artis v. Artis, 228 N.C. 754, 760, 47 S.E.2d 228, 232 (1948). (Emphasis added.)

not a described tract of land, but a "life estate in and to the following described tract of land."[20]

Oxendine points to the possible necessity that the court in the future may have to define the "granting clause" with some exactness. At the present various interpretative problems might arise in application of the *Artis-Oxendine* rule, such as: where the granting clause begins and ends, and therefore, whether or not particular words are included; whether a draftsman using a form deed can add to the printed granting clause, and if so, what is the result of conflicting words within the granting clause. Thus it is questionable whether the presumably desired result of certainty has yet been achieved.

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Federal Income Taxation—Non Taxable Gift Versus Taxable Compensation.

Frequently the taxpayer must decide whether a particular payment is the receipt of income in the form of compensation[1] or a non-taxable gift.[2] The decision is problematical, for the legal distinctions between them are nowhere clearly expressed. If the taxpayer cautiously classifies the receipts as compensation, he might increase his tax burden needlessly. Alternatively, his election to exclude such receipts from gross income faces possible challenge by the Commissioner of Internal Revenue.

Recently the Supreme Court of the United States decided three cases involving the "gift versus compensation" issue.[3] The case of *Commissioner v. Duberstein*[4] grew out of a fairly common business situation. The taxpayer, president of a corporation and a business friend of one Berman, president of another corporation, supplied at Berman's request the names of potential customers for Berman's com-

[20] In *Oxendine* the court clearly did not consider the inserted material part of the granting clause, but there was a dissent as to this. Also, in *Oxendine* the majority merely laid down a rule of exclusion, which leaves much to be desired as to definiteness.

[1] INT. REV. CODE OF 1954, § 61(a): "Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items: (1) Compensation for services, including fees, commissions, and similar items. . . ."

[2] INT. REV. CODE OF 1954, § 102(a): "Gross income does not include the value of property acquired by gift, bequest, devise, or inheritance."

[3] "The Government, urging that clarification of the problem typified by these two cases was necessary, and that the approaches taken by the Courts of Appeal for the Second and the Sixth Circuits were in conflict, petitioned for certiorari. . . . On this basis, and because of the importance of the question in the administration of the income tax laws, we granted certiorari. . . ." Commissioner v. Duberstein, 363 U.S. 278, 283-84 (1960).

[4] 363 U.S. 278 (1960).