

above all things, avoid putting severe and drastic remedies in the hands of the creditor. It is quite reasonable to trust a man for his wealth, his ability, his honesty or his industry; but every day's experience shows us that nothing is so unsafe as to trust your money to the fear of disgrace or punishment. The effect of such a law would, I believe, be most salutary; with nothing but the estate of the debtor to look to, there would be fewer bad debts; trade would be more safely, and therefore more profitably managed; and the ridiculous notions as to the peculiar wickedness alternately imputed to borrowers and lenders would be once and forever exploded. * * * It is better that debts should be paid unequally, than that the property should be destroyed in the effort to ascertain an equality which yields a purely metaphysical and imaginary satisfaction to the thirsty creditor."

All of this is worthy of the greatest consideration, and is quite as applicable to the condition of affairs in this country as in England.

A writer in the September number of the *American Law Review*, in discussing the Guiteau case, makes some rather startling suggestions concerning the punishment for attempts, and the defense of insanity in capital cases. He calls attention to the fact that the essence of a crime is the evil motive by which the accused is actuated at the time of its commission, and that the intent is the same whether the result is the accomplishment of the criminal's wishes or a foiled attempt. That, as the criminal deserves no credit for his failure to accomplish his purpose, therefore he ought not to derive any benefit for it and should, in justice, be punished to the same extent for an attempt as for the crime itself.

We hardly know whether to agree with this view or not. It is a question to which there are two sides, and in such a case, we confess that our instincts are apt to place us in the ranks of conservatism.

As to insanity as a defense in capital cases, he thinks it ought to be abolished. "Capital punishment differs from other forms of punishment in that it is no part of its aim to work any reformation in the criminal."

* * * * "In capital cases the only aim of the law is to destroy the offender, and remove by his death a danger to society which can be removed in no other way. The danger to society from an insane murderer is at least as great as from a sane murderer, and society has as much need of protection in the one case as in the other. If it is vain to hope that the sane murderer who is open to the effects of milder penalties can be rendered harmless while he lives, it is still more so in the case of an insane murderer, upon whom milder penalties would have no effect." This reads like a disguised argument for the abolition of capital punishment.

Though, for our part, we can not see that, taken in all its completeness of meaning, it is not a very good suggestion. Of course it is contrary to precedent, and is revolting to refined sensibilities to execute insane criminals, and it is not likely that such an alteration will ever be made in our criminal laws. But, notwithstanding the idea is open to the charge of brutality, we think that it would be far better than the present weak and bungling system by which the most dangerous criminals are so frequently turned loose upon society.

DELIVERY AND ACCEPTANCE OF DEEDS.

That the mere signing and sealing of a deed imparts no validity to the instrument is well known, and it is a familiar principle of the law of real property, that delivery of the deed is necessary, in order to pass the title, from the grantor to the grantee. This principle has been enunciated again and again in most of the States.¹ It is equally familiar law,

¹ *Younge v. Guilbeau*, 3 Wall. 636; *Frisbie v. Mc-Carty*, 1 Stew. & P. 56; *Miller v. Physick*, 24 Ark. 224; *Fitch v. Bunch*, 30 Cal. 208; *Merrills v. Swift*, 18 Conn. 261; *Oliver v. Stone*, 24 Ga. 63; *Fletcher v. Mansur*, 5 Ind. 267; *Whitaker v. Miller*, 33 Ill. 381; *Mitchell v. Skinner*, 17 Kan. 565; *Hughes v. Easteru*, 4 J.J. Marsh. 573; *Carey v. Dennis*, 13 Md. 1; *Brown v. Brown*, 66 Me. 316; *Berkshire Fire Ins. Co. v. Sturgis*, 13 Gray, 178; *Heffron v. Flannigan*, 37 Mich. 274; *Green v. Yarnall*, 6 Mo. 326; *Davis v. Lumpkin*, 57 Miss. 506; *Patrick v. McCormick*, 10 Neb. 15; *Crawford v. Bertholf*, Sax. (N. J.) 458; *Hammell v. Hammell*, 19 Ohio, 17; *McPherson v. Featherstone*, 37 Wis. 632; *Dikes v. Miller*, 24 Tex. 417.

that the acceptance of the deed by the grantee is as essential as its delivery by the grantor. The title will not pass, unless the grantee has assented to receive the deed.² Inasmuch as the deed has no validity until it has been accepted as well as delivered, it is held that the grantee must accept before the rights of third parties have intervened, or the title passes subject to the rights of such parties.³ To make delivery of the deed, it is not necessary that there should be any particular form or ceremony, nor that the deed should be actually handed over by the grantor to the grantee. The question of delivery is always one as to the intention of the parties. It may be effected by words without acts, or by acts without words, or by both acts and words.⁴ In a recent case, decided by the Supreme Judicial Court of Massachusetts, it is said: "It is not necessary, as between the parties themselves, even when both are present, that the deed should be placed in the actual custody of the grantee, or of his agent. It may remain with the grantor, and it will be good, if there are other acts and declarations sufficient to show an intention to treat it as delivered."⁵ In a case in the New Jersey Court

of Chancery, the vice-chancellor, upon this same subject, said, that delivery might be made "though the deed remained in the custody of the grantor. Thus, if both parties are present when the usual formalities of execution take place, and the contract is fully carried out, and nothing remains to be done except the empty ceremony of passing the deed from the grantor to the grantee, the law regarding the substance, and disregarding mere form, will adjudge the title has passed to the grantee, and that the deed is good and valid to him, though it should remain in the custody of the grantor. However, in cases where there is not an actual transfer of the deed, it must satisfactorily appear, either from the circumstances of the transaction or the acts or the words of the grantor, that it was his intention to part with the deed and put the title in the grantee;"⁶ and the doctrine that the retention of the deed by the grantor is not inconsistent with a delivery of the instrument is sustained by the authorities.⁷ In a case in Georgia it was held that if the deed was signed and sealed, and declared in the presence of attesting witnesses to be delivered as his deed by the grantor, the delivery was effectual, provided there was nothing to qualify, notwithstanding the grantee was not present, nor any one on his behalf, and the deed remained under the control of the grantor.⁸ In an early case it was held, in England, that where the deed was signed in the presence of the parties, but was left behind by them in the place where it was signed, this was as effectual as a good delivery, though no actual delivery took place.⁹

In a case in Maine, where both parties were present at the execution of the instrument, but after its execution the grantor picked up the deed and carried it off with him, it was held that there was no delivery, notwithstanding the fact that the grantor was bound to make the conveyance.¹⁰

In an Alabama case it was held that a deed,

² *Fadger v. Eisensmidt*, 29 Tenn. 567; *Corbett v. Noreross*, 35 N. H. 99; *Bell v. Farmers' Bank*, 11 Bush (Ky.) 34; *Fonda v. Sage*, 46 Barb. 109; *Stephens v. Buffalo, etc. R. Co.*, 20 Barb. 332; *Daniel v. Holmes*, 33 Me. 172; *White v. Bradley*, 66 Me. 254; *Leppock v. National Union Bank*, 32 Md. 136; *Dikes v. Miller*, 24 Tex. 423; *Union Mut. Life Ins. Co. v. Campbell*, 95 Ill. 267; *Merrills v. Swift*, 18 Conn. 261; *Comer v. Baldwin*, 16 Minn. 172; *Kearney v. Jeffries*, 48 Miss. 343; *Rogers v. Carey*, 147 Mo. 232; *McGehee v. White*, 31 Miss. 41; *Dikes v. Miller*, 24 Tex. 417; *Cooper v. Jackson*, 4 Wis. 537; *Mitchell v. Ryan*, 3 Ohio St. 377.

³ *Foster v. Beardsley Scythe Co.*, 47 Barb. 505; *Bell v. Farmers' Bank*, 11 Bush (Ky.) 34; *Tuttle v. Turner*, 28 Tex. 759; *McPherson v. Featherstone*, 37 Mo. 632; *Johnson v. Farley*, 45 N. H. 505; *Derry Bank v. Webster*, 44 Ib. 268; *Samson v. Thornton*, 3 Mete. (Mass.) 275; *Hedge v. Drew*, 12 Pick. 141; *Day v. Griffith*, 15 Iowa, 104; *Goodsell v. Stinson*, 7 Blackf. (Md.) 437; *Parmalee v. Simpson*, 5 Wall. 81; *Cooper v. Jackson*, 4 Wis. 537; *Boody v. Davis*, 20 N. H. 140.

⁴ *Cannon v. Cannon*, 26 N. J. Eq. 319; *Den v. Farley*, 21 N. J. Law, 285; *Gunnell v. Cockerill*, 84 Ill. 319; *Wall v. Wall*, 30 Miss. 91; *Stevens v. Hatch*, 6 Minn. 64 (Gil. 19); *McCoy v. Hill*, 3 Marsh. (Ky.) 375; *Duer v. James*, 42 Md. 492; *Carson v. Phelps*, 40 Md. 73; *Tucker v. Allen*, 16 Kan. 312, 319; *Welborn v. Weaver*, 17 Ga. 267; *Dearmond v. Dearmond*, 10 Ind. 191; *McClure v. Colclough*, 17 Ala. 89; *Newton v. Beales*, 41 Iowa, 334; *Bogie v. Bogie*, 35 Wis. 659; *Dukes v. Spangler*, 35 Ohio St. 616; *Warren v. Swett*, 31 N. H. 332; *Farrar v. Bridges*, 5 Humph. 411.

⁵ *Regan v. Howe*, 121 Mass. 424.

⁶ *Cannon v. Cannon*, 26 N. J. Eq. 319.

⁷ *Canning v. Pinkham*, 1 N. H. 353; *Folly v. Vantuyt*, 9 N. J. Law, 193; *Souverbye v. Arden*, 1 Johns. Ch. 240; *Moore v. Hazleton*, 9 Allen, 102, 106; *Wall v. Wall*, 30 Miss. 91; *Dearmond v. Dearmond*, 10 Ind. 191; *Hart v. Rust*, 46 Tex. 556; *Ledgerwood v. Gault*, 2 Lea, 643; *Farrar v. Bridges*, 5 Humph. 411.

⁸ *Rushin v. Shields*, 11 Ga. 636.

⁹ *Shelton's Case*, Cro. Eliz. 7.

¹⁰ *Woodman v. Coolbroth*, 7 Me. 181.

left by the grantor with the attorney who drew it for registration, or taken by the vendor to be handed to the clerk for registration, had been sufficiently delivered.¹¹ In a Kentucky case it was ruled that proof that the deed was signed and attested, and left on the table without delivery to any person, was not sufficient evidence of a delivery.¹² In Pennsylvania it was held that where the grantor executed and acknowledged the deed, and then left it with the officer without instructions, the delivery was absolute.¹³ In a recent Michigan case, where a husband had executed a deed to his wife for the purpose of having her exhibit it to his creditor to induce him to grant an extension, and had deposited it with his other papers in the house where she had access to it, to make use of it for the purpose for which it was made, it was held that the legal control of the instrument must be regarded as having been delivered to her, and that this constituted a delivery in law.¹⁴ In Illinois it was lately held, the grantor having left the deed to be recorded, and when recorded to be forwarded to the grantee, that there was no delivery until the time of mailing.¹⁵ And it has been held that depositing a deed for record is a delivery of it.¹⁶ Also, that the execution of a deed in the presence of an attesting witness is sufficient evidence from which to infer a delivery.¹⁷ Where a deed has been recorded and acted upon by mutual concurrence of grantor and grantee, that amounts to a delivery; and the fact that it was originally made without the knowledge of the latter, and not manually delivered to him, is regarded as of no importance.¹⁸ To constitute a delivery of the deed, it is necessary that the grantor should part with the possession of the instrument, or with the right to retain it in his possession. There can be no delivery in the absence of one or the other of these two requisites.¹⁹ Wheth-

¹¹ Burt v. Cassety, 12 Ala. 374.

¹² Hughes v. Eastern, 4 J.J. Marsh. 573.

¹³ Blight v. Schenck, 10 Pa. St. 285.

¹⁴ Gage v. Gage, 36 Mich. 229.

¹⁵ Partridge v. Chapman, 81 Ill. 137.

¹⁶ Shaw v. Hayward, 7 Cush. 170.

¹⁷ Moore v. Hazleton, 9 Allen, 102, 106, and cases there cited.

¹⁸ Jackson v. Cleveland, 15 Mich. 94; Gould v. Day, 94 U. S. 412.

¹⁹ Gould v. Day, 94 U. S. 412; Berry v. Anderson, 22 Ind. 36; Rutledge v. Montgomery, 30 Ga. 899; Stinson v. Anderson, 96 Ill. 373; Eckman v. Eckman, 55 Pa.

er there has been a delivery or not, is a mixed question of law and fact. What facts constitute a delivery in law being a question for the court, the jury is to find the existence or non-existence of the facts.²⁰ A deed in the possession of the grantee is presumed to have been delivered, possession being *prima facie* evidence of delivery.²¹ Convincing and clear evidence is necessary to rebut this presumption.²² It has been held that where the grantor is as much, or more, interested in the execution, or preservation, of a deed than the grantee, the fact that it is found in his possession is no presumption against the idea that delivery was intended at the time of execution.²³ And it has been held that non-delivery of the deed will not be presumed from the fact that the deed remained in the possession of the grantor several months after it had been recorded.²⁴ It has also been held that the recording of a deed is *prima facie* evidence of its delivery.²⁵ In Missouri it is said that a delivery may be

St. 269; Brown v. Brown, 66 Me. 316; Burton v. Boyd, 7 Kan. 17; Younge v. Guilbeau, 3 Wall. 636; Duer v. James, 42 Md. 492; Withers v. Jenkins, 6 S. C. (N. S.) 124; Kirkman v. Bank of America, 2 Coldw. (Tenn.) 397; Cook v. Brown, 34 N. H. 460, 475; Elmore v. Marks, 39 Vt. 538.

²⁰ Den v. Farlee, 21 N. J. Law, 279; Jones v. Swayze, 42 N. J. Law, 279; Cocks v. Simmons, 57 Miss. 183; Somers v. Pumphrey, 24 Ind. 231; Dearmond v. Dearmond, 10 Ind. 191; Howell v. Leith, 39 Ga. 180; Gregory v. Walker, 38 Ala. 26; Hurlburt v. Wheeler, 40 N. H. 73; Thompson v. Jones, 38 Tenn. 574; Lindsay v. Lindsay, 11 Vt. 621.

²¹ Berry v. Anderson, 22 Ind. 231; Black v. Thornton, 30 Ga. 361; Roberts v. Swearingen, 8 Neb. 363; Green v. Yarnall, 6 Mo. 326; Morris v. Henderson, 37 Miss. 492; Black v. Shreve, 13 N. J. Eq. 455; Den v. Farlee, 21 N. J. Law, 280; Benson v. Wolverton, 2 McCarter, 158; Tunison v. Chamblin, 88 Ill. 378; Reed v. Douthit, 62 Ill. 348; Rhine v. Robinson, 27 Pa. St. 30; Ward v. Lewis, 4 Pick. 520; Chandler v. Temple, 4 Cush. 285; Fireman's Ins. Co. v. McMullan, 29 Ala. 147; Dawson v. Hall, 2 Mich. 390; Games v. Stiles, 14 Pet. 322; Carson v. Phelps, 40 Md. 73; Patterson v. Snell, 67 Me. 559; Billings v. Stark, 15 Fla. 297; Tuttle v. Turner, 28 Tex. 759; McEwen v. Frost, 1 Sneed, 186; Collins v. Bankhead, 1 Strob. 28.

²² Tunison v. Chamblin, 88 Ill. 378.

²³ Blakemore v. Brynside, 7 Ark. 505; Dyer v. Bean, 15 Ark. 538.

²⁴ Howard v. Patrick, 38 Mich. 795.

²⁵ Gilbert v. North American Fire Ins. Co., 23 Wend. 43; Jackson v. Perkins, 2 Wend. 308; Union Mutual Life Ins. Co. v. Campbell, 95 Ill. 267; Himes v. Keighblinger, 14 Ill. 469; Boardman v. Dean, 34 Pa. St. 252; Chess v. Chess, 1 P. & W. 32; Harwood v. Steel, 4 Phila. 88; Leppock v. National Union Bank, 32 Md. 136; Knolls v. Barnhart, 71 N. Y. 474; Berkshire Mutual Fire Ins. Co. v. Sturgis, 13 Gray, 178.

²⁶ Gorman v. Stanton, 5 Mo. 585; Pearce v. Danforth, 13 Mo. 360.

inferred from leaving a deed for record.²⁶ In a case in California it is said that the recording of a deed is not evidence of a delivery, unless the deed comes from the hands of the grantor, or some one claiming through, or under, him.²⁷ In Michigan it has been held that it is a sufficient delivery of a deed if the grantor, intending thereby to give it effect, leaves it with the conveyancer to be delivered to the grantee.²⁸ In a more recent case in the same State, where a grantor who had executed to his son a deed of land, which the latter occupied, promised to record the same and send it to him, but kept it in his own possession until his death, four years after, the evidence being conflicting as to whether he ever meant to record the deed, it was held that there had been no delivery.²⁹ In a case in New Jersey, where the grantor of a voluntary deed had directed the scrivener to have it recorded, and had paid the recording fees to him, Chancellor Zabriskie nullified the deed upon the ground that there had been no delivery to the child in whose favor it was made, nor to any person for the child.³⁰ But in Iowa it was held that where a deed from the father to a child was absolute in form and beneficial in effect, and the father voluntarily caused the same to be recorded, this was in law a sufficient delivery and passed the title.³¹ And it is well-settled that the law makes stronger presumptions in favor of the delivery of deeds in cases of voluntary settlements, especially when made to infants, than in the ordinary cases of bargain and sale.³² The registration of a deed is regarded as *prima facie* evidence of a delivery.³³ And delivery has been presumed from the acknowledgment of the

deed.³⁴ In other cases it is said that the acknowledgment and registration of the deed afford presumptive evidence of a delivery.³⁵ In Massachusetts it is held that the appearance of a deed on record does not operate as a delivery, nor supersede the necessity of proof of a delivery.³⁶ In New York it has been said that executing and causing a deed to be recorded is not a delivery of it.³⁷ But in Texas it is held that the registration of a deed is a constructive delivery of it.³⁸ And in California it is said that the grantor by the execution and acknowledgment of the deed admits its delivery.³⁹ But the presumption as to a delivery, afforded by the registration of a deed, is overthrown by proof that the grantee had no knowledge of its existence.⁴⁰ A deed takes effect, not from its date, but from the time of its delivery.⁴¹ And the time of delivery may be shown by parol, the rule excluding parol evidence, to affect that which is written, not being infringed by the admission of such evidence, for the purpose of showing that the instrument was void for want of delivery and acceptance.⁴² In the absence of evidence to the contrary, the time of delivery is presumed to have been the same with the date of the

²⁶ *McConnell v. Brown*, Lit. Sel. Cas. 466; *Ford v. Gregory*, 10 B. M. 180; *Den v. Farley*, 21 N. J. Law, 280, 285.

²⁷ *Bullett v. Taylor*, 34 Miss. 708; *Ingraham v. Grigg*, 13 S. & M. 22; *Stewart v. Redditt*, 3 Md. 67; *Warner v. Hardy*, 6 Md. 525; *Hutchins v. Dixon*, 11 Md. 40; *Phelps v. Phelps*, 17 Md. 133; *Craven v. Craven*, 38 Iowa, 471; *Robinson v. Gould*, 26 Iowa, 89; *Rigler v. Cloud*, 14 Pa. St. 361; *Kille v. Ege*, 79 Pa. St. 15. See *Arthur v. Anderson*, 9 S. C. (N. S.) 249.

²⁸ *Hawkes v. Pike*, 105 Mass. 560; *Parker v. Hill*, 8 Met. 447; *Samson v. Thornton*, 3 Met. 276.

²⁹ *Eames v. Phipps*, 12 Johns. 418.

³⁰ *Holliday v. White*, 33 Tex. 460.

³¹ *Bensley v. Atwill*, 12 Cal. 231.

³² *Younge v. Guilbeau*, 3 Wall. 636; *Kingsbury v. Burnside*, 58 Ill. 310; *Hayes v. Davis*, 18 N. H. 500.

³³ *Clayton's Case*, 5 Co. 1; *Ozkey v. Hicks*, Cro. Jac. 263; *Steele v. March*, 4 B. & C. 272; *United States v. Lebaron*, 19 How. 73; *County of Calhoun v. Am. Emigrant Co.*, 93 U. S. 124; *Henloy v. Wilson*, 77 N. C. 216; *Solomon v. Evans*, 3 McCord, 274; *Loubat v. Kipp*, 9 Fla. 60; *Love v. Wells*, 25 Ind. 503; *Egery v. Woodward*, 56 Me. 45; *Gulf R. Co. v. Owen*, 8 Kans. 409; *Harrison v. Andrews*, 18 Kans. 535; *Barncord v. Kuhn*, 36 Pa. St. 383; *Roberts v. Swearingen*, 8 Neb. 363; *Tuttle v. Turner*, 28 Tex. 759; *Fish v. Gordon*, 10 Vt. 288; *Shep. Touchstone*, 72.

³⁴ *Leppock v. Nat. Union Bank*, 32 Md. 186; *Fowle v. Coe*, 63 Me. 245; *Porr v. Larabee*, 58 Me. 543; *Cook v. Knowles*, 38 Mich. 316; *Solomon v. Evans*, 3 McCord, 274.

²⁷ *Barr v. Schroeder*, 32 Cal. 610.

²⁸ *Thatcher v. St. Andrews Church*, 37 Mich. 264.

²⁹ *Burnett v. Burnett*, 40 Mich. 361.

³⁰ *Armstrong v. Armstrong*, 19 N. J. Eq. 358.

³¹ *Cecil v. Beaver*, 28 Iowa, 241.

³² *Broughton v. Broughton*, 1 Atkins, 625; *Clavering v. Clavering*, 2 Vernon, 473; *Johnson v. Smith*, 1 Vesey, 314; *Souverby v. Arden*, 1 Johns. Ch. 256; *Bunn v. Winthrop*, 1 Johns. Ch. 336; *Bryan v. Walsh*, 2 Gilm. 557; *Masterson v. Cheek*, 23 Ill. 72; *Reed v. Douthit*, 62 Ill. 352.

³³ *Thompson v. Jones*, 38 Tenn. 574; *McEwen v. Troost*, 33 Tenn. 186; *Corley v. Corley*, 42 Tenn. 520; *Mitchell v. Ryan*, 3 Ohio St. 377; *Hoffman v. Mackall*, 5 Ohio St. 124; *Hammell v. Hammell*, 19 Ohio, 17; *Mallett v. Page*, 8 Ind. 364; *McNeely v. Rucker*, 6 Blackf. 391; *Taylor v. McClure*, 28 Ind. 39; *Ten Eyck v. Perkins*, 2 Wend. 308; *Gilbert v. North American Ins. Co.*, 23 Wend. 43; *Welborn v. Weaver*, 17 Ga. 267.

deed.⁴³ Where the date of the acknowledgment is subsequent to the date of the deed, delivery is presumed to have been made at the time of acknowledgment.⁴⁴ But in Illinois delivery is presumed to have been made on the day the deed bears date, even though the date of the acknowledgment is subsequent thereto.⁴⁵ In Michigan a deed was not acknowledged until after the death of the grantee, and the court held that it would be presumed that delivery had been previously made.⁴⁶

A deed by husband and wife for the lands of the latter must be delivered before the death of the wife.⁴⁷ The consent of a married woman to the delivery of a deed, executed by her, is evinced by her acknowledgment; and this is the only way in which her consent can be exhibited.⁴⁸ A deed executed and acknowledged by a commissioner, appointed by decree to sell and convey land, was said to be delivered when the court confirmed his report of sale and conveyance.⁴⁹ And it is settled that a deed may be delivered to a third person for the use of the grantee, without any specific authority from the latter.⁵⁰ And the delivery of a deed in *escrow* must be to a third person; for if made to the grantee, it takes effect at once, notwithstanding it was delivered conditionally.⁵¹ And if a deed is de-

posited in *escrow*, and is improperly delivered to the grantee, the condition upon which it was to be delivered up not having been performed, no title will pass, as the delivery is not that of the grantor.⁵² When a deed is delivered in *escrow*, and either party dies before the condition is performed, the condition being afterwards performed, the deed is valid, and relates back to the time of the first delivery.⁵³ And whenever it is necessary to protect the rights of the parties, not merely against the death of the grantor, but also against future disabilities or intervening claims, equity requires that the second delivery shall relate back to the first.⁵⁴ It is settled that a deed will not take effect, although left in the hands of the grantee after its execution, if it is so left solely for the purpose of transmission to a third party, in whose hands it is to remain until the performance of the conditions upon which it is to be delivered up to the grantee.⁵⁵ In a recent case in Massachusetts, where the grantor executed a deed and left it with the scrivener, to be delivered to the grantee upon the performance of certain conditions, and the conditions having been fully performed, the scrivener had given the deed to the grantor upon his declaring that he took it to deliver it to the grantee, the facts were held to warrant a finding that there had been a delivery, although the grantor denied all the facts. It was said "the destruction or detention of the deed by the

⁴³ Clark v. Akers, 16 Kans. 166; Babbitt v. Johnson, 15 Kans. 252; Sweetser v. Lowell, 33 Me. 446; Fowle v. Coe, 63 Me. 245; Robinson v. Wheeler, 25 N. Y. 252; Huber v. Diebold, 25 N. J. Eq. 171; Masterson v. Marshall, 5 Dana, 417; Hall v. Benner, 1 P. & W. 402; Deininger v. McConnell, 41 Ill. 228.

⁴⁴ Loomis v. Pingree, 43 Me. 299; County of Henry v. Bradshaw, 20 Iowa, 355; Blanchard v. Tyler, 12 Mich. 339; Johnson v. Moore, 28 Mich. 3; Clark v. Akers, 16 Kans. 166.

⁴⁵ Jayne v. Gregg, 42 Ill. 413, 416; Blake v. Fash, 44 Ill. 302; Hardin v. Osborne, 60 Ill. 93.

⁴⁶ Eaton v. Trowbridge, 38 Mich. 454.

⁴⁷ Shoenberger v. Zook, 34 Pa. St. 24; Shoenberger v. Hackman, 37 Pa. St. 87.

⁴⁸ Devorse v. Snider, 60 Mo. 235.

⁴⁹ Cocks v. Simmons, 57 Miss. 183.

⁵⁰ Verplank v. Sterry, 12 Johns. 536; Church v. Gilman, 15 Wend. 656; Brown v. Austen, 35 Barb. 341; Shrader v. Bonker, 65 Barb. 608; Weltorn v. Weaver, 17 Ga. 267; Tibbals v. Jacobs, 31 Conn. 431; Graham v. Lambert, 5 Humph. 595.

⁵¹ Co. Litt., 36; Thoroughgood's Case, 9 Reporter, 137; Whyddon's Case, Cro. Eliz. 520; Blunden v. Wood, Cro. Jac. 85; Holford v. Parker, Hobart, 248; Simonson's Estate, 4 Watts, 180; Vorheis v. Kitch, 8 Phil. 554; Gilbert v. North American Fire Ins. Co., 23 Wend. 43; Jordan v. Pollock, 14 Ga. 145; Worrall v. Munn, 5 N. Y. 229; Braman v. Bingham, 26 N. Y. 483; Foley v. Cowgill, 5 Black. 18; State v. Chrisman, 2 Ind. 126; Wright v. Shelby, 16 B. Mon. 5; Fireman's

Ins. Co. v. McMillan, 29 Ala. 147; Fairbanks v. Metcalf, 8 Mass. 238; Ward v. Lewis, 4 Pick. 520; Haggood v. Harley, 8 Rich. 325; Ordinary v. Thatcher, 41 N. J. L. 403; Graves v. Tucker, 10 S. & M. 9; Den v. Partee, 2 Dev. & Bat. 530; Dawson v. Hall, 2 Mich. 390; McKean v. Massey, 6 Kans. 122.

⁵² Black v. Shreve, 13 N. J. Eq. 455; Titus v. Phillips, 18 N. J. Eq. 541; Pratt v. Holman, 16 Vt. 530; Blight v. Schenk, 10 Pa. St. 293; Everts v. Agnes, 4 Wis. 356; S. C., 6 Wis. 457; Patrick v. McCormick, 10 Neb. 1; Cotton v. Gregory, 10 Neb. 125; Harkreader v. Clayton, 56 Miss. 383; Nichols v. Nichols, 28 Vt. 228; Smith v. S. Royalton Bank, 32 Vt. 341; Wheelright v. Wheelright, 2 Mass. 452; Berry v. Anderson, 22 Ind. 36; Abbott v. Alsdorf, 19 Mich. 157.

⁵³ Kirkman v. Bank of America, 2 Cold. 397; Brevard v. Neely, 2 Sneed, 164; Hunter v. Hunter, 17 Barb. 25; Russell v. Rowland, 6 Wend. 686; Cook's Adm'r v. Hendricks, 4 Mon. 502.

⁵⁴ Wheelright v. Wheelright, 2 Mass. 446; Foster v. Mausfield, 3 Met. 412; Frost v. Beekman, 1 Johns. Ch. 288; Whitfield v. Harris, 78 Miss. 710; Simpson v. McGallherly, 52 Miss. 723.

⁵⁵ Rhodes v. School District, 30 Me. 112; Steel v. Miller, 40 Iowa, 406; Gilber v. North American Fire Ins. Co., 23 Wend. 43; Braman v. Bingham, 26 N. Y. 83; People v. Bostwick, 32 N. Y. 445.

grantor, after such delivery, can not divest the grantee's estate."⁵⁶

In a late Michigan case it was held that a *mandamus* did not lie at the suit of a grantee, to compel a register of deeds to record a deed delivered to him in *escrow*, and withheld at the order of the grantee.⁵⁷ It is settled that a deed may be delivered to a third person, to take effect upon the death of the grantor.⁵⁸ In some cases it is said, such a delivery is good, provided the grantor did not retain any control over the instrument. But in Vermont it was held that a deed⁵⁹ could take effect on the death of the grantor, although he had delivered it to a third person to give to the grantee at his death, unless he otherwise directed.⁶⁰ And it is held that where a deed shows upon its face that it was intended to be executed by several persons jointly, so that all should be bound, an execution and delivery by some of the parties only is incomplete, and does not bind them.⁶¹ As to the acceptance of a deed by a grantee, it is held that assent may be presumed, provided it is beneficial to the interests of the grantee.⁶² A guardian is authorized to accept delivery of a deed for his ward.⁶³ But the reception and retention of a deed, it has been said, does not conclusively show acceptance.⁶⁴

HENRY WADE ROGERS.

⁵⁶ Regan v. Howe, 121 Mass. 424.

⁵⁷ People v. Curtis, 43 Mich. 723.

⁵⁸ Latham v. Udell, 38 Mich. 238; Howard v. Parick, 38 Mich. 795; Wallace v. Harris, 32 Mich. 380; Foster v. Mansfield, 3 Met. 412; Stone v. Duvall, 77 Ill. 475; Stephens v. Huss, 54 Pa. St. 20; Stephens v. Rinehart, 72 Pa. St. 434.

⁵⁹ Cook v. Brown, 34 N. H. 460, 475; Prutsman v. Baker, 30 Wis. 644; see, too, Campbell v. Thomas, 42 Wis. 437; Crooks v. Crooks, 34 Ohio St. 616.

⁶⁰ Morse v. Slasson, 13 Vt. 296.

⁶¹ Arthur v. Anderson, 9 S. C. (N. S.) 234.

⁶² Tibbals v. Jacobs, 31 Conn. 431; Treadway v. Hamilton Mutual Ins. Co., 29 Conn. 71; Merrill v. Meachum, 5 Day, 346; Davenport v. Whistler, 46 Iowa, 287; Maloney v. Bewley, 10 Heisk. 642; Peavey v. Tilton, 18 N. H. 183; Johnson v. Farley, 45 N. H. 505; Wall v. Wall, 30 Miss. 91; Renfro v. Harrison, 10 Mo. 411.

⁶³ Barney v. Seeley, 38 Wis. 381.

⁶⁴ Higman v. Stewart, 38 Mich. 513.

ESTOPPEL AS A PROTECTION FOR A PURCHASER FOR VALUE WITHOUT NOTICE.

In deciding an intricate case of *Keate v. Phillips*, arising out of the Dimsdale forgeries, Vice-Chancellor Bacon seems to have taken a somewhat novel view of the application of the doctrine that innocent parties with conflicting claims have a right, as among themselves, to insist upon any legal advantage which they may respectively have the luck to possess. Three innocent parties, who had all been cheated, brought forward conflicting claims to the same parcel of land. (1) The plaintiffs, whose claim was foremost in order of time, claimed under a fraudulent mortgage of a fictitious lease for years of the land; and they claimed upon the ground that Tait, the maker of the fraudulent mortgage, was an agent and accomplice of Dimsdale; and that, at the time of bringing the action, the legal estate in the lands had got into the hands of one Moore upon trust for Dimsdale. They therefore contended that Dimsdale was bound, on acquiring the power so to do, to give effect to the pretended assurance of his agent. (2) The defendant, Phillips, whose claim came second in order of time, also claimed under a fraudulent mortgage of a fictitious lease of the land; but his claim differed from that of the plaintiffs in this, that Phillips' mortgage was an under-lease purporting to be made by Moore, who, as above mentioned, afterwards did actually acquire the legal estate, thus enabling Phillips to contend that he had, by Moore's underlease, acquired an estate by estoppel, which was "fed" and turned into an estate in interest as soon as the true legal estate got into Moore's hands. (3) The claim of the defendants, McStephens & Co., came last in order of time, but it had the great advantage of resting upon no fictions. They claimed under an equitable mortgage created by deposit of the genuine title deeds, accompanied by a memorandum of charge made by Moore after that he had acquired the legal estate. Being forced to decide between these claims, the Vice-Chancellor held that the equitable mortgage of McStephens & Co. was entitled to rank first; and, as the value of the lands was insufficient in full to satisfy this charge, it was unnecessary to pronounce any formal decision be-