Title:
Noy, William, A Treatise of the Principal Grounds and Maxims with an Analysis of the Laws of England, 1821

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Content:

36. Every act shall be taken most strictly against him who made it.

As if two tenants in common grant a rent of ten shillings, this is several, and the grantee shall have twenty shillings but if they make a lease, and reserve ten shillings, they shall have only ten shillings between them. So an obligation to pay ten shillings at the feast of our Lord God, it is no plea to say that he did pay it; but he must shew at what time, or else it will be taken he paid it after the feast.

If tenant in fee make a lease for life, without expressing for whose life, it shall be intended for the life of the lessee, and shall be taken strongly against the lessor; but if tenant in tail make such a lease, it shall be taken for the life of the lessor, because otherwise it would work a wrong to the reversioner. Co. Lit. 42 a.

When a grant is uncertain, and the words of it are ambiguous, the grant shall be taken most strongly against the grantor. As if a man grant an annuity out of land, and he has no land at the time of the grant, yet the grant shall charge his person. Trin. 9 H. 6. And if a deed be good for some parcels, and for some parcels not, that which is for the advantage of the grantee shall stand good.

If a man gives land to another et haeredibus, it shall be a fee-simple without the word suis, and though he do not give him a fee-simple expressly. If I give land to A. B. and his heirs male, this will be a good fee-simple, and the word "males" is void. And if a man gives lands to one et filio suo primogenito, and he has no son at the time of the gift, but afterwards he has a son, that son shall have the land by way of remainder; for the law construes the limitation strong against the maker.

If I make a lease for years upon condition, that in one month after the person to whom it is made shall have a fee, he shall have it after the month accordingly. If I sow all my land with corn, and then make a lease of it for years, if I except it not. 32 H. 6.

If I give a horse to A. B. being present, and say unto him, A. C. take this, it is a good gift, though I call him by a wrong name: but so it would not be if I delivered it for the use of A. C. where I meant A. B. So if I say to A. B. Here, I give you my ring, with the ruby, and deliver it with my hand; though the ring bear a diamond and no ruby, this is a good gift, for these shall be taken strongly against the giver. Bac. Max. 87.

But though grants are taken strongly against the makers, yet no wrong must thereby be done, as already observed. And a man may not be obliged by his own act to do some things which are against law: as a dyer was bound not to use his trade for two years, and the obligation was held against the common law. And if a husbandman be bound not to till or sow his ground, the obligation is contrary to the common law, and void. 11 Co. 53.

37. He who cannot have the effect of the thing, shall have the thing itself.
Ut res quam magis valeat quàm pereat\(^c\).

As if a termor grant his term \(\text{habendum immediatè post mortem suam}\)\(^d\), the grantee shall have it presently \(^e\).

The King shall not be received after default of his tenant for life, because the demandant will not have the effect of the receipt, viz. to declare against him afresh, for no one shall declare against the King, for they must sue him by petition. 25 E. 3. 48.

Tenant in tail makes a lease for life, this shall be construed for the life of the lessor\(^a\). An annuity granted pro consilio impendendo\(^b\), of a feoffment for instructing a son, or for paying a sum of money, is a condition without conditional words; because otherwise, the party would be without remedy. Mar. 141, 142.

[...]

45. The law regards the intent of the parties and will imply their words thereunto.

And that which is taken by common intendment shall be taken to be the intent of the parties: And common intendment is not such an intendment as stands indifferent, but such an intent, as has the most vehement presumption. All uncertainty may be known by circumstances, every deed being made to some purpose, reason would that it should be construed to some purpose; and a variance shall be taken most beneficial for him to whom it is made, and at his election.

[...]

It is a ground in law, \(\text{quòd nemo potest plus juris ad aliam transferre quam in ipso est}\). And further, nothing can pass from the king, nor for the most part to the king, but by matter of record, viz. by letters -patent under the great seal; and that the king cannot pass any thing by delivery of seisin, nor by matter in faith; nor cannot disseise, nor be disseised.

\(^a\)Lord Nottingham's MS. N. Co. Litt. 267 b. (1). Finch's Law, 63. Perhaps this doctrine may be considered a mere quibble in the present day. If the recital stated the intention to be only to grant a rent of ten shillings, that would counteract the operation of this rule of law. Vide \(\text{Shelley v. Wright}\), Willes, 9. \(\text{Henn v. Handson}\), 1 Sidf. 141. \(\text{Thorpe v. Thorpe}\), 1 Ld. Raym. 235. Because it is a maxim of the highest antiquity in the law, that all deeds shall be construed favourably, and as near the apparent intention of the parties as possible; for where the intention is clear, too minute a stress ought not to be laid even on the strict and precise signification of words. 4 Cru. Dig. 292, 293. If such an unjust advantage were attempted to be taken by the grantee of the rent, it seems clear that equity would restrain him, and oblige him to pay the costs. However, when tenants in common grant a rent-charge, it is prudent to add a proviso and declaration, that the grantee is only to receive the sum actually intended, or otherwise to make a conveyance to uses, to the end and intent that the person to have that rent may receive it, and subject thereto to the use of the grantors, as tenants in common fee.

\(^b\)Christmas.

\(^c\)Perk. S. 104. \(\text{Post}, 52\) (a).

\(^d\)And to heirs.

\(^e\)His.

\(^f\)And to his first-born son.

\(^g\)If livery of seisin, or what is equivalent to it be made.

\(^h\)\(\text{Vide note, infra, Condition, }^*78\).

\(^i\)It is better for a thing to have effect than to be void.

\(^j\)To have immediately after his death.

\(^a\)\(\text{Germain v. Orchard}, 1\) Salkl. 346. 14 Vin. 157, pl. 14. 3 Bac. Abr. 399. The reason assigned by the court is, because by the grant of lands in the premises to the grantee, his executors, executors, administrators, and assings, the whole term of...
years is transferred, and since by the premises the whole term passed presently, but by the habendum not till after the death of the grantor; ex consequentia the habendum was repugnant to the premises, and void; and this judgement was affirmed in the House of Peers. The judgement partakes a little of legal sophistry, and it seems would not in present day be followed: for though the habendum, as well as all other parts of a deed, are generally taken most strongly against the grantor, and most in advantage of the grantee; yet it nevertheless must be construed as near the intention of the parties as can be. Shep. Touch. 101. and see Litt. s. 298, and the comment. And as it seems clear that an assignement of a term may be made on a contingency, it therefore follows, as a necessary consequence, that it may be assigned from a certain day to come. Welcden v. Elkington, Plow. Com. 524. There are many maxims of law, that deeds, especially such as execute mutual agreements for valuable consideration, should be construed liberally, ut res magis valeat, according to the INTENT, which ought always to prevail, unless it be contrary to law. A strained construction should not be made to overturn the lawful intent of the parties. Lord Mansfield, If we can support the intention by any construction, we will do it. Mr. Justice Denison. Wright, ex dem. Plowden v. Cartwright, 1 Burr. 285, 286. It seems clear there would be relief in equity against such a construction, as that mentioned in the text. To avoid this question, when an assignment is intended to be made from a future day, it should be made to a trustee in trust for the grantor, till the commencement of the intended time, and then in trust for the assignee, his executors, &c. for the residue of the term. Assignements of terms for years from a future period, as from Michaelmas day next, are not uncommon, and though they are not technically correct, according to the old cases, yet no objection is raised to the title on that account. But when an assignement is to take effect immediately in interest to avoid the above objection, it is prudent to make the habendum "from the day next before the day of the date" or "henceforth".

Referring Principles:

- I.3.1 - Limitation of transfer of rights
- IV.5.1 - Intentions of the parties
- IV.5.3 - Interpretation in favor of effectiveness of contract
- IV.5.4 - Interpretation against the party that supplied the term