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MEREDITH, C.J.

JANUARY 10TH, 1902.

TRIAL.

HUMPHRIES v. AGGETT.

*Deed—Delivery—Retention by Grantor—Possession by Grantee with Rents and Profits—Evidence from Circumstances of, and Paying for Permanent Improvements—Executor and Trustee—Breach of Trust.*

Action tried at Peterborough, brought to have it declared that an instrument dated 7th January, 1852, made by Henry Hurl Humphries sen. to Robert N. Humphries, purporting to convey certain land, was never delivered, and, therefore, did not operate, and consequently that such land formed part of the estate of Henry Hurl Humphries jun., to whom it was devised, subject to a life estate of Robert N. Humphries and his wife, by the grantor, who died in January, 1898, and also to set aside a conveyance of the land, dated 4th May, 1898, made by Robert N. to defendant; and also to have defendant removed from his office of co-executor and co-trustee with plaintiff of the will of Henry Hurl Humphries jun. The defendant, finding the conveyance of 1852 among his testator's papers, it is alleged, procured its registration, and then the conveyance of 1898 from Robert N. Humphries to himself.

E. B. Edwards, K.C., for plaintiff.

A. B. Aylesworth, K.C., for defendant.

MEREDITH, C.J., held that the conveyance made in 1852 was delivered and did pass the land to the grantee. All the words referring to assigns were struck out, and, having regard to the kind of man Robert was shown to have been, and to the fact that he purchased and paid for the land, the idea was that if Robert died without issue it would revert to the grantor. There is nothing inconsistent with the view that the deed of 1852 was delivered, in the fact that the grantor, after the death of Robert and his wife, assumed a