

guished. Williams, L.J., considers that although the defendant could not set up the facts as an accord and satisfaction, yet that he was entitled to say that they amounted to an extinction of the note, just as effectually as if his name had been erased from it; and on the other hand from an equitable point of view the plaintiff could have no claim to the balance except as trustee for the father, and the correspondence produced shewed that the father never intended to make any claim therefor; and, further, that it would be a fraud on the father, who had paid part of the debt in discharge of the whole, if the creditor were thereafter to sue the debtor.

DEED—ASSIGNMENT OF LEASE—DELIVERY OF DEED NOT TO TAKE
EFFECT TILL DEATH OF GRANTOR—ESCROW—TESTAMENTARY
DOCUMENT.

Foundling Hospital v. Crane (1911) 2 K.B. 367. This was an action for rent against the executors of a deceased lessee. The defendants pleaded that prior to his death the lessee had assigned the lease to a Mrs. Browne, and that they had never entered into possession of the demised premises or claimed any interest therein. The evidence shewed that the defendant's testator, Hoe, being in possession, about the year 1905 executed an assignment of the lease in favour of Mrs. Browne, which he left with his solicitors with instructions that they were to be at liberty to fill in the date so that it might take effect on his death in case Mrs. Browne survived him. He died 22 Sept., 1909, and Mrs. Browne having survived him, the solicitors, after his death, filled in the date 20 September, 1909, as the date of the deed. The testator had been in possession up to the date of his death and retained the title deeds and paid the rates and taxes. Scrutton, J., who tried the action, with some doubt gave judgment in favour of the defendants, thinking the assignment had been validly delivered as an escrow; but the Court of Appeal (Williams, Farwell, and Kennedy, L.JJ.) held that inasmuch as the deed was not to take effect until the testator's death, it was in the nature of a testamentary document, which failed of effect, not having been executed in accordance with the requirement of the Wills Act, and could not be regarded as a deed *inter vivos*, notwithstanding the fact that Mrs. Browne had also executed it. The defence, therefore, failed.