

was to become the wife's only in the event of her surviving him. This statement was incredible. The property was intended to be the wife's, and the event which happened—the pre-decease of the wife—was not expected or contemplated.

It was suggested that the deed was not delivered; but a deed cannot be registered unless it is a complete and operative instrument.

In December, 1904, a mortgage was made by the wife with the knowledge and consent of the husband, which could only have been effectual if the deed was delivered.

Anning seemed to have thought that the only conveyance was the duplicate of the deed which he retained in his possession, and that so long as he retained it he retained some dominion over the property. The recorded instrument ceased to be in his custody or control when it was registered.

It was said that the production of the duplicate deed for the purpose of having the mortgage of 1904 prepared amounted to a conditional delivery—"conditioned on the wife surviving her husband." But such a delivery was nugatory. The deed, unless executed in such a form as to amount to a testamentary instrument, would be void: *Foundling Hospital Governors and Guardians v. Crane*, [1911] 2 K.B. 367.

The suggestion that the wife held as trustee for her husband was clearly contrary to the facts.

Nor was there any evidence to support the contention that the transaction was void for improvidence.

The plaintiffs' case would have failed, even if full credit were given to the plaintiff Charles Henry Anning, for lack of any corroboration; but it also failed because the evidence of that plaintiff was not credible.

The appeal should be dismissed with costs.

RIDDELL, J., agreed.

MASTEN J., agreed in the result.

MEREDITH, C.J.C.P., read a dissenting judgment, in which he examined the facts and law with great care. His conclusion was, that the story of the plaintiff Charles Henry Anning was true; that between him and his wife the expressed agreement was that the deed of the land in question from him to her was not to take effect unless and until she survived him; that, upon the authority of *Gudgen v. Besset* (1856), 6 E. & B. 986, she having died