Catalog Record

Item Number

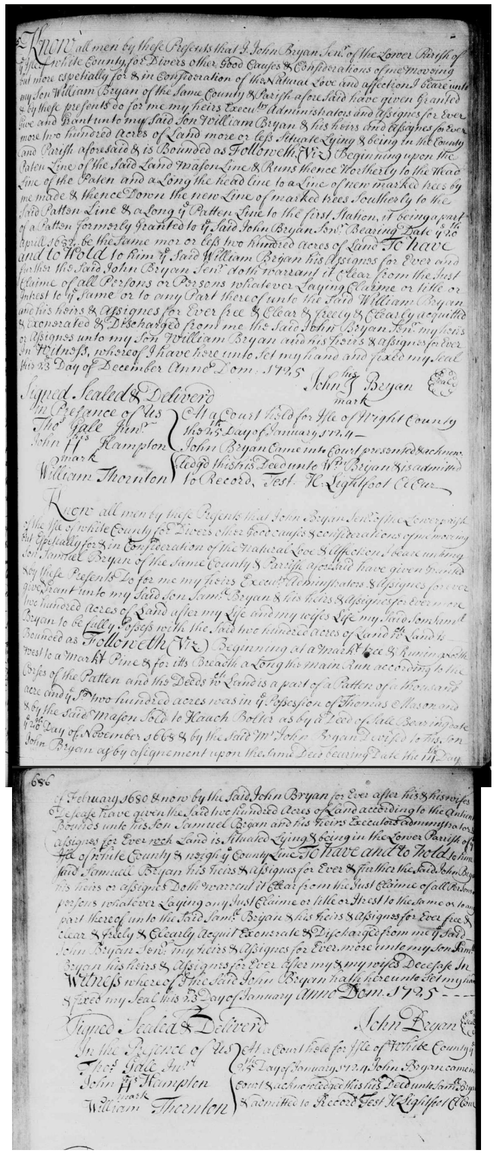
Film/Digital Note

General index to deeds, 1688-1890; deeds, 1688-1900; wills, 1715-1726; court orders, 1755-1757 Deeds and wills Vol. 2(2nd vol.) 1715-1726

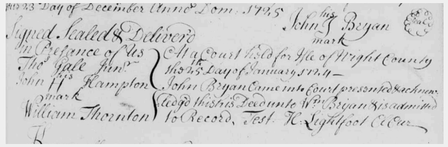
image 359 of 492

Two deeds by John Bryan to his sons in 1725...

One to son William Bryan, the other to son Samuel.



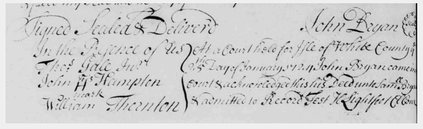
Know all men by these Presents that I John Bryan Senr of the Lower Parish of Isle of White County, for Divers other Good Causes & Considerations of me Moving but more espetially for & in consideration of the Natural Love and affection I beare unto my Son William Bryan of the Same County & Parish aforesaid have given Granted & by these presents do for me my heirs Executrs Administrators and assigns for Ever Give and Grant unto my Said Son William Bryan & his heirs and Assigns for Ever more two hundred acres of Land more or less Situate Lying & being in the County and Parish aforesaid & is Bounded as Followeth (Viz) Beginning upon the Paten Line of the Said Land Mason Line & Runs thence Northerly to the Head Line of the Paten and a Long the head line to a Line of new marked trees by me made & thence Down the new Line of marked trees Southerly to the Said Patten Line & a Long ye Patten Line to the first station, it being a part of a Patten formerly Granted to ye Said John Bryan Senr Bearing Date ye 20th April 1682 be the same more or less two hundred acres of Land To have and to Hold to him ye said William Bryan his Assigns for Ever and further the said John Bryan Senr doth warrant it clear from the Just Claime of all Persons or Persons whatever Laying Claime or title or Interest to ye Same or to any Part thereof unto the said William Bryan and his heirs & Assigns for Ever free & Clear & freely & Clearly acquitted & Exonerated & Discharged from me the Said John Bryan Senr for Ever In Witness, whereof I have here unto Set my hand and fixed my Seal this 23d Day of December Anno Dom 1725



"a Line of new marked trees by me made"

"part of a patten of 1682"

Know all men by these Presents that John Bryan Senr of the Lower Pish of the Isle of White County for Divers other good causes & considerations of me moving but Especially for & in Consideration of the Natural Love & Affection I beare unto my Son Samuel Bryan of the Same County & Parish aforesaid have given Granted & by these Presents Do for me my heirs Exectrs Administrators & Assignes forever give & Grant unto my Said Son Samll Bryyam & his heirs & Assignes for Evermore two hundred acres of Land after my Life and my wifes Life my said Son Samll Bryan to be fully Possess with the Said two hundred acres of Land wch Land Is Bounded as Followeth (Viz) Beginning at a Markt tree & Runing South West to a Markt Pine & for itts Breadth a Long the main Run according to the Corses of the Patten and the deeds wch Land is a part of a thousand acre and ye sd. two hundred acres was in ye possession of Thomas Mason and & by the said Mason Sold to Hauch Bolter as by a Deed of Sale Bearing date ye 20th Day of November 1668 & by the Said Mr John Bryan ***Devised*** to his son John Bryan as by asignment *upon the same Deed* bearing Date the 14th Day of February **1680** & now by the said John Bryan for Ever after his & his wifes Desease have given the Said two hundred Acres of Land according to the Antient Bounds unto his Son Samuel Bryan and his heirs Executors assigns for Ever wch Land is Situated Lying & being in the Lower parrish of ye isle of White County & neigh ye County Line To have and to hold to him said Samuel Bryan his heirs & assigns for Ever & further the said John Bryan his heirs or assigns Doth warrant it clear from the Just Claime of all Persons or persons whatever Laying any Just Claime or title or Itrest to the same or to any part thereof unto the said Samll Bryan & his heirs & Assigns for Ever free & clear & freely & Clearly Acquit Exonerate &Discharge from me ye said John Bryan Senr my heirs & Assignes for Ever more unto my son Samll Bryan his heirs & Assignes for Ever after my & my wifes Decesase In Witness whereof I the said John Bryan hath hereunto set my hand & fixed my Seal this 23rd day of January Anno Dom 1725



Deed does not take effect until his death and his wife

part of the 1000 acre patent of Thomas Mason who sold 200 acres to Hauch Bolter 1668

[that 200 acres] was "devised" to his son John Bryan in 1680

Transcriptions by Marc Anderson 2023

Henry W. Ballantine
Michigan Law Review, Vol. 18, No. 6 (Apr., 1920), pp. 470-483 (14 pages)
https://www.jstor.org/stable/1277805
https://doi.org/10.2307/1277805

WHEN ARE DEEDS TESTAMENTARY?[1]

IT is no objection to a deed that it is used as a substitute for a will, to avoid the expense and delay of probate proceedings.[2] The frequent litigation arising over such deeds, however, shows that this expedient is a dangerous one unless the grantor uses great care to avoid certain snares and pitfalls which the law in its wisdom provides for the unwary. The grantor may attempt to accomplish his purpose either by express provisions embodied in the deed itself, or by external, collateral conditions, preserved by the delivery of the deed to a depository. This paper will consider how far the transfer of title may be suspended by (1) internal, and (2) by external conditions precedent; and particularly how far extrinsic evidence of conditional delivery will be allowed to determine the estates which the instrument shall create and the contingencies upon which it shall become fully operative.

There is a sharp conflict of authority between different states as to the effect of provisions in a deed that *"no title or interest shall pass to the grantee until the grantor's death."* Such provisions by which no estate is created at the time of delivery would apparently make the instrument testamentary, "because a deed not to take effect until after the death of the grantor amounts to a testamentary disposition of the property without complying with the Statute of Wills."[3] In some states such language is given literal effect and the deed is held void as an attempted will.[4] If the instrument is to have no legal operation as a completed legal act until the death of the maker, then it is everywhere a will.[5] But in a majority of states the language that the deed is *"to be in force or take effect from and after the decease of the grantor,"* is interpreted very liberally. Such language may be regarded as representing a confusion of two intents: (1) an intent to give an estate to commence in *futuro*, but to reserve the possession, use and enjoyment of the property during the grantor's life: and (2) an intent not to make a

present dispositive instrument, but to keep the deed ambulatory like a will during the grantor's lifetime. The probable intention is effectuated by holding the instrument operative *in praesenti* as a grant of future estate.[6] Thus in *Shackelton* v. *Sebree*[7] a provision "this deed not to take effect until after my decease, not to be recorded until after my decease," was sustained as a present grant of a future estate. Similar holdings have been made in many other cases.[8] In view of the act of delivery to the grantee in the lifetime of the grantor, and the intention to be gathered from the whole transaction, the provision that "title shall not pass until death," does not mean that the grantee shall acquire no right or interest under the deed until the grantor's death. The deed conveys a vested interest to commence *in futuro*, and necessarily cuts down the estate remaining in the grantor.[9]

Common Law observations on the legal term... "devise"

Commentaries on the Laws of England (1765-1769)
SIR WILLIAM BLACKSTONE
BOOK 2, CHAPTER 23
Of Alienation by Devise

WITH regard to **devises** in general, experience soon showed how difficult and hazardous a thing it is, even in matters of public utility, to depart from the rules of the common law; which are so nicely constructed and so artificially connected together, that the least breach in any one of them disorders for a time the texture of the whole. Innumerable frauds and perjuries were quickly introduced by this parliamentary method of inheritance: for so loose was the construction made upon this act by the courts of law, that bare notes in the hand writing of another person were allowed to be good wills within the statute.15 To remedy which, the statute of frauds and perjuries, 29 Car. II. c. 3. directs, that all devises of lands and tenements shall not only be in writing, but signed by the testator, or some other person in his presence, and by his express direction; and be subscribed, in his presence, by three or four credible witnesses. And a similar solemnity is requisite for revoking a devise.

This is the reason (in my opinion) for all the "pomp and circumstance" of the over abundance of tedious formality of words. Good Lord, enough is enough! It is all drawing attention to the importance of the result. "They said what they meant and they meant what they said". Dammit!
Also remember they were illiterate. Words were important.

Commentaries on American Law (1826-30)
CHANCELLOR JAMES KENT
LECTURE 67
Of Title by Will or Devise

A WILL is a disposition of real and personal property, to take effect after the death of the testator. When the will operates upon personal property, it is sometimes called a testament, and when upon real estate, **a devise**; but the more general, and the more popular denomination of the instrument, embracing equally real and personal estate, is that of last will and testament.

https://lonang.com/?s=devise