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outlet for the manufacturer's products. "Even apart from the incentive for the greatest possible care which strict liability provides, there is an obvious argument that in the public interest, the consumer is entitled to the maximum of protection at the hands of someone, and the producer, practically and morally, is the one to afford it."[29]

RICHARD E. DAY

THE SPOUSE AS A STRANGER TO THE DEED

It is elementary law that one of the essentials to a good conveyance is to have the spouse join in the execution of a deed for the purpose of releasing homestead rights; however, certain problems of draftsmanship may arise as to the correct manner in which the non-owning spouse should execute such a release in Wyoming. The enactment of comparatively recent legislation seems to indicate that it is permissible for the husband or wife, who owns no interest in the property, to sign the deed as grantor in order to release homestead rights.[1] A deed which is executed in this fashion containing a reservation in favor of the grantor may give rise to an ambiguous situation. The question arises as to whether or not the reservation is sufficient to create a vested interest in the non-owning spouse. The issue is one which is most likely to arise at a date later than the conveyance, although an immediate question raised is that of reporting the gift for tax purposes *if* there is a conveyance to the spouse. Normally the problem will be encountered upon examination of the title or the administration of the estate of either husband or the wife, such as the preparation of the inventory or the payment of estate taxes.

A primitive rule of the common law, still applied in modern law, is that a reservation in a deed consists of a right in favor of the grantor and that it cannot operate in favor of a stranger to the deed.[2] At common law a reservation was the creation of some new thing issuing out of the land not previously in existence, such as a rent or feudal service.[3] Since by definition the conveyance was inoperative as to the right reserved, it was on strict principle impossible to hold that the right reserved could be transferred by force of the reservation to a third party. The authority relied upon for this interpretation was the common law writers.[4]

29. Prosser, Torts, 507 (2d ed. 1955).

1. The former requirement that the certificate of acknowledgement contain a clause releasing homestead rights has been repealed. Wyo. Comp. Stat. §§ 66-209, 66-211 (1945) as amended by §§ 2, 3, Ch. 72, S.L. of Wyo., 1949. At present, the only requirement is that the conveyance contain a clause releasing homestead rights. Wyo. Comp. Stat. § 66-209 (Supp. 1957).
2. See cases in 39 A.L.R. 128 (1925).
3. Stone v. Stone, 141 Iowa 438, 119 N.W. 712 (1909).
4. Sheppard, Touchstone of Common Assurance, 80.

An exception in a deed, on the other hand, operated to exclude or exempt from the operation of the conveyance something *in esse* at the time of the grant.[5] A provision, as an exception, cannot operate to vest rights in a stranger to the deed;[6] however, it may recognize and confirm rights already existing in third persons.[7]

The use of the words "reserving" and "excepting" are often used interchangeably in a deed, and it is often difficult to determine exactly what is intended.[8] While the distinction between a reservation and an exception is generally recognized, the modern view is that in construing a deed the technical meaning of the words used must submit to the manifest intentions of the parties to the instrument as evidenced by the language of the deed in its entirety.[9]

Although the courts are in accord as to the general rule, they are divided as to whether a reservation of a life estate to the grantor and spouse in a deed made by husband and wife operates as an exception to the common law rule. In *Saunders v. Saunders*[10] it was held that where a life estate was expressly reserved in favor of both husband and wife, the spouse has such an interest in the property by way of homestead, or such an indefeasible interest as heir or by way of dower, that the combined interest of husband and wife in the property is sufficient to support a reservation of a life estate to either or both of them, by their joint execution of a deed which conveys or waives all their rights. In essence, the court's theory was that in view of the rights which husband and wife *have* or *would* acquire in each other's property, such interest would support a reservation of a life estate to both of them, without express words of grant from the one possessing legal title. It did not trouble the court that before the reservation the non-owing spouse logically should have an estate as large or larger than the life estate.

Another construction is to give effect to the manifest intention, as expressed in the deed, as a means of giving effect to a reservation or exception of a life interest in favor of owner's spouse.[11] Thus, in *Hall v. Meade*,[12] where grantor reserved the right to occupy the land or sell or dispose of the minerals during the lives of both husband and wife, the deed was supported on the principle that if the intention is manifest the instrument should be construed without regard to technical rules of construction and that such intention will control even though it be inaptly or awkardly

5. Supra note 3.
6. Joiner v. Sullivan, 260 S.W.2d 439 (Tex. 1953).
7. Deaver v. Aaron, 159 Ga. 597, 126 S.E. 382, 39 A.L.R. 126 (1925).
8. The strict requirements at common law demanded that an exception be placed in the granting clause, whereas the proper place for a reservation was in the reddendum clause. Marias River Syndicate v. Big West Oil Co., 98 Mont. 254, 38 P.2d 599 (1934).
9. Corlett v. Cox, ___ Colo. ___, 333 P.2d 619 (1958).
10. 373 Ill. 302, 26 N.E.2d 126, 129 A.L.R. 306 (1940).
11. Boyer v. Murphy, 202 Cal. 23, 259 Pac. 38 (1927).
12. 244 Ky. 718, 51 S.W.2d 974 (1932).

expressed. The Wyoming court has said that the intention of the parties is to be ascertained by considering all the provisions of the deed as well as the situations of the parties, and then to give effect to such intention if possible.[13]

One court[14] indicated that the spouse joining in the execution was not a stranger to the deed. It seems, however, the "stranger to the deed" really means stranger to the title.[15]

Some courts hold that, although the reservation is not operative, a result favoring the spouse may be reached on the basis of a covenant to stand seised, the use being executed to the spouse by the statute of uses.[16] In most, if not all, of those cases which hold in favor of a creation of an interest in the spouse, it is clearly manifest that the grantor intended the spouse to take an interest. These courts admittedly do not follow strict logic,[17] but the liberal view is rationalized on the ground that the right result is reached. "Pure logic for its own sake, should not be allowed to frustrate the clearly ascertained intention of a grantor which does not violate an established rule of construction or of law."[18] The ends of justice are left to be promoted in the long run even though indirect methods are employed to arrive at the result.[19]

On the other hand, the jurisdictions which reject the view that the relationship of husband and wife is an exception to the rule against strangers to the deed adhere to the rule that there can be no valid and operative conveyance without words of grant.[20] The spouse has, at most, only an inchoate interest in the property by virute of statute; therefore, she logically can hold no greater interest in the real estate after the execution of the deed than she did before, and the estate reserved in the deed is reserved to the grantor. It is thought improper to allow the interest to vest in the spouse without words of grant. A construction allowing the spouse to take by means of a reservation or exception is in effect allowing a conveyance to be made by intention only, unless there are other circumstances surrounding the transaction. Thus, the rule that interest in land cannot pass without the formalities of a conveyance being observed is defeated.[21]

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13. Balch v. Arnold, 9 Wyo. 17, 59 Pac. 434 (1899).
14. Supra note 11.
15. Lemon v. Lemon, 273 Mo. 484, 201 S.W. 103 (1918).
16. Bryan v. Bradley, 16 Conn. 474 (1844).
17. Glasgow v. Glasgow, 221 S.C. 322, 70 S.E.2d 432 (1952).
18. Id. 70 S.E.2d at 436.
19. Assuming the wife does take a vested interest, a further problem is encountered: classifying the interest. A tenancy by the entireties may be created if the need for a strawman is deemed unnecessary, or the grantee may be said to constitute the strawman on the theory that a reservation operates as a grant and regrant.
20. Ogle v. Barker, 224 Ind. 489, 68 N.E.2d 550 (1946).
21. Wyo. Comp. Stat. § 5-101 (1945) does not require that the conveyance itself be in writing as does the English Statute of Frauds. Wyo. Comp. Stat. § 66-101 (1945) states that a conveyance *may* be made by instrument; therefore, the possibility of a conveyance by livery of seisin is encountered.

Another situation, in which the problem is quite likely to arise in Wyoming, is where the non-owning spouse signs as grantor to a deed which includes a reservation of the minerals. The issue is somewhat the same as the creation of a life estate in the spouse, that is, the vesting of an estate in land in a stranger to the title. *Leidig v. Hoopes*[22] is the only case directly in point to this problem. It was held (one judge dissenting) that where a wife, owning no interest in the real estate, joined with her husband in executing a conveyance of the property which contained a reservation of the minerals in favor of the *vendors,* the mineral estate was reserved to the husband, and the wife acquired no title thereby.[23] It was reasoned that the right reserved must be out of some interest owned by the grantor at the time of the grant. The reservation merely reserves a specific interest from the operation of the grant and leaves that interest vested in the grantor to whom it belonged before and at the time of the execution of the deed.[24] Therefore, the reservation could not create an estate which did not already exist; and if the wife did not own an interest in the real estate prior to signing the deed, she could not logically hold a greater interest after she executed the deed than she did before its execution.

It should be noted, however, that the decision indicates by way of *obiter dictum* that a deed might be drawn in a manner that would accomplish the conveyance of a reserved interest to a stranger to the title.[25] In other words, the title may be conveyed if words of grant to the wife are used in conjunction with the reservation.

Since it appears possible to convey an interest in land in Wyoming without the requirement of a written instrument,[26] the intention of a grantor to create an interest in the spouse may be effected by regarding the reservation as a covenant of seisin.

At most, the creation of an interest in the spouse by means of reservation should be confined to that of a life interest. The purpose of homestead and dower statutes, like that of a life estate, is to provide economic security for the widow or widower, but to allow the vesting of a fee simple interest because of the combined interest of husband and wife and that of a homestead provision is beyond the pale of the purpose and theory of the statute.

Where a routine reservation to the grantor is discovered by the examiner, whether the words used be singular or plural,[27] an ambiguity

22. ___ Okla. ___, 288 P.2d 402, 4 Oil & Gas Rep. 1952 (1955).
23. The case was followed in Pruitt v. Burrow, ___ Okla. ___, 291 P.2d 349 (1955).
24. Technically this analysis of the operation of a reservation as distinguished from an exception is incorrect. In the case of an exception the interest never passes from the grantor, whereas a reservation operates to pass the entire interest to the grantee, and the interest reserved is a new interest out of that granted which is returned to the grantor. Under the modern view of the use of reservations and exceptions, the distinction is of no importance.
25. Supra note 22. 288 P.2d at 404, 4 Oil & Gas Rep. at 1954.
26. Supra note 21.
27. The Leidig case, supra note 22, reserved the minerals to the *vendors.*

arises. An ambiguous reservation is to be construed most strongly against the grantor.[28] The problem confronting the examiner, however, is whether or not there is a sufficient cloud to warrant the cost of quieting title. A prior agreement to convey the minerals[29] or other interest to the spouse or circumstances surrounding the transaction may be found which indicate that the intention of the parties was to make a conveyance to the spouse, and the recorded reservation may be found sufficient to put the subsequent purchasers on notice of a possible cloud. A reservation or exception to *any* stranger to the deed would seem to warrant further investigation, since there may be words of grant appended thereto which may have been inadvertently omitted in preparation of the abstract. Failure to include words of grant seems to be the major objection against the vesting of an interest in a stranger, and where such words have been used in conjunction with a reservation, it has been deemed sufficient to vest the interest in the stranger.[30]

From the point of view of the grantor wishing to create an interest in the spouse, it is advisable to convey such interest by separate deed. The entire issue may be obviated by including a recitation in the deed that the spouse is signing only for purpose of releasing homestead.

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28. Sheppard, Touchstone of Common Assurance, 87.
29. Burns v. Bastien, 174 Okla. 40, 50 P.2d 377 (1935).
30. Johnson v. Republic Steel Corp., 262 F.2d 108 (6th Cir. 1958).