DECISIONS OF THE SUPREME COURT

Assignment of Mortgage in Weill vs. Davis Held Valid

(WALTER CLARK, Jr.)

The opinion of Justice Walker in Weill vs. Davis, reported below, distinguishing that case from Williams vs. Teachey, and holding the assignment in present case valid, is of interest. All opinions handed down Wednesday and not previously reported are reported below.

Assignment Held to Convey Legal Title.

Weill & Bro. vs. Davis presents the question whether the assignment hereinafter set forth conveyed the legal title. D. G. Davis mortgaged certain land to W. H. Davis. W. H. Davis and wife assigned the mortgage to J. M. McGee by the following conveyance:

North Carolina
Wayne County

"This indenture, made this 20th day of June, 1912, by and between W. H. Davis and wife, Louvenie E. Davis, of the county of Wayne, State of North Carolina, parties of the first part, and James M. McGee, trustee, of said county and State of North Carolina, party of the second part.

"Witnesseth: That whereas the said parties of the first part are the holders of two certain notes amounting to $500 and secured by first mortgage deed, which said deed is duly recorded in the register of Wayne county, in Book 91, at page 262. Said parties of the first part for and in consideration of the premises therein conveyed and the sum of $10.00 to have bargained and sold, and by these presents doth bargain and sell said notes and securities unto said party of the second part, the said parties of the first part, their heirs, executors and assigns, full power and authority for collection and receipts acceptable to the holder of said mortgage and apply the proceeds of the said notes to the discharge of said debt and interest on the same, and any surplus pay to the said D. G. Davis and wife, according to the terms thereof.

"In testimony of which the said parties of the first part have hereunto set their hands and seals the day and year first above written.

W. H. DAVIS, Seal
LOUVENIE DAVIS, Seal

"At Mortgage sale advertisement sold the land under the power of sale in the mortgage and conveyed title to purchaser.

"The trial judge held that the assignment was insufficient to authorize the purchaser to make the sale and pass a title of land.

Justice Walker states that the ruling of the trial judge was that the assignment of W. H. Davis and wife to James M. McGee operated only upon the mortgage as a security for the debt and not upon the land itself which is necessary to be conveyed in order that the power of sale, which is appurtenant or appurtenant to the legal title, may pass to the assignee. This statement of the law is abstractly correct, but it does not apply to this case, as we hold that there is sufficient reference in the body of this assignment to pass the legal title thereto and consequently the power of sale to James M. McGee."

Justice Walker states that if the assignment is as held in Williams vs. Teachey, 95 N. C. 102. In such cases, he says, the mortgagee is the owner of the notes and mortgage and the mortgagee is the holder of the legal title as trustee for the benefit of the assignee.

He distinguishes the present case from Williams vs. Teachey and holds that while the assignment is informally drawn, the intent is plain to convey the land, and the entire instrument must be considered in order to determine what thing was intended to be conveyed. Further that this instrument conveyed the legal title with the incident right of foreclosure to the assignee, J. M. McGee and that the exercise of the right of sale by J. M. McGee and the deed thereunder to the plaintiffs is valid. Judgment of trial court reversed.

Effect of Words Written Upon Check.

Rosser vs. Bynum & Snipes, is an action to recover alleged balance due for lumber. Defendants pleaded payment and introduced check with words thereon "lbr. to date" and offered evidence to prove payment of check and that "lbr." meant lumber. Trial Judge ruled that if jury found that plaintiff took check with those words upon it and "lbr." meant lumber, that that closed every particular of indebtedness for lumber up to that date.

Justice Hoke states, that the following rule is laid down in Aydlett vs. Brown, 153 N. C. 334: "That when a creditor receives and collects a check sent by his debtor on condition that it shall be in full for a disputed account, he may not thereafter repudiate the conditions annexed to the acceptance." Further that a proper consideration of the authorities will disclose that such a settlement is referred to the principles of accord and satisfaction and unless the language and the effect of it is clear and explicit it is usually a question of intent to be determined by the jury. In this case, the words "lbr. to date" on the check when taken alone are not sufficiently definite and conclusive to be allowed the effect given them by the Trial Judge and the question should have been referred to the jury.

The second exception was to the charge of the Trial Judge that affirmative is entitled to more weight that negative evidence when witnesses of equal credibility—and that in this case, the defendant having sworn the words were on the check, and plaintiff that these words the affirmative was of greater weight if both were witness of equal credibility. Justice Hoke states that while the general principle is true, it is subject to so many exceptions that it is of small value. After pointing out the true application of the rule Justice Hoke states, "In the case before us there is a direct contradiction between the witnesses on a material fact to which their attention was directed and issue should have been submitted to the jury without comment as to the existence and application of the rule referred to." He states that the ruling of the Trial Judge that evidence of similar entries on other checks was competent is correct. Error.

Parol Evidence to Complete Written Agreement.

Brown v. Mitchell is an action begun before a justice of the peace to recover mule, worth $20. The plaintiff testified that he sold the mule to defendant and took from him a paper writing as follows: "I, Wright Mitchell, promise to pay W. A. Brown, the sum of twenty dollars for one bay mule, if said mule should get well and able to work any time in the limited time of twelve months. If said mule does not get well and able to work in this limited time, above mentioned, I am not to pay W. A. Brown anything."

The trial judge refused to allow introduction of evidence that a half hour after the above agreement was delivered, it was agreed that the title to the mule should remain in Brown until payment made. On the ground that it assailed the written contract and further that there was no consideration.

Justice Allen states: "In the first place, if the agreement had been made contemporaneously with the writing, it would fall within the principal that where a part of the contract is in writing and a part not, that the part in parol may be proven because there is no inconsistency between a promise to pay and an agreement to secure payment, and if made subsequent to the writing, which appears to be the case here, the rule excluding parol evidence would have no application.

As to the second point, Justice Allen states that we are also of opinion that the pre-existing debt is a sufficient consideration to support the agreement. There was error in excluding this evidence. New trial.

Liability For False Arrest and Imprisonment.

Hobbs vs. City of Washington and Howard is an action for damages for false arrest and imprisonment in unsanitary city lock-up. The plaintiff was a minor who was arrested by Howard, chief of police of Washington, N. C., upon the complaint of the owner that plaintiff had stolen his hogs. No warrant was at any time issued and the youth was confined over night in the city lock-up which was alleged to have been in unsanitary condition. He was acquitted next morning before the recorder.

Chief Justice Clark states: We need not, however, consider the debated proposition (imprisonment in unsanitary lock-up) whether the city under such circumstances would be liable for damages because plaintiff was arrested for a violation of the State law and his being placed in the city lock-up was without its authority, express or implied, but was the unauthorized act of the defendant Howard. Such action by Howard, imposes no liability upon the city, any more than if he had imprisoned the plaintiff in a pig pen on the premises of the individual which would not have imposed any liability upon the owner of the lot, without his concurrence in the act. * * Upon emergency, which does not appear to have been the case here, one may be arrested without a warrant, Rev. 3178-8, but as soon thereafter as possible, the warrant must be procured. Rev. 3182. This was found by the jury not to have been the case here. The action of Howard, being unauthorized, created no liability as to the city." Nonsuit as to city of Washington should have been granted. As to Howard, no error.

Quality-Compare Prices

The Goodrich Tire, like the trained athlete is all brawn and muscle—no fat

THE old Olympic Game promoters were great for what we call "form."

Symmetry, proportion, soundness and proper balance out-bid bulging muscles for favor—yes, and out-won, too, just as they will today.

Mere bulk never was synonymous with endurance—and the truth of this statement drives home with a bang, when you apply it to tires.

❖ ❖ ❖

IF thick, heavy tires were the last word in tire construction, we could wipe out of existence a Goodrich Research and Test Department employing seventy people. We would take off the road a battalion of ten automobiles, that run twenty-four hours a day and every day in the year, grinding tires of all makes to pieces, just for the sake of information to us and eventual economy to the user of Goodrich Tires.

There is where we learn to cut out of a tire the material which gets the user nothing.

Of course, when we stripped tire price lists of their padding—fictitious values—we *expected* rivals to say we had stripped our tires.

IT was their only "come-back." They *had* to say that, in stripping down prices to the point where they were *fair* to dealer and consumer and left no room for injurious price-cutting tactics, we had stripped our tires of some quality, too.

❖ ❖ ❖

THE Goodrich Tire, like the trained athlete, is all brawn and muscle—no fat. It represents an achievement—the ability to cut out the extra costs of manufacture, the extra costs of labor, of extra, needless material, and to give you the best, long-mileage, high-standard tire in the world.

There are padded tires as well as padded price lists.

Don't pay for padding.

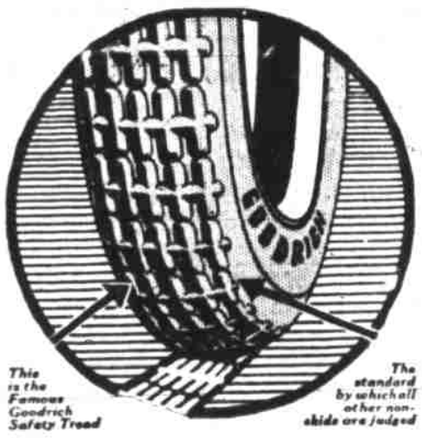
Now don't forget this—we are talking in the main about Goodrich Safety Tread Tires, for they represent ninety per cent of our factory output for resale.

Furthermore, while we have put the padded prices on smooth tread tires on the run, the evil of padded prices on non-skid tires still is in evidence, as shown in table below:

THE B. F. GOODRICH CO., Akron, Ohio

Note the following table of comparative prices on non-skid tires. Columns headed "A," "B," "C" and "D" represent four highly-advertised tires:

Size	Goodrich Safety Tread	OTHER MAKES "A"	"B"	"C"	"D"
30x3	$ 9.45	$10.55	$10.95	$16.35	$18.10
30x3½	12.20	13.35	14.20	21.70	23.60
32x3½	14.00	15.40	16.30	22.85	25.30
34x4	20.35	22.30	23 80	31.15	33.55
36x4½	28.70	32.15	33.60	41.85	41.40
37x5	33.90	39.80	41.80	49.85	52.05



This is the Famous Goodrich Safety Tread

The standard by which all other non-skids are judged

If you are charged less for any other make than Goodrich, they are taking it out of the tire; if you are charged more, they are taking it out of you.

GOODRICH FAIR-LISTED TIRES

Everyone Who Knows

the secret of heating their home for less money—with less dirt—and with greater comfort and satisfaction

BURNS GENUINE GAS COKE

Almost 50% cheaper than hard coal—no soot—no gas—no smoke—quick to handle—holds fire 12 to 18 hours when properly banked.

If you **Don't Know** the many advantages of **Genuine Gas Coke,** it is certainly worth a trial ton to find out. Price $5 per ton delivered.

We will show you how to burn it.

CAROLINA POWER & LIGHT COMPANY
TELEPHONE 1376.

TO PICTURE EVENTS IN EUROPEAN WAR

Dr. Len G. Broughton Will Deliver Lecture at Tabernacle Baptist Church Tuesday

"The Great European War as I Have Seen It, As I Have Heard It and As I Know It," will be the subject of the lecture by Dr. Len G. Broughton at the Tabernacle auditorium Tuesday night, March 9th, at 8 o'clock. The lecture will be illustrated with over one hundred views taken from the scenes of the war and exhibited for the first time in this country under special permission of the British government.

Dr. Broughton has just returned to this country from England, where for more than two years he served as pastor of Christ church, London, one of the greatest churches of the world's metropolis. As pastor of this church, Dr. Broughton not only preached to great multitudes, but he had a congregation that included members of the leading business men and statesmen of Great Britain, and moreover, his distinguished work in the religious world brought him into intimate touch with noted ministers and professional men throughout England and in many of the continental countries. Possessed with a keen sense of the significance of events, a discerning student of men and affairs, he watched at close range the gathering of the forces for the titanic struggle that is now on in Europe. He was there when the storm broke and for six months in London he saw historic England preparing, planning and striking in the greatest war of her existence.

Dr. Broughton is more than a lecturer, he is an interpreter of events. Gifted as few men have been with the power of description and illustration, he will give in this lecture a vivid picture of the things he has seen in connection with this epochal war, but more than this, his unique experience from a point of rare advantage will be brought to bear in his views on the question that everyone is asking, that is, What will be the result?

The lecture Tuesday night will be given for the benefit of the Social Service Center of the Tabernacle church, and a charge of thirty-five cents will be made. The public generally is invited.

WEEK'S NEWS OF TARBORO.

Items of General and Personal Interest From Edgecombe Capital.

Tarboro, Mar. 6.—Mrs. Robb White and children, Robb White, Jr. and John Bridgers White, of Charlottesville, Va., arrived yesterday, and are guests of her parents, Col. and Mrs. John L. Bridgers.

Mrs. Ophia Williams, of Rosemary, who spent last week visiting her son, Mr. M. T. Williams, at this place, has gone to visit her daughter, Mrs. M. S. Robertson, of Pitt county.

Dr. Mary F. Glenton, medical missionary from China, visited Tarboro this week. On Thursday night she delivered a missionary address at the residence of Mrs. James Pender. While here Dr. Glenton was the guest of Mrs. S. S. Nash.

During February there were 1068 bales of cotton weighed at the Tarboro cotton yard.

Mr. M. C. Braswell is building quite a large warehouse to replace the one recently destroyed by fire. This building will be 140 feet long by 60 feet wide.

Mrs. James Matthews, of Bethel, is visiting her son, A. D. Matthews, who is quite sick.

Miss Lena Weeks, of Whitakers, is the guest of Miss Isabell Corbett.

Mrs. M. S. Shrosbee, after visiting Mrs. T. W. Thrash for several days on her return from Florida, left Thursday for her home in Philadelphia.

Mrs. P. B. Tomlinson and children have returned to their new home in Plymouth.

Mrs. Louis Lawrence, of Chattanooga, Tenn., is visiting her daughter, Mrs. J. H. Pender.

The large elm trees in front of the new postoffice building are being removed. It is probable that their places will be occupied by trees equally as ornament and less dangerous to the postoffice building than the elm.

Mr. Mack Johnson, of Rosemary, was the guest of his parents, Mr. and Mrs. D. J. Johnson, early this week.

Mayor Jones has called the attention of the citizens of Tarboro, to the fact that now is the time to begin the fight against flies, mosquitoes, etc., and he appeals to every one to look after the sanitary conditions of his premises and see to it that they are kept in first-class conditions.

GLEE CLUB MAKES A HIT

Louisburg Roundly Applauds Wake Forest Musicians.

(Special to The News and Observer.)

Louisburg, Mar. 6.—In spite of the torrential rains, a good sized and thoroughly appreciative audience heard the Wake Forest Glee Club in the opera house here last night in their initial performance of this season. It was considered by many the very best entertainment that has come to this city in a long time.

Dr. Hubert M. Poteat is not only the superb director of the Club, but he is himself a star of the first magnitude as a soloist, violinist, comedist, pianist, organist, or any thing else that makes a noise. He is a whole show by himself, but he is very ably assisted by twenty-two other men, each of whom is a specialist in his line.

The orchestra, consisting of eleven pieces, is par excellence. Each number on the program was liberally applauded, and the Club was very generous in its appreciation as shown by its responses.

Both classical and popular music was used, with numerous original interpretations and stunts thrown in for good measure, all of which was thoroughly enjoyed. The last number on the program, "The Grasshopper," which was a tragic cantata in several spasms, was replete with philosophy and fun and called forth many rounds of applause.

At the conclusion of the program the Glee Club accepted the invitation of the faculty and senior class of Louisburg College to a reception given in their honor at the college. Here the Club shone with even more effulgence, having greater inspiration. The audience was thoroughly sympathetic, and when "It's a Long, Long Way to Tipperary" was sung all the young ladies including the large number of undergraduates who were allowed the privilege of the reception, but who were lined up on the stair steps and upper corridors, all chimed in and made the welkin ring.

In the library delicious refreshments were served, and a most delightful social hour was spent. And thus the tie that binds Wake Forest and Louisburg Colleges together was greatly strengthened.

BUYING BY TELEPHONE

The easiest, quickest, most pleasant method of placing orders for right-away delivery. Call 95, that's all—no trouble to you or extra cost.

KING-CROWELL DRUG CO.

The Rexall Store. Huyler's Candy.
Nurses' Register.

How Hair Can Be Forced to Grow Luxuriantly And Other Beauty Secrets

The Most Captivating Actress on the American Stage and Most Famous Self-Made Beauty, Reveals More of Her Own Beauty Secrets.

BY MISS VALESKA SURATT

THERE is a world of difference between a hair tonic and a hair grower, and there are many hair tonics sold as hair growers simply because it has been generally assumed that to tone up the hair roots causes them to renewed growth. But this result is very meager, and as a rule disappointing.

I want to give you here the formula for a real hair grower, and you will know by actual visible results that you have at last in your possession a most wonderful article. This formula produces a very pronounced effect upon the entire cell life of the hair from root to tip. It forces hair to grow. You will notice a startling difference in the fast increasing length of your hair, in the unusual thickness of its growth, and in the new vigorous hairs growing in the thin spots. I would not give up this hair grower for all the hair tonics in the world. There is no long waiting, month in month out, for results. The growth becomes glorious and your ambition is sated far beyond your expectations. You will find, too, that your hair will very soon stop falling.

Mix one half pint each of water and alcohol (or take one pint of imported bay rum if you wishes and add one ounce of beta quinol. It is then ready to use. This should be used liberally every day or so. It contains no oil and is a delight to use.

* * *

MISS SUPER. To remove hair because the eyebrows on the upper lip, in fact, on any part of the face, arms, shoulders or other part of the body, the best thing is to apply some simple coffee solution. Get the druggist boil the solution, get the sulphide powder which you simply wet with a little water just before you apply it. This has the effect of dissolving away the hair harmlessly. Instead of burning it off and leaving a red spot or mark, as do the superfluous hair removers commonly advertised. This can be used even on the tenderest skin without the least irritation or danger, and it never fails.

* * *

MISS T. I. G. Whatever we want in this world we want quick. This applies, too, to the desire for a beautiful complexion. The weak, ineffective face creams that are widely known require many months to produce even a partial desired result. Why not be a mixture you make yourself, that is far more economical, and that gives results in a fraction of the time? The following formula will give a complexion of exquisite purity and every blemish, freckle, spot, and all muddiness, will quickly vanish:

Mix two tablespoonfuls of glycerine and one ounce of citrate in a pint of hot water. It will form a cream. When cool it is ready to use.

* * *

MRS. OLDISH. A very remarkable cream to youthful appearance is produced by a cream made up as follows: To half a pint of hot water, add two ounces of eptol and two tablespoonfuls of glycerine. This forms a cream. When cool, apply regularly every day, generously. The eptol can be obtained at any drug store. This cream removes light and deep wrinkles, lines of worry, habit and age, and works fast. No woman should be without it.

* * *

MRS. T. A. M. No one can positively assure you that the hair can be developed. However, there is only one thing to use, and if anything can do it in your case, this certainly can do it. Anything mechanical is liable to cause injury. This formula is safe. Mix half a cup of sugar, two ounces of tincture and a half pint of hot water. Of this take two teaspoonfuls after meals, and at bed time.

* * *

MISS HISSEY. I am sorry you were not able to obtain the aln tone at the drug store. If you will simply write addressing Valeska Suratt care of Secretary, Thompson Bldg., Chicago, enclosing fifty cents, you will be supplied by return mail.

* * *

ALL OVER. You have wasted a year's time. You can get rid of blackheads in a few minutes. This sounds remarkable, but try it and you will find it true.

Get powdered borax at any drug store and sprinkle some of it on a sponge, moistened with hot water, then rub it on the blackheads, large and small. You will be surprised how effective this is.

* * *

MISS IMPATIENT. There is no cream, ointment will remove pimples. A blood tonic, not merely a blood tonic, is necessary. Nothing can surpass the following for results, and it is perfectly safe. Dissolve twelve ounces of sugar and one ounce of sassafras in half a pint of water. One or two teaspoonfuls of this should be taken after meals. This very economical and never fails.

* * *

MRS. S. R. H. For the shampoo dissolve one teaspoonful of egg in half a cup of hot water. You can get for moderate cost at any drug store, enough egg to last you for at least a dozen shampoos. This egg shampoo has wonderful cleansing properties, and far exceeds even the best soap, or any other article for the purpose I ever used. It leaves the hair, too, easy to dress and glossy.

* * *

MISS LEAF. I use a face powder made up according to my own formula. It is free from the crude chalkiness common to nearly all face powders, is exquisitely smooth and delicately scented. To my mind it is a jewel. It is now obtainable at drug stores, and is called "Valeska Suratt Face Powder."

"The Difference In Your Hair In a Short Time Will Be Simply Remarkable."

Ever Notice That The Poorer An Article Is The More It Costs To Sell It?

Just apply this principle to clothes; judge the true quality of clothing by the size of its advertising—and also by its **tone.**

You'll quickly discover that **good** clothing does not require the hypnotism of large space of the bluster of big black type to sell it. Good clothing depends not so much on loud assertion just before its sale as on quiet proof **long after** the sale.

To the get-rich quick clothiers, this doubtless seems a slower way. But a quarter century's good clothes experience has convinced us it's the **surer.**

Particularly worth seeing—our lines of men and young men's spring suits that are arriving daily, at.....**$15 to $30**

CROSS-LINEHAN COMPANY
"The Clothiers"