

NEW JERSEY COURT OF ERRORS AND
APPEALS

ELEANOR C. ELY,
Plaintiff-Respondent,

v.

JENNIE E. PONTIERE, STANLEY M. PONTIERE, and
JOSEPH KILMER,
Defendants-Appellants.

ACTION AT LAW.

IN EJECTMENT.

RESPONDENT'S BRIEF.

STATEMENT.

This is an action of ejectment brought by the plaintiff against the defendants to recover possession of a certain farm at Beesley's Point, New Jersey.

Plaintiff submits that the only question to be decided in this case is whether or not Eleanor C. Ely was the owner of the property in question in fee simple on May 1st, 1925, and whether or not she could convey a good and marketable title to the de-

defendants, Jennie E. Pontiere and Stanley M. Pontiere on that date.

It has been argued by counsel for the defendants that the deed from Bella O. Bricker of the City and County of Philadelphia, and State of Pennsylvania, wife of William H. Bricker, Sr., physician to Caroline Engstrom, dated April 6th, 1920, and recorded in the clerk's office of the County of Cape May in Deed Book 352 on page 178, did not convey title to the said Caroline Engstrom in fee simple, and that thereafter when Caroline Engstrom, widow, conveyed to the plaintiff, that the plaintiff received no title.

The counsel for the defendants bases his argument upon the case of *Jason v. Johnson*, 74 N. J. Law, which was decided by the Court of Errors and Appeals in 1907, in which case the doctrine was laid down that "the signing of a deed of conveyance by one who is not mentioned or described in the body of the instrument as the grantor has no effect at law to convey such party's estate in the lands described therein."

It is therefore argued that since William H. Bricker, Sr., is not named or described in the body of the instrument as a grantor, that the deed executed by himself and wife conveyed no estate to Caroline Engstrom and that, therefore, none has vested in the plaintiff.

ERROR REMEDIED BY STATUTE.

Plaintiff submits that if there was any defect in the deed from Bella O. Bricker and William H. Bricker, her husband, to Caroline Engstrom, that this defect was remedied and corrected by an act

of Legislature approved March 11, 1924, which is reported in the Pamphlet Laws of 1924, Chapter 150, page 347 as follows: "Where in any deed of conveyance of real property heretofore made by husband and wife, both the husband and wife have signed the said deed of conveyance and where their signatures have been duly witnessed and acknowledged as required by law, but where in the recital or the body of the deed of conveyance the name of one of the parties has been omitted, the said deed of conveyance shall be good and valid; provided, however, that the said deed is good and valid in all other respects."

The deed of conveyance in this case was properly signed by both Bella O. Bricker and William H. Bricker, her husband, and duly witnessed and acknowledged, the acknowledgment being taken before a notary public of the State of Pennsylvania, and the Prothonotary's certificate of authority was attached to the deed before it was sent to the Cape May County Clerk for record.

This act has also been re-enacted and will be found in the 1926 Pamphlet Laws, Chapter 154, and the plaintiff submits that if there was any mistake or defect in the deed from Bella O. Bricker, *et vir.* to Caroline Engstrom, that the same has been remedied by the acts of 1924 and 1926.

It may be argued that the acts above referred to are unconstitutional because they are retrospective acts depriving William H. Bricker of his vested rights.

RETROSPECTIVE ACTS ARE VALID IN NEW JERSEY.

It was held in *State v. City of Newark*, 27 N. J. Law, 185, that retrospective acts were valid in the State of New Jersey. The opinion in this case was rendered by Chief Justice Green, and the following citation may be found on page 196: "Very many acts of a similar character have been passed from time immemorial, by the British parliament and by the legislatures of this and of the other states of the Union. Some of the modern constitutions prohibit retrospective laws, but *that of this State does not*. In the case of *Watson v. Mercer*, 8 Peters 88, it was expressly decided that the constitution of the United States does not; and an act of the Legislature of Pennsylvania declaring acknowledgments of deeds by married women, in a form which had been judicially decided to be inoperative and void, so that no estate passed, to be nevertheless good and effectual, was held not to be prohibited by it." And the Chief Justice in the case of *State v. City of Newark*, upheld the doctrine above mentioned.

In general, legislation curing formal defects in deeds and other written instruments, and giving to them the same validity as though they had been properly executed, is constitutional; and as between the original parties to such instruments, such legislation renders them valid and binding to all intents and purposes. This rule applies also to deeds and mortgages invalid by reason of the grantee's or mortgagee's want of capacity, and such an instrument may be validated by a statute passed without the vendor's procurement or consent. It is not considered that legislation validating informal or defective deeds deprives anyone of any vested rights,

even though it operates to cut off a right of action that would otherwise exist. Such legislation, however, cannot be given the effect of cutting off intervening rights of third persons. 12 Corpus Juris, 1906-1907.

“A statute will not be held unconstitutional unless the conflict with the Constitution is apparent.” *Grausman v. Porto Rican-American Tobacco Company*, 95 N. J. Equity, 155.

A reading of *State v. Freulli* shows quite clearly that the Courts of this State will hesitate to declare a clause in a statute unconstitutional where it may be considered to be constitutional.

Justice Swayne, in the case of *Jersey City v. North Jersey Street Railway Company*, 74 N. J. Law, 744, at page 784, lays down the following principle of law “Numerous statutes have been sustained the object of which was to correct the defective execution of deeds or defective municipal action. Such statutes operate to confer an exclusive privilege or even to make good a title to land, but the legislative power has never been doubted. Their justification is found in the meritorious ground of an already existing situation.”

Den v. Downam, 1 Gr. 135; *State v. Newark*, 3 Dutcher 185, 196; *State ex rel, Walter v. Union*, 4 Vroom 350, 355; *State, Vreeland, pros. v. Bergen*, 5 Id. 438; *State, Kohler, pros. v. Guttenberg*, 9 Id. 419; *Mutual Benefit Life Insurance Co. v. Elizabeth*, 13 Id. 235.

In view of the above citations, and especially in view of the Acts of 1924 and 1926, and relying upon the cases of *State v. Newark* and *Jersey City v. North Jersey Street Railway Company*, we submit that if there was a defect in the deed from Bella O. Bricker and William H. Bricker, her husband to

Caroline Engstrom, that this defect has been corrected and argued, and that title now vests in fee simple in the plaintiff, Eleanor C. Ely, and we, therefore, submit that the plaintiff's action of ejectment against all of the defendants to this suit should be sustained, and judgment be rendered for the plaintiff.

Respectfully submitted,
KREPS & BELL,

*Attorneys for and of Counsel
with Plaintiff-Respondent.*



