

Mr. Smith properly assumed the role of agent of Mr. Welty in holding the deed pursuant to Mr. Welty's instruction. This role that Mr. Smith assumed, even though he was the grantee in the deed, was proper under the holding of Chillemi vs. Chillemi, 78 A2d 750 (1951). In this case Eugene J. Chillemi sued Lulu R. Chillemi to enjoin her to reconvey his former home to him and his wife as tenants by the entireties. In 1946 Mr. and Mrs. Chillemi owned a residential property as tenants by the entireties. After some marital difficulties Mrs. Chillemi encouraged her husband to execute deeds conveying his interest to a third person and reconveying the property to Mrs. Chillemi alone. At that time Mr. Chillemi was to leave on a dangerous mission overseas; and he testified that in view of the uncertainty of his return he consented to execute a deed conveying the home to his wife, according to his version, on the condition that she would not record the deed until such time as he should be reported missing, killed, or had failed to return; and that if he should return the deeds would be returned and destroyed. His return home occurred much sooner than Mrs. Chillemi expected; consequently, she had the deeds recorded on January 7, 1947, after Mr. Chillemi had demanded that the deeds be returned to him.

In reversing the case of Buchwald vs. Buchwald, 175 Md 115, the Court of Appeals stated:

"There is actually no logical reason why a deed should not be held in escrow by the grantee as well as by any other person. The ancient rule is not adapted to present day conditions and is entirely unnecessary for the protection of the rights of litigants. After all, conditional delivery is purely a question of intention, and it is immaterial whether the instrument, pending satisfaction of the condition, is in the hands of the grantor, the grantee, or a third person. After the condition is satisfied, there is an operative conveyance which is considered as having been delivered at the time of the conditional delivery, for the reason that it was then that it was actually delivered, although the ownership does not pass until the satisfaction of the conditions. We, therefore, hold that it is the intention of the grantor of a deed that determines whether the delivery of the deed is abso-