

To be reported.

Court Of Appeals Of Kentucky.

Feb.27,1901.

J.S.Rittenhouse,

Appellant.

v.

Appeal from Floyd Circuit Court.

Morgan Clark,&c.,

Appellees.

Opinion of the Court by Chief Justice Paynter.

It appears from the record that previous to December 20,1894,the appellee,Morgan Clark,and his wife,Rebecca A.Clark,either owned or had an interest in a certain tract of land which they exchanged with John W.Porter for a tract of land known in this record as "The Long Branch land." Porter made a deed to them,by the terms of which Rebecca A.Clark was vested with a life estate in it with a certain character of remainder to her children,with the right in Morgan Clark to control it during his lifetime. This deed was not recorded. On December 20,1894,the appellant,Rittenhouse,and John W.Porter and others met the Clarks and they sold the land to Rittenhouse for twenty-two hundred and some odd dollars . For reasons which will hereafter appear Clark and wife did not make a deed to Rittenhouse,but the deed which Porter had made them was destroyed with the knowledge of Rittenhouse,Porter and the Clarks,and at the instance of Rittenhouse and Porter. Whereupon,Porter then made Rittenhouse a deed for the land. Rittenhouse gave Porter a check for \$175 and his notes for \$2,050,payable to the order of Porter,who thereupon indorsed and delivered the check and notes to Morgan Clark. On December 27,1894,in payment of the notes which Rittenhouse had executed and which had been assigned and delivered to Clark,he conveyed to Clark and wife and to those who took the remainder interest in "The Long Branch