Comment on Recent Decisions

AFFIDAVITS—ACKNOWLEDGEMENTS—TELEGRAPHS AND TELEPHONES.—The defendants executed a mortgage and subsequently mortgaged the same premises to a bank. In a foreclosure suit the defendant contended that the first deed was void because the acknowledgement by his wife was made over the telephone. *Held,* that such acknowledgements by the wife over the telephone were good. *Abernathy v. Harris* (Ark. 1931) 34 S. W. (2d) 765.

The prevailing rule is that where statutes require a personal appearance and privy examination before a proper officer for an acknowledgement, one taken over the telephone is void. *Roach v. Francisco* (1917) 138 Tenn. 357, 197 S. W. 1097; *Southern State Bank v. Sumner* (1924) 187 N. C. 762, 122 S. E. 848; *Hutchinson v. Stone* (1920) 79 Fla. 157, 84 So. 151; *Meyers v. Eby* (1920) 33 Idaho 266, 193 Pac. 77, 12 A. L. R. 535. The deed under such circumstances is void. *Robinson v. Bruner* (1927) 94 Fla. 797, 114 So. 556.

However there is some authority to the effect that in the absence of fraud, duress or mistake, a deed acknowledged over the telephone is valid. *Banning v. Banning* (1889) 80 Cal. 271, 22 Pac. 210. This may be so even where the statute requires an appearance before the proper officer. *Wooten v. Farmers' and Merchants' Bank* (1923) 158 Ark. 179, 249 S. W. 569. Where there is an appearance and an acknowledgement of the deed in some manner, it is conclusive, and evidence is inadmissible to impeach the certificate as against an innocent holder. *Meger v. Gossett* (1882) 38 Ark. 377.

Ordinarily, affidavits taken over the telephone are void. *Sullivan v. First National Bank* (1904) 37 Tex. Civ. A. 288, 835 S. W. 421; *Carnes v. Carnes* (1912) 138 Ga. 1, 74 S. E. 785. Notaries taking such acknowledgements will be guilty of professional misconduct and of violation of public duty. *In re Napolis* (1915) 169 App. Div. 469, 155 N. Y. S. 416. But where a lessor executed a lease and received the rent for four years, an attempt to repudiate the agreement upon the ground that it was acknowledged over the telephone was unsuccessful. *Logan Gas. Co. v. Keith* (1927) 117 Ohio 206, 158 N. E. 184, 58 A. L. R. 600. And where notice of injuries was required to be given to the city as a condition precedent to instituting an action against it, it was held that the action could be maintained even though the affidavit in the notice was taken over the telephone. Kuhn v. City of *St. Joseph* (Mo. App. 1921) 234 S. W. 353, 7 ST. LOUIS L. REV. 187.

The instant case seems to be contrary to the purpose and intent of an acknowledgement, namely, that by it the grantor states the act evidenced by the instrument to be his act or deed. It hardly seems possible that one can state an act or deed to be his, when he is talking over the telephone without having the deed before him. T. L., '32.

ATTORNEY AND CLIENT—CONTINGENT FEE LIEN—SECRET SETTLEMENT BY CLIENT.—A personal injury suit was compromised by the plaintiff without