

STATUTE OF FRAUDS

Throughout history of man, real estate may have been conveyed by written instrument. Most frequently in the early stages of the feudal system in England, a ritual called "livery of seisin" was performed to complete the conveyance. There may have been times when the sale of the land was also supported by a written instrument but, most often, only the "livery of seisin" ritual was done. "Livery of seisin" simply means "the delivery of legal possession of property". The ritual would be a series of acts performed by the grantor and grantee, that would signify the actual transfer of the land. Sometimes twigs and soil were handed to the grantee by the grantor, the grantee then performing some act in acknowledgement that this giving of the land had occurred. Throwing soil in the air and shouting by the parties that "I sell this land" and "I accept the sale of this land" may be shouted by the grantor and grantee. It is obvious that this method for conveyance could result in many fraudulent sales. By the seventeenth century, fraud was becoming common in real estate transactions, as well as in every human endeavor. So in the first parliament session of 1673, discussion began and committees were set up to come up with a statute that would protect against fraud. On April 16, 1677, parliament passed the "Statute of Frauds". Within the Statute of Frauds there was a provision that transfer of rights in real property must be in writing. Smith on the Law of Fraud, section 312, page 328, states as follows:

"Before the passage of the statute all freehold estates and incorporal hereditaments could be created by livery of seisin and all estates less than freehold created by parol. (1) By the statute all freehold estates, and all estates less than freehold, except certain specified leaseholds, were declared to have the effect only of estates at will unless in writing. (2) All assignments, grants and surrenders of any term in lands not being held by customary or copyhold tenure, and not by operation of law, were required to be in writing..."

The Statute of Frauds is not the legal control in our courts but, was the basis for many court decisions and conveyance statutes in this country and in forming current statutes. The statute is shown next, as it appears in Smith on the Law of Fraud, section 310, pages 323-326.

• STATUTE 29 CAR. II, CAP. 3.

An Act For Prevention of Frauds
And Perjuries.

For prevention of many fraudulent Practices which are commonly endeavoured to be upheld by Perjury and Subordination of Perjury Bee it enacted by the Kings most excellent Majestie by and with the advice and consent of the Lords Spirituall and Temporall and the Commons in this present Parlyament assembled and by the authoritie of the same That from and after the fower and twentyeth day of June which shall be in the yeare of our Lord one thousand six hundred seaventy and seaven All Leases Estates Interests of Freehold or Terms of Yeares or any uncertaine Interest of in to or out of any Messuages Mannours Lands Tenements or Hereditaments made or created by Livery and Seisin onely or by Parole and not putt in Writeing and signed by the parties soe making or creating the same or their Agents thereunto lawfully authorized by Writeing, shall have the force and effect of Leases or Estates at Will onely and shall not either in Law or Equity be deemed or taken to have any other or greater force or effect, Any consideration for making any such Parole Leases or Estates or any former Law or Usage to the contrary notwithstanding.

II. Except nevertheless all Leases not exceeding the terme of three yeares from the makeing thereof whereupon the Rent reserved to the Landlord dureing such terme shall amount unto two third parts at the least of the full improved value of the thing demised.

III. And moreover That noe Leases Estates or Interests either of Freehold or Terms of yeares or any uncertaine Interest not being Copyhold or Customary Interest of in to or out of any Messuages Mannours Lands Tenements or Hereditaments shall at any time after the said fower and twentyeth day of June be assigned granted or surrendered unlesse it be by Deed or Note in Writeing signed by the party soe assigning granting or surrendering the same or their Agents thereunto lawfully authorized by writeing or by act and operation of Law.

IV. And bee it further enacted by the authoritie aforesaid That from and after the said fower and twentyeth day of June noe Action shall be brought whereby to charge any Executor or Administrator upon any speciall promise to answer damages out of his own Estate (2) or whereby to charge the Defendant upon any speciall promise to answer for the debt default or miscarriages of another person (3) or to charge any person upon any agreement made upon consideration of Marriage (4) or upon any Contract or Sale of Lands Tenements or Hereditaments or any Interest in or concerning them (5) or upon any Agreement that is not to be performed within the space of one yeare from the makeing thereof (6) unlesse the Agreement upon which such Action shall be brought or some Memorandum or Note thereof shall be in Writeing and signed by the partie to be charged therewith or some other person thereunto by him lawfully authorized.

VII. And bee it further enacted by the authoritie aforesaid That from and after the said fower and twentyeth day of June Declarations or Creations of Trusts or Confidences of any Lands Tenements or Hereditaments shall be manifested and proved by some Writeing signed by the partie who is by Law enabled to declare such Trust or by his last Will in Writeing or else they shall be utterly void and of none effect.

VIII. Provided always That where any Conveyance shall bee made of any Lands or Tenements by which a Trust or Confidence shall or may arise or result by the Implication or Construction of Law or bee transferred or extinguished by an act or operation of Law then and in every such Case such Trust or Confidence shall be of the like force and effect as the same would have beene if this Statute had not been made. Anything hereinbefore contained to the contrary notwithstanding.

IX. And bee it further enacted That all Grants and Assignments of any Trust or Confidence shall likewise bee in Writeing signed by the party granting or assigning the same (or) by such last Will or Devise or else shall likewise be utterly void and of none effect. ("Or" interlined on the Roll)

XVI. And bee it further enacted by the authority aforesaid That from and after the said fower and twentyeth day of June noe Cou-

tract for the Sale of any Goods Wares or Merchandises for the price of ten pounds Sterling or upwards shall be allowed to be good except the Buyer shall accept part of the Goods soe sold and actually receive the same or give something in earnest to bind the bargain or in part of payment, or that some Note or Memorandum in writing of the said bargain be made and signed by the parties to be charged by such Contract or their Agents thereunto lawfully authorized.

STATUTE 9 GEO. IV, CAP. 14.

V. And be it further enacted, That no Action shall be maintained whereby to charge any Person upon any Promise made after full Age to pay any Debt contracted during Infancy, or upon any Ratification after full Age of any Promise or Simple Contract made during Infancy, unless such Promise or Ratification shall be made by some Writing signed by the Party to be charged therewith.

VI. And be it further enacted, That no Action shall be brought whereby to charge any Person upon or by reason of any Representation or Assurance made or given concerning or relating to the Character, Conduct, Credit, Ability, Trade, or Dealings of any other Person, to the Intent or Purpose that such other Person may obtain Credit, Money, or Goods upon, unless such Representation or Assurance be made in Writing, signed by the Party to be charged therewith.

VII. And Whereas by an Act passed in England in the Twenty-ninth Year of the Reign of King Charles the Second, intituled AN ACT FOR THE PREVENTION OF FRAUDS AND PERJURIES, it is, among other Things, enacted that from and after the twenty-fourth Day of June, One thousand six hundred and seventy-seven, no Contract for the Sale of any Goods, Wares, and Merchandizes, for the price of Ten Pounds Sterling or upwards, shall be allowed to be good except the Buyer shall accept part of the Goods so sold and actually receive the same, or give something in earnest to bind the Bargain, or in part of Payment, or that some Note or Memorandum in Writing of the said Bargain be made and signed by the parties to be charged by such Contract, or their Agents thereunto lawfully authorized: And 'whereas a similar Enactment is contained in an Act passed in Ireland in the Seventh Year of the Reign of King William the Third: And Whereas it has been held, that the said cited Enactments do not extend to certain Executory Contracts for the Sale of Goods, which nevertheless are within the Mischief thereby intended to be remedied; and it is expedient to extend the said Enactments to such Executory Contracts;' Be it enacted, That the said Enactments shall extend to all Contracts for the Sale of Goods of the Value of Ten Pounds Sterling and upwards, notwithstanding the Goods may be intended to be delivered at some future Time, or may not at the Time of such Contract be actually made, procured, or provided, or fit or ready for Delivery, or some Act may be requisite for the making or completing thereof, or rendering the same fit for Delivery.

X. And be it further enacted, that this Act shall commence and take effect on the First Day of January One thousand eight hundred and twenty-nine.

LIVERY OF SEISIN

Even with the requirement to have transfer of title and rights in land to be in writing, the "livery of seisin" ritual continued. An example of this continued ritual is evidenced in a document dated July 1824 and discussed in Evidence and Procedures for Boundary Location, by Brown and Eldridge, page 73, where it was quoted from Thomas R. Newton in "Land is a Precious Thing." Surveying and Mapping, Vol. XIII, No. 3, p. 365:

"We put the said Robert Millicam in possession of said tract of land, taking him by the hand and causing him to walk around it and telling him in loud and audible words, that by virtue of the commission and powers in us vested in the name of the Government of the Mexican Nation we put him in possession of said tract of land with all the uses, customs, rights, and services thereof, unto him, his heirs and assigns, and the said Robert Millicam, in evidence of being in real and personal possession of said tract of land, without any contradiction, cried out, pulled twigs, threw stones, drove stakes, and performed the other necessary solemn acts..."

The deed shown on the next page was written in 1881 and is very poetic. The statements; "Waiving homestead and mansion, to both a goodbye" and "Turned his face to the street and his back to his home", may or may not actually been done, but these statements are certainly at least a symbolic representation of the "livery of seisin".

Nothing precludes a modern day practice of the "livery of seisin" ritual. But, it can be nothing more than a symbolism of days long passed.

WARRANTY DEED

VALID IN LAW

*J. Henry Shaw, the grantor herein,
 Who lives at Beardstown - the county within,
 For Seven Hundred Dollars to me paid today
 By Charles E. Wyman, do sell and convey -
 Lot Two (2) - in Block Forty (40) said county and town,
 Where Illinois River flows placidly down,
 And warrant the title forever and aye,
 Waiving homestead and mansion, to both a goodly,
 And pledging this deed is valid in law,
 I add my signature.*

Dated - July 25, 1881

J. Henry Shaw (seal)
 HENRY SHAW

*J. Sylvester Emmons, who lives at Beardstown,
 A Justice of Peace of same and renown,
 Of the county of Cass in Illinois state,
 Do certify here that on the same date
 One J. Henry Shaw to me make known
 That the above deed and name were his own,
 And he stated he sealed and delivered the same
 His homestead therein, but left all alone
 Turned his face to the street and his back to his home.*

Dated - August 1, 1881

J. Emmons J.P. (seal)
 S. EMMONS J.P.

Deed filed for Record August 9th - 1881 at One P.M. Ferris E. Downing, Recorder, duly recorded
 Volume 40 of Deeds Page 251 - Cass County, State of Illinois.

Scrivener of this instrument, J. Henry Shaw, Attorney at Law, created a great legal curiosity.
 The document complies with every requirement of law, and has been declared by the Courts of
 Illinois to be entirely valid.

Arizona written conveyance statute, A.R.S. 33-401, sometimes is referred to as the Arizona Statute of Frauds. It is shown next:

§ 33-401. Formal requirements of conveyance; writing; subscription; delivery; acknowledgment

A. No estate of inheritance, freehold, or for a term of more than one year, in lands or tenements, shall be conveyed unless the conveyance is by an instrument in writing, subscribed and delivered by the party disposing of the estate, or by his agent thereunto authorized by writing.

B. Every deed or conveyance of real property must be signed by the grantor and must be duly acknowledged before some officer authorized to take acknowledgments.

Amended by Laws 1976, Ch. 105, § 1, eff. June 22, 1976; Laws 1987, Ch. 153, § 1.

The statute is certainly clear about transfers of title being in writing. But, what about adverse possession, acquiescence, estoppel and parol agreements? See those respective chapters in this book for discussion on these topics.