be no valid reason why the same principle should not be extended to cases involving support of minor children. As the court in the instant case emphasized, a recourse to the court of original jurisdiction would be fruitless. To allow the continuing jurisdiction of the Indiana court to prevent an independent action of this nature would be, in practical effect, to deprive the minor child of any possible relief.

The decision of the Illinois case in *Parker v. Parker* is thus found to be entirely consistent with modern principles of the Conflict of Laws, as applied both in Illinois and in other jurisdictions. The social desirability of the result reached may scarcely be questioned. It would be, as one authority in the field has remarked, highly unreasonable "to suppose that a father can escape the duty of supporting his child simply by keeping away from the child's domicile, or that to enforce that duty the mother should be compelled to follow the father about and establish a domicile for herself and the child in a state where the father can be found." [21] In short the decision formed represents an enlightened and practical solution to a problem of increasing importance in our present day society—the need for protection and support of minor children whose divorced parents have crossed the boundaries between the states.

WESLEY G. HALL.

DEEDS—*An Unsealed Instrument Held to Convey Title to Land.* (Illinois)

Defendant purchased certain land and, when subsequently threatened with a lawsuit, deeded it to his wife, but retained active control of it and continued to pay the taxes. Shortly before her death the wife executed a document purporting to be a deed re-conveying the land to defendant.[1] Plaintiffs, children of the wife by a former marriage, filed a complaint for accounting and partition of the land in question, asserting that the deed was void in that: (1) It contained no words of grant; (2) it

[21] Stansbury, *Custody and Maintenance Decrees Across State Lines*, 10 LAW & CONTEMP. PROB. 832 (1944).

[1] In view of the importance of the document itself in this decision, its relevant portions are here set out:

> "Apr. 20—1944 Rockford Ill. *Quick Claime* Deed *Asinment* to B. F. Zimmerlee
> My interest *it* said piece of property consisting of 8 lots in *Winebago* County Ill. . . . the plat of which Subdivision is recorded . . . in the Recorder's *ofice* of Winnebago County Ill. and the above *maned* being my (husband said property is his) to hold and sell and use the *the prosedes* as long as he shall live
> this is my last wish
>
> Myrtle Zimmerlee
> witness—Mrs. Bessie F. Malone
> Notary Public Lenna Smith
> Rockford, Ill. (Seal)"

was not acknowledged; (3) defendant came into equity with unclean hands since he conveyed the land to his wife to avoid judgment threatened in another lawsuit; and (4) it was not under seal. The circuit court decreed in favor of defendant's cross-complaint that the document was a deed, sufficient to convey title to the land to him. On appeal, *held*: Decree affirmed. *Shadden et al. v. Zimmerlee et al.*, 401 Ill. 118, 81 N.E.2d 477 (1948).

In this decision the Illinois Supreme Court seems to have gone out of its way to hold an imperfect deed sufficient to convey title to real estate. Upon reading the report one might easily wonder if the opinion justifies the decree. The court appears to have answered plaintiffs' first three contentions adequately and authoritatively and they will not be dealt with in this comment. As to plaintiffs' other contention, that the deed was void because not under seal, let us closely examine the reply of the court. It is not clear from the opinion whether it was held that the deed had legal effect or only an equitable operation. The report states, "It appears, therefore, that regardless of whether this suit was brought in law or in equity the plaintiffs are precluded from raising the point that the document in question was not under seal."

Assuming that the court held as it did because it felt that equitable title could have passed to the defendant, upon what basis could it have so held? Generally, there are two methods by which equitable title may pass—by force of a contract specifically enforceable or by declaration of a trust. Did the court mean to decree specific performance? The opinion reads as follows, ". . . in equity, a good title may be conveyed by a writing not under seal or without any writing whatever." Two Illinois cases are then cited.[2] The statement by the court sheds little light on the reasoning behind it, so presumably the cases cited are intended to explain the court's decision. In the *Ashelford* case the court said, "While at law, in order to constitute a valid conveyance of . . . any interest in land, it must be by deed having a seal . . ., yet in equity a good title may be conveyed without any writing whatever." But the court further explained, ". . . the rule seems to be that where the contract is fully performed and a valuable *consideration paid* and possession taken under it, the purchaser or grantee may, in equity, . . . enforce specific performance." In the case under comment there was no consideration paid by the grantee, therefore the *Ashelford* case seems to fail as authority for the proposition advanced. Moreover, courts of this state have adhered to the converse proposition that, to be the basis for a decree of specific performance, a contract or deed must be based on valuable consideration.[3]

[2] Barnes v. Banks, 223 Ill. 352, 79 N.E. 117, 8 L.R.A., N.S. 1037; 114 Am. St. Rep. 331 (1906); Ashelford v. Willis, 194 Ill. 492, 62 N.E. 817 (1902).

[3] Joseph v. Evans, 338 Ill. 11, 170 N.E. 10 (1929); Edwards v. Brown et al., 308 Ill. 350, 139 N.E. 618 (1923); 5 GRIGSBY, ILLINOIS REAL PROPERTY, § 2193 at page 93 (1948).

In the other case cited, *Barnes v. Banks*, there was neither a seal nor consideration, yet the court held that the grantee acquired equitable title to the land in question because there was a valid gift from parent to child. But when the authorities cited in the case are examined it is discovered that they deal only with the problem of whether the deeds there involved were fraudulent as to creditors.[4] The *Barnes* case, like the instant case, relied upon the general proposition set out in the *Ashelford* case and, as previously pointed out, did so erroneously, because of the lack of consideration. Therefore, the reasoning of the court in the *Barnes* case might be seriously questioned and certainly the case fails, along with the *Ashelford* case, as a basis for equitable title having passed in the instant case.

Still dealing with the assumption that equitable title passed under the imperfect deed, could it be that the court felt there was a declaration of a trust? It seems unlikely, if not impossible, in view of existing authority on the subject. Illinois courts have sustained the proposition that where the gift of the legal interest fails for any reason, equity refuses to turn the donor into a trustee for the intended donee.[5] Furthermore, in *Pratt v. Griffin* the Illinois Supreme Court stated, "A trust in favor of the grantee cannot be based on facts showing a mere imperfect gift of the property." [6] The purported deed in the instant case clearly evidenced an intent to pass legal title and, failing to do that, it was merely an imperfect gift, upon which a trust could not be based.

Therefore, it is submitted that equitable title could not have passed to the defendant by the so-called deed, or at least, if it could, the court in its opinion did not sufficiently indicate upon what theory.

But the real innovation in this case lies in the assumption that legal title was conveyed. The courts of this state have always interpreted the Conveyancing Act [7] to mean that legal title to real property can only be conveyed by a deed under seal. In the instant case there was no seal, yet, at one point in the opinion the court indicates that legal title was conveyed. After enumerating the cases cited by plaintiffs, it says, "These cases are properly cited for the general rule that a deed must be under seal to pass legal title to real estate. There is further authority, however, setting up an exception to the general rule, which is to the effect that an instrument, defective as a deed for want of seal, will bind the grantor and his heirs . . .," and cites *Wilson v. Kruse*.[8] But is the *Wilson* case

[4] Patterson et al. v. McKinney et al., 97 Ill. 41 (1880); *cf.* Bay v. Cook, 31 Ill. 336 (1863).

[5] Stodder et al. v. Hoffman et al., 158 Ill. 486, 41 N.E. 1082 (1895); Williams v. Chamberlain et al., 165 Ill. 210, 46 N.E. 250 (1897); Trubey v. Pease, 240 Ill. 513, 88 N.E. 1005, 16 Ann. Cas. 373 (1909). 1 BOGERT, TRUSTS AND TRUSTEES § 205 at page 584 (1935); 1 SCOTT ON TRUSTS, § 31 at page 182 (1939).

[6] 184 Ill. 514, 56 N.E. 819 (1900).

[7] ILL. REV. STAT., c. 30, § 1 (1947).

[8] 270 Ill. 298, 110 N.E. 359 (1915).

authority for an exception with respect to *legal* title? In that case the question involved the validity of an unsealed quitclaim deed to one Wilson. It is important to note that Wilson had possession of the land in question and that, in the lower court, he had attempted to introduce the imperfect deed as evidence and had been refused, resulting in judgment against him. The Supreme Court, in reversing, said, "A paper purporting to be a deed is not valid in this state for the purpose of conveying title unless it is under seal, yet when a person enters into possession under such paper it is admissible in evidence for the purpose of showing the extent of his possession. This instrument, even though not under seal . . . showed clearly that the *equitable* title had been transferred to (Wilson)." Thus, the language relied upon by the court in the case under comment comes solely from the dictum in the *Wilson* case. But in the latter case, even as dictum, the language was devoid of authority for this reason: The authority relied upon for the dictum was a New York case decided in 1821, *Wadsworth v. Wendell.*[9] The actual holding of the Chancellor was, ". . . though it (the unsealed instrument) be a defective conveyance for want of seal, yet it created such an *equity* as to bind the lands in the hands of the (grantor) and his heirs. . . . The grantor and his heirs could have been compelled to have executed a more perfect conveyance and one competent to have passed legal title to the plaintiff." The *Wadsworth* and *Wilson* cases do not support the proposition apparently advanced by the court in the principal case—that *legal* title can be conveyed by a deed not under seal. To the contrary, they conflict with it, and only indicate that such a conveyance, where there is consideration given, will bind the grantor and his heirs in *equity.*

Therefore, in Illinois, there does seem to be valid precedent for an exception to the general rule that a deed must be under seal to pass legal title to real estate, or at least, if there is such precedent, it is neither discussed nor cited in the court's opinion here. Neither does the court announce a change in the stare decisis, that the general rule is reversed. It is not contended that there should not be an exception to this antiquated general rule. Indeed, it might augment the practice and administration of conveyancing law in this state to do away entirely with the necessity of a seal on deeds of real property. But if this be the attitude of the Supreme Court, would not the end sought be achieved more accurately and more expeditiously by means of legislation, or by a specific statement of reversal of policy, than by the enigmatic means resorted to in this decision?

RICHARD E. CARLSON.

[9] 5 Johns. Ch. 224 (N.Y. 1821).