Notes

NECESSITY AND EFFECT OF THE PRIVATE SEAL IN ILLINOIS

"How a scrawl made with pen and ink, and affixed to the name of the writer of the letter, . . . could give it any additional validity, I cannot discover. . . . I cannot consent to yield up my judgment in any case, . . . unless I can see the reason of the decision. Seeing none in this case, and believing that the purposes of justice are not all subserved by an adherence to such antiquated rules and unmeaning technicalities, I dissent from the opinion." [1]

Today, the foregoing criticism is as valid and as applicable to the law of Illinois as it was one hundred and seven years ago when it was written by Mr. Justice Breese, dissenting from an opinion of the Illinois Supreme Court to the effect that an agent cannot bind his principal by deed unless his authority is under seal.

The modern lawyer, though a large part of his practice is streamlined, must still deal with some legal anachronisms. In Illinois statutory changes have been made in the common law relating to sealed instruments; however, there remains the flotsam and jetsam of disconnected rules—the residuum of common law principles. The lawyer and title examiner must wrestle with this doctrine. It is hoped that the following examination of the applicable Illinois law relating to private seals will be of some value to the practicing lawyer of this state. If this review should challenge the Bar of Illinois to a consideration of the question of discarding the private seal, it will be more than justified.

1. WHAT IS A SEAL?

Every legal system has developed rules to distinguish between conduct which is to be given effect in law and conduct which is not to be given effect. At different periods of the law varying formalities have been considered essential in order to give a particular transaction legal effect. For example, the early Saxon adopted the method of smearing his hand with ink and impressing it on a document under the words "witness my hand," after which he made the sign of the cross in black or gold.[2] The function of the seal in authenticating documents takes us back to the eleventh and twelfth century. When most men could not read or write, they relied on scriveners to prepare their instruments. In order to per-

[1] Breese, J., dissenting in Maus v. Worthington, 4 Ill. (3 Scam.) 26 (1841).
[2] Johnson, *A Legal Relic*, 9 THE GREEN BAG 545 (1897).

petuate the evidence of a legal act, an elaborately designed personal seal was used. The seal of the early common law is comparable to the signature of today: it was used to identify the person who executed an instrument, and once the seal was found to be genuine, the instrument became the "best evidence" of the material contained therein. Thus it was the means afforded for identification which gave the seal a peculiar quality. When the art of handwriting spread, the distinctive character of seals degenerated, and they could no longer be used as a means of identification of the author of an instrument. As a result it became necessary to hunt for a different explanation in order to perpetuate the notion that a seal possessed a peculiar quality. As pointed out by Chancellor Kent,[3] the courts were not long in finding a new explanation for the phenomenon of the seal. It was said that the peculiar quality of the instrument executed under seal was derived from the ceremony and solemnity attending the execution.

The "solemnity and sanctity of execution" argument may have been satisfactory to explain the function of the seal to the judge of the latter period of the common law. However that argument lost its impressiveness when the seal went through its next period of evolution and degenerated to a mere scroll. It is ridiculous to think of a businessman as taking part in a little ceremony when signing an instrument containing a printed scroll. Mr. Justice Dunn administered the coup de grace to the "solemnity and sanctity" argument in *People v. Ford* [4] when he wrote, "The solemnity of the sealed instrument is purely Pickwickian and no longer represents an idea."

That the seal is a relic which retains none of its common law attributes is a proposition beyond argument. It certainly is no longer used as identification of the person executing an instrument, and it certainly is no longer evidence of solemn execution of an instrument. Nevertheless, it is part of the legal system in Illinois; it cannot be ignored or overlooked. Although weakened by statute, and crippled by judicial decision, it remains a time-hallowed factor with which the practitioner must contend, and as will be pointed out, it may be a help rather than a hindrance in a few situations.

Returning to the question: "What is a seal in Illinois?", we find that the once noble seal has degenerated to a humble symbol. In 1787 Virginia enacted the following statute: "Any instrument to which the person making the same shall affix a scroll by way of seal, shall be adjudged and holden to be of the same force and obligation as if it were

[3] 4 KENT COMM. 452. (14th ed.)
[4] 294 Ill. 319, 324, 128 N. E. 479 (1920).

actually sealed." Our legislature copied the Virginia Act in 1827, but intentionally or unintentionally spelled the word "scroll" as "scrawl." The Act of 1827 which is still on our statute books reads: "That any instrument of writing, to which the maker shall affix a scrawl by way of seal, shall be of the same effect and obligation, to all intent, as if the same were sealed." [5]

The first question to be decided by the court in interpreting this statute was the meaning of the word "scrawl." In a very early decision,[6] it was held that the cryptic letters "L.S." opposite the name of the signer of a replevy bond were a sufficient seal. The letters were printed on the instrument before execution. The opinion did not indicate whether the letters were within a "scroll," but the bond did contain a recital of sealing. The next case involving a construction of the statute was an action in assumpsit on a note executed, "Eames, Gray & Co. ( )." There were no words or recital in the instrument to identify the use of the parentheses, yet the court held them to be a sufficient "scrawl." [7]

These early decisions were confirmed by several later cases. In *Jackson v. Security Life Ins. Co.*[8] a release was signed, "Isabella H. Jackson, (Seal)," but there was evidence that the parentheses were placed around the word "seal" after the release had been signed. In construing the statute the court said, at page 166, "Even though it should be admitted that the scrawl was placed there afterwards by a representative (of the Insurance Company), such fact does not render the instrument void . . . the word seal is sufficient to constitute the instrument a sealed instrument without the necessity of a scrawl." [9] When the above case was before the Appellate Court it was pointed out that when a person attaches his signature opposite "a scrawl already made he thereby adopts it and makes it his own," although the instrument contains no recital of sealing.[10] The same view had been expressed earlier in another case before the Appellate Court, where the printed release did not contain a recital of sealing.[11]

[5] REV. LAWS (1826-27) 320; ILL. REV. STAT., C. 29 § 1 (1947).

[6] Ankeny v. McMahon, 4 Ill. (3 Scam.) 11 (1841).

[7] Eames v. Preston, 20 Ill. 389 (1858).

[8] 233 Ill. 161, 84 N. E. 198 (1908).

[9] The Illinois court refused to uphold a scrawl as a seal in a case in which the issue was whether a release made in Oregon was under seal. The case is interesting because the court presumed the common law was still in effect in Oregon, and therefore concluded that the scrawl was not a seal, since at common law a seal was required to be of a tenacious substance, such as an impression on wax or wafer. Woodbury v. U. S. Casualty Co., 284 Ill. 227, 120 N.E. 8 (1918) affirming Woodbury v. Ocean Acc. & Guar. Corp., Ltd., 205 Ill. App. 387 (1917).

[10] Jackson v. Security Life Ins. Co., 135 Ill. App. 86, 94 (1907).

[11] Quincy Horse Ry. & C. Co. v. Omer, 109 Ill. App. 238 (1903).

The results of such a liberal construction of the statute are: (1) a "scrawl" may be (a) the word "seal," (b) the letters "L.S.", (c) brackets; and, (2) the scrawl need not be affixed to the instrument by the maker, nor need he recite that the instrument is intended to be sealed.

2. RECITAL OF SEALING

Today personalized seals (other than corporate seals) no longer exist as a means of execution of specialties. It is well known that in most deeds and releases the word "seal" or the mystic initials "L.S." are printed on the blank forms which are used. In most cases the maker does not know whether he has used a seal or not. The question arises whether or not the maker intended to adopt the printed word "Seal" so that the instrument will have significance as a specialty. In the absence of a recital of the maker's intention to adopt the seal, will the instrument have the effect of a sealed instrument? The Illinois courts have answered this question in the affirmative. A signature adjacent to the printed seal is sufficient evidence of intention to adopt the seal as the private seal of the signer.[12] The *Jackson case*,[13] which is the authority for this view, relied on the early case of *Eames v. Preston*,[14] but the question was not in issue in the *Eames case*. As a result the *Jackson case* has been severely criticized.[15] In the case of a release, where the seal is a conclusive presumption of consideration,[16] the unwary layman is liable to be trapped. In the first place he may not even notice the printed seal, and in the second place, even if he did notice it, he is not likely to have knowledge of its legal significance. It has been forty years since the decision in the *Jackson case;* it is submitted that its authority is not too imposing and that the question of intention to adopt a printed word as a seal is open to re-examination.

In the absence of a seal, will a recital of sealing by the author of an instrument give it the effect of a specialty? This question has been answered in the negative without much argument by the courts. The point was first decided in 1840 when the holder of a note brought an action of assumpsit. The note contained the recital: "Given under our hands and seal," but no seal was affixed to the instrument. In allowing assumpsit to be maintained, the court held that the statement of sealing did not make the note a sealed instrument.[17] This view was upheld in two sub-

[12] Jackson v. Security Life Ins. Co., *supra* note 8; Chamberlain v. Fernbach, 118 Ill. App. 145 (1905); Quincy Horse Ry. & C. Co. v. Omer, *supra* note 11.

[13] *Supra* note 8.

[14] *Supra* note 7.

[15] Decker, *The Case of the Sealed Instrument in Illinois*, 1 ILL. LAW BUL. 65, 72 (1917).

[16] The problem of a seal as consideration is discussed *infra* at p. 142.

[17] Vance v. Funk, 3 Ill. (2 Scam.) 263 (1840).

sequent decisions of the Supreme Court,[18] although in 1941 it was somewhat qualified by statute with respect to conveyances of realty.[19]

3. ADOPTION OF SEALS

A similar problem arises when an instrument contains more signatures than seals. The Illinois rule with respect to this problem has not varied since 1841 when the question was settled in two decisions by the Supreme Court. Both of these cases involved an action of debt on a bond. Both bonds contained recitals of sealing. In one case there were seventeen signers but only fifteen seals; in the other there were two signatures but only one seal. The court held that all of the signers of an instrument, indicating upon its face an intention to seal it, adopt any seal or scrawl that may be annexed to the name of any one.[20] This doctrine was reiterated in several later cases.[21] Note that in this type of situation it is necessary that the instrument contain a recital of sealing in order for the doctrine of "adoption of the seal of another" to operate. Although no case has arisen in which there was no recital in the instrument, the courts have relied on the recital as indicative of an intention to create a sealed instrument.

In *Eames v. Preston* [22] there is a dictum to the effect that if the first signer does not use a seal, and that if subsequent signers add seals to their names without the consent of the first signer, then he will not be presumed to adopt their seals. Although no case has turned on this point, it would seem to be applicable only where the instrument did not contain a recital of sealing.

4. CONVEYANCES OF INTERESTS IN REALTY

In order to validly convey a legal interest in Illinois realty, any instrument of conveyance executed in Illinois is required by statute to

[18] Hamilton v. Hamilton, 27 Ill. 158 (1862); Chilton v. People *ex rel.* Jones, 66 Ill. 501 (1873). In the *Chilton* case there was not only a recital of sealing by the maker of a bond, but also a recital by a Justice of the Peace that the bond was "signed, sealed and delivered" in his presence.

[19] ILL. REV. STAT. C. 30 § 34a (1947). Where there is a recital of sealing by the grantor but a private seal or scroll is absent, the statute provides that the grantor has adopted any public seal on the deed as his private seal.

[20] Davis v. Burton, 4 Ill. (3 Scam) 41, 36 Am. Dec. 511; McLean v. Wilson, 4 Ill. (3 Scam.) 50 (1841).

[21] Ryan v. Cooke, 172 Ill. 302, 50 N.E. 213 (1898); Wilson v. Mundy, 238 Ill. App. 575 (1925); Dixon v. Schwartz, 205 Ill. App. 349 (1917); Hiett v. Turner-Hudnut Co., 182 Ill. App. 524 (1913); Trogdon v. Cleveland Stone Co., 53 Ill. App. 206 (1893). In *Eames v. Preston, supra* note 7, although there was no recital of sealing, the court said by way of dictum that all persons signing after the first signer are presumed to adopt his seal. The rule with respect to adoption of seals of others has been enacted by the legislature in ILL. REV. STAT. C. 30 § 34a (1947).

[22] *Supra* note 7.

be under seal.[23] This doctrine has been adhered to by the court both before and after the enactment of the statute in 1872.[24] However, the rule has little intrinsic merit: an instrument without a seal is effective to convey the equitable interest in realty.[25] Although a purchaser of realty has taken a conveyance without a seal, a court of equity will uphold the instrument as having conveyed the equitable title.[26] The purchaser may treat the defective deed as the memorandum of a contract to convey realty which can be enforced by a bill for specific performance. It is conceivable that the purchaser might also be entitled to a bill for reformation of the instrument of conveyance whereby the court will order the vendor to seal the instrument. The common law rule has little intrinsic

[23] ILL. REV. STAT. C. 30 § 1 (1947) provides: " . . . every deed, mortgage or other conveyance in writing, . . . and signed and sealed by the party making the same . . . shall be sufficient . . . for the giving, granting, selling, mortgaging, leasing or otherwise conveying or transferring any lands, tenements, or hereditaments in this state. . . . " Enacted in 1872.)

An interesting academic question is whether the conveyance under seal is the only method of transferring an interest in realty in Illinois. Some writers contend that the Illinois statute provides a substitute for livery of seisin and does not affect conveyances which operate under the Statute of Uses. KALES, FUTURE INTERESTS § 150; TIFFANY, REAL PROPERTY § 403 (1912 ed.). The mere payment of a consideration is sufficient to raise a use which would be executed by the Statute of Uses: thus a bargain and sale might be oral. The Statute of Enrollments, which required a bargain and sale to be in writing and under seal, has not been in force in this country. It appears logical then that a seal is not an essential to a conveyance if it can take effect by operation of the Statute of Uses.

[24] Shipley v. Shipley, 274 Ill. 506, 113 N. E. 906 (1916); Wilson v. Kruse, 270 Ill. 298, 110 N. E. 359 (1915); Williams v. Williams, 270 Ill. 552, 110 N. E. 876 (1915); Osby v. Reynolds, 260 Ill. 576, 103 N. E. 556 (1913); Irwin v. Powell, 188 Ill. 107, 58 N. E. 941 (1900); Barrett v. Hinckley, 124 Ill. 32, 14 N. E. 863 (1888); Barger v. Hobbs, 67 Ill. 592 (1873).

[25] Shadden v. Zimmerlee, 401 Ill. 118, 81 N.E.2d 477 (1948); Durbin v. Carter Oil Co., 378 Ill. 32, 37 N.E.2d 766 (1941); Wilson v. Kruse, 270 Ill. 298, 110 N. E. 359 (1915); Barnes v. Banks, 223 Ill. 352, 79 N. E. 117 (1906); Ashelford v. Willis, 194 Ill. 492, 62 N. E. 817 (1902).

In the very recent *Shadden* case the following dictum is found: There is an exception to the general rule that a sealed instrument is necessary to convey the legal title to real estate. This exception is "to the effect that an instrument defective as a deed for want of seal, will bind the grantor and his heirs and is good as against a subsequent purchaser who has notice." The court cites both the *Carter Oil* and the *Wilson v. Kruse* cases as authority for this proposition. However the *Shadden* case and the *Carter Oil* cases were equitable proceedings, and the court could hardly have formulated a rule of law in such circumstances. The statement quoted above first appeared in *Wilson v. Kruse* which was a proceeding in attachment. An unsealed quitclaim deed was held to be admissible as evidence that the equitable title to the property had been transferred before the attachment action commenced. Either the court of law recognized that an unsealed conveyance is operative to transfer *equitable* title, or else the court was satisfied that an unsealed conveyance transferred *legal* title as against subsequent purchasers with notice. From the language of the opinion it is difficult to determine the exact basis of the decision.

[26] In *Barnes v. Banks, supra* note 25, the court held that the following letter was sufficient to convey the equitable title: "Mrs. Hallie Banks—I present you on this your 33d birthday with the house and premises now occupied by you . . . in the forty acre tract. Very truly your father, A. G. Barnes."

merit for the further reason that recent statutory provisions have weakened the requirement of a seal for a valid conveyance of a legal interest. As will be pointed out below, an instrument is deemed to be validly executed in some circumstances although it contains no private seal or scrawl.

In the case of a conveyance affecting title to Illinois realty, but executed in a state where the law does not require a seal on such instruments, our legislature has provided that a seal is unnecessary.[27] It seems anomalous that the people of this state should be burdened with the additional requirement of a seal, while unsealed conveyances made elsewhere are legally effective.

The Illinois legislature has attempted to simplify the task of the title examiner with respect to the problem of unsealed deeds. Two provisions were enacted in 1941 which further limit the necessity of a private seal in order to validly convey a legal interest in realty in Illinois. The first of these is a validating provision which reads: "All deeds or mortgages heretofore irregularly executed by the omission of a seal are validated and made effective as though such omitted seal had been affixed." [28]

The second of these recent enactments provides for a recital and adoption of a seal, as follows: "Whenever a deed shall recite, either in the body of the said deed or in the acknowledgment thereto, that said deed was sealed by the grantors therein, such recital shall . . . constitute an adoption . . . of any seal appearing on said instrument, including the seal of the notary public or other officer taking such acknowledgment, as their private seal, and shall constitute such instrument a sealed instrument." [29] It is clear that a private seal is not necessary to convey a legal interest as long as the conveyance contains a public seal and a recital of sealing. Therefore a conveyance of realty may be valid although it is not sealed in fact by the grantor.

In his text, *Illinois Law of Title Examination*, Mr. Philip H. Ward indicates that there is some conflict between the above two legislative provisions of 1941. It is his position that the "recital and adoption of seal" provision is sufficient for all purposes, and that the validating provision is useless.[30] Mr. Ward is unwilling to rely on the validating provision until the court construes the phrase "irregularly executed by the omission of a seal." Apparently it is Mr. Ward's belief that the omission of a seal is not an "irregular execution," but is in fact no execution at all. Even though such an argument may be technically correct,

[27] ILL. REV. STAT. C. 30 § 154 (1947) provides: "All instruments relating to land within this state, but executed in another state without a seal, where the law of the place of execution did not require a seal, are validated, as if a seal had been duly affixed thereto."

[28] ILL. REV. STAT. C. 30 § 34b (1947).

[29] ILL. REV. STAT. C. 30 § 34a (1947).

[30] WARD, ILLINOIS LAW OF TITLE EXAMINATION (1st ed., 1942), 1946 Cumulative Pocket Part, page 21.

it is not likely that the court will adopt so narrow a construction of the validating provision. Such an interpretation would give the validating provision no effect whatsoever, and it is not conceivable that the legislature had such a result in mind.

On the other hand, it is Mr. Ward's opinion that if the validating provision is broadly construed, so as to apply to an instrument signed but not sealed, then, in that event, the "recital and adoption of seal" provision is useless.[31] It is submitted that the only possible construction is that the validating provision does apply to instruments signed but not sealed. This interpretation does not force the result that the "recital and adoption of seal" provision would thereby be made nugatory. It is plain from even a casual reading of the two provisions, that the validating provision operates retrospectively, while the provision dealing with adoption of seals operates both retrospectively and prospectively. Assuming that Mr. Ward has directed his argument to only the retrospective application of both provisions to instruments executed prior to 1941, his contention (that the validating provision is sufficient, and that the "recital of sealing" provision is superfluous) is correct.

5. SALES AND GIFTS OF PERSONALTY

There are no problems concerning the necessity of the seal with respect to a contract to sell personal property. The Uniform Sales Act, which has been adopted in Illinois, specifically provides: ". . . a contract to sell or a sale may be made in writing (either with or without seal), or by word of mouth, . . . or may be inferred from the conduct of the parties." [32] The effect of a seal on a contract of sale is considered *infra*.

An interesting question arises with respect to the effectiveness of gifts of chattels without delivery. It is generally accepted that a gift of a chattel can be effectuated by a deed of gift (which is an instrument under seal) without delivery of the chattel. However, there is a dictum in an early Illinois case that a gift can be effectuated by a mere writing.[33] In that case the court said, "A verbal gift without delivery can be resumed by the giver. Not so, however, where the gift is evidenced by writing."

As yet the court has not flatly announced that an unsealed instrument is capable of transferring title to a chattel by way of gift without delivery of the chattel. However, in at least one recent case the court for all practical purposes applied such a rule.[34] The Appellate Court in *Haskell v. Art Institute of Chicago* held that two unsealed letters were

[31] *Supra* note 30 at page 22.
[32] ILL. REV. STAT. C. 121½ § 3 (1947).
[33] Cranz v. Kroger, 22 Ill. 74 (1859).
[34] Haskell v. Art Institute of Chicago, 304 Ill. App. 393 (1940).

effective to pass title to forty paintings which were never delivered. In an unsealed writing Haskell stated that he "has assigned, transferred, and delivered . . . the paintings described. . . ." No delivery was ever made to the Art Institute. Three days later the Art Institute notified Haskell that he could keep the paintings for one year. In holding that the title to the paintings passed to the Art Institute, the court expressed the thought that the delivery was sufficient. Clearly there was no justification for such a statement unless the court felt that the unsealed writings amounted to a sufficient symbolic delivery. Thus the implication is that a gift can be made through the use of an unsealed writing.

The necessity for some such manner of making gifts without delivery is felt in the case of non-documentary choses in action. Where there is no tangible evidence of the chose in action, there is no controlling document which is capable of being delivered. In such a case it is said that a gift of the chose in action can be made by a written assignment under seal, or by a written assignment of such a nature as to be capable of making a gift of a chattel without delivery.[35] The question whether an effective gift of a non-documentary chose in action can be made with an unsealed assignment is as yet unanswered in Illinois. However, since the *Art Institute* case implies that a gift of a chattel can be made with an unsealed assignment, it would seem that by analogy a gift of an intangible might likewise be made with an unsealed assignment. In the case of a chose in action which is evidenced by a tangible token (as distinguished from the non-documentary type), it has been held that a written assignment is effective to transfer title by way of gift without delivery of the documentary evidence of the chose.[36] The latter decision is also of some support to the proposition that a gift of a non-documentary chose in action may be made with an unsealed writing.

6. AGENT'S AUTHORITY TO EXECUTE SEALED INSTRUMENT

At common law the rule was settled that an agent could not execute an instrument under seal which would bind his principal, unless the agent's authority was conferred by a sealed instrument, or unless his act was ratified by an instrument under seal. This technical rule is

[35] RESTATEMENT, CONTRACTS § 158 (1) (a) (1933).

[36] Otis v. Beckwith, 49 Ill. 121 (1868) (Written assignment of life insurance policy without delivery of the policy, held: an irrevocable assignment); Harris v. Harris, 222 Ill. App. 164, 172 (1921) (Written assignment of stock certificate without delivery of shares, held: a valid gift. The court said, at page 172: "All the law requires in order to make a valid gift of a chose in action, . . . is an executed and delivered assignment, or some document of equivalent import."). *Cf.* Badgley v. Votrain, 68 Ill. 25, 18 Am. Rep. 54 (1873).

still followed in Illinois,[37] though with modifications. From the functional standpoint of modern business, it need not be pointed out that such a rule is totally unsuitable; consequently the judiciary has tended to lop off the least desirable ramifications of the doctrine.

Most of the Illinois cases raising the technical requirements of the rule dealt with bonds. The court has defined "bond" as importing a sealed instrument;[38] thus, whenever a bond is executed by an attorney in fact, the surety is not bound unless the power of attorney was under seal. However, it seems equitable that when the bond is executed in the principal's presence, then the principal should be estopped from interposing a defense of lack of agent's authority under seal.[39] If the agent places a seal after the name of his principal on an instrument which does not require a seal for validity, the seal will be disregarded, and the principal will be held.[40]

Equity of course upsets the technical doctrine of the common law in the case of conveyances of realty. If the agent's authority to sell is not under seal, equity will give effect to the agent's deed as a contract to convey legal title, and will order the principal to perform the contract.[41]

In the case of ratification of an agent's unauthorized execution of a sealed instrument, two Illinois cases followed the strict common law rule that the ratification must be under seal.[42] However, a later case seems to recognize the principle of ratification by estoppel which is based on the theory that if the principal wishes to accept the sheep, he must take the goats too.[43] Thus, if the principal receives the benefits of the transaction with knowledge of the facts, he is deemed to have ratified the transaction, although the agent's original authority was not under seal.

The judiciary has also encroached on another technical rule of the common law: that a sealed instrument was necessary to give an agent authority to fill blanks in deeds and bonds. The rule was applied in the case of a bond in an early decision,[44] but was expressly overruled in *City of Chicago v. Gage*.[45] Although in the *Gage* case the court placed the deci-

[37] Ingraham v. Edwards, 64 Ill. 526 (1872); Peabody v. Hoord, 48 Ill. 242 (1868); Bragg v. Fessenden, 11 Ill. 544 (1849); Maus v. Worthing, 4 Ill. (3 Scam.) 26 (1841); *see* Short v. Keiffer, 142 Ill. 258, 31 N. E. 47 (1892); Johnson v. Dodge, 17 Ill. 433 (1856).

[38] Chilton v. People *ex rel.* Jones, 66 Ill. 501 (1873). "The word bond imports a sealed instrument. A writing can not be considered a bond unless there be a seal actually made upon the instrument."

[39] RESTATEMENT, AGENCY § 28 (1933).

[40] Truett v. Wainwright, 9 Ill. 411 (1851); Cook v. Harrison, 19 Ill. App. 402 (1885). *See* Ingraham v. Edwards, 64 Ill. 526 (1872).

[41] Watson v. Sherman, 84 Ill. 263 (1876).

[42] Bragg v. Fessenden, 11 Ill. 544 (1849); Ingraham v. Edwards, 64 Ill. 526 (1872).

[43] Tucker v. Kanatzar, 373 Ill. 162, 25 N. E.2d 823 (1940); Donason v. Barbero, 230 Ill. 138, 82 N. E. 620 (1907)).

[44] People v. Organ, 27 Ill. 27 (1861).)

[45] 95 Ill. 593 (1880).

sion on the grounds of an estoppel, the facts of the case do not seem to warrant such a conclusion. The result is better explained on the basis of implied authority; that is, as a matter of law, the agent has implied authority to fill in blanks on a bond which has previously been signed and sealed by his principal.

The above rule which is applied to bonds has not been extended to deeds by the Illinois Court. A deed which does not contain the name of the grantee at the time of execution is considered void, and so if such a deed is given to an agent with oral authority to fill in the grantee's name when a purchaser is found, the deed is not effective to convey legal title.[46]

Another of the technical common law rules prevented an undisclosed principal from being bound on a sealed instrument even though the agent had sealed authority to execute it. This rule, which provides that only the parties to a sealed instrument may sue or be sued thereon, has been followed by the Illinois Court.[47] However, where the undisclosed principal received the benefits of the agent's acts, and there was some evidence of fraud, the undisclosed principal was estopped from asserting his title against a mechanic's lien.[48] An important qualification of the common law doctrine should be noted in the situation where a suit may be maintained against an undisclosed principal on the basis of privity of estate, although suit could not be maintained on the basis of privity of contract because of the fact that the undisclosed principal was not a party to the sealed contract. Such a distinction has been made by the Illinois court in a fairly recent decision.[49]

An additional problem which merits consideration deals with the right to revoke an exclusive agency created by a sealed instrument. In the recent case of *Whyte v. Rogers* [50] an agent sued to recover his commission from the principal who had attempted to revoke an exclusive agency for the sale of realty. The court held that, since the agreement was under seal, it was deemed to have been made upon a sufficient con-

[46] Osby v. Reynolds, 260 Ill. 576, 103 N. E. 556 (1913); Robinson v. Yetter, 238 Ill. 320, 87 N. E. 363 (1909); Donason v. Barbero, 230 Ill. 138, 82 N. E. 620 (1907); Mickey v. Barton, 194 Ill. 446, 62 N. E. 802 (1901); Whittaker v. Miller, 83 Ill. 381 (1876); Chase v. Palmer, 29 Ill. 306 (1862).

[47] Walsh v. Murphy, 167 Ill. 228, 47 N. E. 354 (1897); Harms v. McCormick, 132 Ill. 104, 22 N. E. 511 (1890); Gautzert v. Hoge, 73 Ill. 30 (1868); Moore v. House, 64 Ill. 162 (1872); Pensonneau v. Bleakley, 14 Ill. 15 (1852); Mears v. Morrison, 1 Ill. (Breese) 223 (1827); Tribune Comp. v. Wendell, 192 Ill. App. 639 (1915).

[48] Bastrup v. Prendergast, 179 Ill. 553, 53 N. E. 995 (1899).

[49] Everett v. Sexton & Co., 280 Ill. App. 250 (1935). (A, the lessee under a sealed lease, made an unsealed assignment of the lease to B, who was the agent for undisclosed principal C. C, the undisclosed principal, went into possession of the leased premises. The privity of estate was extended to C, and the court held C liable for rent accruing during the period of his possession.)

[50] 303 Ill. App. 115, 24 N. E.2d 745 (1940). Noted in 28 ILL. BAR J. 239 (1940).

sideration; thus the agency could not be revoked.[51] As between the agent and third parties, however, it would seem that the parol revocation of the agent's sealed authority would be effective to terminate the authority of the agent so long as the third party had knowledge of the revocation. In his work on agency, Mechem states that a revocation under seal is not necessary, and that a parol revocation is sufficient.[52] Thus the principal may terminate by parol the agent's sealed authority to deal with third parties; but on the basis of the *Whyte* case, as between the agent and principal, the principal has no right to terminate the authority if it has been conferred by a sealed instrument.

7. EXECUTION BY PARTNER

In Illinois the judiciary has not recognized the common law rule that authority to execute a sealed instrument must be conferred by an instrument of equal dignity in the case of execution of a sealed instrument by a partner. In *Peine v. Weber*, an early case, the court said: "One partner may, in furtherance of the partnership business, and for its benefit, execute a deed under seal, which will be binding on the other, if he has foreknowledge, or subsequently ratifies it, and this may be proved by acts and circumstances, or by his verbal declarations and admissions." [53] In two later cases where one partner had signed and sealed promissory notes in the partnership name, the court disregarded the seals and treated the notes as simple contracts. Since the seals were considered surplusage, it was held that the partners could ratify the notes in the same manner as simple contracts.[54] In both cases there is dictum to the effect that one partner cannot bind his co-partner by deed which would suggest that the court still had the old common law rule in mind. However, there is no disapproval of *Peine v. Weber*, the earlier case which emphatically discarded the common law rule. It appears that the rule of the *Peine* case, which is quoted above, is still good law in Illinois.

8. SEAL AS CONSIDERATION

In the actions of debt and covenant at common law, it was never necessary to allege a consideration. When the action of assumpsit appeared in the sixteenth century, the doctrine of consideration was introduced,

[51] The problem of the seal as consideration is discussed *infra*.

[52] 1 MECHEM, AGENCY 442 (2d ed., 1914).

[53] Breese, C. J. in *Peine v. Weber*, 47 Ill. 41 (1868).

[54] Walsh v. Lennon, 98 Ill. 27 (1881); Edwards v. Dillon, 147 Ill. 14, 35 N. E. 135 (1893). In a dictum in the *Edwards* case the court mentioned *Peine v. Weber* and did not express any disagreement with the rule it announced.

but consideration was not a requirement for all contracts.[55] Since the sealed contract continued to be used, it continued to be enforced in an action of covenant without the requirement of proving a consideration: thus the doctrine of consideration was never extended to specialties. To explain this bit of unique magic the English lawyer used a shorthand expression: "the seal imports a consideration." The Illinois courts have used the expression repeatedly, and the rule that no consideration is necessary to support a contract under seal is still followed at this time,[56] with an exception that is created by statute.[57]

The statute provides that lack of consideration shall be a defense to any action "upon a note, bond . . . or other instrument for the payment of money or property or performance of covenants or conditions . . ." It would seem clear that the statute applies to any written contract, but

[55] HOLMES, THE COMMON LAW 273 (1881).

[56] Kaiser v. Cobbey, 400 Ill. 214, 79 N. E.2nd 604 (1948); Curry v. Cotton, 356 Ill. 538, 191 N. E. 307 (1934); Chamberlain v. Sanders, 268 Ill. 41, 108 N. E. 666 (1915); Robinson v. Yetter, 238 Ill. 320, 87 N. E. 363 (1909); Jackson v. Security Life Ins. Co., 233 Ill. 161, 84 N. E. 198 (1908); Adams v. Peabody Coal Co., 230 Ill. 469, 82 N. E. 645 (1907); Forthman v. Deters, 206 Ill. 159, 69 N. E. 645 (1902); Chicago Sash, Door & Blind Co. v. Haven, 195 Ill. 474, 63 N. E. 158 (1902); Evans v. Edwards, 26 Ill. 279 (1861); Benjamin v. McConnel, 9 Ill. 536 (1847); Buckmaster v. Grundy, 2 Ill. (1 Scam.) 309 (1836); White v. Rogers, 303 Ill. App. 115, 24 N. E.2nd 745 (1940); Davis v. Glendinning, 232 Ill. App. 583 (1924).

In spite of the imposing array of cases cited above, it does not seem likely that the court would enforce an executory promise under seal if the promise were not supported by consideration. The above cases announce the rule that consideration is conclusively presumed when the contract is under seal. However, the statement is dictum in most of these cases because an actual consideration is present; in others the contract in controversy is an option. In only one case, *Chicago Sash Co. v. Haven*, cited above, is the rule actually upheld. In that case the defendant executed a bond under seal in consideration of the plaintiff's performance of a pre-existing contractual obligation to furnish materials. The court held that the plea of lack of consideration was no defense since the bond was under seal.

That the seal raises only a rebuttable presumption of consideration, *see* Ruppert v. Frauenkneckt, 146 Ill. App. 397 (1909) and MacFarland v. Williams, 107 Ill. 33 (1883).

[57] ILL. REV. STAT. C. 98 § 10 (1947) provides: "In any action upon a note, bond . . . or other instrument for the payment of money or property or performance of covenants or conditions . . . if such instrument was made without good or valuable consideration . . . verdict shall be for the defendant."

The compiler has placed this provision in the chapter on negotiable instruments since 1874. It was originally passed as "An Act to Regulate the Practice in Certain Cases." L. 1819, p. 59. It seems then that the General Assembly in 1819 intended that all common law specialties were to be subjected to the defense of lack of consideration, since the act specifically refers to "instruments . . . for the performance of covenants or conditions."

It is interesting that the first case reported in the first volume of the Illinois Reports seems to refer to this or a similar statute enforced during the days of the Northwest Territory. In an action of covenant the court refers to the manner of showing a want of consideration under "the statute." Taylor v. Sprinkle, 1 Ill. (Breese) 3 (1819). Reference is made to the act enforced in territorial days in Buckmaster v. Eddy, 1 Ill. (Breese) 381 (1830).

the Supreme Court has not given the statute such a broad application. In *Chicago Sash, Door & Blind Co. v. Haven* a narrow construction was placed on the statute when the court held that it applied only to negotiable instruments.[58] It is interesting that prior to the limited application in the *Haven* case, the court had applied the statute to a contract guaranteeing the payment of money.[59] It is clear that a guaranty contract is not a negotiable instrument. However, even after the narrow construction of the *Haven* case, it has been held that the seal raises only a rebuttable presumption of consideration in guaranty contracts.[60] Thus it would seem that the question may still be open with respect to the applicability of the statute to a sealed contract of guaranty. The question whether penal bonds are included in the statute has also arisen. An early case held that the statute applied to a penal bond, and as a result the lack of consideration may be used as a defense even though the instrument was under seal.[61] The *Haven* case, which announced that the statute applied only to negotiable bonds, implies that the earlier case was correctly decided. It is difficult to reconcile the two decisions because the earlier case involved an indemnity bond which was clearly non-negotiable. It would seem therefore that the applicability of the statute to penal bonds is another question which may be open for reconsideration on the merits.

The rule that a sealed contract establishes a conclusive presumption of consideration is somewhat modified in equity. In an equitable proceeding the presumption of consideration raised by the seal is rebuttable. The court will inquire into the real consideration of the contract, and

[58] 195 Ill. 474, 63 N. E. 158 (1902) reversing Chicago Sash, Door & Blind Co. v. Haven, 96 Ill. App. 92 (1900). In concluding that the statute applied only to negotiable instruments, the court was undoubtedly influenced by the fact that the original act of 1819 was included in the Revised Statutes of 1874 in the Chapter on Negotiable Instruments. The court might have reasoned that the re-enactment of the original act under the title "Negotiable Instruments" indicated a legislative intent to limit it to negotiable instruments. However, such reasoning ignores the striking difference in wording between Section 10 (the original act of 1819 plus a proviso added in 1827) and the other sections of the chapter which clearly refer to negotiable instruments. The Appellate Court in the *Haven* case, in holding that the statute was not restricted to negotiable instruments, said: "It (the statute) applies, in terms, to a bond for performance of covenant or conditions, and such a bond is not a negotiable instrument." Haven v. Chicago Sash D. & B. Co., 96 Ill. App. at 96.

[59] Bullen v. Morrison, 98 Ill. App. 669 (1901). (Sealed guaranty of the rent endorsed on a lease after the lease had taken effect, held: void for lack of consideration, and such defense can be made in spite of the seal.)

[60] Pabst Brewing Co. v. Le Page, 186 Ill. App. 468 (1914); B. & R. Brewing Co. v. Motycka, 163 Ill. App. 238 (1911). Both of these cases were decided since the *Haven* case, but neither cites it. They are both similar to the *Bullen* case, *supra* note 59; since a guaranty contract of this type is not a negotiable instrument, these cases can not be reconciled with the doctrine of the *Haven* case.

[61] Gage v. Lewis, 68 Ill. 604 (1873). The bond was clearly not negotiable since there was no promise to pay a sum certain, and since the promise was conditional. Yet the court stated that the Act of 1819 (as it appeared in the Revised Statutes of 1845) allowed a defense of lack of consideration even though the instrument was under seal.

if no consideration is found, specific performance will not lie.[62] The equitable rule has been affirmed in a very recent case dealing with a sealed contract to make a will.[63] Even though the seal is only rebuttable evidence of consideration in equity, it is not necessary to allege a consideration in a pleading on a contract under seal.[64]

At this point special attention should be given to the Illinois law dealing with the recital of consideration in a deed. Although a deed is an instrument under seal, a recital of consideration is conclusive for only one purpose: the recital may not be contradicted to invalidate the instrument as a conveyance.[65] This rule stems from the principle of estoppel by deed: that the grantor cannot contradict recitals in a sealed instrument. The old rule of estoppel is still retained and applied in this particular situation because there is language of the Illinois court to the effect that a warranty deed conveys no interest in the absence of consideration.[66] Thus the only way to make a gratuitous conveyance of realty is through the use of a recital of consideration in the deed. However, except for the purpose of giving operative effect to the deed, the rule of estoppel is not retained, and the recital under seal may be contradicted in law and equity. The recital of payment does not bar the vendor from bringing an action to recover the consideration,[67] and the recital does not destroy the vendor's lien.[68] The real consideration may be shown even though the recital states a different amount,[69] and failure of consideration may be shown in a suit for reconveyance.[70]

[62] Kaiser v. Cobbey, 400 Ill. 214,79 N. E.2d 604 (1948); Hemmick v. B. & O. S. W. R. R. Co., 263 Ill. 241, 104 N. E. 1027 (1914); Corbett v. Cronkite, 230 Ill. 9, 87 N. E. 874 (1909); Poe v. Ulrey, 233 Ill. 56, 84 N. E. 46 (1908); Crandall v. Willig, 166 Ill. 233, 46 N. E. 755 (1897). *See* Guyer v. Warren, 175 Ill. 328, 51 N. E. 580 (1898).

[63] Kaiser v. Cobbey, *supra* note 62.

[64] Mills v. Larrance, 186 Ill. 635, 58 N. E. 219 (1900).

[65] Fleming v. Rheis, 275 Ill. 132, 113 N. E. 923 (1917); Abernathie v. Rich, 256 Ill. 166, 99 N. E. 883 (1912); Poe v. Ulrey, 233 Ill. 56, 84 N. E. 46 (1908); Redmond v. Cass, 226 Ill. 120, 80 N. E. 708 (1907); Stannard v. Aurora E. & C. Ry., 220 Ill. 469, 77 N. E. 254 (1906); Rendleman v. Rendleman, 156 Ill. 568, 41 N. E. 223 (1895).

[66] Redmond v. Cass, 226 Ill. 120, 80 N. E. 708 (1907); Catlin Coal Co. v. Lloyd, 180 Ill. 398, 54 N. E. 214 (1899)). The rule stems from the principle that equity would not give effect to a bargain and sale deed as raising a use in the absence of a valuable consideration.

[67] O'Brien v. Palmer, 49 Ill. 72 (1868); Elder v. Hood, 38 Ill. 533 (1865); Kimball v. Walker, 30 Ill. 482 (1863).

[68] Kock v. Roth, 150 Ill. 212, 37 N. E. 317 (1894).

[69] Booth v. Hynes, 54 Ill. 363 (1870).

[70] Kinzie v. Penrose, 3 Ill. (2 Scam.) 515 (1840). In Lloyd v. Sandusky, 203 Ill. 621, 68 N.E. 154 (1903) the court said at 631: "Whenever the question has come before this court it has been uniformly held that the statement of the amount of the consideration and acknowledgment of its receipt in the deed were formal recitals, their only operation, in law, being to prevent a resulting trust, and that they might be explained, varied and contradicted, by parol."

A recital of consideration in an option under seal does not make the option irrevocable in equity. If upon inquiry, the court fails to find any consideration, the option will be treated as revocable. As a result there can be no specific performance, if the offeree has attempted to accept the offer after it has been revoked.[71] This position of the Illinois Court has been severely criticized, since it is contrary to the view of most courts in this country that there is such a thing as an "equitable consideration" which operates to make an option contract binding and enforceable irrespective of the effect of a seal.[72]

Even though the seal may be an anachronism in many situations, it still serves one utilitarian purpose which should not be overlooked in considering any proposal for its abolition. The seal still retains its inviolable character in the case of gratuitous promises. It is desirable to have some means in the law whereby a promise shall be effective and enforceable without consideration. This means is provided by the promise under seal. If the long reign of the seal should come to an end, some substitute should be provided for the creation of an enforceable gratuitous promise. An adequate replacement is provided in the Uniform Written Obligations Act which makes a promise in writing enforceable if the promisor recites his intention to be legally bound by the promise.[73]

9. PAROL MODIFICATION OF SEALED INSTRUMENTS

The problem of variation of a prior sealed instrument by a subsequent oral or unsealed written instrument is not to be confused with the operation of the parol evidence rule which is beyond the scope of this note. The common law did not tolerate the alteration or discharge of a sealed obligation unless by an instrument of equal dignity. The rule is harsh, and the results of its application are often unhappy; nevertheless, it has been frequently applied in Illinois but with several exceptions.[74] The pressure of modern tendencies away from the common law doctrine

[71] Corbett v. Cronkite, *supra* note 62. *See* Adams v. Peabody Coal Co., *supra* note 56.

[72] Comment, *The Present Status of the Sealed Obligation*, 34 ILL. L. REV. 457, 466 (1939).

[73] The Act provides: "A written release or promise hereafter made and signed by the person releasing or promising shall not be invalid or unenforceable for lack of consideration if the writing also contains an additional express statement that the signer intends to be legally bound."

The Uniform Written Obligations Act has been adopted in Utah and Pennsylvania. For discussion of a case in which the Act is applied see Note, 3 U. of CHI. L. REV. 325 (1935).

[74] Wagner v. McClay, 306 Ill. 560, 138 N.E. 164 (1923); Ryan v. Cooke, 172 Ill. 302, 50 N.E. 213 (1898); Chapman v. McGrew, 20 Ill. 101 (1858); Wilson v. Mundy, 238 Ill. App. 579 (1925); Hiett v. Turner-Hudnut Co., 182 Ill. App. 524 (1913).

has caused the court to restrict its application where the results are inequitable.

One of the limitations engrafted on the rigorous rule of the common law finds its basis in the principle of equitable estoppel. Thus, where the parol modification of the sealed contract has been executed, and the defendant has changed his position to his detriment in reliance thereon, an equitable estoppel will arise.[75] In one case the court even applied the rule where the parol modification was not executed and lacked consideration, and thus there was no basis for an estoppel.[76] In that case a parol agreement to reduce rent was allowed as a bar to an action to collect the rent on an original sealed lease. The result is illogical since it places the lessee of a sealed lease in a better position than a lessee by simple contract. Such anomalous results can be avoided if the court were to abolish the severe common law rule itself rather than attempt to evade it.

A second limitation of the rule that a sealed instrument may not be altered unless by an instrument under seal is the rule that conditions in a contract under seal may be waived by parol. In the recent case of *Fisher v. Michigan Square Bldg. Corp.*[77] the question before the court was whether leased premises were housing accommodations as defined by the Rent Regulations for Housing. Although the defendant lessor held a sealed lease which did not allow the plaintiff lessee to use the premises for living quarters, the court found a parol waiver of the condition, and affirmed the rule that rights arising under a sealed instrument may be waived by parol. Although this rule has its origin in equity, it has been applied in a legal proceeding in at least one case.[78] Typical illustrations of the application of the rule in equity are: in a suit against the vendor for specific performance of a contract to sell realty, the purchaser may excuse failure to pay installments of purchase money by showing a parol agreement changing the time of payment;[79] or the purchaser may excuse a failure to make a deposit of purchase money by showing a parol agreement to extend the time.[80]

A third limitation of the common law rule is the doctrine that a

[75] Yockey v. Marion, 269 Ill. 342, 110 N.E. 34 (1915); Jones v. Crary, 234 Ill. 26, 84 N.E. 651 (1908); Snow v. Griesheimer, 220 Ill. 106, 77 N.E. 110 (1906); Warrell v. Forsyth, 141 Ill. 22, 30 N.E. 673 (1892); White v. Walker, 31 Ill. 422 (1863).

[76] Snow v. Griesheimer, *supra* note 75.

[77] 328 Ill. App. 143, 65 N.E.2d 473 (1946).

[78] Palmer v. Meriden Brit. Co., 188 Ill. 508, 59 N.E. 247 (1900). Action against a lessor for a sum agreed by him to be paid to the lessee after the end of the term for a building to be erected on the premises by the lessee. The building was not built according to the specifications in the lease. Held: evidence of a parol waiver of the specifications by the lessor was admissible. *Cf.* Starin v. Kraft, 174 Ill. 120, 50 N.E. 1059 (1898).

[79] Anderson v. Moore, 145 Ill. 61, 33 N.E. 848 (1893).

[80] Becker v. Becker, 250 Ill. 117, 95 N.E. 70 (1911); Zemple v. Hughes, 235 Ill. 424, 85 N.E. 641 (1908); Kissack v. Bourke, 224 Ill. 117, 79 N.E. 619 (1906).

sealed executory contract may be rescinded by a parol agreement. This limitation of the rule has been applied in the case of a lease,[81] a contract,[82] and an antenuptial agreement.[83]

Although the above limitations have considerably weakened the common law rule, its rigor is unimpaired with respect to the inadmissibility of proof of a subsequent *executory* parol agreement which modifies or alters the terms of the sealed contract. There are no logical reasons to support the retention of this remnant of the rule; however, it is not likely that the Illinois judiciary will overrule the many cases which have kept the doctrine alive.

10. RELEASES

Since in an action at law the seal establishes a conclusive presumption of consideration, the seal has afforded an effective means of avoiding the necessity for an actual consideration in the case of the release of a debt or other contractual obligation. The sealed release also provides a convenient method for settling disputes and bringing an end to litigation.[84] On the other hand if the release is not under seal, then it has to be supported by an adequate legal consideration or else it will be unenforceable. Thus a strong argument may be advanced in favor of preserving the seal: the sealed release serves the utilitarian purpose of decreasing court litigation, and it affords a creditor a means for forgiving a debt. On the other hand the seal is not often used intelligently. Few nonlawyers understand the effect of the printed word "seal" on an instrument that they are about to sign, and it need not be pointed out that some advantage may be taken of innocent individuals in such circumstances.

Although the sealed release has had a long usage as a means for a creditor to discharge his debtor without payment, it is clear that many laymen do not understand that the seal is an essential in such a situation. According to the number of cases that have been before the courts, the usual creditor gives his debtor a receipt reading "In full payment of account." Such receipts, when given to discharge liquidated or undisputed debts without payment thereof, amount to nothing more than gratuitous promises; and, in the absence of actual consideration, they are unenforceable. The same rule obtains where the creditor is willing to take a part payment in satisfaction of a larger debt. Although the courts have expressed dissatisfaction with the rule that the part payment of an undisputed debt is not sufficient consideration to support a promise to discharge the debt, they have always applied it. At any rate, although

[81] Alschuler v. Schiff, 164 Ill. 298, 45 N.E. 424 (1896).
[82] Brettman v. Fisher, 216 Ill. 142, 74 N.E. 777 (1905).
[83] Yockey v. Marion, *supra* note 75.
[84] Woodbury v. U.S. Casualty Co., 284 Ill. 227, 120 N.E. 8 (1918); Jackson v. Security Mutual Life Ins. Co., *supra* note 8.

not all creditors have taken advantage of the sealed release in such transactions, it is available to them as a method for forgiving debts. Therefore, as in the case of the gratuitous promise, the seal should not be abolished without providing some substitute for this useful function. Several states which have abolished seals have provided that releases in writing are enforceable.[85]

The Uniform Written Obligations Act, which has been previously cited, provides for a method of giving to the unsealed release the same force and effect of the release under seal at common law. The Act provides: "A written release or promise hereafter made and signed by the person releasing or promising shall not be invalid or unenforceable for lack of consideration if the writing also contains an additional express statement that the signer intends to be legally bound." [86] The Uniform Act is a recognition of the need for some means by which gratuitous promises and releases can be given legal effect. It fulfills that need by providing a means whereby the artificial solemnity of the seal is dispensed with.

It may be further noted that it is now possible in Illinois to make one type of release that is effective without a seal. In 1943 the legislature provided with respect to releases of powers: "A release of a power . . . is effective when the donee thereof signs an instrument in writing evidencingan intent to make the release . . . " [87] It would seem that the legislature has realized that the substitution of a simple writing for the common law requirement of a sealed instrument is really not going too far after all. This statute makes the test of legal effect the objective one of the expressed intent of the releasor which is the same principle embodied in the Uniform Written Obligations Act. Both the statute and the Uniform Act recognize that the legal magic is found in the expression of intent, and not in the false dignity of the seal.

CONCLUSION

It has been shown in the foregoing discussion that the judiciary in Illinois is still enforcing a number of archaic rules inherited from the medieval period of the common law. For the most part these technical rules have lost their original meaning; they operate to defeat the intention of the parties, and produce results which are out of harmony with the rest of our jurisprudence. The obsolete doctrine of the seal is not

[85] *See* ALA. CODE ANNO. 7669 (1928); CAL. CIVIL CODE § 1541 (1937); NORTH DAK. REV. CODE (1943).

[86] See I WILLISTON, CONTRACTS § 219A (Rev. Ed. 1936). For a discussion of the Uniform Act see Steele, *The Uniform Written Obligations Act—a Criticism*, 21 ILL. L. REV. 185 (1926).

[87] ILL. REV. STAT. C. 30 § 179 (1947).

compatible with modern business practice. The art of writing has spread so that the seal has lost all of its intrinsic significance. The seal is no longer usable as a means of identification of the person executing a document, and the thought that a printed scroll adds any solemnity to an execution is ridiculous.

It is true that the seal is a useful tool in accomplishing desirable results in the case of option contracts, releases, and gratuitous promises. However, the Uniform Written Obligations Act can achieve the same desirable results in a more satisfactory manner. Although parties may intend to be bound by a promise, their intention is thwarted where they are ignorant of the legal requirements of consideration or of the seal. The Uniform Act is preferable as a tool because it is more closely related to the object sought to be accomplished, while any preference for the seal is based on habit, and not on any inherent quality of the seal.

If seals were unknown today, and if we were seeking for the first time for some means in the law whereby a gratuitous promise could be given effect, it is clear that no one would suggest the scroll as we know it today as an expedient. The expedient which would be suggested would be one which fits the purpose to be accomplished. The magic of the Uniform Act is that it gives legal effect to the expression of the intent of the promisor, which is also the object that the promisor seeks to accomplish. Although the doctrine of the seal is part of the learning of every Illinois lawyer, there is no justification in retaining it when a more efficient tool is available.

It has been one hundred and seven years since Justice Breese filed the first indictment against the seal—the time for judgment and sentence is now at hand.[88]

RICHARD J. FALETTI.

[88] An annotator with a sense of humor appended the following note to the statute of Mississippi which passed sentence on the seal: "Beneath this lies all that remains of Locus Sigilli, a character of ancient date, whose mission was to give peculiar solemnity to documents. Emigrating to this state in its earliest days, he served his day and generation to a good old age, and was gathered to his fathers, generally mourned by the members of the legal profession. He has left surviving only one relative, who is now in the keeping of corporations. His last request was that this epitaph should be under 'Seal'." MISS. ANNO. CODE § 4079, note (1892).