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Manley O. Hudson

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Land Tenure and Conveyances in Missouri

I INTRODUCTION

It is impossible to apply the artificial rules of the modern law of real property without a clear understanding of the feudal system of land tenure in which they originated. The disappearance of the essentials of feudal society—the personal relation between lord and tenant and the duties owed by the tenant to the lord—has not taken away the feudal basis of the law of real property; nor has it made the common law rules, apart from statute, less applicable.¹ But there is such a close connection between land ownership and other social institutions² that, however fixed the legal theory, the former is bound to undergo many changes as the latter are developed. To know what these changes have been and are to be, it is imperative that the fundamental conceptions of land ownership be understood. No study of future interests in land can neglect the basic notions of tenure and seisin, both of which are still of influence in the development of the law.

At the outset in studying the law of real property in Missouri, therefore, one is confronted with the questions—how is land in Missouri owned? Is it the absolute property of the holder of the fee simple? Or is it merely held by him under the paramount lordship of the state? Is the feudal conception of land tenure so out of harmony with present social thinking³ that it has no place in our legal theory? And these

1. The following *dictum* of Judge Bliss is interesting only for its rhetoric: "The practical sense of modern jurisprudence has so sifted that vast pile of wisdom and rubbish, comprising the common law of tenures, that justice and reason are no longer the slaves of technical consistency." *Aubuchon v. Bender* (1869) 44 Mo. 560, 568.

2. "The progress of nations has been reflected, step by step, in the development of customs and laws relating to the tenure of landed property." Munro, *Seignorial System in Canada*, p. 1.

3. It may be pointed out in this connection that there appears to be a close parallel between the feudal conception of the crown or state as ultimate owner—the overlord—of all land, and modern state socialism. 1 Sybel, *Geschichte der Revolutionszeit*, p. 33; Kovalevsky, *Modern*

are in turn to be followed by the questions—of what importance is seisin in Missouri today? May land still be conveyed by livery of seisin? In what manner does a modern conveyance operate to pass the title to land?

It is believed that the answers to these questions have something more than academic interest, that they may have a very controlling influence in the solution of practical problems which frequently arise in the construction of deeds and wills.

II LAND TENURE IN MISSOURI

At common law, all land in England was held either mediately or immediately of the crown.⁴ No person could own land outright; ownership of land was a royal prerogative. The feudal regime which necessitated this system of land tenure had to be supported in its incipiency by military power, and in its earliest stages the services owed by the tenant to his lord were military in nature. The military tenure by knight service was distinguished from the later socage tenure in which only agricultural services were owed. The chief characteristic of socage tenure, however, was that the services owed by the tenant were certain and fixed; and as time went on all tenures of land by certain and invariable rents and service, tho not agricultural, came to be regarded as socage tenures. In 1660, military tenure was abolished in England and all freehold tenure became socage.⁵ Today most of the land in England is held in socage tenure.⁶

In the American colonies, under British dominion, all land was held in socage tenure.⁷ The effect of the Revolution

Customs and Ancient Laws of Russia, p. 113. Cf. Laveleye, *Primitive Property*, c. 22; 1 Ely, *Property and Contract*, p. 124, *et seq.*

4. Williams, *Real Property* (17th Int. ed.) p. 7.

5. 12 Car. II, c. 24. This statute did not apply to copyholds which still exist in England. Tiffany, *Real Property*, § 13.

6. Jenks, *Short History of English Law*, p. 237.

7. "All the country now possessed by the United States was a part of the dominions appertaining to the crown of Great Britain. Every acre of land in this country was then held mediately or immediately by grants from that crown." Jay, C. J., in *Chisholm v. Georgia* (1792) 2 Dallas 419, 470. See also *Van Rensselaer v. Hays* (1859) 19 N. Y. 68, 73; Story, *Constitution of the United States* (3d ed.) §§ 172-175. For

must have been to substitute the respective states for the crown as the overlord in this system of tenure, for "it does not seem that so fundamental an alteration in the theory of property as the abolition of tenure would be worked by a change of political sovereignty."⁸ In several of the original states, all lands have since been made allodial by statute;⁹ in at least two of them, there have been judicial pronouncements that no tenure exists.¹⁰ In the states carved out of the Northwest Territory, the existence of tenure may be made to depend on the dominion over that territory after the Revolution, in the absence of positive legislation; if it was really owned by Virginia until her cession to the United States in 1784,¹¹ then the Virginia statute of 1779,¹² abolishing tenure, applied there.¹³ The history of legislation in the states east of the Mississippi river makes it a simple matter to determine the existence of tenure in those states.

West of the Mississippi river, there is more difficulty. Missouri was a part of the Louisiana Purchase which had various systems of law at various times. The law of the Indians was merely tribal, not territorial, and has not therefore affected the history of our land law. Indian grants of land were entitled to no recognition in courts applying a territorial system

a good discussion of tenure in the United States, see 1 Washburn, *Real Property* (5th ed.) p. 67. Cf. 3 Osgood, *American Colonies*, p. 510.

8. Gray, *Perpetuities* (3d ed.) § 22. See *De Lancey v. Piepgras* (1893) 138 N. Y. 26, 40.

9. Gray, *Perpetuities* (3d ed.) § 23.

10. *Mathews v. Ward* (1839) 10 G. & J. (Md.) 443, 451 (*dictum*); *Wallace v. Harmstead* (1863) 44 Pa. 492 (*dictum*). The latter is opposed to *Ingersoll v. Sergeant* (1836) 1 Whart. 337. See also Foulke, *Perpetuities*, p. 44. In *Gibbons v. Gibbons* (1807) Charlton (Ga.) 113, counsel argued and the court agreed that "the Revolution destroyed the ideas attached to an estate in fee simple. * * * The term *fee*, as it imports a subjection to some superior in a feudal acceptance, is unknown to the constitution and laws of the American people. * * * A man seized of lands * * * in the state of Georgia (and every other state in the Union) is seized thereof absolutely in his own demesne, and the allodial estate or property remains in himself." But tenure is now declared to exist in Georgia by statute. Georgia Code of 1911, § 3623.

11. The Northwest Territory was also claimed by Connecticut, Massachusetts, and New York. Hinsdale, *Old Northwest*, c. XI.

12. Virginia Statutes of 1779, c. 13.

13. Professor Gray holds this view. *Perpetuities* (3d ed.) § 23. Cf. *Penny v. Little* (1841) 4 Ill. 301.

of law.¹⁴ France acquired the territory west of the Mississippi river during the latter part of the seventeenth century, and the French law was made to prevail by the edict of Louis XIV in 1664, extending the "Custom of Paris" to his American possessions.¹⁵ The French law at that time included a well-defined system of land tenure¹⁶ which was established in parts of America,¹⁷ and which must have obtained, at least in legal theory, in the Louisiana territory. In 1762, the territory was ceded by France to Spain.¹⁸ In 1769, Governor O'Reilly proclaimed the Spanish law to be in force¹⁹ and thereafter the so-called "law of the Indies" was applied.²⁰

The Spanish law had not replaced the French law in the interval between 1762 and 1769, for mere cession does not work a change of law;²¹ but the Spanish crown must have succeeded the French crown as paramount lord in 1762.²² Whether, in the Spanish law which prevailed after 1769, the crown was conceived to be overlord, is more doubtful. In mediaeval times, there was a system of land tenure in Spanish law,²³ which persisted until the beginning of the nineteenth century, and it seems probable that it was extended to America

14. *Johnson v. M'Intosh* (1823) 8 Wheaton 543. Cf. *Cherokee Nation v. Georgia* (1831) 5 Peters 1.

15. The conqueror's law does not prevail in conquered territory by reason of conquest alone. *Blankard v. Galdy* (1693) 2 Salkeld 411.

16. Brissaud, *History of French Private Law*, § 60.

17. In Canada, the French seignorial system of land tenure got a firm foothold. Munro, *Seignorial System in Canada*, p. 31 *et seq.* It was finally abolished in 1854. See 2 *Canada and Its Provinces*, p. 590. It seems that Louisiana was at one time subordinate to the government of "New France" or Canada. 1 Houck, *History of Missouri*, p. 269.

18. The Spanish did not actually take possession of the territory until 1769, tho the French asserted no authority after 1762. This period, 1762 to 1769, is therefore spoken of as an *interregnum* in *Wright v. Thomas* (1837) 4 Mo. 577. See also *Hill v. Wright* (1833) 3 Mo. 243.

19. 2 Fortier, *History of Louisiana*, p. 6; 2 Houck, *History of Missouri*, p. 196. But see report of commissioners on Land Claims in Missouri, *American State Papers*, V Public Lands, p. 707.

20. Walton, *Civil Law in Spain and Spanish-America*, p. 520.

21. *Commonwealth v. Chapman* (1848) 13 Metcalf (Mass.) 68.

22. While there is little evidence of actual Spanish occupation of Upper Louisiana between 1762 and 1769, there can be no question of Spanish sovereignty during that period. See *Wright v. Thomas* (1837) 4 Mo. 577.

23. 2 Falcon, *Derecho Civil Espanol* (4th ed.) pp. 45, 50 *et seq.*; 1 White, *New Recopilacion*, pp. 85, 342.

and became a part of the "law of the Indies."²⁴ But in Louisiana the opinion seems to be that lands have always been allodial.²⁵ The question is now only of historical interest, and the later history of landholding in what was Louisiana territory does not depend upon it in any way.

Louisiana was ceded by Spain to France in 1800 and by France to the United States in 1803. But the Spanish law continued to prevail in Louisiana after both cessions. There were several divisions of the territory after 1803;²⁶ but the Spanish law continued to prevail in what is now Missouri until 1816, when by act of the territorial legislature it was superseded by "the common law of England, which is of a general nature, and all statutes made by the British Parliament in aid of or to supply the defects of the said common law, made prior to the fourth year of James the first, and of a general nature and not

24. Blackmar, Spanish Colonization in the Southwest, Johns Hopkins University Studies in History and Political Science (8th series) p. 59. The following provision of the "law of the Indies" as promulgated in 1535 would seem to indicate tenure of land: "Let the lands be distributed reasonably among the discoverers and colonists, and their descendants, who may remain in the country, and let them not be able to sell them either to the church or to a monastery or to any other ecclesiastical person, under pain of the lands reverting to the king and being conferred upon other persons." *Leyes de Indias*, lib. 4, tit. 12, ley 10. In writing of certain Spanish grants in America, White says, "Whether these grants were absolute or conditional, in the nature of fiefs, or merely for the encouragement of settlement and cultivation, I have found no means of ascertaining." *New Recopilacion*, p. 15. In the report of the congressional commissioners on Land Claims in Missouri, it is said that "such grants bear, in their terms, the character of vesting a fee simple in the grantee." *American State Papers*, V Public Lands, p. 706.

25. In *Xiques v. Bujac* (1852) 7 La. Ann. 498, 504, the court said that "in Louisiana, all titles to land were, and remain allodial, and not feudal. The feudal law, and its usages, never had a place in this region, under the Spanish government, and the jurisprudence of real property, under the common law, cannot be applicable to land titles in this state."

26. From 1804 to 1805, Missouri (Louisiana) was a part of the territory of Indiana. In 1804, the Governor and Judges of Indiana Territory, on whom Congress had conferred authority to legislate for Louisiana, enacted that all deeds conveying "any estate of inheritance in fee simple" and containing the words grant, bargain and sell, should be construed to contain express covenants of seisin, of freedom from incumbrances and of quiet enjoyment. See *Laws of District of Louisiana 1804*, p. 101. This seems to be a legislative recognition of tenancy in fee simple. In 1805, the Territory of Louisiana was organized and in 1812 the Territory of Missouri was organized.

local to that kingdom."²⁷ If a tenure prevailed before 1800, then it continued to prevail after the cessions of 1800 and 1803. It is an interesting academic question whether the federal or the territorial government was the successor of the French government, if tenure prevailed.²⁸ The effect of the adoption of the common law, if a system of tenure previously existed, must have been to continue the existing system with the single modification of *Quia Emptores*²⁹ which abolished subinfeudation. If no tenure existed previously then it must have been introduced with the common law:³⁰ it was an essential part of the common law system; and as is shown by the history of land ownership in the American colonies, it is not so inconsistent with modern conditions in Missouri as to have been excluded by implication when the common law was adopted. So it seems that socage³¹ tenure must have existed in Missouri since 1816, for there has been no legislation on the subject since that date.³²

27. 1 Missouri Territorial Laws, p. 436. This statute was reenacted in the revision of 1825. Revised Statutes 1825, p. 491.

28. Perhaps the question is more accurately stated as follows: if tenure prevailed, did the federal government abdicate its position as paramount lord in favor of the territorial government when it created the latter? Another question of nicety may arise: if the federal government continued to be overlord, was this position surrendered to the state on its admission into the Union? It is submitted that this must have been the result. But see 1 Cooley, Blackstone's Commentaries (3d ed.) p. 380, note. But the federal government may have continued to be paramount lord of the public lands to which it kept the title.

29. (1290) 18 Edw. I, c. 1. Whether *De Donis* was included in the body of English law adopted in 1816, see 1 Law Series, Missouri Bulletin, p. 6.

30. Gray, Perpetuities (3d ed.) § 23. Professor Gray expresses a doubt as to the validity of the statute establishing the common law in the Northwest Territory. See 1 Chase's (Ohio) Statutes, p. 190, note. But it seems that Congress had given to the legislature of the Territory of Missouri plenary legislative power. 1 Missouri Territorial Laws, p. 9.

31. Tho military tenure was not completely abolished in England until 1660, and the Missouri statute adopted the English law as of 1606, the tenure in Louisiana must have been socage for while no fixed service was owed by the tenant, the society of the time offered no basis for military tenure. See *ante*, p. 4.

32. It should be noted that in some of the states carved out of the Louisiana Purchase, there have been legislative declarations that tenure does not exist. In Minnesota, a part of which was formerly in Louisiana, the constitution declares all land to be allodial. Art. I, § 15. So in Arkansas. Art. II, § 28. In Iowa, the existence of tenure may be made to depend on early Michigan legislation. Gray, Perpetuities (3d. ed.)

The conclusion that land in Missouri is not owned absolutely but is held by the owner in fee simple as tenant of the state which must be regarded as paramount owner, may be surprising only because of its being unfamiliar. The courts and the lawyers seem to have assumed that tenure did not find its way into Missouri law, without much discussion of the subject. Some isolated references may be found, as in *Frame v. Humphreys*,³³ where the court said that "the last vestige of the system of feudal tenures was swept from our statute book" by an amendment of the statute abolishing estates tail.³⁴ But the subject has had little attention in Missouri decisions, tho it must be familiar to every student of real property law. Indeed, the term *estate* in itself connotes a *holding* of land and for this reason it is not applied to personal property which is *owned* and not *held*. So, *fee simple* must refer to the character of a tenancy and not to the extent of real ownership.

The existence of tenure in Missouri presents questions of more than historical interest. The solution of some practical problems in the law of future interests may depend upon it. The more burdensome incidents of tenure certainly do not exist,³⁵ but it is quite thinkable that some of the ancient incidents of tenure still obtain. Fealty was one of the chief of these—a formal recognition of allegiance to the crown; tho in modern times every citizen is conceived to owe allegiance to the state irrespective of land tenure, it may be that fealty is not altogether obsolete.³⁶ Escheat, tho usually spoken of as an incident of tenure,³⁷ is really a perquisite of tenure—if a

§ 23. It seems that no tenure exists in Louisiana. *Xiques v. Bujac* (1852) 7 La. Ann. 498, 504.

33. (1901) 164 Mo. 336.

34. See 1 Law Series, Missouri Bulletin, p. 17.

35. Story, Constitution of the United States (3d ed.) p. 119.

It should be noted that the power of eminent domain is in no sense dependent on tenure; it is an attribute of sovereignty, not of ownership. 1 Lewis, Eminent Domain (2d ed.) § 3; Nichols, Eminent Domain, § 8.

36. In *De Lancey v. Piepgras* (1893) 138 N. Y. 26, 39, the obligation of fealty was recognized in a grant made in 1763. On the New York manor lands, see 1 Reeves, Real Property, § 289, note. In *Matthews v. Ward* (1839) 10 Gill & J. (Md.) 443, the court said that after the Revolution "the oath of allegiance to the State superseded the incidents of fealty."

37. 1 Washburn, Real Property (5th ed.) p. 51. It is spoken of as a right of seignory in Leake, Property in Land (2d ed.) p. 20.

tenant's heirs fail by reason of either the extinction or corruption of his blood, the tenure ends and the land escheats to the lord. It would seem that escheat is possible in Missouri to day where a tenant's heirs fail by reason of the extinction of his blood;³⁸ but the statute in force since 1814³⁹ provides for a statutory escheat which renders it unnecessary to resort to this consequence of tenure.

So much for the incidents of present day tenure. The existence of tenure may have some effect on the validity of possibilities of reverter. There is high authority⁴⁰ for the position that such interests were abolished by *Quia Emptores*⁴¹ which put an end to subinfeudation. Unless tenure prevails, that venerable statute is no part of Missouri law and the question of the validity of possibilities of reverter cannot arise in Missouri. It seems that the Missouri court has not addressed itself to this question.⁴²

The tenure heretofore spoken of is not to be confused with the "imperfect" tenure which exists between the owner of a particular estate and the owner of the reversion which follows it. When a tenant in fee simple conveys to another in fee tail,⁴³ or for life, or for years,⁴⁴ there is considered to exist a modified

38. Failure of heirs for corruption of blood is no longer possible in the United States. Missouri Constitution of 1875, Art. I, § 13. See Reeves, Real Property, § 998.

39. See Geyer's Digest, p. 63. The statute is now Revised Statutes 1909, § 6256. It may be that a principle analogous to escheat would confer title on the state as *ultimus heres* apart from tenure and statute. *Matthews v. Ward* (1839) 10 Gill & J. (Md.) 443; Reeves, Real Property, § 290. Such a principle confers on the state the title to *bona vacantia*.

In the leading case of *Burgess v. Wheate* (1759) 1 Eden 177, it was held that there is no escheat of an equitable fee. The soundness of such a decision at the present day might be made to depend on the existence of tenure. See Gray, Perpetuities (3d ed.) § 204, note; Challis, Real Property (3d ed.) p. 38.

40. Gray, Perpetuities (3d ed.) § 31. See also Tiffany, Real Property, § 81.

41. (1290) 18 Edw. I, c. 1.

42. The Missouri court has shown little disposition to distinguish between determinable, base and qualified fees. *Gaven v. Allen* (1889) 100 Mo. 293, criticised in 17 Harvard Law Review 303. Strictly, a possibility of reverter can exist only with a determinable fee. Tiffany, Real Property, § 81.

43. On the effect of such a conveyance under the Missouri Statutes, see 1 Law Series, Missouri Bulletin, p. 24 *et seq.*

44. Strictly speaking, there was probably no estate for years at common law and therefore no tenure in such case. Challis, Real Property

species of tenure which may involve either services by the tenant or the payment of a rent. *Quia Emptores* abolished subinfeudation only where a fee simple was passed. This tenure is the basis for the implication of a condition against disclaimer of the landlord's title.⁴⁵ It was also the basis for the forfeiture caused by an attempt of a tenant for life or years to convey a fee simple by a feoffment, fine or recovery. It is possible that such forfeiture may still occur in Missouri.⁴⁶

It would seem, therefore, that all land in Missouri is *held* instead of *owned*, the state being paramount lord. This conception is of some practical importance in determining the basis for escheat, the status of possibilities of reverter, and the effect of conveyances by life tenants. It is more important however in studying the manner in which present day conveyances operate to pass title and the extent to which such conveyances are restricted in the creation and transfer of future interests in land.

III METHODS OF CONVEYANCE

Under the Spanish law which prevailed in Missouri until 1816,⁴⁷ land could be conveyed by a simple agreement which was not required to be in writing and which was effective without any entry on the land.⁴⁸ As early as 1804, a statute

(3d ed.) p. 65. Strictly, also, there is no remainder or reversion after a term for years—the owner of the freehold being seised subject to the term; "leasehold tenure" is, however, an accepted phrase. *Ibid.*, p. 99.

45. 1 Law Series, Missouri Bulletin, p. 3; Tiffany, Real Property, § 52; Leake, Property in Land (2d ed.) p. 40.

46. In *Foote v. Sanders* (1880) 72 Mo. 616, a life tenant's deed purporting to pass a fee simple was held to have passed simply the life estate. The question of forfeiture was not raised, and the deed probably operated as a bargain and sale so that a forfeiture was impossible. On forfeiture by a life tenant, see *Redfern v. Middleton* (1839) 1 Rice (S. C.) 459; *Stump v. Findlay* (1828) 2 Rawle 168; 1 Washburn, Real Property (6th ed.) §§ 229-233; Reeves, Real Property, § 540.

47. 1 Missouri Territorial Laws, p. 436.

48. *Mitchell v. Tuckers* (1846) 10 Mo. 260; *Allen v. Moss* (1858) 27 Mo. 354; *Long v. Stapp* (1872) 49 Mo. 506; *Langlois v. Crawford* (1875) 59 Mo. 456. For the regulations governing Spanish grants, see Geyer's Digest, p. 438 *et seq.* It seems that in the later years of Spanish control, at least after 1798, a formal conveyance was necessary. The regulations speak of an "acknowledgment of conveyance of land" and inserting "in the deed the metes and bounds." Geyer's Digest, p. 443. For a history

was enacted requiring a record of "all deeds and conveyances,"⁴⁹ but such record was construed to have been required only for the protection of subsequent purchasers and mortgagees.⁵⁰ In 1816, the adoption of the common law and appropriate statutes of the British Parliament enacted prior to the fourth year of James I, resulted in the abolition of the informal Spanish methods of conveying land and the substitution of the more formal English methods in vogue in 1606.⁵¹ For an understanding of the law of conveyancing in Missouri after 1816, it is therefore necessary to determine what methods of conveyance were known to the common law as it was modified by legislation prior to 1606.

At common law the most important method of conveying an estate of freehold lying in possession was livery of seisin. No writing was necessary, tho from early times the livery of seisin was usually evidenced by a deed.⁵² The whole transaction, the livery of seisin and the oral or written evidence of its intended nature, was called a feoffment.⁵³ This simple act of handing over the land by one to another, tho it grew out of the formal, feudal ceremony of investiture,⁵⁴ served much the same function as the delivery of a chattel. It was obviously impossible to convey an estate of freehold not lying in pos-

of St. Louis land titles, see 1 Scharf, *History of St. Louis*, p. 316. See also the report of the congressional commissioners on Land Claims in Missouri, *American State Papers*, V Public Lands, p. 702 *et seq.*

49. 1 Missouri Territorial Laws, p. 47.

50. *Allen v. Moss* (1858) 27 Mo. 354.

51. The statute of 1816 adopted the common law and statutes "not contrary to the laws of this territory." This should be interpreted so as to make the adoption effective, and it should therefore be held that the common law of conveyancing entirely superseded the Spanish law. It is believed that this is the opinion prevailing at the bar. In *Reaume v. Chambers* (1855) 22 Mo. 36, 53, the court said, "after the introduction of the common law, the Spanish law no longer had any existence here." But see *Lindell v. McNair* (1836) 4 Mo. 380. Cf. *State ex rel. v. Withrow* (1895) 133 Mo. 500.

52. *Poe v. Domec* (1871) 48 Mo. 441. A deed was necessary to a feoffment to a corporation aggregate at common law. Challis, *Real Property* (3d ed.) p. 403.

53. Technically, only a fee simple could be conveyed by *feoffment*; when a fee tail was conveyed by the same process, it was called a *gift*; when a life estate was conveyed, a *lease*.

54. Digby, *History of Law of Real Property* (5th ed.) p. 146; 2 Pollock & Maitland, *History of English Law* (2d ed.) p. 85.

session by livery of seisin to which an entry on the land was essential; reversions and remainders were therefore conveyed by a writing under seal, called a *deed*, which operated as a *grant*. For a grant of a reversion or a remainder, attornment by the tenant in possession was necessary. Between persons not strangers to the land, a conveyance could be by surrender or release—the former involving nothing but the act of giving up the land with intent to pass the particular estate held, to one whose estate was such as to absorb the particular estate by merger; the release was simply a grant of a reversion or remainder to one who had a particular estate already, and it might or might not have been followed by a merger. Fines and recoveries were also used to pass freehold interests in land, both being collusive suits employed chiefly to bar entails.⁵⁵ A freehold could also be passed by *exchange* for another freehold, for which a parol agreement without livery of seisin was sufficient.⁵⁶

An estate of less than freehold, lying in possession, was created and transferred at common law by parol agreement followed by entry. A future estate for years could be conveyed only by deed.

No consideration was required for a conveyance at common law.⁵⁷ But with the growth of equity jurisdiction it became necessary to rebut resulting uses and this could be accomplished by either a consideration in fact, or a recital of consideration, or a declaration of the use.

The statute of uses⁵⁸ of 1536 left all of the common law methods unchanged and introduced two new methods of conveyance—bargain and sale and covenant to stand seised. These were not primarily new methods of conveying legal titles,

55. See 3 Gray, *Cases on Property* (2d ed.) p. 191. Fines and recoveries were abolished in England in 1834. 3 and 4 William IV, c. 74.

56. See the valuable note on Exchange in 3 Gray, *Cases on Property* (2d ed.) p. 248.

57. In *Jackson v. Alexander* (1808) 3 Johns. 484, Kent, C. J., said that "the general and the better opinion is, that the notion of a consideration first came from the court of equity." See *Springs v. Hanks* (1844) 5 Ired. Law (N. C.) 30; 3 Pomeroy, *Equity Jurisprudence* (3d ed.) § 981.

58. 27 Henry VIII, c. 10.

but methods of raising a use to be executed by the statute. For a bargain and sale of a freehold, the statute of enrolments,⁵⁹ also enacted in 1536, required a writing indented, sealed and enrolled. For a covenant to stand seised, the requirement of a writing under seal was the result of judicial decision.⁶⁰ An actual consideration was required to raise a use in a bargain and sale;⁶¹ a covenant to stand seised had to be supported by a *good* consideration, i. e., a relationship by blood or marriage.⁶² Reversions and remainders could be conveyed by bargain and sale without the necessity of attornment.⁶³

Such, then, were the methods of conveyance established in Missouri by the adoption of the common law and appropriate statutes of the British parliament in 1816. The statutes of *De Donis*,⁶⁴ of *Quia Emptores*,⁶⁵ and of uses⁶⁶ were included. But the English statute of enrolments was probably never a part of Missouri law, for it required an enrolment in an English court.⁶⁷ Nor was the English statute of frauds⁶⁸ enacted in 1676 included; but a very similar statute of frauds was enacted immediately, requiring every conveyance of any interest in land to be in

59. 27 Henry VIII, c. 16. The statute of enrolments was evaded by the device of lease and release—the lease operating by way of bargain and sale to which the statute had no application if it was less than a freehold, the release operating as a common law method of conveying the future estate to the holder of a particular estate. Conveyances by lease and release have seldom, if ever, been employed in the United States.

60. *Callard v. Callard* (1593) Moore 687.

61. Modernly, a recital of consideration is conclusive as to the existence of a consideration for the purpose of raising a use. See *Draper v. Shoot* (1857) 25 Mo. 197; Tiffany, Real Property, § 384.

62. This was the consequence of the desire of men to establish their families. See Bacon, Uses, 13, 14.

63. *Edward Fox's Case* (1610) 8 Co. 93b.

64. 1 Law Series, Missouri Bulletin, p. 6.

65. *Vide ante*, p. 8.

66. A statute of uses, similar to the English statute of 1536, was re-enacted in Missouri in 1825. Revised Statutes 1825, p. 215. Now Revised Statutes 1909, § 2867. In the statute of 1804, the words "grant, bargain and sale" were given the effect of implying covenants. See Laws of Louisiana 1804, p. 101. "Bargain and sell" must be given their vulgar meaning in this statute, for it can hardly be contended that a statute of uses was in force in 1804.

67. *Givan v. Doe* (1844) 7 Black. (Ind.) 210; Gray, Perpetuities (2d ed.) § 67, note; Tiffany, Real Property, § 376.

68. 29 Car. II, c. 3.

writing.⁶⁹ In *McCabe v. Hunter*,⁷⁰ it seems to have been held that this statute required all conveyances to be by deed, but it is difficult to justify such a decision.⁷¹ The statute of conveyances in 1845 required "every conveyance in fee, or of a freehold estate" to be subscribed and sealed.⁷² The statute of 1865 required "all deeds or other conveyances of lands, or of any estate or interest therein," to be subscribed and sealed and acknowledged.⁷³ This statute has persisted,⁷⁴ except that in 1893 seals were made unnecessary in all conveyances.⁷⁵ It is to be noted that the methods introduced in 1816 were not changed by this legislation, but were required to be evidenced in a certain way, viz., by deed.

In 1865, a new method of conveyance was introduced by the enactment that "conveyances of lands or of any estate or interest therein may be made by deed * * * without any other act or ceremony whatever."⁷⁶ The courts seem to have assumed that any freehold lying in possession or out of possession might be so conveyed prior to this statute.⁷⁷ In *Tapley v. Ogle*,⁷⁸ it was said *obiter* that this statute negated a conveyance in any other manner, but it is believed that so radical a change of the law should not be based on implication. It would seem that the statute simply introduced a new method of

69. 1 Missouri Territorial Laws, p. 439. In *Chapman v. Templeton* (1873) 53 Mo. 463, the court said that "since the introduction of the common law into this state, conveyances of land cannot be made simply by parol." This, it should have been stated, is only true because of the Missouri statute of frauds. The inchoate right of an adverse possessor may be transferred to another adverse possessor without a writing. *Crispen v. Hannavan* (1872) 50 Mo. 536.

70. (1842) 7 Mo. 355. Cf. *Moss v. Anderson* (1841) 7 Mo. 337; *Long v. Stapp* (1872) 49 Mo. 506.

71. *Fry v. Phillips* (1772) 5 Burrows 2827, which was cited by the court, is no authority for its decision. The statement in 1 Taylor, Landlord and Tenant (9th ed.) § 34 is clearly erroneous.

72. Revised Statutes 1845, c. 32, § 15.

73. Revised Statutes 1865, c. 109, § 7.

74. Revised Statutes 1909, § 2792.

75. Laws of 1893, p. 117. Now Revised Statutes 1909, § 2773.

76. Revised Statutes 1865, c. 109, § 1.

77. *Perry v. Price* (1825) 1 Mo. 553. In *Harrington v. Fortner* (1874) 58 Mo. 468, the court said that an unacknowledged deed was "good as a common law deed."

78. (1901) 162 Mo. 190.

conveyance, viz., statutory grant,⁷⁹ and made all interests in land alienable.⁸¹

This survey of the legislation concerning conveyances will perhaps suffice to show how it is possible to convey land in Missouri and how each method of conveyance operates to pass the title. It now remains to study the present position in the law of each of the methods outlined, and the extent to which each is employed by conveyancers.

1. *Feoffment*. It would seem that livery of seisin, if evidenced by some writing which will satisfy the statute of frauds, is still effectual tho it is probably entirely obsolete.⁸¹ While it has been made unnecessary, livery of seisin has not been abolished in Missouri.⁸² In *Perry v. Price*,⁸³ it was held that a deed might operate as a feoffment without livery of seisin, the function of which was performed by the record.⁸⁴ While a writing is essential, it seems that no consideration in fact or recital is necessary,⁸⁵ but there must be a rebuttal of a resulting use. The common law restrictions on feoffment still obtain—the feoffor cannot convey to himself, nor can he make his heir a purchaser.⁸⁶ But an estate may be made to commence *in futuro* as a result of the statutory provision that estates of freehold “may be made to commence in future by deed, in like manner as by will;”⁸⁷ and the statute would seem

79. In *Poe v. Domec* (1871) 48 Mo. 441, the court said, “An ordinary conveyance, under our statute, is a feoffment as well as bargain and sale.” It is submitted that this is inaccurate.

80. Including contingent remainders, *Godman v. Simmons* (1893) 113 Mo. 122; *Summet v. Realty Co.* (1907) 208 Mo. 501; and possibly rights of entry for condition broken, 5 Law Series, Missouri Bulletin, p. 15.

81. Revised Statutes 1909, § 2781, refers to estates made or created by *livery and seisin only*, thereby recognizing the efficacy of livery of seisin. There is an instance of livery of seisin in New York as late as 1827. *McGregor v. Comstock* (1858) 17 N. Y. 162, 171. In England, an infant tenant in gavelkind is still obliged to convey by feoffment. Digby, *History of the Law of Real Property* (5th ed.) p. 412, note; Challis, *Real Property* (3d ed.) p. 402.

82. It has been abolished in some states by statute. Stimson, *American Statute Law*, § 1470.

83. (1825) 1 Mo. 553.

84. See *Chambers v. Chambers* (1909) 227 Mo. 262.

85. See *Green v. Thomas* (1834) 11 Maine 318; Brewster, *Conveyance by Deed*, p. 63 *et seq.*

86. Leake, *Property in Land* (2d ed.) p. 37.

87. Revised Statutes 1845, c. 32, § 9. Now Revised Statutes 1909, § 2876. See *O'Day v. Meadows* (1905) 194 Mo. 588, 621 *et seq.*; *Aldridge*

to authorize also the creation by feoffment of future interests which do not take effect as remainders, interests similar to shifting uses. There would seem to be nothing to prevent a feoffment from having a tortious operation—an attempt by a tenant for years or for life to convey a fee simple by deed of feoffment may therefore occasion the forfeiture of his estate,⁸⁸ but to avoid this result every effort would be made to treat the conveyance as operating by some method which could have no tortious effect, such as statutory grant or bargain and sale.⁸⁹ Feoffment may also be used in connection with uses—A may enfeoff B and his heirs to the use of C and his heirs, and a court of equity will force B to hold to the use of C without reference to consideration; the statute of uses will then execute the use. Where A enfeoffs B to his own use, there is no use for the statute to execute. B really holds free of use.⁹⁰

2. *Grant.* This is still the classical way of conveying incorporeal hereditaments⁹¹ and future estates. The common

v. Aldridge (1907) 202 Mo. 565; *Buxton v. Kroeger* (1908) 219 Mo. 224, 256. It would seem that this statute did not make remainders and executory devises convertible, tho such would seem to be the effect of the court's statement in *Buxton v. Kroeger* that "it was not necessary that there should be any estate created between the end of the life estate and the vesting of the estate in remainder."

88. The question might have been raised in *Utter v. Sidman* (1902) 170 Mo. 284. Revised Statutes 1909, § 2870, provides that "every conveyance of real estate shall pass all the estate of the grantor therein, unless the intent to pass a less estate shall expressly appear, or be necessarily implied in the terms of the grant." This provides the minimum and not the maximum effect of a conveyance, and may not therefore affect tortious feoffments.

89. In *Foote v. Sanders* (1880) 72 Mo. 616, it was held that a life tenant's conveyance which purported to pass a fee simple, *Foote v. Clark* (1890) 102 Mo. 394, was effectual to pass the life estate. No forfeiture was contended for, and the case can be explained on the ground that the deed operated by way of bargain and sale. Cf. *Owen v. Switzer* (1873) 51 Mo. 322.

The tortious operation of feoffments was abolished in England in 1845 by 8 and 9 Vict., c. 106, § 4. On tortious feoffments in the United States, see Washburn, *Real Property* (6th ed.) § 232. In several states, statutes provide that no conveyance shall occasion forfeiture. Alabama Code 1907, § 3405 is typical of such statutes.

90. Gray, *Perpetuities* (3d ed.) § 930, note. For apparent exceptions to the rule that "a person cannot be seised to his own use when there is not any other purpose to be served," see Challis, *Real Property* (3d ed.) p. 390.

91. *Desloge v. Pearce* (1866) 38 Mo. 588.

law requirement of a deed has been changed only in that a seal is no longer necessary; the statute now provides for the grant of reversions and remainders without attornment by the tenant in possession.⁹² No consideration is required but the resulting of a use must be rebutted. If the grantee already has a vested estate in the land, or if he is in possession as tenant at will or for years or for life, the grant is called a *release*.⁹³

3. *Surrender*. This common law method of conveying to one who is not a stranger to the title may still be used by a tenant for life or for years. It is required by statute to be "by a deed or note in writing, signed by the party surrendering, * * * or by operation of law."⁹⁴ A merger must result from a surrender. No consideration is necessary.

4. *Fines and Recoveries*. These means of conveying have probably never been resorted to in Missouri. The early modification of estates tail⁹⁵ made it unnecessary to resort to them for the purpose for which they were most used, viz., docking the entail. But both fines and recoveries were known in the American colonies,⁹⁶ and there is an instance of a fine in

92. Revised Statutes 1909, § 7925. The Missouri statute is modeled on 4 Anne, c. 16, § 19 (1705). It was first enacted in 1845. Revised Statutes 1845, c. 32, § 11.

93. Releases are usually listed as a separate class of conveyances, but such classification seems unnecessary for the purposes of this article. Releases may enure in four manner of ways: (a) to pass a right, as where a disseisee releases to a disseisor; (b) to pass an estate, as where one joint tenant releases to another; (c) by way of enlargement, as where a vested remainder in fee is released to a life tenant—but this enlargement is really the effect of merger following the grant; (d) by way of extinguishment, as where a contingent remainderman releases to a reversioner. See Coke, Littleton 267a, Butler's note; 1 Cooley, Blackstone's Commentaries (3d ed.) p. 518; *Miller v. Emans* (1859) 19 N. Y. 384. The technical language of a release differs from that of a grant in that the word *release* should be used.

A partition is not a release. The cases upholding parol partitions are anomalous. *Bompart v. Roderman* (1857) 25 Mo. 385; *Le Bourgeoise v. Blank* (1880) 8 Mo. App. 434. But see *Hazen v. Barnett* (1872) 50 Mo. 506; *Nave v. Smith* (1888) 95 Mo. 586.

94. Revised Statutes 1909, § 2782. On surrender by operation of law, see *Kerr v. Clark* (1853) 19 Mo. 132; *Matthews v. Tobener* (1866) 39 Mo. 115; *Huling v. Roll* (1890) 43 Mo. App. 234; *Robertson v. Winslow* (1903) 99 Mo. App. 546.

95. The statute adopting the common law expressly provided that "the doctrine of entails shall never be allowed." 1 Missouri Territorial Laws, p. 436. See 1 Law Series, Missouri Bulletin, p. 6.

96. Reeves, Real Property, § 429. They are still recognized by statute in Delaware. See 1 Stimson, American Statute Law, § 1473.

New York as late as 1827.⁹⁷ No Missouri statute has abolished fines and recoveries. In *Moreau v. Detchemendy*,⁹⁸ the court said *obiter* that a fine was "a species of assurance never used or known in this country." It is improbable that fines and recoveries will ever be revived in Missouri. And it would probably be held that modern procedure is not adapted to employing them.⁹⁹ The former use of fines in conveying the interests of married women,¹⁰⁰ tho it would have been convenient before the Married Women's Act,¹⁰¹ would now be superfluous.

5. *Exchange*. This method of conveying land is possible in Missouri, but has probably never been used. It would have to be evidenced by a deed covering both parcels exchanged, and each parcel would be treated as consideration for the other. The estates exchanged must be equal,¹⁰² and the word *exchange* must be used.¹⁰³ The law annexes an actual warranty of the title to each tract conveyed, with a condition of re-entry,¹⁰⁴ and it is for this reason that mutual deeds of bargain and sale are always preferred.

6. *Bargain and Sale*. Probably most Missouri conveyances can be upheld as operating by way of bargain and sale. Before the statutory grant was introduced,¹⁰⁵ it was the method commonly used.¹⁰⁶ A writing is necessary indicating an intention of one person to stand seised to the use of another. A consideration is necessary to raise the use, tho perhaps a recital of consideration will serve.¹⁰⁷ When the use is raised

97. *McGregor v. Comstock* (1852) 17 N. Y. 162.

98. (1853) 18 Mo. 522.

99. For the procedure followed in fines and recoveries, see 5 Cruise, Digest (4th ed.) tit. XXXV, and XXXVI. For the tortious effect of recoveries, see *Stump v. Findlay* (1828) 2 Rawle (Pa.) 167.

100. See *Lindell v. McNair* (1836) 4 Mo. 380; *Christy v. Burch* (1887) 25 Fla. 942, 2 So. 258; *Hitz v. Jenks* (1887) 123 U. S. 297.

101. Enacted in Laws of 1875, p. 61. Now Revised Statutes 1909, § 8309.

102. *Long v. Fuller* (1866) 21 Wis. 121; *Windsor v. Collinson* (1898) 32 Ore. 297, 52 Pac. 26.

103. *Hartwell v. DeVault* (1896) 159 Ill. 325.

104. *Gamble v. McClure* (1871) 69 Pa. 282.

105. Revised Statutes 1865, c. 109, § 1.

106. *Farrar v. Christy* (1857) 24 Mo. 453.

107. See *Draper v. Shoot* (1857) 25 Mo. 197, 202, where the court held that "the non-payment of the nominal consideration cannot be

the statute immediately executes it, tho the statute does not execute a use upon a use. For this latter reason it becomes very important to determine whether a conveyance is a feoffment or a bargain and sale: if A enfeoffs B to the use of C, the statute executes the use in C; but if A bargains and sells to B to the use of C, the statute executes a use in B but the use in C remains unexecuted and C's interest is only equitable.¹⁰⁸ A conveyance by bargain and sale cannot possibly have a tortious operation. It can be employed only by one who has the seisin, and cannot therefore be used for transferring terms for years, tho it may be used for creating them.¹⁰⁹ Reversions and remainders may be conveyed by bargain and sale. The use may be made to spring out of the bargainor at any future time—thus A may agree to stand seised to the use of B from and after a future date. And the use may be made to shift from the bargainee at any future time, the new use taking effect in substitution for the old. Shifting and springing uses are executed by the statute of uses and are therefore legal interests immediately after their creation.¹¹⁰ Whereas future interests created by feoffment must take effect as remainders, future interests created by bargain and sale may take effect immediately after or even tho they lap over, preceding estates. But this is to be modified by the rule that any interest which is capable of taking effect as a remainder cannot take effect as a springing or shifting use.¹¹¹ The possibility of shifting and

shown to defeat a deed." This language is broad enough to cover both deeds of feoffment and deeds of bargain and sale. See Tiffany, *Real Property*, § 384. This may rest on the principle of estoppel. See Challis, *Real Property* (3d ed.) p. 420.

108. This distinction was involved in *Green v. Sutton* (1872) 50 Mo. 186. It is of great practical-importance in determining the application of the rule against perpetuities to contingent remainders. See Gray, *Perpetuities* (3d ed.) § 325.

109. *Slevin v. Brown* (1862) 32 Mo. 176; Leake, *Property In Land* (2d ed.) p. 92. Terms for years were ordinarily transferred by *assignment*. Tiffany, *Real Property*, § 375.

110. The bargainor or feoffee or grantee to uses was formerly conceived to have a possibility of seisin pending the vesting of a future use. This was the celebrated doctrine of *scintilla juris*, now abandoned. *Williams, Real Property*, (17th Int. ed.) 437.

111. *Doe d. Planner v. Scudamore* (1800) 2 B. & P. 289; Gray, *Perpetuities* (3d ed.) § 918 *et seq.* But cf. *Simonds v. Simonds* (1908) 199 Mass. 552. The rule stated in the text had its origin in the judges' dislike of uses,

springing uses does not do away with remainders created by bargain and sale, therefore, and as to contingent remainders there is still the necessity of their fitting immediately on to the particular estates.¹¹² In Missouri and several other states an anomalous rule prevails, due to Chancellor Kent's misconception,¹¹³ that after a fee simple with an expressed absolute power of disposition, any limitation by way of springing or shifting use is void.¹¹⁴

7. *Covenant to Stand Seised.* There is little difference to-day between a bargain and sale and a covenant to stand seised. The requirement of a seal for the latter has been abolished by statute.¹¹⁵ While a bargain and sale must be supported by an actual consideration in fact or recital, a covenant to stand seised may be supported by a *good* consideration, i.e., by relationship of blood or marriage. The conveyance in *Aubuchon v. Bender*¹¹⁶ was held to operate as a covenant to stand seised, tho supported by the consideration of a release of dower. The deed in *Hutsell v. Crewse*¹¹⁷ seems to have been upheld as a covenant to stand seised, tho it may have contained a recital of actual consideration so as to have been a good bargain and sale, and it was probably a good statutory grant. The same interests may be created by covenant to stand seised as by bargain and sale, and in most instances conveyances even to near relatives are now so made as to be supportable by way of bargain and sale. Covenants to stand seised are therefore little used to-day.

8. *Statutory Grant.* Since 1865¹¹⁸ it has been possible to convey "any estate or interest" in land by deed. The

112. It should here be noted that an equitable contingent remainder, unexecuted by the statute, does not need the support of a particular estate since the seisin is held by the trustee. *Astley v. Micklethwait* (1880) 15 Ch. Div. 59.

113. *Jackson v. Robbins* (1819) 16 Johns. (N. Y.) 537.

114. *Green v. Sutton* (1872) 50 Mo. 186; *Cornwell v. Orton* (1894) 126 Mo. 355; *Cornwell v. Wulff* (1898) 148 Mo. 542; *Jackson v. Littell* (1908) 213 Mo. 598. Cf. *Straat v. Uhrig* (1874) 56 Mo. 482; *Wommack v. Whitmore* (1874) 58 Mo. 448. See Tiffany, Real Property, § 140.

115. Laws of 1893, p. 117. Now Revised Statutes 1909, § 2773.

116. (1869) 44 Mo. 560.

117. (1896) 138 Mo. 1.

118. Revised Statutes 1865, c. 109, § 1. Now Revised Statutes 1909, § 2787.

statute requires no consideration and it would seem that none is necessary for this statutory grant.¹¹⁹ The statute provides only for the conveyance, not for the creation of interests in land. It is to be read, however, in connection with the statute which provides that "an estate of freehold or of inheritance may be made to commence in future by deed in like manner as by will."¹²⁰ and it would seem therefore that any future interest creatable by will, i.e., a springing or shifting use, may be created by deed operating as a statutory grant.¹²¹

9. *Lease and Assignment.* The foregoing methods of conveyance are chiefly applicable to freeholds—but leaseholds in possession may be exchanged or surrendered; they may be created by bargain and sale or covenant to stand seised; they may be assigned in writing or conveyed by statutory grant. and leaseholds not in possession may be conveyed by common law grant or by statutory grant, but not by bargain and sale or covenant to stand seised. The informal lease permitted at common law would seem to have fallen under the requirement in the statute of 1865 that all "conveyances of lands or of any estate or interest therein" be by deed.¹²² But it does not seem to have been so held.¹²³ Any writing which satisfies the statute of frauds¹²⁴ is now sufficient and was probably sufficient before the statute abolishing seals. Terms for one year or less may be created by mere oral agreement.¹²⁵ Entry

119. In *Cooper v. Newell* (Mo., 1914) 172 S. W. 326, a voluntary conveyance by a son to his mother was effectuated, tho the mother was forced to hold for the benefit of the son. This result was proper if the conveyance operated as a statutory grant, but if it operated as a covenant to stand seised it would seem that the grantee should have held for her own benefit.

120. Revised Statutes 1909, § 2876. First enacted in 1845. Revised Statutes 1845, c. 32, § 9. The body of this statute was copied from 10 and 11 William III, c. 16 enacted in 1699, but the provision in question was not included in that statute.

121. See *O'Day v. Meadows* (1905) 194 Mo. 588, 621, *et seq.*; *Buxton v. Kroeger* (1908) 219 Mo. 224, 256.

122. Revised Statutes 1865, c. 109, § 7.

123. *Gay v. Ihm* (1877) 3 Mo. App. 588, memo. Cf. *Firman De Loge's Admr. v. Hall* (1862) 31 Mo. 473.

124. Now Revised Statutes 1909, §§ 2781, 2783.

125. *Ray v. Blackman* (1906) 120 Mo. App. 497. But see *Gerhart v. Weiter* (1904) 108 Mo. App. 248. The inconsistency in the statutes, Revised Statutes 1909, §§ 2781, 2783 and 7883, has led to many conflicting

is still necessary and until entry the tenant has only an *interesse termini*,¹²⁶ which is not sufficient for him to maintain trespass.¹²⁷

Whatever form the actual conveyance may take, therefore, whether it is a quitclaim¹²⁸ or a conveyance which purports to pass a good title, it would seem that it must operate by one of the methods above described. If the parties intend to employ a particular method and for any reason their conveyance by that method cannot be given validity as intended, we have the salutary principle that their conveyance will if possible be effectuated by some other method. This is the well known principle of *Roe v. Tranmer*.¹²⁹ In most cases it will make little difference which method is used, and now that conveyance has been made so easy it is usually unimportant to determine how a conveyance operates. But the analysis made must indicate that no complete study of future interests is possible without this survey of the operation of conveyances.

MANLEY O. HUDSON.¹³⁰

statements concerning the validity of terms for one year or less, but it would seem that leases for one year or less should occupy the same place in Missouri law which leases for three years or less occupied under the English statute of frauds, 29 Car. II, c. 3. It seems wholly illogical that a lease for one year, to begin *in futuro* but within one year, should be required to be in writing; for the contract is really performed when the lease is executed since a vested estate is then put into the lessee. *Shacklett v. Cummins* (Mo., 1914) 165 S. W. 1145; *Austin v. Huntsville Coal & Mining Co.* (1880) 72 Mo. 535. Cf. *L'Hussier v. Zallee* (1856) 24 Mo. 13.

126. *Austin v. Huntsville Coal & Mining Co.* (1880) 72 Mo. 535. Cf. *L'Hussier v. Zallee* (1856) 24 Mo. 13; Taylor, Landlord & Tenant (9th ed.) §§ 15, 68; Tiffany, Landlord & Tenant, § 37.

127. *Deland v. Vanstone* (1887) 26 Mo. App. 297.

128. For the ancient office of the quitclaim, see 2 Pollock and Maitland, History of English Law (2d ed.) p. 91. The modern quitclaim probably had its origin in the common law release. See 2 Reeves, Real Property, § 1056; Tiffany, Real Property, § 377. But a quitclaim deed to-day "is not a mere release. It has the effect of completely transferring whatever title the grantor had to the persons named as grantees." *Chew v. Kellar* (1902) 171 Mo. 215. On the position of the grantee in a quitclaim deed, see *Starr v. Bartz* (1908) 219 Mo. 47.

129. (1757) 2 Wils. 75. See *Hunt v. Hunt* (1833) 14 Pick. (Mass.) 374, cited with approval in *Wilson v. Albert* (1886) 89 Mo. 537.

130. The writer has been ably assisted by John M. Linger, Esq., in the preparation of this article.