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THE HISTORY OF THE MISSOURI LAW OF SEALED INSTRUMENTS

BY ROBERT E. ROSENWALD

I. INTRODUCTION

The use of seals antedates by many centuries the Norman Conquest, when they first were introduced into England,¹ thereafter to become an essential element in the common law.² The Bible contains a number of references to seals;³ they are mentioned in the plays of Shakespeare.⁴ A proper analysis of the subject under discussion would not be complete without a very brief reference to these historical antecedents, in order to present a correct perspective. The direct source of seals in Missouri is the common law.⁵ Courts in this State have adopted Chancellor Kent's definition of the seal as "an impression upon wax, wafer, or some other tenacious substance capable of being impressed."⁶ They also take the view that at common law a seal imports consideration,⁷ although Professor Williston asserts that this statement is "absurd historically."⁸ Thus it may be seen that the fundamental elements of the common law seal have been recognized by Missouri courts in cases involving the law of contracts.

A complete treatment of the law of sealed instruments would necessitate a consideration of both public and private seals, including corporate seals. Such a subject would be too broad to be included within the confines of this paper. Accordingly, it

¹ 2 BLA. COM. 305.

² Crownhart, *Seals*, 34 CENTRAL L. J. 279, 280.

³ 1 KINGS, c. 21; DANIEL, c. 6; ESTHER, c. 8; JEREMIAH, c. 32.

⁴ MERCHANT OF VENICE, act IV, scene 1, line 139; HENRY THE EIGHTH, act II, scene 4, line 222.

⁵ Gates v. State (1850) 13 Mo. 11; Swink v. Thompson (1861) 31 Mo. 336.

⁶ 4 KENT, COM. 452; Gates v. State (1850) 13 Mo. 11; Swink v. Thompson (1861) 31 Mo. 336; Pease v. Lawson (1862) 33 Mo. 35.

⁷ County of Montgomery v. Auchley (1887) 92 Mo. 126, 4 S. W. 425; Swift v. Central Union Fire Ins. Co. (1919) 279 Mo. 606, 216 S. W. 935; Wulze v. Shaefer (1889) 37 Mo. App. 551; Greer v. Nutt (1893) 54 Mo. App. 1.

⁸ 1 WILLISTON, CONTRACTS, sec. 109.

has been necessary to delimit the problem. A thorough study of the history of private seals has been undertaken, with references to the law of corporate seals after 1893. Several cases relating to public seals have been discussed in order to determine what constitutes a sufficient sealing.

The Missouri law of sealed instruments, except for an act of 1822, shows the effect of evolution on the law of contracts. The act to which reference has been made, is a legal sport and may be considered separately. It provided, in part, that "all writings . . . without seal or seals, stipulating for the payment of money or property, or for the performance of any act or acts, duty or duties, shall be placed on the same footing with sealed writings, containing the like stipulations, receiving the same consideration in all courts of justice, or before justices of the peace; and to all intents and purposes having the same force and effect, and upon which the same species of action may be founded as if sealed; provided, that in all actions founded on such writings, the consideration may be enquired into, either in a court of law or equity, whether they be under seal or not."⁹

The law was short-lived, and was repealed in 1825,¹⁰ before it had been construed by the Supreme Court. A perusal of the law shows that it departed widely from the common law, and its early repeal is evidence that it was enacted long before lawyers and laity were prepared for such a radical change. With the exception of this act, which was a unique piece of legislation for its time, the law of sealed instruments developed in regular and orderly fashion in Missouri.

II. 1807-1893

A. *What is a sufficient sealing*

The Legislature of the Territory of Louisiana, out of which the State of Missouri later was carved, passed an act in 1807 providing that "any instrument in writing to which the person executing the same shall affix a scroll¹¹ by way of seal, shall be adjudged and holden to be of the same force and obligation as if

⁹ 1 Ter. Laws p. 940.

¹⁰ R. S. Mo. (1825) p. 500, sec. 13.

¹¹ The words "scroll," "scrall," and "scrawl," have been used interchangeably by the courts.

it were actually sealed."¹² This law remained in effect until 1822 when it was repealed by the Legislature of the State of Missouri,¹³ but in 1825 it was re-enacted in a substantially similar form.¹⁴ An amendment of the statute in 1835 provided for the addition of the words, "expressed on the face thereof to be sealed," after the word "writing," and the statute as amended continued to be the law until 1893.¹⁵

In 1844, in the case of *Glasscock v. Glasscock & Dodd* in which the action was brought on two notes, not actually sealed but with scrawls annexed to the signatures, and within these scrawls the word "seal" written in full, it was held that the instrument was not sealed within the meaning of the statute, there being no recognition of the scrawl as a seal in the body of the instrument. Judge Scott of the Supreme Court said, "The construction put upon our statute, making a writing, to which there was annexed a scrawl by way of a seal, a sealed instrument, was adopted in analogy to the interpretation put upon a similar law of the State of Virginia. Judge Tucker of that State, in one of the early cases on this subject, placed this construction, on the ground that it was necessary, in order to prevent unsealed instruments from being converted into sealed ones by the bare annexation of a scrawl, which could not be so easily affixed if the scrawl was recognized as a seal in the body of the instrument. The word seal being written within the scrawl, does not show that the instrument was intended to be a sealed one. That can only be shown by what appears on the face of the instrument. This case is neither within the letter nor spirit of the former decisions, the law of which seems to have been recognized by the general assembly, at the late revision (1835) of a change in the phraseology of the former statute adopting those decisions."¹⁶

The former decisions to which the court referred,¹⁷ and sub-

¹² 1 Ter. Laws p. 115, sec. 27; see *Rector & Conway v. Honore* (1822) 1 Mo. 204; *Caples v. Branham* (1855) 20 Mo. 244.

¹³ 1 Ter. Laws p. 854, sec. 64.

¹⁴ R. S. Mo. (1825) p. 215, sec. 3; see R. S. Mo. (1825) p. 627, sec. 22.

¹⁵ R. S. Mo. (1835) p. 118, sec. 3; R. S. Mo. (1845) p. 216, sec. 5; R. S. Mo. (1855) p. 352, sec. 5; R. S. Mo. (1866) p. 398, sec. 5; R. S. Mo. (1879) sec. 662; R. S. Mo. (1889) sec. 2388; Mo. Laws 1893, p. 117.

¹⁶ 8 Mo. 577.

¹⁷ *Cartmill v. Hopkins* (1830) 2 Mo. 220; *Boynton v. Reynolds* (1831) 3 Mo. 79; *Walker v. Keile* (1843) 8 Mo. 301.

sequent¹⁸ ones are in accord with the *Glasscock* case to the effect that the maker of the instrument should show by some expression in the body or testimonium thereof that he intended it to be taken as a specialty, when a scrawl is used instead of a seal, under the statute.

In several cases the question has been raised as to what is a sufficient scrawl within the meaning of the law. The word "seal" printed between brackets has been held to satisfy the terms of the statute.¹⁹ Likewise where a scrawl has been appended to the name of the party signing the instrument with the word "seal" written therein, this is sufficient.²⁰ On the other hand, if the word "seal" is written opposite the grantor's name in a deed, but is not surrounded by any scrawl or other device, the terms of the law have not been complied with.²¹ In a case in which scrawls were placed opposite the names of two grantors in a deed, and the deed purported to have been executed under the hands and seals of *three* grantors, and was acknowledged as the deed of all, the validity of the deed was upheld. The court decided that "in such a case, it is not necessary that a separate seal should be placed to each name. If it appears that the seal affixed was intended to be adopted as the seal of each, it was sufficient."²²

The statute to which reference has been made, and the cases decided under the statute show a considerable relaxation from the common law. However, it is evident that the law had not dispensed with many of the technical requirements which formerly attended the sealing of specialties.

In the case of *Boynton v. Reynolds*, decided in 1831, the Supreme Court made it clear that the statutory method permitting the use of a scrawl by way of a seal, was not the exclusive means

¹⁸ *Grimsley v. Admr's of Riley* (1838) 5 Mo. 280, 32 Am. Dec. 319; *Moreau v. Detchemendy* (1853) 18 Mo. 522; *Moreau v. Branham* (1858) 27 Mo. 351; *Moreau v. Detchemendy* (1867) 41 Mo. 431; *Groner v. Smith* (1872) 49 Mo. 318; *State ex rel. v. Eldridge* (1877) 65 Mo. 584; *Dickens v. Miller* (1882) 12 Mo. App. 408.

¹⁹ *Underwood v. Dollins* (1871) 47 Mo. 259.

²⁰ *Samuels v. Shelton* (1871) 48 Mo. 444.

²¹ *Dunn v. Raley* (1874) 58 Mo. 134.

²² *Lunsford v. La Motte Lead Co.* (1873) 54 Mo. 426, 436; *accord*, *Burnett v. McCluey* (1883) 78 Mo. 676.

of sealing instruments. The common law seal was not replaced by the scrawl.²³ Subsequent cases are in accord.²⁴

What constituted a sufficient sealing in Missouri, aside from the statutory scrawl? In a case in which the validity of a deed was summoned into question, the objection was raised that no *impression* was made on the wafer, and so, although everything else had happened necessary to a valid sealing, yet the want of this crowning requisite was fatal. Judge Dryden held that the instrument was properly sealed, saying, "The common law prescribed no particular instrument with which to make the impression, nor fixed the breadth or length or depth it should be made, and as the execution of this paper was attended with the usual circumstances of deliberation, and as it was manifestly intended as a sealed instrument, and as the scalloped paper, when applied to the wafer and caused to adhere, must from a physical necessity have made an impression, we feel warranted, for the effectuation of the clear intention of the parties, in regarding the scalloped paper a sufficient instrument, and the impression made by it to cause cohesion, a sufficient impression to comply with the requirement of the law."²⁵ The court arrived at a similar conclusion where the seal was attached with mucilage instead of a wafer.²⁶ In both cases the Supreme Court took a liberal view, and it seems that no injustice was done in upholding the validity of these instruments.

A sharp distinction is drawn in cases involving presumptions as to sealing where a copy of a deed is before the court, depending on the question of whether the instrument is the deed of a private individual or a sheriff. The case of *Dickens v. Miller*²⁷ involved a certified copy of a deed from one Rebecca Hooper to one Dempson Hooper. An effort was made to show that there was a proper scrawl affixed to the instrument in order to bring it within the terms of a statutory sealing, but this effort was un-

²³ 3 Mo. 79.

²⁴ Pease v. Lawson (1862) 33 Mo. 35; State ex rel. v. Thompson (1872) 49 Mo. 188; Dale v. Wright (1874) 57 Mo. 110; Dingee v. Kearney (1876) 2 Mo. App. 515; Dickens v. Miller (1882) 12 Mo. App. 408; St. Louis Dairy Co. v. Sauer (1884) 16 Mo. App. 1.

²⁵ Pease v. Lawson (1862) 33 Mo. 35, 40.

²⁶ Turner v. Field (1869) 44 Mo. 382.

²⁷ (1832) 12 Mo. App. 408.

successful. The court refused to admit the deed into evidence, and this was complained of as error. The appellant claimed that the court should have indulged in the presumption that the original instrument had affixed thereto a common law seal. The Saint Louis Court of Appeals refused to sustain the contention and took judicial notice of the fact that the common law seal was not used by private persons in this state. The Court, however, did conclude that the presumption would be otherwise where public seals were involved, and this presumption was generally recognized whenever copies of sheriffs' deeds were introduced into evidence.²⁸

Equity gives relief to the vendee in cases where a deed is defective because it lacks a seal, and compels the vendor and his heirs, and all other persons claiming under him without notice, and even purchasers for a valuable consideration, if with notice, to make good the conveyance. Thus it was decreed in a case in which the instrument lacked a seal, but concluded with the words, "in witness whereof I have hereunto set my hand and seal," that a subsequent purchaser with notice should convey the legal title to the first purchaser.²⁹

In the case of a mortgage which was not sealed as required by law, the court said, "It is very true this does not comply with the statutory requirements in reference to seals, but the mortgage is not in consequence thereof avoided. A mortgage may be irregular where the seal is omitted, or not in accordance with law, but it will nevertheless be valid to create a lien, a trust for the benefit of the creditor, which can be enforced in equity."³⁰ This is the general rule.³¹

B. *Instruments under seal*

Professor Williston has said that "contracts under seal were

²⁸ *Geary v. City of Kansas* (1875) 61 Mo. 378; *Norfleet v. Russel* (1876) 64 Mo. 176; *Parkinson v. Caplinger* (1877) 65 Mo. 290; *Addis v. Graham* (1885) 88 Mo. 197. *McCoy v. Cassidy* (1888) 96 Mo. 429, expressly overruled *Hamilton v. Boggess* (1876) 63 Mo. 290, in which a contrary opinion had been rendered.

²⁹ *Mastin v. Halley* (1875) 61 Mo. 196; *Martin v. Nixon* (1887) 92 Mo. 26. A mortgage, although not under seal, imports notice to subsequent purchasers. *McClurg v. Phillips* (1874) 57 Mo. 214.

³⁰ *Dunn v. Raley* (1874) 58 Mo. 134.

³¹ *McClurg v. Phillips* (1872) 49 Mo. 315; *Jones v. Brewington* (1874) 58 Mo. 210; *Harrington v. Fortner* (1874) 58 Mo. 468.

enforced at common law by the action of covenant unless the contract was for the payment of a fixed sum of money. In that case debt was the exclusive remedy until the seventeenth century. Afterwards covenant became a concurrent remedy."³² Blackstone also was of the opinion that the action of debt would lie for certain instruments under seal.³³ In Missouri, however, it seems that covenant was the proper form of action before the adoption of the code,³⁴ while debt would lie only in actions on contracts not under seal.³⁵ In actions of ejectment, of course, sealed instruments were referred to collaterally, and the court determined whether the instrument was properly sealed.³⁶

In *Brown v. Lockhart*, decided in 1823, the court said, "A sealed instrument is . . . a deed, a bond, a covenant, a sale, etc., but a sealed instrument is never a note."³⁷ And in a case in 1898 the court held that "under all of the authorities a sealed instrument is a *deed*, whether it be a conveyance of land or a bond or a contract of any kind between the parties."³⁸ For purposes of classifying sealed instruments, the first definition is, perhaps, more satisfactory than the second although it is not all-inclusive. Specialties in this state were deeds for the conveyance of lands,³⁹ releases,⁴⁰ bonds,⁴¹ and powers of attorney.⁴² To this group may be added formal written promises such as for the hire and keep of slaves.⁴³ Not satisfied with the common law rule that deeds for the conveyance of lands were required to be

³² 1 WILLISTON, CONTRACTS, sec. 5.

³³ 2 BLA. COM. 465.

³⁴ *Brown v. Lockhart* (1823) 1 Mo. 409.

³⁵ *Boynton v. Reynolds* (1831) 3 Mo. 79.

³⁶ *Walker v. Keile* (1843) 8 Mo. 301.

³⁷ (1823) 1 Mo. 409.

³⁸ *Edmunds v. Electric Light & Power Co.* (1898) 76 Mo. App. 610.

³⁹ *Moreau v. Detchemendy* (1853) 18 Mo. 522; *Moreau v. Branham* (1858) 27 Mo. 351; *Swink v. Thompson* (1861) 31 Mo. 336; *Pease v. Lawson* (1862) 33 Mo. 35; *Moreau v. Detchemendy* (1867) 41 Mo. 431; *McCoy v. Cassidy* (1888) 96 Mo. 429; *Dickens v. Miller* (1882) 12 Mo. App. 408.

⁴⁰ *Riley v. Kershan* (1873) 52 Mo. 224; *Arnett v. Mo. Pac. R. Co.* (1912) 164 Mo. App. 368; *Judd v. Walker* (1911) 158 Mo. App. 156.

⁴¹ *State ex rel. v. Clay County* (1870) 46 Mo. 231; *State ex rel. v. Thompson* (1872) 49 Mo. 188; *State ex rel. v. Eldridge* (1877) 65 Mo. 584; *St. Louis Dairy Co. v. Sauer* (1884) 16 Mo. App. 1.

⁴² *St. Louis Dairy Co. v. Sauer* (1884) 16 Mo. App. 1.

⁴³ *Grimsley v. Adm'rs of Riley* (1838) 5 Mo. 280, 32 Am. Dec. 319.

under seal, the Legislature wrote this stipulation into the statutory law.⁴⁴

The rule of strict construction was applied to instruments under seal. It has been held in an action on an attachment bond that the sureties are not liable thereon where the instrument is unsealed,⁴⁵ although such an instrument might be sued upon as a simple contract.⁴⁶ The rule was that an authority to an agent to execute an instrument under seal, whenever this was not done in the presence of the principal, had itself to be under seal. And by the common law decisions a subsequent ratification also had to be under seal.⁴⁷ A method of avoiding the harsh rules here invoked was discussed in the case of *Shuetze v. Bailey* in an action involving personal property. The court said, "We think the case comes within the reasoning that would make this the contract of the principal, but as a contract under seal, it is ineffectual for want of an authority under seal. Now if this was an instrument affecting real estate, this result would be conclusive of the case; but when the contract relates to personal property only, or is a mere agreement to pay money, although void as a contract under seal, the seal is unnecessary, and may be disregarded as surplusage, and it will be good as a contract not under seal, provided there were authority by parol for its execution."⁴⁸ The explanation of this case is to be found in the fact that all transactions relating to realty had to be under seal, while this was not true of personalty.

The cases to which reference has been made show the many fine distinctions and the numerous technical decisions which the court had to resort to while seals were essential elements of the law of contracts in Missouri.

C. Procedure under the statutes

In 1835 the Legislature enacted a law which provided, "All notes in writing made and signed by any person or his agent,

⁴⁴ R. S. Mo. (1845) p. 221, sec. 15; R. S. Mo. (1855) p. 358, sec. 15; G. S. Mo. (1866) p. 444, sec. 7; R. S. Mo. (1879) sec. 674; R. S. Mo. (1889) sec. 2401. See *Harris v. Sconce* (1896) 66 Mo. App. 345.

⁴⁵ *St. Louis Dairy Co. v. Sauer*, note 42 above.

⁴⁶ *Saline County v. Sappington* (1876) 64 Mo. 72.

⁴⁷ *St. Louis Dairy Co. v. Sauer*, note 42 above; *Hawks v. McGroarty* (1892) 110 Mo. 546, 19 S. W. 830.

⁴⁸ (1867) 40 Mo. 69, 75.

whereby he shall promise to pay to any other person, or his order, or unto bearer, any sum of money or property therein mentioned, shall import a consideration, and be due and payable as therein specified."⁴⁹ The law was amended in 1855 so that the word "instruments" replaced the word "notes," and the statute, substantially as amended has continued in effect to date.⁵⁰ The effect of the 1855 amendment was to broaden the scope of contracts which were to import consideration so as to extend it to writings other than negotiable notes.⁵¹

The law has been construed to mean that in an action on a sealed instrument, failure of consideration must be alleged in the pleadings, or consideration will be presumed. The effect of the statute was to abrogate the old common law rule that the seal conclusively imported consideration.⁵² This is a significant departure from the law of Blackstone's day, and placed sealed instruments in the same category with simple contracts as far as consideration was concerned.

A second procedural statute, which has had practically the same effect as the law which has just been considered, was first enacted in 1845. It provided, "Whenever a specialty or other written contract for the payment of money, or for the performance of a duty, shall be the foundation of an action or defense in whole or in part, or shall be given in evidence in any court without being pleaded, the proper party may prove the want or failure of the consideration, in whole or in part, of such specialty or other written contract."⁵³ The law, unmodified, continues in effect,⁵⁴ although subsequent legislation virtually has obliterated the distinction between specialties and other contracts. One significant feature of this statute is that it fails to

⁴⁹ R. S. Mo. (1835) p. 104, sec. 1; R. S. Mo. (1845) p. 189, sec. 1.

⁵⁰ R. S. Mo. (1855) p. 319, sec. 1; G. S. Mo. (1866) p. 398, sec. 6; R. S. Mo. (1879) sec. 663; R. S. Mo. (1889) sec. 2389; R. S. Mo. (1899) sec. 894; R. S. Mo. (1909) sec. 2774; R. S. Mo. (1919) sec. 2160.

⁵¹ *Hoffman v. Trust Co.* (1896) 68 Mo. App. 177.

⁵² *County of Montgomery v. Auchley* (1887) 92 Mo. 126, 4 S. W. 425; *Wulze v. Schaefer* (1889) 37 Mo. App. 551; *Greer v. Nutt* (1893) 54 Mo. App. 1.

⁵³ R. S. Mo. (1845) p. 832, sec. 19.

⁵⁴ R. S. Mo. (1855) p. 1290, sec. 24; G. S. Mo. (1866) p. 686, sec. 24; R. S. Mo. (1879) sec. 3725; R. S. Mo. (1889) sec. 2090; R. S. Mo. (1899) sec. 645; R. S. Mo. (1909) sec. 1974; R. S. Mo. (1919) sec. 1404.

include "property" in the same category with "money" and "duty." However, the omission is rendered unimportant, because the first law which was set forth makes specific reference to "property."

Speaking in the case of *Smith v. Busby*, decided in 1852, Judge Scott said, "At common law, a failure of the consideration of a bond, whether partial or total, was no defence to an action on the instrument. A partial or total failure of the consideration of a note might be used as a defence to an action. Our statute has now abolished all distinctions between bonds and notes in this respect, and a failure of consideration, in whole or in part, may be given in evidence to defeat or diminish the recovery in an action on the instrument."⁵⁵

Under this statute it has been held that courts of both law and equity have authority to inquire into the question of consideration, even though the instrument is under seal.⁵⁶

D. *Trend of the period*

After the middle of the nineteenth century it became clear that Missouri courts were construing the law of sealed instruments with great liberality, and that the seal was becoming less and less significant. In a case in which the validity of an insurance policy was questioned because the policy was not sealed, the court sustained the policy on the ground that the insurance company was not required by its charter to attach its common seal to insurance contracts.⁵⁷ In another case an action was brought to recover damages for the breach of an official indemnifying bond of a constable. The objection that the instrument was not under seal was held unavailing, the court taking the position that the form of the bond required by statute was not sealed and did not purport to be sealed "further than the word bond would import a seal."⁵⁸ This action was brought in 1872, and curiously enough the form to which the court referred was first adopted in 1807,⁵⁹ when the law was strictly enforced that

⁵⁵ 15 Mo. 387, 391.

⁵⁶ *Winter v. K. C. Cable Ry. Co.* (1897) 73 Mo. App. 173.

⁵⁷ *National Banking & Ins. Co. v. Knaup* (1874) 55 Mo. 154.

⁵⁸ *State ex rel. v. Dunn* (1875) 60 Mo. 64, 72.

⁵⁹ 1 Ter. Laws p. 143, sec. 5; R. S. Mo. (1825) p. 213, sec. 2; G. S. Mo. (1866) p. 167, sec. 2.

all bonds should be under seal. In recognizing a modification of the common law rule, in 1888, the Supreme Court held that if an agent of a corporation was authorized by resolution to execute an instrument, this would dispense with the necessity of affixing the corporate seal.⁶⁰

Judge Bliss once said, "We have been very liberal as to what constitutes a common-law seal, but have never dispensed with a seal in bonds and deeds, only as the statute substitutes a scrawl in lieu thereof. It might be very well, as has been done in some states, to dispense with seals altogether, but courts cannot so change the law, and those who desire the change must look to the law-making power."⁶¹

The St. Louis Court of Appeals expressed itself in no uncertain language in a case handed down in 1882. Judge Thompson said, "Private seals have long ceased to be of any value in the authentication of written instruments, and the rule which preserves the distinction between sealed and unsealed instruments, where so executed, is entirely technical and formal. But it is interwoven with our law of real property, and preserved in our statute law. We cannot, therefore, disregard it, and we must accordingly hold that the learned judge committed no error in refusing to admit this so-called deed in evidence."⁶²

At the time this decision was rendered, private seals were no more than the vestigial remains of the common law, carried forward into a new era characterized by its complex economic and social structure. Seals had long since passed their heyday, and soon were to be almost completely obliterated by statute.

III. 1893-1930

The act of 1893 was revolutionary in its nature. It provided, "The use of private seals in written contracts, conveyances of real estate, and all other instruments of writing heretofore required by law to be sealed (except the seals of corporations), is hereby abolished, but the addition of a private seal to any such instrument shall not in any manner affect its force, validity or

⁶⁰ Campbell v. Pope (1888) 96 Mo. 468.

⁶¹ State ex rel. v. Thompson (1872) 49 Mo. 188, 189.

⁶² Dickens v. Miller (1882) 12 Mo. App. 408, 409.

character, or in any way change the construction thereof.”⁶³ The law continues in effect.⁶⁴

Curiously enough, the first case which arose after the passage of this law, completely disregarded it. In *Arnett v. Mo. Pac. Ry. Co.*, heard before the Kansas City Court of Appeals in 1896, the court said, “Satisfaction may be accomplished, or shown, in two ways: One, as a matter of law, by a technical release (of a joint tortfeasor) under seal; and the other as a matter of fact. To constitute the former, there must be a technical release under seal, and when so executed it is conclusive on the party injured and will be deemed a satisfaction in law.”⁶⁵

However, when a similar case arose in 1912 before the same court, reference was made to the *Arnett* case, and the court concluded that the former case probably was decided before the trial court or counsel knew that the law had been changed. In the 1912 case, the court made specific reference to the statute and let it be understood that a seal did not any longer import consideration.⁶⁶

In a criminal case which arose four years after the law was enacted, the defendant was accused of forging a deed. He requested the court to instruct the jury that a deed was an instrument under seal. On appeal the Supreme Court held that such an instruction would have been erroneous and was properly refused, and specifically referred to the statute in so doing.⁶⁷

In the leading case of *Pullis v. Pullis Iron Co.*,⁶⁸ decided by the Supreme Court in 1900, the question arose as to the validity of a deed of a corporation, since the instrument was not under seal. It was admitted that the corporation had no seal, but the plaintiff contended that under the statutes of Missouri a corporation could not convey land unless the deed was sealed with the corporate seal. The court discussed the law of 1893 as it related to earlier legislation concerning conveyances of corporations, and concluded that since a corporation had power to adopt a seal, but

⁶³ Mo. Laws 1893, p. 117.

⁶⁴ R. S. Mo. (1899) sec. 893; R. S. Mo. (1909) sec. 2773; R. S. Mo. (1919) sec. 2159.

⁶⁵ 64 Mo. App. 368.

⁶⁶ Funk v. Kansas City (1912) 208 S. W. 840; accord, Judd v. Walker (1911) 158 Mo. App. 156, 133 S. W. 655.

⁶⁷ State v. Tobie (1897) 141 Mo. 547, 42 S. W. 1076.

⁶⁸ (1900) 157 Mo. 565, 57 S. W. 1095.

was not required to do so, the law should be construed to mean that whenever a corporation had a seal, it was necessary to affix it to a conveyance of real estate, but that whenever it had no seal, the deed would be effective as though it were the conveyance of an individual, within the meaning of the statute. A further qualification of the rule is that where a corporation has a seal and it is not affixed to the deed, the deed is insufficient to convey the legal title of the corporation, but such a conveyance will be upheld in equity provided that the grantee already has taken possession of the land.⁶⁹

In a case in which the defendant corporation sought to be relieved from the liability on a judicial bond on the ground that it lacked the corporate seal or was not ratified under seal, Judge Trimble of the Kansas City Court of Appeals held that "The whole truth of the matter is that the distinction between sealed and unsealed instruments has been done away with to such an extent that a judicial bond is no different from any other simple contract except, of course, that where it is a statutory bond, it must be given in compliance with, and under the circumstances specified in, the statute authorizing it. But, so far as the form of its execution is concerned and the power of the corporation to thereafter ratify its unauthorized execution, there is no difference between a bond and any other simple contract. Hence, we are of the opinion that a defendant cannot escape liability on the ground that the bond in question lacked the corporate seal or was not ratified under a seal."⁷⁰

It has been held that even though a corporation has a seal, contrary to the rule in regard to real property, a mortgage of personal property by a corporation need not be under seal, since at common law such a mortgage was not a specialty.⁷¹ But the seal of a corporation makes the instrument *prima facie* evidence of what it purports to be, while in the absence of the seal, proof otherwise than by the instrument itself is required to establish

⁶⁹ *Albers v. Paving & Crusher Co.* (1916) 196 Mo. App. 265, 194 S. W. 61.

⁷⁰ *State ex rel. v. Parke-Davis & Co.* (1915) 191 Mo. App. 219, 227, 177 S. W. 1070. A detailed history of the law of corporate seals in Missouri appears in 10 Mo. LAW BULL. 59.

⁷¹ *Strop v. Hughes* (1907) 123 Mo. App. 544, 101 S. W. 149; *Strop v. Hughes* (1907) 123 Mo. App. 547, 101 S. W. 146.

the execution thereof.⁷² The rule is that the fact that a corporate seal does not appear to the contract is not fatal.⁷³

An action was brought on a quitclaim deed in the case of *Bosley & Bro. v. Bosley*.⁷⁴ The deed was under seal, but was not supported by any real consideration. It was contended that the defendant was estopped to deny the want of consideration because a seal was affixed to his signature, since this conclusively imported a consideration. The court held that "Whatever may have been the rule under the ancient common law, it is now . . . well settled that in such proceedings as this courts of equity, at least, will go behind the seal and inquire into the matter of consideration. . . . But in addition to this our statute . . . has abolished the use of private seals in written contracts, except only as to seals of corporations, and they are of no further consequence. Whether such private seals be affixed to an instrument or not they do not 'in any manner affect its force, validity or character, or in any way change the construction thereof.'"

In a recent case the question raised was whether an undisclosed principal could be held liable for a breach of warranty made by the agent in a deed executed in the latter's own name. The court said that "it is the well-established common-law doctrine that an action can be maintained upon a sealed contract only against those whose names appear therein; and hence the general rule is that an undisclosed principal cannot be held liable upon a contract under seal executed by an agent in his own name. . . . From this it necessarily followed that conveyances of real estate, being sealed instruments, came within the rule; and an undisclosed principal could not be liable for the breach of a covenant of warranty contained in a deed executed by an agent in his own name." But the court pointed out that the distinction which the common law made as to the liability of the principal in sealed and unsealed instruments had been abolished in Missouri by statute. Accordingly it was held that a principal was liable for a breach of warranty by the agent.⁷⁵

⁷² *Sinclair Coal Co. v. Mining Co.* (Mo. App., 1919) 207 S. W. 266.

⁷³ *Stevens v. Knights of Modern Maccabees* (1910) 153 Mo. App. 196, 132 S. W. 757.

⁷⁴ (1900) 85 Mo. App. 424, 428. See *Mueninghaus v. James* (Mo. 1930) 24 S. W. (2d) 1017.

⁷⁵ *Donner v. Whitecotton* (1919) 201 Mo. App. 443, 212 S. W. 378.

The effect of the law of 1893 and of the cases decided under the law has been to increase the responsibility and the liability of classes of persons, who before the act, continually sought the refuge of a seal. The law is in harmony with the age, and the benefit derived from it has been great.

IV. CONCLUSION

The several states of the United States may be classified in three groups as regards the law of sealed instruments. In the first are those states that adhere rather strictly to the common law. These states have retained specialties although they have relaxed the hard and fast rule as to the common law sealing.⁷⁶ The second group includes Missouri and other states, in which the law of private seals has been greatly modified to provide for a large increase in the kinds of instruments that are valid without seals, although for certain purposes, generally in the conveyances of corporations, the use of seals is required by law.⁷⁷ The states in the third group are those in which laws have been enacted that in substance have abolished the distinction between sealed and unsealed instruments in all instances where a private seal was required at common law.⁷⁸

The trend of legislation in the United States and the tendency of the Missouri courts are in the direction of the entire elimination of the private seal. Its origin is historical, its use traditional, its value insignificant. In Missouri, it seems that the seal is essential only for the transfer of real estate by a corporation which has a seal. If the corporation has no seal, it may dispose of its real estate by a deed not under seal. As a result of this distinction, corporations which possess seals and deal in real estate, run a risk of having conveyances set aside when they would be upheld if the corporations were without seals. In the light of Missouri decisions, for a corporation to own a seal is a

⁷⁶ Ga. Code (1926) sec. 4219; Cons. Laws N. Y. (Cahill, 1923) c. 23 secs. 43 and 44; Wis. Stat. (1927) sec. 235.17; R. S. Ill. (Cahill, 1929) c. 29 sec. 1, c. 30 sec. 47.

⁷⁷ R. S. Kan. (1923) c. 16 sec. 106, c. 17 sec. 60; G. S. Minn. (1923) secs. 6933, 7447:3, 7481; W. Va. Code Ann. (Barnes, 1923) c. 13 sec. 15, c. 72 secs. 25, 26, 27, c. 73 sec. 5.

⁷⁸ Comp. Laws Colo. (1921) sec. 4883; Iowa Code (1924) sec. 9439; Gen. Laws R. I. (1923) secs. 3017, 4270, 4278; Comp. Stats. Wash. (Remington, 1922) sec. 10556.

liability rather than an asset. Furthermore, while mortgages of real estate by corporations possessing seals, but failing to affix them to such mortgages, are subject to attack, the same corporations can make chattel mortgages that are binding even in the absence of seals. And finally, it seems that the Missouri courts, particularly equity courts, have made the greatest efforts to sustain conveyances which according to statute law would seem to be invalid for want of a seal. Any single factor here set forth should cause the Legislature to consider the advisability of abandoning entirely the use of private seals in Missouri, and all of the factors considered together should make the decision of the Legislature a question on which no reasonable man would have a doubt.