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THE STATUTE OF USES AND SOME OF ITS IMPORTANT EFFECTS

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In the early part of the sixteenth century in England there existed a practice on the part of landowners of conveying their land for the use of someone other than the feoffee. The procedure generally followed consisted of a transfer of the legal title to a feoffee and a promise by him that he would allow whomever the feoffor indicated to have the possession and enjoyment of the land. The person entitled under this agreement to the benefits of the land was known as the "cestui qui use" and was often the feoffor himself. It is commonly believed that these uses first started in the fourteenth century as a means of avoiding prohibitions against the ownership of land by religious organizations. An owner of land who wanted a monastery to have it found that he could accomplish this purpose, at least to some extent, by enfeoffing a neighbor with the land and exacting a promise from him that it be held for the use of the monastery. Landowners soon found that they could avoid other restrictions and burdens on titles to land by means of uses. A landowner could save his heirs from the feudal incidents of descent by conveying to a friend for the use of his heirs, he could get around his lack of power to devise real property by conveying to the use of persons that he would designate in his will, and he could escape forfeiture for treason by enfeoffing another to his own use before he began a treasonable escapade that might lead to forfeiture. The feudal burdens and disabilities related only to the holders of legal title. For this reason the rights under a use could not be forfeited nor could uses be charged with other feudal burdens incident to the legal title.

Uses were not recognized by the law courts and so the cestui qui use could not enforce his rights in courts of law, but had to depend on the good faith of the feoffee. When these uses were first made for the benefit of religious organizations, they were enforced by exercise of the Church's powerful hold on the minds of the people. A properly injected threat from Church officials was in most cases sufficient to curb an inclination to ignore a promise made to hold land for the benefit of a Church or monastery. There was no real

means of enforcing uses made for other purposes until the Chancellor, as keeper of the King's conscience, recognized that it was unjust for a feoffee who had promised to hold land for the benefit of another not to keep that promise. It gradually became established procedure for a cestui qui use to appeal to the Court of Chancery for enforcement of his use and for this Court to apply the threat of imprisonment against the feoffee to uses to force him to keep his promise. As uses became even more popular as means of conveying the benefits of land. By 1535 much of the land in England was held for the use of someone other than the holder of the legal title. The Chancellor by this time had reached the position of enforcing uses against all but purchasers of the land for value and without notice of the promise. Since these promises could be oral and even secret, it is obvious that they caused much uncertainty as to titles to land.

In order to restore the sources of revenue lost by avoidance of feudal obligations and to prevent further confusion resulting from secret uses King Henry VIII got the statute of 27 Henry VIII enacted in 1536. This act, commonly called the Statute of Uses, provided in substance that when A is seised to the use of B, then B should be deemed the owner in law with seisin and possession of a legal interest of the same size as that given for his use. It is important to notice that the Statute did not attempt to prevent the creation of uses or to change the methods of creating them. It simply provided that when a use was created, the seisin and possession would pass to the cestui qui use. The reasons for the enactment of the Statute are clear. The Statute itself is simple and easily understood. Nevertheless when applied in conjunction with established laws concerning real property, the Statute of Uses resulted in many important and frequently confusing consequences.

EFFECT OF THE STATUTE ON THE TRANSFER OF LEGAL INTERESTS

Until 1536 possessory freehold interests could be transferred directly only by feoffment. This required livery of seisin, which involved a symbolic delivery of possession with both parties actually on the land. A term of years could be transferred by an oral lease and entry by the lessee, and the non-possessory interests of reversions and vested remainders could be passed by

sealed deeds of grant. The device of lease and release was a possibility before the Statute and did allow a transfer of a possessory fee without livery of seisin. In this transaction the transferror would first lease to the transferee for a term of years; then, after the transferee had reduced the transferror's interest to a non-possessory reversion by entry on the land under the lease, the transferror could release his reversion to the transferee by deed. Notice however that it was necessary for the transferee to enter by right of his lease before the transferror could be in a position to make a release. Until the transferee entered, the transferror continued to have a possessory freehold interest which could not be transferred by deed. Hence it appears that before the Statute a conveyance of a possessory freehold required entry on the land by both the parties, as in feoffment, or at least entry by the transferee, as in lease and release. Two other methods of conveyance, fine and recovery, were used only in certain instances and were cumbersome and time consuming. In general, a conveyance before 1536 required actual delivery of possession to a transferee.

The Statute did not displace any of the existing methods of conveying land. It was still possible after the Statute to transfer land by feoffment or lease and release, but where these methods were used, it was necessary to guard against resulting uses. Before the Statute it had been so common for the feoffor to keep the use for himself while enfeoffing another with the land that it was presumed that in any conveyance the use returned to the feoffor unless it was specifically mentioned or unless consideration had been given. This presumption continued after the Statute and in so far as the use came back to the transferror, the Statute would operate on the resulting use to give the transferror a legal interest. This could be prevented by stating who should have the use.

After the Statute it became possible to transfer the legal estate of the transferror by the appropriate common law method to another to the use of the transferee. After 1536 the Statute of Uses would act on this transcation to carry the seisin given to the transferee to uses on to the cestui qui use and vest him with legal title. For instance, if A should enfeoff B and his heirs to the use of C and his heirs, C would immediately, by force of the Statute, have legal title in fee simple and B would

have nothing. Before the Statute B would have had the legal title and C only the equitable title, a right in Chancery against B. Another example is the case in which A enfeoffs B and his heirs to the use of A for life, remainder to C and his heirs. Here the Statute would put a legal estate for life in A with a legal interest similar to a remainder in C, while B would again have no interest.

Another method of transferring the legal title produced by the Statute was based on the practice of the owner promising to stand seised to the use of another without transfer of the legal title to anyone. It had been common practice before the Statute for one person to "bargain and sell" the use directly to another. This was in effect a promise by the owner that he would stand seised to the use of the other. The Chancellor would enforce such promises only if it could be shown that there was consideration for the owner's promise. While it had been easy to charge the conscience of a feoffee to uses with the obligation to carry out his promise, the Chancellor felt that unless the owner had been paid, he should not be forced to keep a promise to make a gift of his land. Before 1536 if A were to bargain and sell his land to B, A would retain his legal fee and B would have only the personal right against A in the Court of Chancery. After the Statute a valid use arising from a bargain and sale transaction would be changed to a corresponding legal estate in the grantee, and B would immediately have title to the legal interest corresponding to the use sold.

A third type of conveyance, which developed after the Statute, was the so-called "covenant to stand seised." This differs from a bargain and sale only in that the promise must be by a sealed instrument and the consideration must be relationship by blood or marriage, rather than money.

The new methods of bargain and sale and covenant to stand seised enabled an owner of land to pass a possessory freehold interest in land without an actual delivery of possession. The Statute itself acted to transfer the legal title and possession according to the promise without any further action by the parties.

To preserve the secrecy of their conveyances and to avoid the fees required by the Statute of Enrollments, which was enacted shortly after the Statute of

Uses, landowners developed an additional technique for conveying land, combining one of the new methods with one of the old. This consisted of a bargain and sale for a term of years followed immediately by a deed of release. Here the Statute of Uses would carry the legal possession of the term directly to the transferee without the necessity for an entry, and the release would be effective immediately. The Statute of Enrollments required the enrollment only of a bargain and sale of a freehold interest. Here the bargain and sale was only for a term of years and the freehold reversion was transferred by a deed of release; hence the Statute of Enrollments was neatly evaded.

EFFECT OF THE STATUTES ON THE CREATION OF FUTURE INTEREST:

The only non-possessory freehold interest that an owner of land could create in another before 1536 was a remainder. A remainder could be either vested or contingent, a vested remainder being a present estate in the land with the right to possession postponed until a future time and a contingent remainder being merely a possibility of becoming a vested estate. A remainder is contingent either when the identity of its owner remains uncertain or where the right to possession depends upon the happening of a condition other than the expiration of the preceding estate.

A limitation must have certain qualities to create a remainder. It is necessary that a preceding estate of freehold be created at the same time as the remainder is created and that the remainder become possessory on the expiration of the preceding estate. As a general rule it had been impossible to create a freehold estate to become possessory in the future, since freehold interests could not be conveyed without an immediate delivery of possession. However, the courts reasoned that if a possessory freehold were created, the feoffor could give seisin to the possessory tenant not only for the possessory interest conveyed to him but also for non-possessory interests for others. Hence it was possible for a landowner to to create a present estate of freehold, such as a life estate, and at the same time provide for another estate to become possessory on the termination of the first, tenant not only for his estate, but also for the remainder. On the expiration of the life estate the seisin would "remain" for the holder of the second estate. Since only the transferee of a freehold estate could receive seisin, which is the legal possession of a freehold,

the preceding estate was necessarily at least a life estate. What might be called an exception to this rule existed in the creation of a vested remainder where a term of years was given to the first tenant and livery of seisin was made to him as agent for the remainderman. In this case the seisin went directly to the remainderman, and the tenant held his term under him. Because of the rule that seisin had to be in someone at all times in order that the feudal obligations connected with seisin would be enforceable, it was necessary also that the second estate become possessory immediately on the termination of the first. If there were a gap in time between possession of the two estates, the seisin of the land would automatically go to the owner of the fee and could be transferred from him only by another physical delivery of possession. If by the terms of the limitation the second estate could not become possessory until a time after the expiration of the first, the seisin transferred by the livery would be interrupted and the limitation of the second estate would be invalid. Another restriction on the creation of remainders was that they could not be made to take effect in derogation of the proceding estate. The courts reasoned that to the extent that the seisin was given to one it could not be shifted to another by force of the original livery. Consequently a limitation that would cut short a prior estate and shift it to another was void. Thus it appears that before 1536 the only estate that could be created in another to become possessory in the future was a remainder, that to create a remainder a present estate must be created at the same time, and if the remainder is contingent the present estate must be a freehold; that it must be limited to become possessory at the end of the preceding estate, and that it cannot be limited to become possessory in derogation of the preceding estate.

Since uses before the Statute were equitable interests, separate from the legal possession or seisin of the land, they could be created free from the restrictions on transfers of seisin. When the Statute of Uses transformed uses to legal estates, it made possible the creation of legal non-possessory or "future" interests in land of the same types that had been enforceable only in equity before 1536.

Before the Statute there were two main types of non-possessory interests created by uses. Springing uses existed in cases in which an owner of land conveyed the use

of his land to another, the use to become possessory at a future date or on the happening of a condition. The Chancellor would enforce such a use against the transferror when the time came for the use to become possessory. The second type of future equitable interest was called a shifting use. Here the use was made to shift from the one to whom it was first given over to another on the happening of a condition. An example of this is a bargain and sale by A to B and his heirs, but if a certain event occurs, to C and his heirs. The Chancellor would enforce the use of B against A until the condition happened; then he would enforce C's interest.

After 1536 the Statute made limitations which could not be remainders effective as springing and shifting uses. Thus if A were to bargain and sell his land to B, to become possessory on B's marriage, A would retain the fee until the condition happened, at which time the Statute would take the seisin from A and put it in B. Since the Statute itself acts to transfer possession of the land when the use becomes possessory, it is no longer necessary for A to make a physical transfer of possession. In the example of a shifting use, where A bargains and sells to B and his heirs, but on condition to C and his heirs, the Statute would put the seisin in B immediately on the execution of the transaction. On the happening of the condition it would take the possession and legal title from B or his heirs and shift it to C and his heirs. By making springing uses legal estates, the Statute made possible a grant of a legal future interest without a preceding estate of any kind, and by acting on shifting uses it allowed a grantor to provide that a granted estate could be terminated by condition and shifted to another person.