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# CONTRACTS - ASSIGNMENT- UNSEALED ASSIGNMENT OF SEALED INSTRUMENT

CONTRACTS — ASSIGNMENT — UNSEALED ASSIGNMENT OF SEALED INSTRUMENT — Defendants sold and conveyed their grocery business by a bill of sale under seal and covenanted not to engage in a like business within a one-mile radius for a period of three years. The purchaser assigned the bill of sale by an instrument not under seal to the plaintiffs. When the defendants opened a competing business in violation of their agreement, the plaintiffs filed a bill in equity asking that the defendants be restrained. *Held*, that an injunction should issue, notwithstanding the bill of sale was sealed while the assignment was not. *Adamowicz v. Iwanicki*, (Mass. 1934) 190 N. E. 711.

The Massachusetts court early laid down the rule that "an assignment of an instrument under seal must be by deed." [1] The reason given for this statement was that the instrument of transfer must be of "as high a nature" as the instrument transferred. The rule has been often repeated in that state,[2] but it seems to have no basis either on principle or authority [3] and it has often gotten the court into difficulty.[4] In other jurisdictions, parol assignments of choses in action under seal have been almost universally upheld.[5] Most of the Massachusetts cases which have laid down this rule involve the question whether an

[1] Wood v. Partridge, 11 Mass. 488 (1814). At one time it was even doubted by the court whether an unsealed promise in writing could be assigned so as to convey an equitable interest to the assignee without a deed. Perkins v. Parker, 1 Mass. 117 (1804).

[2] Brewer v. Dyer, 7 Cush. (61 Mass.) 337 (1851); Bridgham v. Tileston, 5 Allen (87 Mass.) 371 (1862); Sanders v. Partridge, 108 Mass. 556 (1871). *Cf.* Currier v. Howard, 14 Gray (80 Mass.) 511 (1860).

[3] 1 WILLISTON, CONTRACTS, sec. 430 (1931).

[4] For example, if this principle were literally followed, a judgment or a debt of record could never be assigned so as to entitle the assignee to the aid of a common-law court. This difficulty arose in Dunn v. Snell, 15 Mass. 481 (1819), where Chief Justice Parker attempted to draw a distinction between such assignments as pass the legal title, and such as merely vest in the assignee an interest, which courts of law in the exercise of equitable jurisdiction will take notice of and protect.

[5] Sealed contract to deliver hay, Moore v. Waddle, 34 Cal. 145 (1867); sealed promissory note, Dawson v. Coles, 16 Johns. (N. Y.) 51 (1819); sealed land contract, Durst v. Swift, 11 Tex. 273 (1854); bond for payment of money, Allen v. Pancoast, 20 N. J. L. 68 (1843); sheriff's bond, Morange v. Edwards, 1 E. D. Smith (N. Y.) 414 (1852). But see Landry v. Sivret, 39 N. B. 356 (1909), to the effect that the assignment of a replevin bond must be under seal.

"A right can be effectively assigned either orally or by a writing." 1 CONTRACTS RESTATEMENT, sec. 157 (1932).

assignee of a lease can sue in his own name on the lease covenants,[6] and Professor Williston thinks that the court failed to distinguish assignments of ordinary contract from assignments of covenants running with the land.[7] To constitute a valid assignment of a chose in action, no particular form of words or instrument is necessary.[8] An oral assignment for value is sufficient to give the assignee a legal power of attorney to collect the claim and to create an equitable right as against the assignor and anyone standing in no better position.[9] The instant case did not expressly repudiate the old Massachusetts doctrine but rather said that since the seal was unnecessary and without effect upon the rights sought to be enforced,[10] it could be treated as surplusage in respect to the validity of an assignment not under seal. And even though the plaintiffs might not be able to sue at law, the court said that they were at least equitable assignees of the bill of sale and could enforce their rights in equity.[11] This view corresponds with that taken by the court in the past.[12] *Quære* as to what the court would do if the action had been brought in law for damages for breach of the contract.

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[6] It was decided in Sanders v. Partridge, 108 Mass. 556 (1871), that while an assignment of a lease under seal, as a contract, must be by deed, yet as an assignment of an estate it may be by any instrument sufficient to satisfy the statute of frauds.

[7] "It is possible that the confusion as to the necessity of a sealed assignment arose from a failure to distinguish assignments of ordinary covenants from assignments running with the land. In order that the benefit of a covenant shall run with the land, it is essential that title to the land be transferred and a larger estate than a leasehold can only be transferred by deed. Consequently, without a deed, it may be said that the covenant cannot be assigned, so as to make the assignee entitled at law to sue in his own name upon it. . . . Moreover, even here it is not the assignment of the covenant which must be under seal, but the deed conveying the estate." 1 WILLISTON, CONTRACTS, sec. 430, p. 808 (1931).

It is almost universally held that while a writing is necessary to satisfy the statute of frauds where the lease is for more than a year, a writing without a seal is enough although the lease to be assigned is a sealed instrument. See 2 AMERICAN & ENG. ENCYC. OF LAW, 2d ed., p. 1054 (1896).

[8] ADDISON, CONTRACTS, 11th ed., 224 (1911).

[9] 1 PARSONS, CONTRACTS, 9th ed., p. 249 (1904). See Button v. Traders' Trust Co., 157 Wash. 625, 289 Pac. 1010 (1930); Wiggins v. McDonald, 18 Cal. 126 (1861).

Yet a seal on an assignment may be of some importance today. "The right acquired by the assignee under a gratuitous assignment is terminated by assignor's death, by a subsequent assignment by assignor, or by notification from the assignor received by the assignee or by the obligor, unless (a) the assignment is in writing either under seal or. . . ." 1 CONTRACTS RESTATEMENT, sec. 158 (1932).

[10] The seal would not be mere surplusage if it were necessary to extend the period of limitations. Clarke v. Pierce, 215 Mass. 552, 102 N. E. 1094 (1913).

[11] Similarly in Bridgham v. Tileston, 5 Allen (87 Mass.) 371 (1862), the court said that while a lease under seal could not be validly assigned at law except by a writing under seal, the purchaser of the lease by a written transfer not under seal became its equitable owner.

[12] Dunn v. Snell, 15 Mass. 481 (1819); Dennis v. Twitchell, 10 Metc. (51 Mass.) 180 (1845).