CHAPTER XV.

SIGNING.

§ 233. Signing not essential at common law.—The "execution" of a conveyance may include in its broad sense all the formalities of signing, sealing, attestation, acknowledgment and delivery; and in a few states all these are necessary to constitute the execution.

Sealing and delivery were the important elements in the execution of a deed at common law after the Norman Conquest, and signing was not required for its validity.[1]

It is often stated, as if it were a matter as to which no doubt has existed, that the statute of frauds[2] required deeds to be signed,[3] but the true view seems to be that the statute did not apply to instruments under seal, and that it is not because of that statute that deeds are signed in addition to the other formalities of execution.[4]

[1] Shep. Touch., p. 56.

[2] See 29 Car. II, c. 3 (1677).

[3] See, for example, 2 Bl. Comm. 306.

[4] Aveline v. Whisson, 4 M. & G. 801; 43 Eng. C. L. 414; Taunton v. Pepler, 6 Madd. 166; Challis R. Prop. 327; Shep. Touch. 56, note 24; Parks v. Hazlerigg, 7 Blackf. (Ind.) 536, 585; 43 Am. Dec. 106.

§ 234. **Now generally necessary in the United States.**—However this may be, the laws of most of the states require expressly that all deeds conveying real estate shall be signed by the party making them, or by his agent duly constituted.

While there may still be some states in which sealing and delivery will be considered a sufficient execution without signing,[5] it could not be generally so held; and under most of our statutes it would undoubtedly be held that an unsigned instrument, though delivered, is a nullity. For example: A mortgage attested, acknowledged, delivered and recorded, but not signed, is not merely defective but void, where the statute requires all conveyances to be "in writing, sealed by the grantor, and subscribed with his own hand * * * or by his attorney," and a subsequent grantee of the premises, though he has assumed and agreed to pay the mortgage, is not estopped from claiming that the incumbrance has no existence in fact.[6] And the naming of one as grantor in a deed will not make it his deed unless it is signed by him (and sealed where necessary).[7]

§ 235. **Place of signature.**—While it is customary, and is the better practice, to sign the deed at its end, it seems that it is not essential (under statutes which provide simply for "signing") that the signature should be placed there if it appears in the body of the instrument, especially if the deed was written by the grantor himself who has inserted his name in it,[8] or even if the deed was written by another, with the name so inserted at the

[5] Sicard v. Davis, 6 Pet. 124.

[6] Goodman v. Randall, 44 Conn. 321. And see, Jones v. Gurlie, 61 Miss. 423; Boothroyd v. Engles, 23 Mich. 19; Miller v. Ruble, 107 Pa. St. 395. But see, contra, Martin v. Nixon, 92 Mo. 26; 4 S. W. 503.

[7] Adams v. Medsker, 25 W. Va. 127; Thomas v. Caldwell, 50 Ill. 138.

[8] Saunders v. Hackney, 10 Lea (78 Tenn.) 194; Smith v. Howell, 11 N. J. Eq. 349, 354.

grantor's direction, and acknowledged by him and delivered as his deed.[9]

The statutes of many states, however, require the instrument to be "subscribed,"[10] and under such a provision the deed should be signed at its end or bottom, for, though the question has not often arisen as to deeds, it has been often held in cases where the question has been raised as to other instruments that there is a difference between "signing" and "subscribing."[11]

§ 236. **Form of signature — Signing by mark.**—By "signing" is generally understood the writing of one's name by himself, but there may be a valid signing without the grantor's name being written either by himself or another.

The primary meaning of the word sign is mark (*signum*), and the statutory requirement as to signing is made for the purpose of securing some visible manifestation of the intention of the grantor to be bound.

The best way to signify this intention is that usually adopted by the grantor in himself writing his name in full, but he may adopt any "mark" as his signature,[12] and (in the absence of a statute providing otherwise) whether he can write his name or not.[13]

It is customary where a mark is used, to write near the device adopted, or made by the grantor, the words "his mark," but this is not necessary,[14] nor is it necessary that a signing by mark should be specially attested by

[9] Newton v. Emerson, 66 Texas 142; 18 S. W. 348.

[10] And a few that it shall be signed at its foot: Winston v. Hodges, 1893, 102 Ala. 304; 15 So. 528.

[11] Stone v. Marvel, 45 N. H. 481; Davis v. Shields, 26 Wend. 341; James v. Patten, 6 N. Y. 9. But see Cal. Canneries Co. v. Scatena, 1897, 117 Cal. 447; 49 Pac. 462.

[12] Devereux v. McMahon, 1891, 108 N. C. 134; 12 S. E. 902; 12 L. R. A. 205; Truman v. Lore, 14 Ohio St. 144.

[13] Mackay v. Easton, 19 Wall. 619, 631.

[14] Sellers v. Sellers, 98 N. C. 13; 3 S. E. 917.

witnesses—unless witnesses to deeds otherwise signed are required.[15]

Witnesses are required by the statutes of some states where the signing is by mark. Under such a statute it has been held that the signature by mark is not invalid, because not witnessed, but that it is not prima facie a signature unless witnessed, though it may be shown to be such.[16]

When not required by statute witnesses may be desirable where the signing is by an ordinary cross, which is not as easily identified as is the usual signature by name—the signature by mark may then be proved by the witness, and in practice it is usual to have witnesses for this reason, especially if the instrument is not acknowledged. Where, however, an instrument is properly acknowledged, the grantor must be regarded as having adopted the signature—whether mark or name—and as the acknowledgment is prima facie evidence of execution,[17] witnesses are of little advantage in most cases.[18]

It is to be noted that the matter of signing by mark is regulated by statute in many states, and in some a signature by mark is allowable only when the signer is unable to write.[19]

§ 237. **Form of signature—Part of name—Initials.**—The signing of an instrument by the Christian name alone, where there is no doubt as to the identity of the person and of his intention to be bound, has been con-

[15] Meazles v. Martin, 1892, 93 Ky. 50; 18 S. W. 1028; Finley v. Prescott, 1899, 104 Wis. 614; 80 N. W. 930; 47 L. R. A. 695.

[16] Miller ex parte, 49 Ark. 18; 3 S. W. 883; Davis v. Semmes, 51 Ark. 48; 9 S. W. 434.

[17] See post, § 259.

[18] Mackay v. Easton, 19 Wall. 619, 632; Meazles v. Martin, 1892, 93 Ky. 50; 18 S. W. 1028.

[19] See Re Guilfoyle, 1892, 96 Cal. 598; 31 Pac. 553; 22 L. R. A. 370.

sidered a sufficient signing,[20] as has been the signing by initials alone.[21] And where the grantor's name appears in one and the same form in both the body of the deed and in the certificate of acknowledgment, but is signed in a different form, it has been held in many cases that such a variance does not invalidate the conveyance,[22] but, on the other hand, there is authority for the view that a deed so executed appears to be signed and acknowledged by different persons, and that the record of such an instrument is not admissible without further proof of the identity of the person signing and acknowledging.[23]

In the preparation of conveyances such variations should be avoided; and where, in the examination of titles, they are found, as well as where the signatures are irregular or unusual (as by part of the name, etc.), they should, to avoid all question, be corrected by a new conveyance, if possible, or by obtaining proof that the substituted or irregular signing was intended by the signer to bind him.

§ 238. Signing by another for grantor.—It is not generally necessary that the grantor should personally sign his deed, for if it be signed by another person for him, under his direction and in his presence, it is generally regarded as effective as if actually signed by him.[24]

In these cases the distinction between deeds so executed and those executed by an attorney—who must be authorized by an instrument equal in dignity to the instrument

[20] Zann v. Haller, 71 Ind. 136; 36 Am. R. 193; Knox's Estate, 131 Pa. St. 220; 18 Atl. 1021; 6 L. R. A. 353; an interesting case discussing signatures.

[21] Sanborn v. Flagler, 9 Allen 474; Salmon &c. Mfg. Co. v. Goddard, 14 How. 446.

[22] Hill v. Banks, 1891, 61 Conn. 25; 23 Atl. 712; Middleton v. Findla, 25 Cal. 76; Houx v. Batteen, 68 Mo. 84; Zann v. Haller, 71 Ind. 136.

[23] Boothroyd v. Engles, 23 Mich. 19.

[24] Gardner v. Gardner, 5 Cush. 483; 52 Am. Dec. 740; Middlebrook v. Barefoot, 121 Ala. 642; 25 So. 102; Lewis v. Watson, 1892, 98 Ala. 479; 13 So. 570; 39 Am. St. R. 82; 22 L. R. A. 297.

to be executed—is recognized. If the disposing capacity is present, the mere fact that the grantor, for any reason, uses the hand of another instead of his own to perform the physical act of signing, makes the signing none the less his act. "To hold otherwise would be to decide that a person having a clear mind and full capacity, but through physical inability incapable of making a mark, could never make a conveyance or execute a deed, for the same incapacity to sign and seal the principal deed would prevent him from executing the letter of attorney under seal." [25]

And even if the grantor is not present when his signature is affixed by another he may afterward adopt the signing by acknowledging the deed as his own, although no previous authority had been given the signer.[26]

§ 239. **Signing under power of attorney.** — A deed signed by another person than the grantor is, however, usually signed by him by virtue of a "power of attorney."

In such a case the deed, to follow the most generally approved form, should contain only the name of the principal till the testimonium clause is reached, being in fact of the same form as an ordinary deed to be signed by the principal. The testimonium clause may then be:

"In witness whereof the said A B has, by his attorney in fact, C D, hereunto set his hand (and seal, if needed) this ——— day ———, etc.

(Witnesses if needed.) A B. [Seal]
By C D, his attorney in fact."

[25] Gardner v. Gardner, 5 Cush. 483; 52 Am. Dec. 740. While this is the generally accepted view, the construction placed on particular statutes in some cases will probably prevent it from being universally accepted: Wallace v. McCullough, 1 Rich. Eq. (S. C.) 426; Simpson v. Commonwealth, 89 Ky. 412; 12 S. W. 630.

[26] Blaisdell v. Leach, 1894, 101 Cal. 405; 35 Pac. 1019; 40 Am. St. R. 65; Bartlett v. Drake, 100 Mass. 174; 97 Am. Dec. 92; 1 Am. R. 101; O'Donnell v. Kelliher, 1895, 62 Ill. App. 641; Nye v. Lowry, 82 Ind. 316.

It is the usage in many localities to insert in the deed a brief recital as to the power of attorney, its place of record, etc., which is convenient for purposes of reference.[27]

The deed should be in the name of the principal and be executed as his deed by the attorney,[28] and not as the deed of the attorney.[29] And where the deed is executed as the deed of the attorney parol evidence of an intention to bind the principal has been held inadmissible.[30]

To avoid all question as to the form of signing, the attorney should sign both the principal's name and his own, and not merely the principal's,[31] though where the fact of the deeds being executed by the attorney is stated in the body of the deed, a signing by him of the principal's name alone has been held enough.[32] And it should be noted also that the strictness of the older general rules, as to the form of the deed and the signature by an attorney, is modified by statute in several states—the general purport of such statutes being that it is enough if it appears from the deed as a whole, or from the signature, that the conveyance is that of the principal and not that of the attorney.[33]

While there is thus a generally approved form of deed for one acting under a power of attorney, still, even in the absence of such statutes as those just referred to, it has been held that no precise order of words or form of expression is indispensable if it appears from the face of

[27] The testimonium clause will, of course, be varied to suit the form of deed used. See above, pp. 23 and 25.

[28] Elwell v. Shaw, 16 Mass. 42.

[29] Williams v. Paine, 1897, 169 U. S. 55, 77; Clarke v. Courtney, 5 Pet. 319; Bassett v. Hawk, 114 Pa. St. 502; 8 Atl. 18.

[30] Hackney v. Butts, 41 Ark. 393. See Salem Bank v. White, 1895, 159 Ill. 136, 143; 42 N. E. 312; Townsend v. Hubbard, 4 Hill 351.

[31] Wood v. Goodridge, 6 Cush. 117.

[32] Devinney v. Reynolds, 1 Watts & S. 328.

[33] See Ohio R. S., §§ 4109, 4110; Penn. B. P. Dig., 12th ed., p. 152, § 8; Tenn. Shan. Code, § 3679—McCreary v. McCorkle, 1899, 54 S. W. 53; Va., § 2416; W. Va., ch. 71, § 3.

the instrument who is intended to be bound, and if the mode of execution be such as to bind him,[84] and a deed, for example, purporting at its beginning to be the deed of "A and B, of the first part," with covenants by the parties of the first part, concluding: "In witness whereof said parties of the first part have hereunto set their hands and seals.

(Signed.) M N (Seal) and X Y (Seal),
Attorneys in part for A and B,"

has been held to be the deed of A and B.[85]

§ 240. **Execution of conveyance by corporation.**—As a corporation acts through agents, the general principles applicable to conveyances by an attorney apply to conveyances made on behalf of a corporation.

The corporation is mentioned as grantor, mortgagor or party of the first part, and the testimonium clause may be:

"In witness whereof, the said The M N Company has hereunto caused its corporate name to be signed and its corporate seal to be affixed, and the same to be attested by the signatures of O P, its president, and X Y, its secretary, thereunto duly authorized, on this — day of ——, 18—, etc.

(Witnesses if needed.)

(Corp. Seal.) The M N Company,
by O P, its President,
and X Y, its Secretary.

Or, the conveyance is often signed as follows:

"The M N Company,
(Corp. Seal.) by O P, its President.
Attest, X Y, Secretary.[86]

[84] McClure v. Herring, 70 Mo. 18.

[85] Martin v. Almond, 25 Mo. 313, and see Nobleboro v. Clark, 68 Maine 87, where a deed signed by the attorney in his own name alone was held to be the deed of the principal, as it appeared from the body of the deed to be the intention of the parties to bind the principal. See also Hunter v. Eastham, 1902 (Texas), 67 S. W. 1080.

[86] The testimonium clause, as in conveyances by individuals, being adapted to the form of deed used, whether indenture or deed poll.

The conveyance should purport to be that of the corporation, and not merely that of its officers.[37] The testimonium clause should recite the mode of execution and should give the name and title of the officer who is authorized to execute the conveyance on behalf of the corporation. The particular officers who should execute the conveyance of a corporation are in many states specified by statute, but in the absence of such a provision any officer may be authorized to do so.[38]

As at common law the affixing of the corporate seal was the important element in the execution of a corporate deed it will still (it seems) be a sufficient execution—the proper officers signing their names—without the signing of the corporate name, unless the signing of its name is required by statute.[39] Affixing the seal without signing the corporate name is not, however, enough when signing is required by statute as an element in the execution of conveyances in general; and signing the name may be of more importance than affixing the seal.[40]

§ 241. Conveyances by municipal, religious, or literary corporations.—Particular modes are often prescribed by special or general laws for disposing of the property of certain classes of corporations, as, for example, municipal corporations, or private incorporated societies not organized for profit, but for religious, literary, and kindred purposes.

[37] Norris v. Dains, 1894, 52 Ohio St. 215; 39 N. E. 660; Brown v. Farmers' Supply Co., 1893, 23 Ore. 541; 32 Pac. 548; if the instrument is clearly that of the corporation an execution by the proper officers in their own names may be enough, though not in the best form: Fond du Lac v. Otto's Est., 1902, 113 Wis. 39; 88 N. W. 917.

[38] Ellison v. Branstrator, 1899, 153 Ind. 146; 54 N. E. 433.

[39] Bason v. Mining Co., 90 N. C. 417; West Side Auction Co. v. Conn. M. L. Ins. Co., 1900, 186 Ill. 156; 57 N. E. 839.

[40] Isham v. Iron Co., 19 Vt. 230; Hutchins v. Barre Water Co., 1901, 74 Vt. 36; 52 Atl. 70; Globe Ins. Co. v. Reid, 1897, 19 Ind. App. 203; I Wilgus Corp. Cases 1142; 47 N. E. 947; 49 N. E. 291. (As to the necessity or desirability of using the corporate seal, in view of statutes dispensing with seals in general, see post, § 249.)

The special mode prescribed for conveying property of a municipal corporation should be followed,[41] and if no special mode is prescribed, the conveyance should be under the corporate seal and in the corporate name.[42]

The legal title to the property held by religious or literary societies is often vested in trustees; conveyances by such corporations are generally made by the trustees. When the method of conveyance is prescribed by statute —and there are often requirements not found in other cases—that method is essential.[43]

Religious societies often have occasion to borrow money by mortgaging their property; the members may build a meetinghouse with borrowed money and use it as a place of worship, and yet raise technical objections to the validity of a mortgage securing the loan.[44] So the lawyer's caution should not be laid aside in dealing with them.

[41] Pimental v. San Francisco, 21 Cal. 351.
[42] Tiffin v. Shawhan, 43 Ohio St. 178; 1 N. E. 581.
[43] Lombard v. Chicago Sinai Cong., 64 Ill. 477, 487.
[44] Scott v. Trustees First Meth. Ch., 50 Mich. 528; 15 N. W. 891.