

THE LONG WAY BACK TO SECTION 53

I. INTRODUCTION

UNDER the general law of conveyancing it is the practice of the Singapore conveyancer to effect a transfer of legal title to land by a deed.¹ To him there is no other way to do so. He also regards the law as requiring him to effect the creation and disposal of most legal interests in land by deed. Ask him why and he will reply without hesitation, "Section 53". He is referring to section 53 of the Conveyancing and Law of Property Act (CLPA)² which states, "A conveyance of any estate or interest in land other than a lease for a period not exceeding three years at a rack rent shall be void at law unless it is by deed in the English language." This provision has been interpreted to require the transfer of title on a sale of land as well as the creation and disposal of other legal interests in land³ to be effected exclusively by way of a deed which must be in the English language, failing which the transfer shall be void at law. Basic to such an interpretation (to be referred to as "the conventional interpretation")⁴ of section 53 CLPA is that the term "conveyance",⁵ at least in the context of the said section, is taken to mean, *inter alia*, a transfer of title on a sale of land. The term is thus not confined to the instrument by which a dealing or transaction such as a transfer of title on a sale of land is effected but is extended to mean the dealing itself.

There is an alternative to the conventional interpretation of section 53 CLPA which is that the section merely provides that those assurances (instruments) within the meaning of "conveyance" employed to effect the creation or disposal of interests in land, including a transfer of title on a sale of land, must be in the deed form in the English language. This interpretation (to be referred to as "the alternative interpretation") is based in contrast on the construction of the term "conveyance" in section 53 CLPA as meaning instruments and not dealings or transactions. Under this interpretation, if there are modes of effecting the creation or disposal of interests in land other than by such instruments as are included in section 53 CLPA, the said section will have no effect on the validity of those other modes.

¹ With continuing conversion of land to the Torrens System only one third of land in Singapore at most remain under the general law of conveyancing.

² Cap. 268, Singapore Statutes (1979 Rev. Ed.).

³ S. 53 CLPA purportedly deals with leases, assignments and other dealings with property.

⁴ There are cases which have proceeded upon the conventional interpretation of section 53. E.g. *Nagappan v. Chen Chi Ya* (1949) 15 M.L.J. 271.

⁵ S. 2 CLPA states: "Conveyance" includes assignment, appointment, lease, settlement and other assurance made by deed on a sale, mortgage, demise or settlement of any property, and on any other dealing with or for property; and "convey" has a corresponding meaning. This definition is qualified by the words "unless there is something repugnant in the subject or context."

The object of this essay is to show that there is sufficient ambiguity in the provisions of the CLPA to admit the alternative interpretation, with perhaps ungratifying consequences, but that nevertheless a case in support of the conventional interpretation may be made out. First, the English law on formalities for land dealings including the historical development of the use of the deed in such dealings will be discussed. Particular emphasis will be given to dealings with regard to the corporeal freehold interest (the immediate freehold estate) and the lease. The usefulness of examining English law is rather self-evident since so much of the laws of Singapore is an adaptation or even a word for word adoption of English law and Singapore land law is no exception. Secondly, the corresponding law in Singapore will be dealt with. Its historical development will be traced and the relevant Singapore statutory provisions will be analysed to show how they are inadequate to support the conventional interpretation of section 53 CLPA. Finally, arguments will be put forward to suggest that the conventional interpretation was nevertheless that intended by the legislators of the CLPA.

II. ENGLISH LAW ON FORMALITIES FOR LAND DEALINGS

1. *At Common Law*

At common law the creation and transfer of the corporeal freehold interest in land,⁶ in contrast with the incorporeal interest,⁷ could not be simply effected by deed. The method of so conveying the corporeal interest was the feoffment,⁸ the essential part of which was the livery of seisin⁹ which was given by putting the feoffee or transferee into possession of land. The deed, and for that matter writing, was not a necessary part of this mode of conveyance. The function of writing when employed in connection with the feoffment was to preserve evidence of the feoffment itself and to show the intent with which seisin had been delivered including the limitations of the estate conferred by the feoffment. The lease of corporeal freehold interests could be created or assigned without formalities; and even orally. The lease of incorporeal interests had to be made by deed.¹⁰

It was inevitable however that writing should assume greater and greater importance. In practice writing, when employed in land dealings, was in most instances in the form of the deed. Conveyancers developed deed forms for transactions such as the release, the surrender, the exchange and partition¹¹ even with respect to the corporeal freehold interest. For example, where the tenant was in possession of the land and his landlord desired to convey to him the landlord's interest in

⁶ The reversion and remainder in freehold estate are incorporeal interests which would pass by release or grant.

⁷ Among things which are counted as incorporeal for the purpose of conveyance are rents, remainders, reversions and seignories.

⁸ For a detailed reading on the feoffment, see Sir William Holdsworth, *A History of English Law*, Vol. III, (London, 1966), at pp. 219-234.

⁹ This was a solemn ceremony carried out by the parties entering on the land, and the feoffor, in the presence of witnesses, delivering the seisin to the feoffee either by some symbolic act, such as handing him a twig or sod of earth, or by uttering some such words as "Enter into this land and God give you joy" and leaving him in possession of the land.

¹⁰ See Megarry and Wade, *The Law of Real Property*, 4th Edn., (London), at pp. 620-621.

¹¹ For a short description of these, see Holdsworth, *A Historical Introduction to the Land Law*, 1st Ed., (Oxford 1927) at p. 115.

the land, the release by deed was used; livery of seisin being inappropriate since the transferee was already in possession. The release was later used in a technique known as the lease and release¹² which came to be used as an alternative method of conveying the corporeal freehold interest. The importance of deeds increased with the rise of uses, for the Statute of Uses led to the development of the bargain and sale for a term followed by a common release effected by deed.¹³ This technique came to be the most commonly employed mode of conveying the corporeal freehold interest in land.¹⁴

It must be noted however that the lease and release and the bargain and sale were nevertheless circuitous modes of conveying the corporeal freehold interest in land since it was not possible to convey the interest directly and simply by deed.

2. *The Statute of Frauds 1677*

The Statute of Frauds 1677¹⁵ made writing mandatory for most land dealings, in some cases to evidence and in others to effect the dealings.

By section 1¹⁶ of the Statute the creation of those freehold interests which could be created by feoffment with livery of seisin or orally and the making of leases which as mentioned earlier could under the common law be effected orally, had to be "put in writing". The phrase "put in writing" is vague as to whether it means that the land dealing had to be effected or merely evidenced in writing. The requirement was probably for evidence in writing since with regard to the corporeal freehold interest it was still livery of seisin that effected the dealing and such interest in land could not be created or disposed of simply by deed until 1845.¹⁷ The consequence of non-compliance with section 1 was that the interests involved would have the force and effect of leases or estates at will only. Only the lease not exceeding three years was exempt from the requirement in writing.

Section 3 of the Statute was directed at the assignment, grant or surrender of the interests covered after their creation and such assign-

¹² For a brief description of the lease and release, see Megarry and Wade, *op. cit.* at 164.

¹³ This technique was a combination of two other techniques namely, the lease and release at common law and the bargain and sale and it worked as follows:

V contracted to sell (*i.e.* bargained and sold) the land to P for one year in consideration of a nominal payment. Equity deemed V to be seised to the use of P, much as today V is said to be a trustee for P until the land is duly conveyed in accordance with the contract. The Statute of Uses 1535 which provided that the cestui que use should be "deemed and adjudged in lawful seisin, estate and possession" for the equivalent estate, "executed the use" and P would be deemed to be in actual possession of the land. The next day V conveyed the reversion to P by a deed of release and the balance of the price was paid. See Sir William Holdsworth, *A History of English Law* (1966) Vol. VII, pp. 356-362.

¹⁴ See, *Bythewood & Jarman's Conveyancing*, Ed. by L. G.G. Robbins, (1888) Vol. V, pp. 7-9.

¹⁵ 29 Car. 2, c. 3.

¹⁶ The operation of s. 1 of the Statute of Frauds 1677 was confined to such interests in land as could formerly be conveyed by livery of seisin or by parol. Hence, in regard to incorporeal estates no change was introduced and their creation or disposal was almost invariably effected by deed.

¹⁷ On the operation of s. 1 and the question whether writing had to be in the deed form, see, Causten Browne, *A Treatise on the Construction of the Statute of Frauds as in England and the United States* (5th ed. 1895).

ment, grant or surrender was required to be effected and not just evidenced by deed or note in writing, unless the dealing itself was effected¹⁸ by operation of law.

3. *The Real Property Act 1845*

The Real Property Act 1845¹⁹ took the law further. By the 18th century written documents had come to be capable of conveying corporeal freehold interests in land notwithstanding the circuitous nature of such modes of conveyance. This development culminated in the enactment in 1845²⁰ that the creation and transfer of corporeal freehold interests lay in grant (like the incorporeal interests) as well as in livery, which thus meant that conveyancers could now use the simple and direct deed of grant.

Section 3 of the Act modified the provisions of the Statute of Frauds 1677. The writing which was required by the Statute of Frauds 1677 to evidence a feoffment now clearly had to take the form of a deed. Where mere writing was sufficient to evidence the creation of leases²¹ and to effect their assignment,²² a deed was now made mandatory to effect both their creation and their assignment. Likewise, it also became necessary that the exchange, partition and surrender (save surrender by operation of law) which under the Statute of Frauds 1677 had to be in writing,²³ be effected by deed.

Thus looked at from around the 1850's, the combined effect of the Statute of Frauds 1677 and the 1845 Act probably came to this. The feoffment and other alternative modes of conveying the corporeal freehold interest in land were preserved although to these was added the simpler mode of the deed of grant. The only substantive change made by section 3 RPA 1845 was that the lease had to be effected and not merely evidenced, as required under the Statute of Frauds 1677, by deed. Elsewhere, section 3 RPA 1845 merely "built upon"²⁴ the writing requirements in the Statute of Frauds 1677. It may therefore be argued that the effect of section 3 RPA 1845 was to lay down the form which instruments, purporting to effect or to evidence certain transactions, had to take; namely that they had to be in deed form.

¹⁸ The consequence of non-compliance with s. 3 was not expressly stated.

¹⁹ 8 & 9 Vict., c. 106.

²⁰ S. 2 of the RPA 1845 which reads: "After the said 1st day of October 1845, all corporeal tenements and hereditaments shall, as regards the conveyance of the immediate freehold thereof, be deemed to lie in grant as well as in livery; and that every deed which, by force only of this enactment, shall be effectual as a grant, shall be chargeable with the stamp duty with which the same deed would have been chargeable in case the same had been a release, founded on a lease or bargain and sale for a year, and also with the same stamp duty (exclusive of progressive duty) with which such lease or bargain and sale for a year would have been chargeable".

²¹ S. 1 Statute of Frauds 1677. S. 2 of this statute provided that s. 1 did not affect the lease not exceeding three years.

²² S. 3 Statute of Frauds 1677.

²³ Some forms of exchange and partition had, under the Common Law to be effected by deed and their position was unchanged by the Statute of Frauds. Other types of exchange and partition could be effected orally under the Common Law and by the provisions of the Statute of Frauds had to be put in writing although not necessarily in deed form.

²⁴ The RPA 1845 did not repeal the Statute of Frauds or any of its provisions.

4. *The Law of Property Act 1925*

All the provisions of the Statute of Frauds 1677 and the RPA 1845 that have been mentioned were expressly repealed by and reproduced with modifications in the Law of Property Act 1925 (LPA 1925). These provisions of the LPA 1925 are still in force.

Section 51²⁵ of the LPA 1925 takes section 2 RPA 1845 a step further in abolishing the old forms of conveyance and stipulating that "all lands and all interests therein lie in grant" so that no other mode of conveyancing can be employed. Section 54 LPA 1925²⁶ reproduces, with amendments, section 1 Statute of Frauds 1677 and states that "all interests in land created by parol and not put into writing... have... the force and effect of interests at will only". Section 53 LPA 1925²⁷ reproduces, with amendments, section 3 and other sections of the Statute of Frauds 1677 stating that "no interest in land can be created or disposed of except by writing".

By these three provisions of the LPA 1925,²⁸ namely, sections 51, 53 and 54, it is clear that to transfer a corporeal freehold interest in

²⁵ S. 51(1) of the LPA 1925 reads: All lands and all interests therein lie in grant and are incapable of being conveyed by livery or livery and seisin, or by feoffment, or by bargain and sale; and a conveyance of an interest in land may operate to pass the possession or right to possession thereof, without actual entry, but subject to all prior rights thereto.

²⁶ S. 54(1) of the LPA 1925 states: All interests in land created by parol and not put in writing and signed by the persons so creating the same, or by their agents thereunto lawfully authorised in writing, have, notwithstanding any consideration having been given for the same, the force and effect of interests at will only.

Compare s. 1 of the Statute of Frauds 1677 which reads: ...BE IT ENACTED, that from and after the 24th day of June 1677, all leases, estates, interests of freehold, or terms of years, or any uncertain interest of, to or out of any messuages, manors, lands, tenements or hereditaments, made or created by livery and seisin only, or by parol, and not put in writing, and signed by the parties so making or creating the same, or their agents thereunto lawfully authorised by writing, shall have the force and effect of leases or estates at will only, and shall not either in law or equity be deemed or taken to have any other or greater force or effect; any consideration for making any such parol leases or estates, or any former law or usage to the contrary notwithstanding".

²⁷ S. 53(1) of the LPA 1925 states: Subject to the provisions hereinafter contained with respect to the creation of interests in land by parol —

(a) no interests in land can be created or disposed of except by writing signed by the person creating or conveying the same, or by his agent thereunto lawfully authorised in writing, or by will, or by operation or law".

Compare s. 3 of the Statute of Frauds 1677 which reads: And moreover, no leases, estates or interests, either of freehold, or terms of years, or any uncertain interest, not being copyhold or customary interest, of, in, to or out of any messuages, manors, lands, tenements, or hereditaments shall at any time after the said 24th day of June be assigned, granted or surrendered, unless it be deed or note in writing, signed by the party so assigning, granting or surrendering the same, or their agents thereunto lawfully authorised by writing, or by act and operation of law.

²⁸ One general observation that may be made about ss. 51, 54 and 53 of the LPA 1925 is that although they are identifiable "successors" to certain statutory provisions of the Statute of Frauds and the RPA 1845, in their language at least they are wider in scope. So, although s. 2 RPA 1845 dealt specifically with the conveyance of the immediate freehold interest, s. 51 LPA 1925 is applicable indiscriminately to "all land and interests therein". While s. 1 Statute of Frauds 1677 was directed at those freehold interests in land which could be effected by livery of seisin or orally and the creation of leases, s. 54 LPA 1925 applies to all interests in land created by parol. Finally, s. 3 Statute of Frauds 1677, which dealt with the assignment, grant and surrender of leases and freehold interests, is expanded by s. 53 which requires generally the creation and disposal of all interests in land to be in writing.

land or to grant a lease of a term exceeding three years the only mode of conveyance is the grant and that the creation and disposal of such interests have to be effected in writing.

What is less clear is the purpose and effect of section 52 LPA 1925 which states, "All conveyances of land or of any interest therein are void for the purpose of conveying or creating a legal estate unless made by deed." If section 52 is taken in isolation and the term "conveyances" construed as meaning "dealings", section 52 would appear to be saying that the creation and disposal of legal interests in land (save those dealings specifically excepted) including *inter alia* the transfer of corporeal freehold interests, cannot be effected by any other mode of conveyance than the deed.

However, when one correlates section 51, 52, 53 and 54 LPA 1925, it is more likely that section 52 was intended merely to regulate the form of instruments used to effect the dealings in land. As has been shown earlier, it is section 51 that abolishes all modes of conveyance other than the grant. The requirement that the grant has to be effected in writing is to be found in section 53 and section 52 therefore must be dictating the form which that writing has to take.²⁹ Moreover, section 52 LPA 1925 appears to be a reproduction with amendments of section 3 RPA 1845³⁰ and it has already been suggested that section 3 RPA 1845 was directed merely at the instruments to effect a land dealing and not the dealing itself.

One argument to the contrary effect is that section 3 RPA 1845 rendered void a feoffment (clearly a dealing) unless the same was evidenced by deed. But the argument is weakened by the fact that this too was built upon section 1 Statute of Frauds 1677 which already required feoffments to be put in writing. Another argument for saying that section 52 concerns dealings³¹ as opposed to instruments effecting them is that sub-section 2 of section 52 lists certain exceptions to the rule contained in sub-section 1 and some of these exceptions are dealings not required by law to be in writing.³² This argument was

²⁹ The enactment of s. 52 LPA 1925 (which follows the RPA 1845) in co-existence with s. 54 LPA 1925 (which follows the Statute of Frauds 1677), rather than an enactment combining the effect of the two sections, has been attributed to force of habit. See, Megarry and Wade, *ibid.*, at pp. 621 and 622.

³⁰ For the view that s. 52 LPA 1925 is a reproduction with amendments of s. 3 RPA 1845, see Wolstenholme and Cherry, *Conveyancing Statutes*, (12 Edn.) Vol. 1 pp. 318-319.

S. 3 RPA 1845 reads: "A feoffment, made after the said 1st day of October, 1845, other than a feoffment made under a custom by an infant, shall be void at law, unless evidenced by deed: and a partition and an exchange of any tenements or hereditaments, not being copyhold, and a lease required by law to be in writing, of any tenements or hereditaments, and an assignment of a chattel interest, not being copyhold, in any tenements or hereditaments, and a surrender in writing of an interest in any tenements or hereditaments, not being a copyhold interest, and not being an interest which might by law have been created without writing, made after the said 1st day of October, 1845, shall also be void at law, unless made by deed: provided always, that the said enactment so far as the same relates to a release or a surrender shall not extend to Ireland".

³¹ For a hint that s. 3 RPA 1845 might be directed at dealings, see L.G.G. Robbins (Ed.), *op.cit.* pp. 10-11.

³² Included in the subsection are surrenders by operation of law and leases or tenancies not required by law to be in writing. See, P.V. Baker, "Oral Lease to Oneself" (1962) 78 L.Q.R.

dealt with in *Rye v. Rye*,³³ a decision of the English House of Lords. Lord MacDermott said:³⁴

With all respect to those who took a different view I am unable to find anything in these or in the other exceptions listed in subsection 2 to show that section 52 furnishes a context requiring the word "conveyance" to be construed so as to include parol transactions. The section deals with the requirement that a conveyance must be under seal and what the list of exceptions aims at is to provide that certain instruments do not require to be under seal.

Consistent with Lord MacDermott's interpretation is the definition given in section 205 LPA 1925 of the word "conveyance", which states:

Conveyance includes a mortgage, charge, lease, assent, vesting declaration, vesting instrument, disclaimer, release and every other assurance of property or of an interest therein by any instrument, except a will.

This definition of "conveyance" was also considered in *Rye v. Rye* and Lord Radcliffe said:

There is a known ambiguity in such words as "conveyance" since by themselves they are capable of referring either to the transaction itself or to the legal instrument that effects it. This is true of "conveyance", "mortgage" or "lease", but it is not true of "vesting declaration" which can refer only to the instrument itself, and when I find these and other words linked together in a definition of the word "conveyance" with a general reference at the end of the list to "every other assurance... by any instrument", I feel little doubt that apart from any special context, "conveyance" and "convey" in the Act are intended to apply to instruments in writing only.³⁵

These judicial views on the relevant provisions of the LPA give strong support for the proposition that section 52 deals with instruments and dictates the form that the writing elsewhere required for land dealings has to take and that the conventional interpretation put upon section 53 CLPA cannot be put upon section 52.

Thus, the deed of grant has come to be capable of conveying corporeal freehold interests in land and indeed is now the only way of doing so. The deed is also now the exclusive way of creating a lease of more than three years duration and of assigning leases. This state of the law is the combined effect of four sections in the LPA 1925, namely, sections 51, 52, 53 and 54. We can now turn to the Singapore position and the interpretation of section 53 CLPA.

III. SINGAPORE LAW ON FORMALITIES FOR LAND DEALINGS

1. *Reception of English Law*

Singapore received in 1826 via the Second Charter of Justice,³⁶ *inter alia*, the real property law of England which would include the law

³³ (1962) A.C. 496; (1962) 1 All E.R. 146.

³⁴ *Ibid.*, at pp. 508-509; *ibid.*, at p. 152B-C.

³⁵ *Ibid.*, at pp. 511-512; *ibid.*, at pp. 153I-154A.

³⁶ On the subject of reception of English law in Singapore, see G.W. Bartholomew, the Introduction in *Tables of the Written Laws of the Republic of Singapore 1819-1971*, Vol. 1 at pp. xv-xxxvi.

on formalities in England as at 1826 subject to any local statutes and applicability to local circumstances. Accordingly, the Statute of Frauds 1677 was received and writing was necessary for the creation and disposal of most legal interests in land,³⁷ though not mandatorily required to be in deed form. It is certain that some at least of the English modes of conveying the corporeal freehold interest in land were employed in Singapore such as the lease and release and the bargain and sale, even though the status of other modes as part of Singapore conveyancing practice may be doubted.³⁸ What is clear however is that the notion that the creation and disposal of corporeal interests in land could be effected simply by deed did not come in since it was only introduced in England in 1845, which was clearly past the date of reception.

Pertinent to the proper interpretation of section 53 CLPA, enacted sixty years after English law was first received, is an examination of the law on formalities for land dealings in Singapore prior to 1886 with particular regard to the question whether prior to 1886 the law was that the transfer of the corporeal freehold interest and the creation of a lease for a term exceeding three years and assignment of leases could be effected by deed only.

2. Statute Law

The earliest piece of legislation other than English Acts concerning the law on formalities for land dealings is Indian Act XVI of 1839 (Act XVI 1839).³⁹ Clause XI of this Act dealt with mutations of title in land and laid down the requirement that all mutations be registered. "Mutations of title" was not defined but from its context the term

³⁷ Since 1826 is the cut-off date for reception of English statutes, both the RPA 1845 and the LPA 1925 do not apply to Singapore.

³⁸ According to Woodward J. in *Syed Ali bin Mohamed Alsagoff v. Syed Omar bin Mohamed Alsagoff* (1918) 15 S.S.L.R. 103 (C.A.), there never was livery of seisin in the colony.

³⁹ One of the Indian Acts passed during the period extending from 22 April 1834 to 31 March 1867 and in force in the Colony of the Straits Settlements as determined under the provisions of the Statute Law Revision Ordinance 1889. The relevant clauses of s. XI of Indian Act XVI are:

Clause First—And it is hereby enacted, that all mutations by act of party or by succession in titles to land, taking place after the first day of January in the year of Lord 1840, shall be registered under the following rules.

Clause Second—The party claiming by right of transfer or succession shall attend at the Collector's Office, either in person, or by his constituted agent, and shall make application for registering the mutation, producing the original grant or lease, together with the bill of sale or other deed of transfer, which must be made out in the English language, and according to a form which will be found in the Collector's office, or, in case of successions, the Probate or Letters of Administration, together with the Original Will, if any or a copy thereof, after which, notice of the mutation shall be registered, the date and other particulars of the transaction being entered in the Register in a clear and distinct form.

Clause Fifth—The Registry of a mutation shall not of itself be taken to convey or establish any legal title to land, nor shall it be held to corroborate, qualify or bar any rights which may come to be questioned judicially. But no deed whatsoever for the sale or transfer of land, which may be executed after the first day of January in the year of our Lord 1840, shall be admitted to be valid by the Officers of Government, or be received in evidence as a legal instrument by any Court of Judicature, unless the same shall have been registered in the Collector's office in the manner directed by this Section, nor shall any Probate or Letters of Administration be received as evidence of title to land until so registered".

appears to mean changes in title in land; *i.e.*, the dealing rather than the instrument effecting the same. No exception was expressly made for the grant or assignment of leases.

Under this Act a person claiming by right of transfer was required to attend at the Collector's office and make an application for registering the mutation "producing the original grant or lease,"⁴⁰ together with the bill of sale or other deed of transfer, which must be made out in the English language, and according to a form⁴¹ which will be found in the Collector's office".

The effect of these provisions would appear to have been that in order to register a mutation (and registration was required) the parties had to effect or at least evidence the transfer by way of a prescribed instrument. Bearing in mind that in England it was only in 1845 that the corporeal freehold interest could be transferred by way of a deed of grant, the question arises as to what form of conveyance was prescribed by the Collector's office. Did the Act introduce a novel form of conveyance of the corporeal freehold interest, namely the deed of grant or was the prescribed form patterned after the Bargain and Sale⁴² or such other techniques which depended on the working of the Statute of Uses?

On this question, the Statement of Objects and Reasons gazetted with regard to an amendment to Act XVI 1839 and proposed in 1871⁴³ throws some light. Mr. T. Braddell, then Attorney-General of the Straits Settlement, explaining the need to amend that part of Act XVI 1839 which required the bill of sale or other deed of transfer which was to be presented to the Collector's office for registration of a mutation to be in a prescribed form, stated:⁴⁴

When the Act XVI of 1839 was passed, it was supposed to be necessary to provide a form of conveyance, as at that time there were very few professional conveyancers in these settlements, and it was anticipated that the assurances would be ordinary deeds of sale for a simple money consideration, and would, generally speaking be drawn by the clerks in the land office. Accordingly, a form of Bill of Sale was drawn up by the Attorney-General in Calcutta, and sent down to each of the Settlements, and the 2nd Clause of section 11 of the Act required Deeds of Transfer to be made out according to this form. Since that time, however, professional conveyancers have been employed, and as parties have required special deeds to be drawn, we have now assurances of all sorts under the Statute of Uses, with complicated family and other trusts created by deeds and wills, so that the restriction to the simple form given under the Act is impossible and has long been disregarded in practice.

⁴⁰ Amended in January 1875 by Ordinance No. V of 1875 which provided that: So much of the second clause of the eleventh section of the Indian Act No. XVI of 1839, as requires the production of the original grant or lease... upon the application for registration of any mutation in title is hereby repealed.

⁴¹ Amended by Ordinance 2 of 1871.

⁴² See Footnote 13. For a brief description of the Bargain and Sale and its historical development, see Megarry and Wade *op. cit.* at pp. 165-166.

⁴³ Straits Settlements Government Gazette, May-August 1871 at pp. 189-190.

⁴⁴ *Ibid.*, at pp. 189-190.

Noting the then Attorney-General's remarks that the simple form or the restriction to such form had long been disregarded in practice, if the form had been the deed of grant by which the corporeal freehold interest could have been transferred directly and simply, it would be strange for conveyancers to have discarded the availability of such a straightforward mode of conveyance in preference for the more circuitous techniques like the Bargain and Sale for a term followed by deed of release and such other techniques depending on the Statute of Uses for their efficacy.

Whatever the true nature of the prescribed form it was certainly not the only mode by which to effect mutations in title. Act XVI 1839 did not stipulate the consequences for not employing the prescribed form. Indeed from the above extract of the Statement of Objects and Reasons, it would appear that the authorities were somewhat permissive towards deviations from the prescribed form. The Act also stated that "the registry of a mutation shall not of itself be taken to convey or establish any legal title to land". What this implies is that it was necessary to look elsewhere in the law to determine the validity of the form of conveyance.

But the question remains whether the Act was effective in bringing about a uniform use of deeds notwithstanding the variety of deed forms in land transactions. "Clause fifth" of Clause XI of the Act states:

But no deed whatsoever for the sale or transfer of land,... shall be admitted to be valid by the Officers of Government, or be received in evidence as a legal instrument by any Court of Judicature, unless the same shall have been registered....

Thus, to the extent that the common law techniques of conveyancing such as the Bargain and Sale for a term followed by a deed of release were effected or evidenced as a matter of practice even in England in deed form, the provisions of Act XVI 1839 would have affected such transactions in cases of disputes when the intervention of courts was necessary and the deed would not have been recognised or admissible in evidence unless registered.

However, it is not clear whether the penalties for non-registration under the Act affected those land dealings which were not by law nor in practice effected or evidenced by way of writing in deed form. On a very strict interpretation, the word "deed" means a formal document signed, sealed and delivered and it may be argued that instruments under hand would not be affected by the statute. Further support of this view might be found in the following arguments. First, the Act did not expressly abolish all modes of effecting land dealings other than by deed. Secondly, the Act was silent on how it was to affect the provisions of the English Statute of Frauds 1677 which was already in force in the then Colony, and it is doubtful that the Act was intended in any way to affect the validity of a lease of not more than three years.

Thus it is arguable that a person claiming as a lessee of a lease evidenced in writing would not suffer since the Act did not provide for the consequences of the failure to register such instruments not being deeds nor intended to be deeds. It is also far from clear whether by the Act a novel form of conveyance of the corporeal freehold interest by way of the deed of grant had been introduced in Singapore.

The next relevant statute to be considered is the Indian Act XXXI of 1854.⁴⁵ Clause XIV of the Act was enacted as follows:

Any estate or interest in immoveable property situated within the said territories, whether in possession, remainder or reversion, may in addition to any other mode of conveyance of release which is now valid be conveyed, passed or released by a simple deed, whether such deed operate under the Statute of Frauds or not.

By its terminology this provision clearly contemplated the release and such other forms of conveyance that depended in part on the Statute of Uses⁴⁶ which was in force in the then Colony. All these modes of conveyance were expressly preserved. Further, by providing that a simple deed would of itself be efficacious to convey any state or interest in immoveable property, the Act impliedly introduced the novel mode of the deed of grant recently introduced in England. It may be significant to note that this was done without expressly declaring that the corporeal freehold interest shall be deemed to lie in grant (thus unlike in England).

Finally, the year 1885 saw the reading of two bills⁴⁷ which were to become the two major pieces of legislation with respect to the law of conveyancing in Singapore before the introduction of the Torrens System in 1959. These two statutes⁴⁸ were the Conveyancing and Law of Property Ordinance 1886 (CLPO 1886) and the Registration of Deeds Ordinance 1886 (RODO 1886). They are still in force and are the principal statutes for conveyancing of land which have not been brought under the provisions of the Land Titles Act.

Section 53 first appeared in the CLPO 1886 and it was then numbered as section 63. In accordance with the conventional interpretation, section 53 is the law that abolishes all other modes of conveyance other than the deed of grant. This would mean, *inter alia*, that not only must dealings in the corporeal freehold interest be effected by deed only but also the creation of leases of more than three years and the assignment of leases. Aside from the provisions of the CLPO 1886 (now the CLP A) there is no other statute that has been regarded as having achieved the above effect.

IV. INTERPRETATION OF SECTION 53

In trying to determine the proper interpretation of section 53 CLPA, four aspects of this provision will be examined:

1. the policy behind the provision
2. its probable antecedents
3. its technical interpretation
4. the judicial views on the section

⁴⁵ One of the stated objects of the Act was to simplify the modes of conveying land. It is also interesting to note that this Act abolished Fines and Common Recoveries, which were the common law forms of conveyance of freehold interests in land depending for their efficacy upon the machinery of the Court.

⁴⁶ The Statute of Uses was repealed as to Singapore by Ordinance 6 of 1886.

⁴⁷ The Bill for the Crown Lands Ordinance was also read in 1885.

⁴⁸ Re-named the Conveyancing and Law of Property Act and the Registration of Deeds Act respectively.

1. *The Policy Behind Section 53*

The explanation given of section 53 CLPA (then section 63 CLPO 1886) in the Statement of Objects and Reasons issued by J.W. Bonser, then Attorney-General, and gazetted in 1885 with regard to the proposed enactment of the CLPO 1886,⁴⁹ was that the section "...which provides that all conveyances are to be void unless by deed, is in accordance with the law of this colony as enacted by the Indian Act XVI of 1839".

It is not clear however, what the Attorney-General would have the term "conveyance" to mean. Did he mean that all land dealings had to be effected by way of a deed or merely that all instruments for effecting such land dealings had to be in deed form? Which of the two possible interpretations would accord with the law as enacted by the Indian Act XVI of 1839?

It may be argued what the Attorney-General meant was that section 53 reflected the policy behind Act XVI for certainly what could be said was that the policy of the authorities was to encourage mutations in title to be effected by deed and registered.⁵⁰ However, whatever the policy of the legislators of Act XVI was, the inadequacy in the expression of such policy⁵¹ raised earlier prevents the firm conclusion that Act XVI had the effect that section 53 CLPA by its conventional interpretation is supposed to have. The Attorney-General's statement gazetted in 1885 with regard to section 53 is not wholly illuminating.

2. *The Probable Antecedents of Section 53*

The CLPA (then CLPO) was adapted from the following English statutes with "certain alterations and additions which the circumstances of the colony seem to require";⁵² namely,

The Vendor and Purchaser Act 1874

Conveyancing and Law of Property Act 1881

Conveyancing and Law of Property Act 1882

Further, the following statutes were repealed while some of their provisions were incorporated; namely,

27 Henry VIII, c. 10 (Statute of Uses)

Indian Act XX of 1837⁵³

Indian Act XXXI of 1854⁵⁴

Indian Act XXVIII of 1866⁵⁵

⁴⁹ See the Statement of Objects and Reasons by J.W. Bonser, Straits Settlement Government Gazette, December 31, 1885 at pp. 2001-2002.

⁵⁰ Clause XI of Act XVI was repealed by the RODA 1886. The latter Act does even less than Act XVI in restricting modes of conveyancing. It merely deals with the registration of assurances on the assumption that certain land dealings are effected by such assurances.

⁵¹ See the Statement of Objects and Reasons at pages 2014 and 2015 in the Straits Settlements Government Gazette, December 31, 1885 issued with regard to the Bill to provide for the Registration of Deeds which provided for the abolition of Clause XI of Indian Act XVI.

⁵² See footnote 49.

⁵³ This Act dealt with the transmission of Immoveable Property.

⁵⁴ An Act to simplify the modes of conveying land in cases to which English law is applicable.

⁵⁵ An Act to give Trustees, Mortgagees and others, in cases to which English law is applicable, certain powers now commonly inserted in Settlements, Mortgages and Wills, and to amend the law of property and relieve Trustees.

None of the said English Acts and none of the repealed Indian Acts have a provision similar to section 53.

However, section 52 of the English LPA 1925, which is regarded as a reproduction with amendments of section 3 RPA 1845, is in wording remarkably similar to section 53 CLPA, although section 52 LPA 1925 was enacted some forty years after section 53 CLPA. Can it be argued that section 53, like section 52 of the English LPA 1925, is a reproduction with amendments of section 3 RPA 1845?⁵⁶ Certainly when one looks at the relevant sections, the parallel in function between sections 2 and 3 RPA 1845 and sections 52 and 53 CLPA can be seen. It can be argued that whilst section 2 RPA 1845 and section 52 CLPA gave the corporeal freehold interest the capability of being transferred by grant, section 3 RPA 1845 and section 53 CLPA made necessary the use of the deed (whether one looks at the section as being directed at transactions or at instruments).

If section 53 CLPA is a reproduction of section 3 RPA 1845,⁵⁷ then the observations made earlier with regard to section 3 RPA 1845 apply to section 53 and it is suggested that section 53, like section 3 RPA 1845, stipulates the form in which instruments, purporting to effect certain transactions for which writing was already made necessary by the Statute of Frauds, must take. It should be noted that the relevant sections of the Statute of Frauds have not been expressly repealed in Singapore.

If section 53 CLPA is a reproduction of section 3 RPA 1845, it would also be the counterpart of the later section 52 of the LPA 1925. But if section 53 CLPA is interpreted so as to render void the creation and disposal of legal interests in land unless they are effected by deed, then section 53 would be wider in scope than section 52 LPA 1925; for what requires two provisions in the LPA 1925 to make clear, namely, that all lands and interests therein lie in grant so that all other forms of conveyance are abolished (section 51 LPA 1925) and that all dealings save those specifically excepted have to be effected by deed (assuming for the moment the conventional interpretation of section 52 LPA 1925), section 53 is supposed to say it all. By section 53 alone, one is supposed to understand that all forms of conveyance other than the deed have been abolished in Singapore.

However, there is a technical difficulty in taking the view that section 53 is directed at instruments only because of the definition of "conveyance" in section 2 CLPA which speaks of deeds only. If the word "conveyance" is confined to assurances by deed then section 53 would be somewhat redundant in stating that deeds must be in deed form. The English LPA 1925 does not have this difficulty as "conveyance" is defined to include "every other assurance... by any instrument".⁵⁸

Therefore even if it is likely that section 53 is a reproduction of section 3 RPA 1845 there is still ambiguity as to whether section 53

⁵⁶ This was the view taken in *Khoo Keat Lock v. Haji Yusop and Others* (1929) S.S.L.R. 210.

⁵⁷ S. 53 CLPA, like s. 52 LPA 1925, is wider in scope than s. 3 RPA 1845.

⁵⁸ See s. 205 LPA 1925.

is directed at instruments only, as has been argued with regard to section 3 RPA 1845, or at dealings as well.

3. *The Technical Interpretation of Section 53*

Basic to the conventional interpretation is the notion that “conveyance” means a land dealing as opposed to the instrument by which the dealing is effected. Section 2 of the CLPA states:

“Conveyance” includes assignment, appointment, lease, settlement and other assurance made by deed on a sale, mortgage, demise or settlement of any property, and on any other dealing with or for any property; and “convey” has a corresponding meaning.

One way by which definitions of the kind given in section 2 are to be interpreted is suggested in the judgment of Lord Esher M.R. in *Rodger v. Harrison*.⁵⁹ Lord Esher said:

The meaning of the word “include” in such a definition as is given in this Act seems to be this. The word interpreted has its ordinary meaning. That meaning it still has in the Act. So the definition is used to enlarge the meaning of the term beyond its ordinary meaning and make it include matters which the ordinary meaning would not include. But this enlargement of meaning is confined to the matters expressly mentioned in such definition.⁶⁰

The ordinary meaning of “conveyance”, if there is one, is not given in the CLPA. When used to refer to an instrument there is judicial opinion⁶¹ that the term is well-known to conveyancers (at least in England) as meaning a deed which passes a freehold interest in real property. This may be the reason for the extension of the term “conveyance” in the CLPA to include assignments, leases and other documents concerning interests other than freehold interests. It should be noted that in order to support the conventional interpretation of section 53, the terms “conveyance” must in its ordinary meaning include not only dealings but also dealings with regard to interests other than freehold. It is suggested that no common or ordinary meaning of the term “conveyance” can be drawn from the various statutes that employ this term and therefore its meaning when the term is employed in any statute must be determined within the context of that particular statute.

Since the CLPA “comes” from the three English Acts and the three repealed Indian Acts mentioned earlier, the manner in which the term “conveyance” is used in these statutes should be considered. On an examination of the three repealed Indian statutes, one comes away with the impression that the term “conveyance” was not distinctly nor exclusively used as meaning instruments alone or dealings in and documents concerned with freehold interests only.⁶² On the other hand, it has been said that the chief object of the CLPA 1881 of England was to shorten conditions of sale, conveyances, mortgages

⁵⁹ (1893) 1 Q.B. 161; see also *Khoo Keat Lock v. Haji Yusop and Others* (1929) S.S.L.R. 210.

⁶⁰ *Ibid.*, at p. 167.

⁶¹ *Rodger v. Harrison* (1893) 1 Q.B. 161.

⁶² For examples, see: Indian Act XXVIII 1866, ss. XLI and X; Indian Act XXXI 1854, ss. XIV and XVI; Indian Act XX 1937, s. III.

and trust deeds.⁶³ It seems clear that many of the provisions of the CLPA 1881 served to incorporate by implication, clauses into the instruments (conveyances) by which land dealings were effected. When the definition of "conveyance" in section 2 CLPA 1881 is looked at, only instruments by deed are mentioned.⁶⁴ The definition given of "conveyance" in the CLPO 1886 is very similar to that in the CLPA 1881 and is in all probability a reproduction, with slight amendments, of it. Many of the provisions in the CLPO 1886 are almost word for word reproductions of those provisions in the CLPA 1881 that served to incorporate clauses into instruments.

It is difficult to conclusively arrive at the proper interpretation of "conveyance" in section 53 CLPA solely on the basis of the way, or more correctly, the ways in which the term is used. There is, it would appear, no one meaning that is used consistently even within the CLPA itself.⁶⁵

4. *The Judicial Views on Section 53*

In *Nagappan v. Chen Chi Ya*⁶⁶ the Court was clearly of the view that section 53 CLPA deals with transactions and ruled that any assignment of a lease must be by deed.⁶⁷ Yet on this very point of formalities for the assignment of leases, there are later cases⁶⁸ that do not refer to section 53 as the applicable section. Section 53 was not even mentioned in these cases and the Court considered that section 3 Statute of Frauds 1677 necessitated the assignment of leases to be effected by deed or note in writing. Thus the judicial views on section 53, like the Statement of Policy mentioned earlier, do not add very much to the debate,

V. ARGUMENTS FOR THE CONVENTIONAL INTERPRETATION OF SECTION 53

The arguments supporting the conventional interpretation may be seen as falling under the following three headings:

1. practical arguments
2. reliance on other statutory provisions, including some not eventually enacted
3. reliance on other terms and expressions in section 53 itself.

⁶³ Chitty's Statutes, (6th ed., 1911) Vol. 2, p. 789, note (g).

⁶⁴ S. 2 stated, "Conveyance", unless a contrary intention appear, includes assignment, appointment, lease, settlement, and other assurance and covenant to surrender, made by deed, on a sale, mortgage, demise or settlement of any property or any other dealing with or for any property.

⁶⁵ See CLPO 1886, ss. 6(1), 7(1){A}, 68. See also the present s. 37 of the CLPA.

⁶⁶ (1949) 15 M.L.J. 271, especially at p. 272.

⁶⁷ The Judge said (on page 272): "Moreover by the joint effects of the Statute of Frauds and the Real Property Act 1845 any assignment must be by deed *Pollock v. Stacey*. The local provision which in effect combines these is if anything clearer. An assignment comes within the general provision of section 53 of the Conveyancing and Law of Property Ordinance Cap. 118 as being a conveyance, but does not come within the exception for it is not a lease.

⁶⁸ For example, *Khalik v. Thai Craft Ltd.* (1966) 2 M.L.J. 112; *Tea Chwee Geok v. Ng Hui Lip and Co.* (1967) 1 M.L.J. 245.

1. *Practical Arguments*

An examination of the development of the relevant law clearly shows a general effort towards the implementation of a system of registration of land titles and this would be difficult to achieve without a mono mode of conveyancing. The deed even in 1839 seemed the obvious choice of instrumentation. Without such a uniform system of conveyancing the object of the Registration of Deeds Ordinance would have been defeated.

Moreover, however inadequate the actual wording of Act XVI 1839 was in achieving its intended result, as a matter of practice, given the state of conveyancing in the then Colony, all land title transfers must have been covered, save perhaps the Bargain and Sale⁶⁹ which did not require a deed. It seems that livery of seisin was never applicable and thus when in 1854, the legislature came to prescribe the capability of the written document itself, i.e. the deed, to convey property, it was not necessary to specially provide for the abolition of livery of seisin or for the capacity of corporeal freehold interest to lie in grant. As for leases, the practice was probably, if not invariably, to effect them by deed, because then the lessee would be able to sue his landlord upon the covenant.⁷⁰

2. *Other Statutory Provisions Including Those Not Enacted*

Strength for the conventional interpretation may be found in what has not been said in the Crown Lands Ordinance⁷¹ enacted in 1886. In its bill form this statute contained a provision that read as follows, "No estate or interest in land and no easement in or over any land shall be created or transferred except by writing under seal in the English language." This provision, numbered as section 12, was clearly directed at dealings and not instruments and it appeared to achieve the combined effect of sections 52 and 54 of the LPA 1925. This proposed section 12 was clearer than section 53 CLPA. The significance about this provision is that it never appeared in the Crown Lands Ordinance when that statute was passed in 1886. One can only speculate the reasons for this omission. The Crown Lands Ordinance and the CLPA were enacted in the same period. It may be argued that the legislators considered that the proposed section 12 of the Crown Lands Ordinance and section 53 CLPA (section 63 CLPO as it then was) were similar in effect and purpose⁷² and therefore decided

⁶⁹ See footnote 42. In view of the historical development in England of this technique, it is questioned whether it was employed in Singapore save that the form prescribed by Act XVI 1837 might have been patterned after it.

⁷⁰ But see *Boyer v. Warby* (1953) 1 Q.B. 234. The Court of Appeal has held that the burden (and presumably also the benefit) of a stipulation can run with a lease for three years or less made by unsealed writing.

⁷¹ Later re-named the State Lands Act.

⁷² The comment on the proposed s. 12 made in the Statement of Objects and Reasons gazetted in the Straits Settlements Government Gazette, September to December 1885, at p. 1967 was that "Section 12 re-enacts, as to future transactions, a rule laid down in Section 11 of Act XVI of 1839, that deeds relating to land must be in the English language." This is surely a somewhat restricted view of s. 12 which is clearly directed at dealings in land and requires:

- (a) such dealings to be in writing;
- (b) such writing to be in deed form; and
- (c) such deed to be in the English Language...

When one contrasts the said comment on s. 12 with that made on s. 53 CLPA (then s.63 CLPO), one would have thought that the comment on s. 12 was more appropriate to s. 53 CLPA.

to omit section 12. If this was the case then it can be said that the legislators took the conventional interpretation of section 53 since section 12 clearly dealt with land dealings and required that such be effected by deed.

The Indian Act XXXI of 1854 has already been considered and it was noted that Clause XIV of the Act not only enabled land dealings to be effected by deed but permitted other modes of conveyance. Section 52 CLPA⁷³ is obviously a reproduction with amendments of Clause XIV but that part of Clause XIV which permitted other modes of conveyance was omitted from section 52. Such deletion is compatible with intending a conventional interpretation of section 53.

The alternative interpretation of section 53 is not without its difficulties particularly because of the definition of conveyance in section 2. As raised earlier, if the definition of "conveyance" is restricted to any assurance made by deed, section 53 would be redundant in requiring deeds to be in deed form. This very restricted construction of "conveyance" in section 53 will necessarily result in the very narrow view of section 53 as only requiring deeds (conveyances) to be in the English language and therefore all those dealings in land mentioned in section 3 Statute of Frauds 1677 such as the assignment of leases may still simply be effected in writing.

Moreover, although a preference has been expressed for the view that section 3 RPA 1845 refers to instruments only, the section is really not that clearly worded and it could be viewed as requiring certain transactions to be effected by deed. Accordingly, it may be that the probable successor to section 3 RPA 1845, namely, section 53 CLPA, could be viewed as referring to dealings and not merely the instruments for effecting the dealings.

3. *Other Terms and Expressions in Section 53 Itself*

Section 53 CLPA contains the expression "the lease for a period not exceeding three years at a rack rent" which is absent in section 52 of the English LPA 1925. Thus, section 53 expressly provides that such lease shall be excepted from the rule that a conveyance of any estate or interest in land shall be void at law unless it is by deed in the English language. It can be argued that the exception made in section 53 of "the lease for a period not exceeding three years at a rack rent" by its phraseology refers to a dealing rather than a deed.

VI. A THIRD INTERPRETATION OF SECTION 53

A third interpretation of section 53 lies in a modification of the alternative interpretation; that is that section 53 is directed at all instruments effecting or evidencing or purporting to effect or evidence the creation or disposal of legal interests in land. Such an interpretation which has ultimately the same effect on formalities for land dealings as would the conventional interpretation necessitates that the word "conveyance" at least in the context of section 53 be read to include

⁷³ S. 52(1) states, "Any estate or interest in land, whether in possession, remainder or reversion, may be conveyed by a simple deed, whether the deed operates under the Statute of Uses or not."

any instrument whether in deed form or not.⁷⁴ By this third interpretation, section 53 “builds upon” the provisions of the Statute of Frauds which made writing necessary for the creation and disposal of most legal interests in land in that section 53 stipulates that such writing has to be in deed form and in the English language.⁷⁵ There are difficulties to be overcome in adopting this interpretation such as the technical difficulty in the interpretation of the word “conveyance” as including instruments other than deeds. However, many of the arguments used in support of the conventional interpretation may be applied in favour of this third interpretation.

VII. REASON TO QUESTION

In conclusion, the conventional interpretation or at least the third interpretation of section 53 may just be justifiable. It is regarded as a settled aspect of the law on formalities for land dealings that the transfer of legal title on a sale of land and the creation of a lease exceeding three years and the assignment of a lease have to be effected by deed and one may rightly ask why it has been necessary to attempt a justification of it. Singapore’s legal system was built upon borrowed laws particularly from England but from 1826 such importation has not been a total and continuous transplant of the law applicable in England. Rather the borrowing has been in parts and from time to time. Such importation underscores the importance of clear correlation of the imported laws with the existing laws (themselves also borrowed perhaps from a different period of England’s own legal development) and the careful adaptation of such imports to fit the existing structure of rules. The importation of laws which are tailored for and based on an infrastructure of rules that exist in the exporting country can cause ambiguity in the body of law of the importing country when such infrastructure does not in fact exist or exists in part only in that country. Where there is apparent ambiguity in the law a look into the history of that law may help to clarify such ambiguity and in that process may lead to a richer and fuller understanding of the laws themselves. Thus it has been necessary to take the long way back to section 53,

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⁷⁴ Note English position under LPA 1925. See footnote 58.

⁷⁵ As noted earlier, ss. 1 and 3 of the Statute of Frauds have never been expressly repealed.

* LL.B. (Sing.), Lecturer, Faculty of Law, National University of Singapore.