

CONCERNING SEALS.

SELECTIONS.

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Few things will bear less looking into, with other eyes than those of habit, than the theory of the common law concerning seals. Established as this theory was in days of ignorance, it derives its support from prescription and usage rather than from intrinsic worth. The fact is that the law moves much like the gods of Homer—an interval of ages between the steps. In that alone we are accustomed to forget that the world is a world of progression, and that what was good three centuries ago may possibly not be good now. In that alone we are wont to believe that the common law, like another Minerva, was knocked, complete, out of a few sage Anglo-Saxon heads, and that all that remains for subsequent generations to do is to hand this “torch of truth” along the line. While it comes rather hard to conscientiously believe that the common law is literally the perfection of human wisdom, we can readily concede its many and great excellencies. What it needs is pruning—the lopping off of some things that have outlived their usefulness. To the plain man, unversed in the wonderful mysteries of the law, the legal effect of a seal can hardly fail to seem less than a miracle. The simple wafer must appear to him like “some amulet of gems annealed in upper fires.” Why it should have the consecrating influence the law imputes to it, he will never be able to understand, and we very much doubt if any one else will ever understand it.

A little investigation of the history of seals shows, clearly enough, that they were originally used only as a make-shift for writing. Blackstone gives the following account of them: “The method of the Saxons was, for such as could write, to subscribe their names; and whether they could write or not, to affix the sign of the cross, which custom our illiterate vulgar do, for the most part, to this day keep up by signing a cross for their mark, when unable to write their names.” “In like manner, and for the same unsurmountable reason, the Normans, a brave but illiterate nation, at their first settlement in France, used the practice of sealing only, without writing their names; which

custom continued when learning made its way among them, though the reason for doing it had ceased. At the conquest, the Norman lords brought over into this kingdom their own fashion, and introduced waxen seals only instead of the English method of writing their names, and signing with the sign of the cross. And in the reign of Edward I, every freeman, and even such of the more substantial villians as were fit to be put upon juries, had their distinct particular seals.”

A seal was certainly useful to a Norman that could not write, and of significance when each had his particular signet; but when writing became common and the distinctive character of the seal lost, sealing became a mere hollow form; as Blackstone says, “the reason for doing it had ceased.” At common law a seal was “wax impressed, because wax without impression is not a seal” (3 Inst. 169); but even these requisites, *wax* and *impression*, are dispensed with in most, if not all the States, and in some of them a mere scrawl of the pen is held sufficient. Not equal to the task of freeing ourselves from this venerable superstition, we make the observance of it as easy and meaningless as possible. Chancellor Kent thought that this legalizing of pen-flourish seals “is destroying the character of seals, and is in effect abolishing them and with them the definition of a deed or speciality, and all distinction between writings sealed and writings unsealed.” 4 Kent’s Com. 445.

Now, to the lawyer, accustomed to look upon a seal much as a heathen does upon his idols, this may seem very bad, but to a layman it would probably appear of little moment whether the “distinction between writings sealed and writings unsealed” were preserved or not.

It seems to us rather absurd to be told by learned judges that “sealing is a relic of ancient wisdom,” and yet such expressions are found in our reports of comparatively recent date. For instance, in *Jackson v. Wood*, 12 Johns. 73, we find the following: “This venerable custom of sealing is a relic of *ancient wisdom*, and is not without its real use at this day. There is yet some degree of *solemnity* in this form of conveyance. A seal attracts attention and excites caution in illiterate persons, and thereby operates as a security against fraud. If a man’s freehold might