ing the Act in England, lands there did lie in grant. The error is important, because in some cases a conveyance may be found to fail entirely, and in other cases only to operate by the raising of a use when it was not intended, and thus causing the uses expressly declared, to be but uses on a use, and therefore trusts. Whatever doubt there may be as to whether words of release only may operate as a grant or bargain or sale, (see *Cameron* v. *Cunn*, and *Nicholson* v. *Dillabough*, supra, in the text and notes,) there can be no doubt that a deed using only "grant" as an operative word, may take effect as a bargain and sale, if on a pecuniary consideration, or as a covenant to stand seised if on a consideration of blood or marriage, or as a release if there be possession or a vested estate whereon it can operate, or as an assignment, surrender, and in other modes. The nugatory grant therefore might be valid as a bargain and sale, or covenant to stand seised, but in such cases, if uses were declared, it would be attended with the results above alluded to, of misplacing them and also the legal estate, by the use being raised, unintentionally, yet necessarily, in the bargainor or covenantor. Thus, if A, in anticipation of marriage, had by way of settlement, *granted* to B and his heirs, to the use of him, A, and his heirs till marriage, and thereafter to other uses declared, the instrument would have been void as a grant; and though if a pecuniary consideration had been expressed, it might have operated as a bargain and sale, then the fee would have been in B in trust for A, and not in A, as intended; and if the marriage had happend, the uses declared, which it was intended should confer legal estates, as being executed in possession by the Statute of Uses, would have been mere trusts. So also, if A had granted to B, in fee, to the use of him, A, and another, in fee, with a view to vest the estate in himself and such other jointly, (a case very likely to have occurred on appointment of a new trustee), the deed was either inoperative, or if it could have operated as a bargain and sale, the legal estate would have been in B. In the above and the like cases the intention was that the instrument should operate as a conveyance at Common Law, and that the first use raised should be in the grantee to uses, and this would be so, and the instrument would so operate now that lands lie in grant; but if it can only be supported as a bargain and sale, or covenant to stand seised, the first use raised is of course in the bargainor or covenantor.

If the instrument could be supported as a Common Law conveyance by way of release, it would work as intended, but this presupposes possession, or some vested estate, at least, in the releasee. Possibly the Act of 12 Vic. ch. 71. sec. 2 (repealed) might aid the want of possession, or of estate, in cases of grants after that Act; the construction of that section is, however, very obscure.

Great caution appears requisite in the use of this Act, as the forms in its schedules are, in strictness, appropriate only to the most simple conveyances. The form in the first schedule is that of a grant in fee simple, and the covenants in the second section are framed with reference to an assurance of that simple description; and it may be useful to impress upon parties who choose to avail themselves of the Act, that more than usual care will be necessary to have their deeds accurately engrossed. The Act gives a particular efficacy to a particular form of words, and the slightest deviation from that form will endanger the operation of the Statute with reference to the covenant in which the mistake occurs; and such covenant may then, under the second section, be left to the very doubtful effect it may have by its own independent operation.

Section 3 of schedule 2 authorizes the introduction of exceptions and qualifications of the covenants, but for the reasons above given it is dangerous to interfere with the forms, unless in very clear cases, for it may not be easy to determine what is the introduction of an exception or qualification. Thus the superadding to the covenant for right to convey free from incumbrance the words "except a certain mortgage dated, &c.," would clearly be within the authority; but in the very common case of *striking out* the words "notwithstanding any act of the said covenantor" with a view to render the covenant for right to convey, and all *subsequent* covenants *unqualified*, it is by no means clear that that is an *introduction* of an exception or qualification; it is rather the omission of that which is intended to enlarge the covenant and deprive it of its exceptional and qualified character, and render it according to the common expression "full and unlimited." If the forms of covenants in the Act did not, as in effect they do, except the acts of all other than the covenantor, and