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An interesting exception to that situation is presented in the recent case of *Ivanhoe Building & Loan Ass'n. of Newark v. Orr*.³ The bankrupt was liable on a bond, secured by a mortgage on property which did not belong to him. The creditor foreclosed the mortgage, and bid the property in at a nominal figure. It (the creditor) then filed a claim in the bankruptcy proceedings for the amount due on the bond, less the amount of the nominal bid. The referee reduced the claim to the amount due on the bond, less the actual value of the property, and his action was sustained by the District Court and the Circuit Court of Appeals. The Supreme Court reversed the ruling, on the ground that, since the property did not belong to the bankrupt, the creditor was not a "secured creditor" within the definition in Section 1(23),⁴ and therefore its rights were not governed by Section 57(e).⁵ Hence, the Court said these sections did not "forbid the proof of a claim for the principal of the bond with interest, though the petitioner [creditor] may not collect and retain dividends which with the sum realized from the foreclosure will more than make up that amount."

This return to the "chancery" rule again illustrates the Court's long-maintained preference,⁶ and serves as fair warning that, hereafter, the Court will, in all probability, apply that rule, even in bankruptcy cases, whenever it is not bound by strict statutory language.

D. W. MARKHAM.

Bills and Notes—Adoption of Printed Seal.

A hurrying age has largely cast seals on the scrapheap. In states where they are not abolished their formality and significance are much impaired by either statutory or judicial action.¹ Yet even in such an

³ 55 Sup. Ct. 685 (U. S. 1935).

⁴ 30 STAT. 544 (1898), 11 U. S. C. A. §1(23) (1927).

⁵ 30 STAT. 560 (1898), 11 U. S. C. A. §93(e) (1927).

⁶ See Clark, *supra* note 1.

¹ In the following states private seals have been abolished: ARIZ. REV. CODE (Struckmeyer, 1928) §3048 (except corporate seals); ARK. CONST. of 1874, Schedule 1; CAL. CODE OF CIV. PROC. (Deering, 1931) §1932; IDAHO CODE ANN. (1932) §§28-108; IOWA CODE (1931) §9439; KAN. REV. STAT. (1923) c. 16, §106 (except corporate seals); KY. STAT. (Carroll, 1930) §471; MINN. STAT. (Mason, 1927) §6933 (except corporate seals); MISS. CODE (1930) §3302 (except corporate seals); MO. REV. STAT. (1929) §2957 (except corporate seals); MONT. REV. CODES (1921) §7524; NEB. COMP. STAT. (1929) c. 76, §256; N. M. STAT. ANN. (1929) §117-105 (except corporate seals); N. D. COMP. LAWS (1913) §5894; OHIO ANN. CODE (Throckmorton, 1929) §32; OKLA. COMP. STAT. (1921) §5037; S. D. COMP. LAWS (1929) §864; TENN. CODE (1932) §7828 (except corporate seals); TEX. REV. CIV. STAT. (Vernon, 1935) art. 27 (except corporate seals); WASH. REV. STAT. (Remington, 1933) §10556; WYO. REV. STAT. (1931) c. 97, §122 (except corporate seals).

The effect of this legislation has in most instances been to reduce the status of a sealed instrument to that of a written contract. In some states, however, just the reverse seems to have happened. In these states statutes provide that the distinction between sealed and unsealed instruments shall be abolished, but written

atmosphere the case of *Williams v. Turner*,² decided last spring, came as something of a shock to the bar and has doubtless outlawed, without warning or opportunity for preventive measures, a considerable amount of overdue commercial paper heretofore considered enforceable under the long statute of limitations for sealed instruments. A promissory note, says the decision, though it bears after the maker's signature the printed symbol, "(SEAL)", is not legally a sealed instrument unless there is additional evidence of a specific intention to adopt the printed seal as the maker's own.³

instruments shall "import a consideration" in the same manner as sealed instruments have formerly done. ARIZ. REV. CODE (Struckmeyer, 1928) §3048; MO. REV. STAT. (1929) §2958; N. M. STAT. ANN. (1929) §45-608. In Indiana and Wyoming "every writing not sealed shall have the same force and effect that it would have if sealed." IND. STAT. ANN. (Burns, 1933) §2-1601; WYO. REV. STAT. (1931) c. 97, §123. In South Dakota a written instrument is "presumptive evidence of consideration." S. D. COMP. LAWS (1929) §848.

Many of those states which still retain the distinction between sealed and unsealed instruments have nevertheless cut down on the common law effect of a seal. Statutes in these states provide that, in an action on a sealed instrument, the seal shall be merely presumptive evidence of consideration which may be rebutted. MICH. COMP. LAWS (1929) §14200 (presumption of consideration arising from the presence of a seal "may be rebutted in the same manner, and to the same extent, as if such instrument were not sealed"); N. J. COMP. STAT. (1911) p. 2240, §66; N. Y. CIV. PRAC. ACT §342; ORE. CODE ANN. (1930) §9-704 (seal is "primary" evidence of consideration); WIS. STAT. (1931) c. 328, §27.

In other states a seal is no longer necessary to convey the legal title to land. ALA. CODE (Michie, 1928) §6839; COLO. ANN. STAT. (Courtright's Mills, 1930) §823; IND. STAT. ANN. (Burns, 1933) §56-104; MICH. COMP. LAWS (1929) §14007; R. I. GEN. LAWS (1923) §4270; S. D. COMP. LAWS (1929) §541; UTAH REV. STAT. (1933) tit. 104, c. 48, §4; W. VA. CODE (1931) c. 36, art. 3, §1.

In many of the states still requiring seals for certain instruments, scrolls and printed insignia are sufficient as seals. COLO. ANN. STAT. (Courtright's Mills, 1930) §824; CONN. GEN. STAT. (1930) §5615; FLA. COMP. GEN. LAWS (1927) §5704, §5705; GA. CODE (Michie, 1926) §5; ILL. REV. STAT. (Cahill, 1933) c. 29, §1; MICH. COMP. LAWS (1929) §13313; N. Y. CON. LAWS (Cahill, 1930) c. 23, §44; ORE. CODE ANN. (1930) §9-703; UTAH REV. STAT. (1933) tit. 104, c. 48, §2; VT. GEN. LAWS (1917) §22; VA. CODE (Michie, 1930) §5562, §5; W. VA. CODE (1931) c. 2, art. 2, §6; WIS. STAT. (1931) c. 235, §17.

Even the requirements of official sealing are modified in various ways. See N. C. CODE (1935) §§3179, 3297, 3949 (8), and §7880 (97), tax law, which recognizes the possible use of scrolls for official seals. A seal no longer converts an otherwise negotiable instrument into a non-negotiable specialty. *Pate v. Brown*, 85 N. C. 166 (1881); NEGOTIABLE INSTRUMENTS LAW §6, par. 4. And generally is not conclusive evidence of consideration. *Citizen's Nat. Bk. v. Curtis*, 153 Md. 235, 138 Atl. 261 (1927); *Patterson v. Fuller*, 203 N. C. 788, 791, 167 S. E. 74, 75 (1932); *Lentz v. Johnson & Sons, Inc.*, 207 N. C. 614, 178 S. E. 226 (1935) (1927) 25 MICH. L. REV. 208; cf. *Ducker v. Whitson*, 112 N. C. 44, 53-54, 16 S. E. 854, 857 (1893). Whether the rebuttable presumption of consideration from a seal is any greater a procedural asset than the prima facie case created by the Law Merchant,—see *Campbell v. McCormac*, 90 N. C. 491 (1884)—and, by Negotiable Instruments Law §24, may hinge on whether a presumption is treated in the particular jurisdiction as doing more than to take the case to the jury. See generally on that *McCormick, Charges on Presumptions and Burden of Proof* (1927) 5 N. C. L. REV. 291; and 5 WIGMORE, EVIDENCE (2d ed. 1923) §§2483-98.

² 208 N. C. 202, 179 S. E. 806 (1935).

³ The finding at trial here was that the maker of the note did not "adopt as his seal the word '(seal)' unless he did so by writing his name on said line at the

That evidence might, it seems, be either in the form of a recital in the body of the instrument,⁴ or, of some special manifestation by the maker of an intent to execute a sealed instrument,⁵—this last, an almost unheard of circumstance and a possibility, therefore of little practical significance.

The decision was not demanded by an earlier binding decision in a case on all fours, for there was no such case; nor by inescapable logic from a long line of analogous North Carolina cases, for there were no such cases;⁶ nor did it bow to any overwhelming weight of authority

right hand end of which is printed '[Seal]'." This is treated on appeal as a finding that the maker had no intention of executing a sealed instrument, seemingly too strict an inference. It could mean equally, and probably did mean, that there was no other evidence of any intention on the matter. Though defendant's plea of the three-year statute of limitations might be regarded as denying an intent to execute a sealed instrument, it does not appear that the plea was introduced in evidence for this purpose. Even if the court did not want to go to the length of the Restatement of Contracts in creating a conclusive presumption, it could, out of deference to the widespread use of this form under the supposition that it provided sealed paper, have recognized the signing as described to create a rebuttable presumption of an intent to adopt the seal, as was done in the case of a paper paster in *Hughes v. Debnam*, 53 N. C. 127 (1860), according to the headnote, though the report itself seems more doubtful. Cf. RESTATEMENT, CONTRACTS (1932) §98, subsection 1 with subsection 2.

⁴ It is understood that some lawyers in consequence of this case are changing their note forms by incorporating a recital of sealing in addition to the printed seal at the end of the signing line. Yet the case does not say that such a recital will conclude the matter and there is local authority that the question is one of actual intention and so a jury question even when there is a recital. *Pickens v. Rymer*, 90 N. C. 282 (1884) (2 signers, one seal). Where, as in such a case, the only evidence of intent is what appears on the instrument, the folly of leaving it to the variable results of a jury verdict would seem only too evident. Other cases sound *contra*, that a recital establishes adoption of the seal and that it is a matter for judicial determination. *Harrell & Co. v. Butler*, 92 N. C. 20, 23 (1885); *Devereux v. McMahon*, 108 N. C. 134, 141, 12 S. E. 902, 904 (1891) *semble*; *Benbow v. Cook*, 115 N. C. 324, 332, 20 S. E. 453, 455 (1894), cited and quoted in *Bailey v. Hassell*, 184 N. C. 450, 456, 115 S. E. 166, 170 (1922), although in that case a jury had found adoption from extrinsic evidence. See also, *Jacksonville, M. P. Ry. v. Hooper*, 160 U. S. 514, 16 Sup. Ct. 379, 40 L. ed. 515 (1896), relied on in the instant case. But those were cases where a seal was necessary to the validity of the instrument and cannot be definitely relied upon in view of the intimation in the instant decision that a different rule may then apply as in Virginia. Note (1928) 15 VA. L. REV. 91, 92. See also dissent of Henderson, C. J., in *Yarborough v. Monday*, 13 N. C. 493, 495 (1830), considering the word "Indenture" in the body of the instrument sufficient evidence of the adoption of a seal by two signers. The usual recital will, of course, not satisfy the requirements of the Code for registering deeds. *Withrell v. Murphey*, 154 N. C. 82, 87, 69 S. E. 748, 751 (1910). In the following cases there was no evidence of any recital: *Taylor v. Heggie*, 83 N. C. 244 (1880); *Clayton v. Cagle*, 97 N. C. 300, 1 S. E. 523 (1887); *Caldwell v. Morganton Mfg. Co.*, 121 N. C. 339, 28 S. E. 475 (1897); cf. the now probably obsolete view that the recital cannot prove the seal since the seal must prove the deed of which the recital is but a part. *Ingram v. Hall*, 2 N. C. 193, 209 (1795).

⁵ Something of that sort might arise by a vote of stockholders, authorizing, for example, an issue of "bonds." Cf. *Bailey v. Hassell*, 184 N. C. 450, 455, 115 S. E. 166, 169 (1922).

⁶ While it has been repeatedly said that the question of adopting a seal is one of the signer's intent, only one previous case has been found in which the symbol was

elsewhere, for there was no citation of such overwhelming weight of authority, nor is there any such.⁷ And the decision is contrary to the rule adopted by the American Law Institute⁸ which customarily follows a clear weight of authority if there is one.⁹ So far as the state of the authorities is concerned it might have gone either way—it was a purely policy decision. When that is the case, a widespread expression of dissatisfaction, such as has been heard in this instance, gives rise to doubts.

If the transition from formal, impressive seals in wax,¹⁰ to assorted scrawls, miniature sun-flowers and other penned symbols and printed insignia be considered,¹¹ some light will be shed on the reasons which should underlie a decision on the matter. When any non-descript mark once came to be relied upon and legally approved as a sufficient seal,¹²

at once, (1) a clearly designated seal, and, (2) so situated as to relate clearly to the signature of the one sought to be charged with adopting it. *Devereux v. McMahon*, 108 N. C. 134, 12 S. E. 902 (1891). That case came up from a jury verdict but contains a statement that signing before a seal automatically created a deed (p. 141). It is not an authority for the present case since the present decision thought it necessary to distinguish it on the ground that the instrument was there one requiring a seal for validity. Cases where the mark is of uncertain character or is in an unusual or seemingly unrelated location (see notes 13 and 17, *infra*), are only remotely analogous and of very little persuasive weight.

⁷ There is usually said to be a split of authority. See 56 C. J., Seals, §5; 1 DANIEL, NEG. INSTR. (7th ed. 1933) 32-33, after first stating the rule as announced in the instant case; Billig and Wunschel, *The Private Seal in West Virginia* (1934) 40 W. VA. L. Q. 330, 334. Accord with view of principal case, *Hughes v. Spratling*, 3 Ala. App. 517, 57 So. 629 (1912) (letters, "L. S."); *Buckingham v. Orr*, 6 Colo. 587 (1883); *Caputo v. Di Loreto*, 110 Conn. 413, 148 Atl. 367 (1930) (emphasizing statute); *Burkhalter v. Perry & Brown*, 127 Ga. 438, 56 S. E. 631 (1907) (same); *Manning v. Perkins*, 86 Me. 419, 29 Atl. 1114 (1894); *In re Pirie*, 198 N. Y. 209, 91 N. E. 587 (1910). *Contra*: *Langley v. Owens*, 52 Fla. 302, 42 So. 457 (1906) (printed letters "L. S."; presumption of sealing; goes largely on statute); *Moats v. Moats*, 72 Md. 325, 19 Atl. 965 (1890); *Line v. Line*, 119 Md. 403, 86 Atl. 1032 (1913); *Osborn v. Kistler*, 35 Oh. St. 99 (1878); *Loraw v. Nissley*, 156 Pa. 329, 27 Atl. 242 (1893) (strong case); *McLaughlin v. Braddy*, 63 S. C. 433, 41 S. E. 523 (1902). See also *Green v. Lake*, 2 Mackey 162, 172 (D. C. 1882) (involving Mississippi note); *Brown v. Jordhal*, 32 Minn. 135 (1884).

⁸ I RESTATEMENT, CONTRACTS (1932) §98(1) and illustration; see North Carolina annotations, (1934) 13 N. C. L. Rev. 67.

⁹ *Corbin, The Restatement of the Law of Contracts* (1928) 14 A. B. A. J. 602, 603, although, of course, some minority views have been stated when they were thought to represent the clearly superior rule.

¹⁰ See Article, *Seals* (1867) 1 AM. L. REV. 638.

¹¹ *Ingram v. Hall*, 2 N. C. 193 (1795); *Billig and Wunschel, supra* note 7.

¹² It is usually stated that whether a given mark or attachment constitutes a seal is a question for the court while the question of whether it was put on or was adopted as such by the signer is a question for the jury. See *Yarborough v. Monday*, 14 N. C. 420, 421 (1832); *Baird v. Reynolds*, 99 N. C. 469, 6 S. E. 377 (1888). Since recognition of scrawls and marks for seals, however, [see statutes so providing, *supra* note 1; also *Henderson, J., in Yarborough v. Monday*, 13 N. C. 493, 494 (1830); *Hacker's Appeal*, 121 Pa. 192, 15 Atl. 500 (1888) (holding that a mark 1/8 inch long will serve)], the first question has practically ceased to exist,—anything will do if so intended and the sole question then becomes the second, i.e., if it was so intended. That is a fact question but it is by no means in all cases a proper jury question. The intent may be so clearly manifested on the instrument that the court should decide it, as where there is a recital of sealing or, it is be-

it was proper to seek the actual intent of the signer as to whether he meant it to be his seal. There was no clearly evident intent from the mere signing, for the marks might be only flourishes; so likewise when it was sought to make one seal do for more than one signature.¹³ It is easy to see why that should be, too. In the one case the kind of mark, in the other, its place, would suggest a question as to its intended import. But when a printed symbol containing the word "Seal" was used, the presence of that word in plain English adjacent to each place of signing would give rise to a natural inference that the self-explanatory symbol was what it said it was¹⁴ and that it was adopted like any other part of a printed document would be if not cancelled.¹⁵ In other words, even though intent is still determinative, it is objective intent, and only one finding thereon is reasonable under the facts of the instant case—that the instrument was intended to be sealed. It follows that the trial judge should direct such a finding or set aside a contrary one as against the weight of the evidence. Of course, in cases where there is ambiguity there is a legitimate jury question. This easily distinguishes the cases relied on by the court, where one scroll was claimed to be the seal of two,¹⁶ and where, on a mutilated instrument, the question of the existence of any marks as a seal was obviously one of fact for the jury.¹⁷

A sampling canvass of laymen tends to confirm the view just expressed. It seems that they quite generally understand that the printed seal is a part of the instrument, legally efficacious for some purpose and that it is adopted by signing before it. Of course, it argues nothing for the opposing position that the signer does not know the full or correct legal effect of the seal he finds and adopts. That would be still true if there were a recital. And it is almost as certainly true of the words of negotiability on the same instrument, yet these, beyond question he adopts if he does not cancel them. One accepts and incorporates by signing all plain, seemingly relevant matter connected with the instru-

lieved, likewise where the signature is placed before a mark including the word, "seal." It would always be open to the defendant to show whether the mark was wrongfully placed there after the signing. And usual equitable principles should apply in case of mutual mistake. Cf. *Lynam v. Califer*, 64 N. C. 572 (1870), where the seal was added through "mistake and ignorance."

¹³ *Yarborough v. Monday*, 13 N. C. 493 (1830), 14 N. C. 420 (1832); *Pickens v. Rymer*, 90 N. C. 282 (1884).

¹⁴ See language of Gilfillan, C. J., in *Brown v. Jordhal*, 32 Minn. 135, 137 (1884), as to presence of word "seal" in brackets as evidencing unmistakable intent to make the symbol a seal.

¹⁵ *Loraw v. Nissley*, 156 Pa. 329, 27 Atl. 242 (1893), that use of printed form raises conclusive presumption of the adoption of all parts not cancelled before signing. And see Oregon statute to the effect that "any printed seal or scroll on the instrument at the time of signing will be presumed to have been adopted by the person signing his name before it." ORE. CODE ANN. (1930) §9-703.

¹⁶ Note 13, *supra*.

¹⁷ *Baird v. Reynolds*, 99 N. C. 469, 6 S. E. 377 (1888).

ment he signs. This proposition is so elementary that it hardly ever finds direct expression but it is implicit in such doctrines as the fine print exception¹⁸ and the significance attached to the writing as evidence of the parties' intention in the application of the parol evidence rule.¹⁹ And the argument sometimes made that seals might be fraudulently added²⁰ loses most of its weight when applied to a printed form, particularly in view of the present day skill in detecting differences of ink and type.²¹

Two considerations, moreover, are present with regard to negotiable instruments that are not in the case of ordinary common law documents. The first of these is that commercial paper should not be cluttered up with unnecessary verbiage such as the non-commercial language of a recital taken from common law deeds and covenants.²² The second of these considerations is that a long period of limitation is more justifiable in the case of negotiable instruments than in the case of most other legal engagements both written and oral. The universally recognized custom is to surrender a bill or note when it is discharged²³ and the possibility of fraudulent suits upon such instruments after the lapse of an unreasonable time is therefore diminished.

It may be silly to allow an informal mark carelessly annexed or thoughtlessly adopted, to effect the same important differences in legal

¹⁸ 1 PAGE, *CONTRACTS* (2d ed. 1920) §112. And see novel argument based on that doctrine. *People v. Mich. Ave. Trust Co.*, 242 Ill. App. 579, 596-597 (1926).

¹⁹ That the parol evidence rule prevents "varying, contradicting or adding to" a writing only when reasonable men would have intended it to embody the final and complete agreement of the parties, see *Gianni v. R. Russel & Co., Inc.*, 281 Pa. 320, 126 Atl. 791 (1924), and *McCormick, The Parol Evidence Rule as a Procedural Device for Control of the Jury* (1932) 41 YALE L. J. 365. Cf. 5 WIGMORE, *EVIDENCE* (2d ed. 1923) §2430 that the test of intent is subjective. Of course, the purport of the writing is cogent evidence of intent. See 5 WIGMORE, *EVIDENCE* (2d ed. 1923) §2430 (3).

In North Carolina, it seems that the rule prevents only contradiction and that any intent is immaterial. *Chadbourn and McCormick, The Parol Evidence Rule in North Carolina* (1931) 9 N. C. L. REV. 151, 156-167. This view of the parol evidence rule would be an analogy for a holding that an instrument like the one in the instant case is conclusively presumed to be sealed—that is, even objective intent is immaterial.

²⁰ 1 DANIEL, *NEG. INSTR.* (7th ed. 1933) 32; *In re Pirie*, 198 N. Y. 209, 214, 91 N. E. 587 (1910). Cf. *Ingram v. Hall*, 2 N. C. 193, 210 (1795).

²¹ OSBORN, *QUESTIONED DOCUMENTS* (2d ed. 1929) 481-488.

²² It is true that Chief Justice Gibson's "Courier without Luggage," [*Overton v. Tyler*, 3 Pa. 346, 347 (1846)] might in this day be more fittingly compared to a luggage-laden red-cap. But what stipulations it has been found desirable to add for business reasons are one thing; what are unnecessarily added by legal compulsion are another. The practice was to cut down on words and utilize implications. Note the dropping of "for value received"; the absence of recitals about signing and delivery like those in the language of common law documents, "signed, sealed and delivered"; the bare form of a blank endorsement with its fully effectual operation to transfer and bind—all mercantile abbreviations for mercantile paper.

²³ *NEGOTIABLE INSTRUMENTS LAW* §74; N. C. CODE (1935) §3055.

rights which the old-time elaborate and impressive sealing did.²⁴ Sealing today, even with a preliminary printed recital, is hardly more than a blind and inadequately comprehended equivalent of declaring consideration to be unnecessary²⁵ and enforceability to be lengthened. Yet a statement in plain words to the same effect would hardly be permitted to serve the purpose.²⁶

Perhaps such a statement should be sanctioned and even made the exclusive way of accomplishing those objects,²⁷ or at the opposite extreme that the entire effect of private seals should be done away with along with the seals themselves.²⁸ The former course would assure a wider understanding of what was legally accomplished; the latter would remove the need for any special understanding. But either of these departures would be recognized as a matter for legislative determination, so that existing rights might be protected.

Williams v. Turner, the instant case, departed from the rule apparently long supposed to be the law in this state and long acted upon as such.²⁹ There is nothing unseemly about a court's acquainting itself with existing lay ideas as to the state of the law and with the practices built up upon such ideas, and in then considering the consequences to business and private rights of a decision one way or the other,—espe-

²⁴ See Decker, *The Case of the Sealed Instrument in Illinois* (1917) 1 ILL. L. BULL. 65-66, 173-174; Crane, *The Magic of the Private Seal* (1915) 15 COL. L. REV. 24; *Ingram v. Hall*, 2 N. C. 193, 203. But cf. Reeve, *The Uniform Written Obligations Act* (1928) 76 U. OF PA. L. REV. 580.

²⁵ As to negotiable instruments, this is not included. See citations at the end of note 1, *supra*.

²⁶ Cf. cases holding recital without seal insufficient. Annotations to RESTATEMENT, CONTRACTS (1932) §96, (1934) 13 N. C. L. REV. 66; Note (1926) 4 N. Y. L. REV. 431. But a contrary rule exists by statute in some states. ALA. CODE (Michie, 1928) §6847; MASS. ANN. LAWS (Michie, 1932) c. 4, §9A; N. J. LAWS 1931 c. 12 (applies only to conveyances of real property); S. C. CODE (1932) §8694.

²⁷ Cf. the recital of intent to be bound as a substitute for consideration in acts adopted in Pennsylvania and Utah. Reeve, *The Uniform Written Obligations Act* (1928) 76 U. OF PA. L. REV. 580; Note (1931) 9 N. C. L. REV. 196.

²⁸ See statutes, *supra* note 1; Judge Crane, *op. cit. supra* note 24, at 36. But cf. *contra*, argument of Prof. Reeve, *supra* note 24, at 580, 581.

²⁹ Sample forms of promissory notes used in North Carolina, not collected for this purpose but already in hand for use as illustrative material in the course in Bills and Notes in the Law School, show the following classifications: (Total notes, 11); Forms having neither seal nor recital, 1, (Fidelity Bank, Durham); having both seal and recital, 2, (First & Citizens Nat. Bk., Smithfield, Bank of Chapel Hill); having seal but no recital (the type here in question), 8, (general form in use at Asheville, and forms of Jefferson Standard Life Ins. Co., Greensboro, Bank of Wendell, Farmers & Merchants Bank, Wendell, First Nat. Bk., Washington, Central Bank and Trust Co., Asheville, N. C. Bank & Trust Co., Raleigh, Hood System Industrial Bank of Greenville). Furthermore, as to forms set out in full in recent reported opinions, besides the one in the instant case, that quoted in *Davis v. Alexander*, 207 N. C. 417, 177 S. E. 417 (1934), has a seal but no recital and is referred to throughout the opinion as "the note under seal," while that found in *Hall v. Hood*, Comr., 208 N. C. 59, 179 S. E. 27 (1935), shows neither seal nor recital.

cially when the law in the particular situation, as here, has not already been cast in a fixed mould. As early, at least, as the 1700's that course had the approval by conduct of so eminent a jurist as Lord Mansfield³⁰ and there have been noteworthy examples ever since. If the court in the instant case had followed that practice it is believed a different conclusion would have been reached. At least in the case of standard forms of negotiable instruments bearing printed seals clearly described as such at the end of the signing lines, the intent of the signer thereon ought to be regarded as sufficiently evident to require no jury finding. Whether a like rule ought to apply to a printed "(L. S.)" in a like place is somewhat more doubtful because of the element of ambiguity but it may be noted for what it is worth that a limited inquiry among intelligent laymen shows a considerable impression that such an insignia, so placed, means "Legal Seal."³¹

The General Assembly would be well occupied at its next session in devoting some time to taking up anew the whole problem of seals and sealed instruments, including those of corporations, and declaring an appropriate state policy for the present day.

M. S. B.

Contracts—Exclusive Agency—Requirement as to Definiteness.

In an action for breach of contract plaintiff alleged an offer by defendant automobile manufacturer to grant plaintiff an exclusive sales agency if plaintiff succeeded in raising \$40,000 additional capital. After plaintiff had raised the \$40,000 by a sale of its stock, defendant refused to perform. *Held*, on demurrer, that the agreement was too indefinite and uncertain to be enforced.¹

The increasing prevalence of exclusive sales agencies as a means of distributing manufactured products creates new problems which test the usefulness of old common law rules of contract. The familiar formula that to be enforceable an agreement must be reasonably definite and certain,² fails as an instrument of predictability. The types of agreements which will be given or denied legal effect can be ascertained only by a close examination of the provisions of agreements involved in the cases where the formula is applied.³ Parties may enter into an enforceable

³⁰ See CAMPBELL, LIVES OF THE CHIEF JUSTICES (1899) 120, note.

³¹ If this notion is widespread enough, it should make no difference that it is historically erroneous.

¹ *Jordan v. Buick Motor Co.*, 75 F. (2d) 447 (C. C. A. 7th, 1935).

² *Ford Motor Co. v. Kirkmyer Motor Co.*, 65 F. (2d) 1001 (C. C. A. 4th, 1933) (Amount of goods not specified); 1 WILLISTON, CONTRACTS (1920) §37; RESTATEMENT, CONTRACTS (1932) §32.

³ *Oakland Motor Car Co. v. Indiana Automobile Co.*, 201 Fed. 499 (C. C. A. 7th, 1912) (Model and price of cars not stated in agreement, but locality and time