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MARYLAND STATUTORY MODIFICATIONS OF THE COMMON LAW OF REAL PROPERTY

By B. H. Hartogensis*

Present land titles in Maryland, as now owned by or vested in persons, natural or artificial, have an interesting and deeply significant historical background. Their origin dates from the granting of the Royal Charter of Terra Mariae by Charles I to Cecilius Calvert on June 20, 1632, and from the dominion claimed thereunder. This claim of dominion, born of discovery and consummated by actual possession, has been recognized by the Courts of the United States. Whatever title present landowners possess is derived solely through this grant, and nothing more. This negatives any notion of title accruing through grants of the Indian tribes.¹ At the date of the founding of the Palatinate, there were several forms of tenure in effect in England, the principal being that of military tenure (though it must be conceded that at this date in the history of English feudal law, military tenure did not occupy the position of honor and greatness which it once held). The charter granted to Calvert did not contain anything relating to the establishment of military tenure in the Colony. The grant was in "free and common socage" (agricultural tenure) and the tenure designed by Calvert was agricultural, with a blending of the lesser forms of tenure in effect in England, such as villein socage and copyhold, in order to take care of the Indians of the Colony.² The grant to Calvert was thus an abridgement of the basic principle of feudal tenure in the lack of the requirement of military tenure. This anticipated the abolition of the various military tenures by Parliament during the reign of Charles II.³ It is interesting to note that the grant to Calvert exempted the Colony from the operation of the Statute of Quia Emptores⁴

¹ Johnson's and Graham's Lessee v. McIntosh, 8 Wheat. 543, 5 L. Ed. 681 (1822).
² Royal Charter of Maryland, Art. V. The form of tenure granted in the charter is aptly explained in the leading case of Matthews v. Ward, 10 G. & J. 443 (1839).
³ Kilty, Landholder's Assistant, 24. Copyholds were expressly ended by the British Estates Act of 1925.
⁴ 12 Car. II, Ch. 24; Reeves, Real Property, Vol. I, 357.
⁵ 18 Edw. I, Ch. 1.
which had abolished sub-infeudation. While it has been claimed that this statute was in effect in the Colony, and even in the State today, this contention does not seem to have much substantiation. It would seem that since the statute is not mentioned in Chancellor Kilty’s reports, nor in Alexander’s British Statutes, nor in the leading Maryland case of Matthews v. Ward it was not and never did become part of the law of the Colony or the State. It seems safe to say that most of the incidents of the feudal system of tenure were in effect in the Colony with the exceptions of the Statute of Quia Emptores, military tenure and frankalmoyn tenure. The Colony also possessed the land law developed by the Courts of England up to this time in respect to the feudal system of tenure and its outcroppings.

Upon the advent of the Revolution and the incorporation of the Colony into one of the original thirteen states, certain changes begin to appear in the land law of the State. The first change seems to be made in the Bill of Rights of the Constitution of 1776 where it was declared that all of the property derived from and under the Royal Charter was vested in the inhabitants of the State of Maryland. At the time of the Declaration of Independence most of the lands within the State of Maryland had been granted by the several Lords Proprietaries to individuals or corporations by deeds which vested them with full powers of ownership; and except where confiscated for disloyalty, none of these rights were affected by the establishment of the new government and the change of sovereignty thereby. Those lands which had not been granted away by the Lord Proprietary, together with the confiscated lands, became the property of the new state. The Common Law of England was quite promptly adopted by the new state of Maryland, the Bill of Rights to the first constitution stating that “... the inhabitants of Maryland are entitled to the Common Law of England and trials by jury according to the course of that law and to the benefit of such of the English statutes as existed on July 4, 1776, and which by experience have been

6 Royal Charter of Maryland, Art. XVIII. Venable, Syllabus on Real Property (1912) finds that the statute does not seem to be in force in Maryland. Compare Ingersoll v. Sergeant, 1 Whart. 336 (Pa. 1836).
7 Supra, note 2.
8 Kilty, Landholder’s Assistant, 28.
9 Constitution of 1776, Bill of Rights, Art. III. This is now Constitution of 1867, Declaration of Rights, Art. V.
found applicable to their local and other circumstances and have been introduced, used and practiced by the Courts of Law and Equity."

With the common law of England declared to be part of the law of this state, and with the English statutes in effect in England prior to the Revolution (insofar as they had been found to be of aid and assistance) declared to be a part of the law of the State, the purpose of this comment is briefly to summarize the important statutory changes that have been made by legislative enactments since then.

Accretion. Accretions to land bounding both on navigable and non-navigable waters vest in the proprietor of the land so bounding under a statute of 1862.\[12\] Acknowledgment. Acknowledgment is now required in a deed conveying any estate of inheritance or freehold, or any declaration or limitation of use, or any estate above seven years.\[13\] Although at one time such acknowledgments had to be taken before two justices of the peace, since 1856 one is sufficient,\[14\] and, since 1896, a notary public is competent to take such acknowledgments.\[15\] It is interesting to note that acknowledgments may also be had before a judge either of the Supreme Bench of Baltimore City, one of the Circuit Courts of the Counties, or of the Orphans' Courts, sitting in and for the county or city where the land lies.\[16\]

Advancement and Hotchpot. These were created early in the history of this State, but being in derogation of the common law, were strictly construed.\[17\] They are now non-existent,\[18\] except that advancements, if shown to have been made, must be considered in the auditor's account, which is not to consider the claims of a widow, but such account is only to include advancements to children, except for maintenance and education. It is to be noted that this section applies only to cases of intestacy. The right accruing to the heirs that the estate advanced should be brought into hotchpot is a legal right, and it cannot be defeated by any alienation or incumbrance placed thereon by the heir.\[19\]

\[13\] Supra, note 9.
\[12\] Md. Code, Art. 54, Sec. 46.
\[13\] Md. Code, Art. 21, Sec. 1.
\[14\] Md. Code, Art. 21, Sec. 2.
\[15\] Ibid.
\[16\] Ibid.
\[17\] Clark v. Wilson, 27 Md. 703 (1867).
\[18\] Md. Code, Art. 93, Sec. 180.
\[19\] Young's Estate, 3 Md. Ch. 461 (1851); Smith, et al. v. Donnelly, 9 Gill. 84 (1850).
**Adverse Possession.** Originally it was held that in order to procure benefits from the possession of land, it had to be fenced in, and this requirement applied even to land held by a trespasser thereon. This rigid condition was changed in 1852 so that now no actual enclosure is necessary.\(^2\) A species of adverse possession is the failure of a landlord to demand rent for twenty consecutive years. Such failure to demand rent, unless the landlord is under a legal disability to assert his title, works a forfeiture of the right to claim rent and creates a fee simple title in the tenant.\(^2\)

**Aliens.** The common law restrictions on the right of aliens to hold property, and to inherit and devise same, have been greatly lifted. Since 1874 there seems to be little or no distinction between an alien and a citizen of the State of Maryland in the matter of holding property.\(^2\)

**Confiscated, Vacant and Escheated Lands.** Persons claiming to be entitled to lands held by the Lord Proprietor in the name of the British Crown, which lands were confiscated by the State,\(^2\) may obtain title thereto upon satisfactory proof submitted to the Commissioner of the Land Office who will issue a patent therefor.\(^2\) Likewise, title to any vacant lands and any lands which may have escheated to the State may be taken by any person making proper application therefor and furnishing satisfactory proof.\(^2\) It is to be noted, however, that under an act of 1818 patents to such lands can have no effect if possession of the lands has been taken by anyone for a period of 20 years prior to the issuance of such patent.\(^2\)

**Contingent Remainders.** Any contingent remainder arising under any deed, will or other instrument executed after July 1, 1929, shall be capable of taking effect notwithstanding the determination, by forfeiture, surrender, merger, or otherwise, of any preceding estate of freehold, in the same manner in all respects as if such determination had not happened; and it shall not be necessary to appoint

\(^2\) Md. Code, Art. 75, Sec. 84; Warner v. Hardy, 6 Md. 539 (1854).
\(^2\) Md. Code, Art. 53, Sec. 27; Safe Deposit Co. v. Marburg, 110 Md. 410, 72 Atl. 839 (1909).
\(^2\) Md. Code, Art. 3, Sec. 1.
\(^2\) The right to these confiscated lands was given its *imprimatur* by Smith v. Maryland, 6 Cranch 286, 3 L. Ed. 225 (1810).
\(^2\) Md. Code, Art. 54, Sec. 19.
\(^2\) Md. Code, Art. 54, Sec. 25. Patents to lands at the contested divisional line between Maryland and Pennsylvania may be obtained from the proper authorities of this State, Md. Code, Art. 54, Sec. 45.
\(^2\) Md. Code, Art. 57, Sec. 10.
trustees to support such contingent remainders in order to prevent the destruction thereof.  

Corporations. Today, corporations duly chartered can acquire by purchase, or in any other manner, realty and personalty, and likewise dispose of the same. However it must be remembered that religious corporations can hold land and acquire the same only with the consent of the Legislature, which consent can be given either prior or subsequent to the acquisition.

Dedication. Conveyances of land, or gifts thereof, bounding on any street or highway shall be construed to pass to the donee or grantee thereof, all the right, title and interest of the grantor or donor of said land, to the center of the street or highway on which the same is located or binding, provided always that the grantor or donor can, by express provision, reserve unto himself his interest in the said street or highway. For a long time there was no statutory dedication in Maryland. Since 1908, however, statutory provision has been made for the dedication of public highways to the use of the municipality of Baltimore.

Descent. The common law canons regarding the descent of real property have been for the most part abolished in this State. Since 1916 real property descends in accordance with the rules of descent relating to the distribution of personal property of intestates, so that lineal ascent is now recognized under certain conditions. Another modification of the common law canons of descent was the abolition of primogeniture in 1786 so that all those in the same degree of relationship, whether male or female, share equally. Still another inroad was made on the rigid common law rules of descent when the onerous distinction between the whole blood and the half was declared inoperative in 1798. But though there has been an appreciable diminution of these canons of descent, there is a survival existing in the provision of 1831 that where a trustee in fee tail or in fee simple shall be seised of the naked title to any

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26 Md. Code Supp., Art. 93, Sec. 305-B.
27 Md. Code, Art. 23, Sec. 9 (6).
28 Constitution of 1867, Declaration of Rights, Art. 38.
29 Md. Code, Art. 21, Sec. 98.
30 Charter and Public Local Laws of Baltimore City, Secs. 840A, C.
31 Md. Code, Art. 46, Sec. 1.
32 Md. Code, Art. 93, Secs. 131-136. For an interesting discussion of the law of descent prior to the enactment of these statutes, see Chirac v. Reinacker, 2 Pet. 612, 7 L. Ed. 538 (1829).
33 Md. Code, Art. 93, Sec. 129.
34 Md. Code, Art. 93, Sec. 135.
land or inheritance, without having or being entitled to any
beneficial interest or estate therein, then if such trustee
shall die, the legal estate shall descend to such persons as
would have become heirs of such trustee under the common
law. And in spite of apparently contradictory statutory provisions, it would seem that the same incidents attach to the devisability of such estates. Article 93, Section 328, (passed in 1798) which excepts fees tail from the list of devisable estates, has been construed, as originally enacted, to have reference only to fees tail special since fees tail general were in effect abolished and made devisable in fee simple by the Act to Direct Descents. It certainly would seem that if fees tail special can descend in fee simple as they now do in cases of intestacy, they can be so devised.

Die Without Issue. The inclusion of the words "die without issue" either in testamentary dispositions or in conveyances inter vivos has, since 1862, the effect of meaning a definite failure of issue at death, rather than an indefinite failure of issue.

Distraint. Distraint is much the same as at common law. Today however, there are liberal exemptions in favor of the property of strangers, and chattels personal or real, which are covered by a validly recorded chattel mortgage or conditional contract of sale.

Dower. Curtesy has been abolished in this state so that a surviving husband’s interest in the property of his wife is now the same as her dower interest in property held by him during marriage. The wife now has dower in the equitable estates of her husband. Since 1872 when a spouse is either absent seven years or adjudicated non compos mentis the other may convey property acquired after such adjudication has occurred or the absence had begun, as if unmarried.

89 Md. Code, Art. 46, Sec. 1.
90 Posey v. Budd, 21 Md. 477 (1863).
91 Acts, 1786, Ch. 45.
92 Md. Code, Art. 93, Sec. 341; Ibid, Art. 21, Sec. 92.
94 Md. Code, Art. 45, Sec. 7.
95 Md. Code, Art. 45, Sec. 6.
96 Md. Code, Art. 45, Sec. 13.
Estate pur autre vie. These estates most frequently arise from a sale of a life estate by the tenant, but may be also created directly; as a conveyance to A for the life of B. In such a case, the owner is tenant pur autre vie, and the person during whose life the estate endures is the cestui que vie. Where the tenant pur autre vie died before the cestui que vie, the residue of the estate from the death of the tenant to the death of the cestui que vie did not go to the tenant’s heirs, it not being an estate of inheritance, nor to his personal representatives, since it was not, at common law, personal property. The estate being then without an owner, any one might take possession of it, and such person was known as a general occupant. But in the special case, where an estate pur autre vie was conveyed to any one and his heirs, the heirs, on the death of the tenant, were entitled to take possession as special occupants. Today in Maryland, general occupancy has been abolished, but special occupancy remains as at common law. Estates for the life of another person or persons, except those granted to the deceased and his heirs only are now deemed to be assets in the hands of the personal representative of the deceased tenant.

Execution Sale. Sale of land under execution at common law was impossible because of feudal tenure. This was superseded by sale under elegit in certain colonies, including Maryland, by the Statute of 5 Geo. II, C. 7. The present power of sheriffs to sell under writs of execution (fieri facias) is derived from a statute of 1810.

Executors and Administrators. By Act of 1798 title to decedent’s leasehold chattels real passes to the administrator for the purpose of distribution after the payment of debts and by Act of 1914 a record title deed of such evidence of transmission is required to be given parties entitled thereto by executors and administrators upon order of the Orphans’ Court.

Under the common law executors and administrators had unlimited power of sale over chattels real. But by Act of 1843 if any administrator or executor shall sell or remove any property without an order of the Orphans’ Court, the Orphans’ Court may revoke his letters and appoint a successor to recover the property, and any sale so
made without previous authorization of the Orphans’ Court shall be void. And in Baltimore City, whenever a personal representative shall make any sale of personal property, either by express power granted in the will, or by virtue of an order of the Orphans’ Court, an account of the sale must be returned to the Court upon oath. Where a sale has been made by an executor under a supposed authority derived from a will, the court may, at its discretion, confirm such sale, after hearing the parties interested. Where a sale of real or personal property is necessary for the satisfaction of decedent’s debts, or for some other purpose, a court of equity, upon the petition of any person interested in such sale, may appoint a trustee to sell and convey the same. The power of the Orphans’ Court to appoint trustees to effect the sale of property for the satisfaction of debts, is confined to realty of intestates, and then only when such property does not exceed in its appraised value the sum of $2,500.

Fraud of Creditors. Conveyances made by a grantor with intent to defraud his creditors and with the corresponding element of knowledge on the part of the grantee, can be set aside as void under the Statute of 13 Elizabeth, ch. 5, as supplemented by the Statute of 27 Elizabeth, ch. 4 and the Uniform Fraudulent Conveyance Act, even though the grantee parted with a fair consideration. However, where a fraudulent conveyance has been made but the grantee has acted in a bona fide manner, in addition to giving a fair consideration, his (the grantee’s) title cannot be upset.

Joint Tenancy. At common law a conveyance to two or more persons not occupying the relation of husband and wife created a joint tenancy when the four unities of time, title, interest and possession were present. Since 1882 a conveyance to such persons creates a tenancy in common unless it is expressly provided that the property conveyed is to be held in joint tenancy. But this provision has no

48 Md. Code, Art. 93, Sec. 293.
49 Rule No. 3 of the Orphans’ Court of Baltimore City, approved November 30, 1867.
50 Md. Code, Art. 16, Sec. 96.
51 Md. Code, Art. 16, Sec. 97.
52 Md. Code, Art. 93, Sec. 302.
53 Md. Code, Art. 39B, Sec. 7. The English statutes relating to fraudulent conveyances are in effect in Maryland and may be found in I Alexander, British Statutes, 499, and II, Ibid, 555.
54 Fladung v. Rose, 56 Md. 13 (1881).
application to conveyances made to trustees for the benefit of third parties, such trustees taking a joint tenancy with the right of survivorship.\(^{56}\) Where there is an express creation of a joint tenancy between husband and wife, the interest of either can be reached during their respective lives in satisfaction of their individual debts.\(^{56a}\) A conveyance to husband and wife has the effect of creating a tenancy by the entireties unless there is an express provision for some other type of tenancy.

**Kindred of the half blood.** At common law the rule was that to inherit, one must have been of the whole and not of the half blood. Collateral kinsmen must have descended not only from the person, but from a marriage with that person. This strict rule likewise has been changed, and now there is no distinction between the whole and the half blood.\(^{57}\)

**Lapse Statutes.** By a statute passed in 1832\(^ {58}\), it was provided that no devise, legacy or bequest should fail of taking effect by reason of the death of any devisee or legatee in the lifetime of the testator, but the devise or bequest to such deceased legatee or devisee shall have the same effect as if such legatee or devisee had survived the testator. By an amendment to this act in 1929, it was extended to include situations where a member of a class has predeceased the testator.\(^ {59}\)

**Leases (ground rents).** Leases for 99 years, renewable forever, have by various acts of the General Assembly, beginning in 1884, been made redeemable by the tenant. The first of such acts was passed in 1884 and provided that leases or sub-leases of land for a longer period than 15 years could be redeemed at any time after the expiration of 15 years, at the option of the tenant, at a sum equal to the capitalization of the rent reserved at the rate of six per cent, unless some other sum not exceeding four per cent capitalization be specified.\(^ {60}\) By Act of 1888 it was provided that leases for a longer period than 15 years could be redeemed by the tenant at the expiration of 10 years at a capitalization not to exceed six per cent.\(^ {61}\)

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\(^{56}\) Gray v. Lynch, 8 Gill 403, 424 (1849).


\(^{57}\) Md. Code, Art. 93, Sec. 135.

\(^{58}\) Md. Code, Art. 93, Sec. 335.

\(^{59}\) Md. Code Supp., Art. 93, Sec. 335A. The prior act of 1910 modifying the law of lapses is construed in Livingstone v. Safe Deposit and Trust Co., 157 Md. 492, 146 Atl. 432 (1929).

\(^{60}\) Md. Code, Art. 21, Sec. 94.

\(^{61}\) Ibid.
act, passed in 1900, provided that such leases could be re-
deeded by the tenant after the expiration of five years,
provided that thirty days notice be given to the landlord
and a sum paid equal to the capitalization of the rent re-
served at a rate not exceeding six per cent. By Act of
1922 no leases executed exclusively for business purposes,
or for any purpose other than residential, are redeem-
able by the tenant, provided that the term of such lease, includ-
ing all renewals provided for therein, shall not exceed
ninety-nine years. It is provided, however, that if no de-
mand for rent has been made by the landlord for more than
twenty years, such landlord not only forfeits his right
thereafter to claim rent, but suffers the loss of his rever-
sion.

Since 1904, unless otherwise stipulated by the terms of
the lease, rent ceases whenever the improvements on the
premises shall become untenantable by reason of fire or
other unavoidable accident. A tenant has the right to
remove fixtures erected by him under one demise or term,
even though he has accepted a new lease of the same prem-
ises without any intermediate surrender of possession.
And where the lessee covenants to yield up the premises
in good repair, he will not be obliged to pay for such build-
ings as may be destroyed by fire or otherwise without fault
or negligence on his part, unless there is a written agree-
ment or covenant that he shall be so bound.

Limitations on land recovery. Early English statutes
altered the conditions of recovery of land, both as to the
person to whom the right was given, and also as to the time
for exercising it. The last British statute in effect in
Maryland is that of James I. This statute was modified
by the Act of 1870 which simplifies the procedure in eject-
ment proceedings. Limitations on the recovery of land
are 20 years except for persons resting under disabilities,
although ejectment proceedings for the recovery of rent
must be brought within three years from the date of the ac-
crual of the cause of action.

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62 Md. Code, Art. 21, Sec. 95. Ibid, Art. 53, Sec. 25 was repealed by Acts, 1929, Ch. 361.
63 Md. Code, Art. 21, Sec. 99.
64 Md. Code, Art. 53, Sec. 27.
66 Md. Code, Art. 53, Sec. 29.
67 Md. Code, Art. 53, Sec. 30.
68 21 Jac. I, Ch. 16; 2 Alexander, British Statutes, 599.
69 Md. Code, Art. 75, Sec. 76.
70 Md. Code, Art. 57, Sec. 1.
Married Women's Rights. The common law disabilities of married women in the matter of the execution by them of contracts were removed in 1898. Formerly the husband could control such execution, and they were invalid without his joinder. Today his joinder is no longer necessary, not even in the execution by the wife of deeds of conveyance.

It is further provided that limitations run against her during coverture, although before 1894 the rule was otherwise. It would seem that today there are no restrictions on the rights of a married woman in respect to the acquisition and disposition of property, whether personal or real. She may deed property to her husband, either directly or through an intermediary; she may convey her property to him and herself as tenants by the entirety, subject only to the rights of subsisting creditors who have three years within which to attack the transfer as being without consideration or for fraud. She may relinquish her dower rights by power of attorney, and may execute such a power to an agent authorizing him to relinquish her dower right either by joining her husband in making such a deed, or she may act solely and without his joinder. The husband likewise may waive his interest in the real estate of his wife by his joint or separate deed or may authorize an attorney to do the same.

Although at common law a married woman could not make a will, by the Act of 1842 she was enabled to do so, with the provision, however, that there be a joinder by the husband therein and that she undergo a separate examination apart from him in order to show absence of duress. These provisions have now been abolished and a wife may now make a will in like manner as her husband.

Married women now hold all their property for their separate use as fully as if they were unmarried. After 1853 it was no longer necessary to interpose a trustee in order to secure to her the use of her sole and separate estate. This sole and separate estate of the wife, both

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71 Md. Code, Art. 45, Sec. 5.
72 Md. Code, Art. 45, Sec. 4.
73 Md. Code, Art. 57, Sec. 7.
74 Abeys v. Cockey, 73 Md. 297, 20 Atl. 1071 (1890).
77 Md. Code, Art. 45, Sec. 12.
78 Ibid.
79 Acts, 1842, Ch. 293; Md. Code, Art. 93, Sec. 345.
80 Acts, 1929, Ch. 531.
81 Md. Code, Art. 45, Sec. 4.
82 Ibid.
83 Md. Code, Art. 45, Sec. 3.
equitable and statutory, is not abolished and the wife may convey it through a trustee appointed by a Court of Equity, without the joinder of her husband.\textsuperscript{44} Moreover, between the ages of 18 and 21 years, she may make a deed of trust of her real and personal property with the aid of such Court.\textsuperscript{44a} In accordance with the theory of her personal control of separate estate, the property of the wife, whether acquired before or after marriage, is not liable to execution for the debts of her husband.\textsuperscript{55} This exemption from execution is extended also to include her earnings during coverture and insurance on the life of her husband, no matter by whom it is taken out.\textsuperscript{56} In the matter of procedure in civil suits, the wife, as plaintiff or defendant, occupies no different position from any other normal and adult litigant,\textsuperscript{57} except that she may not sue her husband in tort.\textsuperscript{57a}

Modern Conveyancing. During an early period in the history of the State livery of seisin was required for alienation in order to comply with the Statute of Frauds. This livery was effected by the delivery of a symbolic twig, and in colonial Maryland, occasionally by a candlestick. In 1776 enrollment was declared to be a sufficient substitute for livery of seisin, and the practice of indenting deeds soon became equivalent to enrollment. Today neither livery of seisin nor indenting is essential to the validity of any deed.\textsuperscript{68}

In 1856, the words "bargain and sale" in the granting clause of deeds superseded, to a large extent, words of enfeoffment. By usage and practice in this State, the words "bargain and sale" and "grant" have simplified conveyancing and have almost entirely superseded all other modes thereof.\textsuperscript{69} Since 1864, new forms for conveyancing have been adopted by law\textsuperscript{80} and these have greatly shortened and simplified the long and involved forms previously used. These forms, though brief and simple, procure with equal certainty and security, the covenants of general and special warranty, and the rest of the covenants usually found in conveyances of realty.\textsuperscript{81} All instruments purporting to convey interests in land call for attestation with the excep-

\textsuperscript{44} Bishop v. Safe Deposit Co., 170 Md. 615, 185 Atl. 335 (1936).
\textsuperscript{44a} Md. Code, Art. 21, Sec. 1.
\textsuperscript{55} Md. Code, Art. 45, Sec. 1.
\textsuperscript{56} Md. Code, Art. 45, Sec. 8.
\textsuperscript{57} Md. Code, Art. 45, Sec. 5.
\textsuperscript{57a} See Note (1936) 1 Md. L. Rev. 65.
\textsuperscript{68} Md. Code, Art. 21, Sec. 24.
\textsuperscript{69} Matthews v. Ward, 10 G. & J. 443 (1839).
\textsuperscript{80} Md. Code, Art. 21, Secs. 56, 74-82.
\textsuperscript{81} Ibid.
tion of some few exempted by statutes. Thus no attestation is required on a mortgage of real estate nor on a bill of sale, nor for a mortgage of chattels, nor for a lease, nor for an assignment of a mortgage on real estate, or a release thereof, nor for the release of a vendor's lien. Hence it is that any of these instruments, if they follow the above mentioned forms will, if otherwise valid and not defective, pass title, were in those cases where the statutes require attestation.

Notices to Quit. No statute has changed the common law rule that notice, determining the tenancy, was unnecessary, either for an estate for one or more years or for an estate for a fixed period less than a year. The rule is equally applicable to landlord and tenant whether in the counties or in Baltimore City. But now for estates from year to year, six months notice before the end of the year must be given by either landlord or tenant in the counties; in Baltimore City notice in writing must be given ninety days before the end of the year by the landlord, but only thirty days by the tenant. In estates at will, immediate notice is sufficient, either by landlord or tenant, in the counties; thirty days notice in writing must be given either by the landlord or tenant in Baltimore City. To determine estates at sufferance, no notice is necessary in the counties, though thirty days notice in writing must be given by either landlord or tenant in Baltimore City. This latter rule applies also to estates pur autre vie. The above-mentioned rules, which have reference to the notice necessary to terminate the tenancy, must be distinguished from the statutory rule requiring one months notice by the landlord if he wishes to bring an action for possession of the premises against a tenant holding over after either a definite term or one at will.

Nullius Filius. At common law, the illegitimate child could inherit from no one, and only heirs of his body could inherit from him. Furthermore at common law, the mother

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92 Md. Code, Art. 21, Sec. 64.
93 Md. Code, Art. 21, Sec. 65.
94 Md. Code, Art. 21, Sec. 66.
95 Md. Code, Art. 21, Sec. 67.
96 Md. Code, Art. 21, Sec. 35.
97 Md. Code, Art. 21, Sec. 37.
98 Md. Code, Art. 21, Sec. 30.
99 Carrico v. Bank, 33 Md. 235 (1870). Compare, however, Md. Code, Art. 21, Sec. 90, wherein it is stated that no chattel mortgage shall be valid without the required attestation.
100 Venable, Real Property, 66.
100a Md. Code, Art. 53, Sec. 1.
could not inherit from them, nor could the legitimate children of the union. This strict ruling has been changed by the Act of 1825 and now the illegitimate children of any female and the issue of any such illegitimate children are capable of taking real or personal property from their mother through inheritance. Since 1868 they are also able to take real or personal property from each other, or from the descendants of each other, in like manner as if born in lawful wedlock, and, in certain instances, the mother or her relatives will inherit from the illegitimate. Legitimation of illegitimates requires both marriage and acknowledgment of paternity. The adoption statutes in effect in Maryland today operate to vest such adopted children with full rights in their adopted parents' property as if they were their own lawfully begotten children.

Patents. Patents to escheated and confiscated lands may be obtained through application to the State Land Office. This was made possible by legislation enacted in 1781. However, the State cannot grant a patent to land covered by navigable waters.

Posthumous children. Posthumous children of the intestate take in the same manner as if they had been born before the death of the intestate. This extension of the right to inherit to posthumous children is limited to children of the intestate, the posthumous children of any other person being excluded from consideration.

Powers of Attorney. According to the ancient method approved in Comb's Case a power of attorney read, "A.B., principal by C.D. his attorney", the attorney or agent then acknowledging the deed to be the act of his principal. Under the present statute of 1856 the recital is of a deed made by C.D. by virtue of his power of attorney and signed by C.D. as attorney or agent. And so in the acknowledgment C.D. acknowledges the deed to be his act. Corporations now act by attorneys who state in their deed that they are appointed for the purpose at hand and make like statement in their acknowledgment. Now by Act of

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101 Md. Code, Art. 93, Sec. 139; Ibid, Art. 46, Sec. 7.
102 Ibid.
103 Md. Code, Art. 46, Sec. 6; Scanlon v. Walshe, 81 Md. 118, 31 Atl. 498 (1896).
104 Md. Code, Art. 18, Secs. 74-79.
105 Acts, 1781, Ch. 20; Md. Code, Art. 54, Secs. 19, 25.
106 Md. Code, Art. 54, Sec. 48.
107 Md. Code, Art. 93, Sec. 138.
108 9 Coke 76.
109 Md. Code, Art. 23, Sec. 127.
1908\textsuperscript{110} the acknowledgment may be made for the corpora-
tion by its president.

\textit{Quit Claim Deeds.} Although in many states these
deeds take the place of common law releases, they have
never been specifically recognized in Maryland.\textsuperscript{111} A deed
of this nature would pass title to such estate as the grantor
has therein, but there would be no assurance of any title
whatever, nor any of the usual covenants.

\textit{Recordation.} Recordation is essential to the grant of
any estate or use of land or any lease for a period of more
than seven years.\textsuperscript{112} Such recordation is to be made by
the clerk of the Superior Court of Baltimore City if the
land lies therein\textsuperscript{113}, or if in the county, then by the clerk of
the Circuit Court of the County in which the land lies.\textsuperscript{114}
Although at one time a deed or mortgage could be recorded
after the expiration of six months from the date of its exe-
cution only by a decree of a court of equity,\textsuperscript{115} today a deed
may be recorded even after the expiration of the six month
period without an order of court,\textsuperscript{116} but a mortgage is still
under the old requirements.\textsuperscript{117}

\textit{The Rule in Shelley's Case.} The fundamental doctrine
of English land law known as the rule in Shelley's Case has
been abolished in Maryland by the Act of 1912.\textsuperscript{118} The
destruction of this doctrine is, however, inapplicable to in-
struments executed prior to the date on which the act took
effect.

\textit{Springing and Shifting Uses.} These are governed by
the early English Statute of Uses and not by any Maryland
statute.

\textit{Tax Titles.} Title to property acquired through pur-
chase at a tax sale is always looked upon with suspicion be-
cause there is no presumption in favor of official acts being
done regularly or full notice having been given to all parties
in interest as required by law.\textsuperscript{119} This suspicion continues
even after the sales have been reported to and ratified by a

\textsuperscript{110} Ibid.
\textsuperscript{111} Worthington v. Lee, 61 Md. 530 (1883), construing Md. Code, Art. 21,
Sec. 12. For a full discussion of the use of the word "grant" in deeds and
of the effect of a deed of bargain and sale see Frank, Title to Real and
Personal Property in Maryland, 41, 57-58.
\textsuperscript{112} Md. Code, Art. 21, Sec. 1.
\textsuperscript{113} Constitution of 1867, Art. IV, Sec. 38. Md. Code, Art. 21, Sec. 13.
\textsuperscript{114} Md. Code, Art. 17, Sec. 59.
\textsuperscript{115} Md. Code, Art. 16, Sec. 35.
\textsuperscript{116} Md. Code, Art. 21, Sec. 20.
\textsuperscript{117} Knell v. Green St. Building Assoc., 34 Md. 72 (1870).
\textsuperscript{118} Acts, 1912, Ch. 144; Md. Code, Art. 93, Sec. 342.
\textsuperscript{119} Md. Code, Art. 81, Sec. 61.
Court of Equity. A purchaser at a tax sale must claim the property within seven years after the ratification of the sale otherwise title and possession thereto will be barred under the doctrine of adverse user.\textsuperscript{120}

\textit{Tenancies by the Entireties}. A tenancy by the entireties is created by a grant to a husband and wife when the four unities of time, title, interest and possession are present. Where a tenancy of this nature has been created, there is a freedom from the liens of judgment creditors of either spouse, but not freedom from the lien of a judgment creditor having a judgment against the spouses jointly. It would seem that this type of tenancy can be created by a grant by one spouse to the other spouse and the grantor as tenants by the entireties, without the interposition of a straw man.\textsuperscript{121}

\textit{Torrens System}. This method of simplification of land title recordation and transfer has never been adopted in Maryland.

\textit{Words of Inheritance}. At common law, in order to create a fee simple by deed, the use of the word “heirs” was necessary. Various other expressions containing the same import were insufficient. The first qualification of this rule was made in favor of wills when the inclusion of the word “heirs” was rendered unnecessary.\textsuperscript{122} All that was required was that a clear intention on the part of the testator to dispose of his entire estate and thus to create a fee simple, be shown. The technicality was destroyed in 1856 when it was provided that no words of inheritance were necessary in order to create a fee simple by a conveyance by deed. Every conveyance of property \textit{inter vivos} was deemed to convey the grantor’s entire estate unless a contrary intention appeared.\textsuperscript{123}

\textit{Worthier Title}. Where a will devises land of the same quantity and quality to a person who would take the same as heir at law, such person takes as heir and not as devisee.\textsuperscript{123a}

\textit{Prospective Future Changes}. In 1931, the Commission to Revise the Land and Inheritance Laws of Maryland,

\textsuperscript{120} Md. Code, Art. 57, Sec. 15.
\textsuperscript{121} Although there is no case stating directly that such a tenancy can be created without the intervention of a straw man in Maryland, there is strong language indicating that such a result might be effected. Lang v. Wilmer, 131 Md. 215, 101 Atl. 706 (1917). See also Md. Code Supp., Art. 50, Sec. 13A, which might conceivably support the creation of a tenancy by the entireties by a conveyance between the spouses without the aid of a straw man. In general, see 62 A. L. R. 511 and the authorities there cited.
\textsuperscript{122} Md. Code, Art. 93, Sec. 336.
\textsuperscript{123} Md. Code, Art. 21, Sec. 11.
\textsuperscript{123a} Posey v. Budd, 21 Md. 477 (1863); Donnelly v. Turner, 60 Md. 81 (1883).
which had been created by the General Assembly in 1929,\textsuperscript{124} began its work by procuring changes in the laws affecting the administration of personalty in the Orphans' Court. The Commission proposes to continue its efforts in this respect by procuring an entire statutory revision of testamentary law and procedure.

\textsuperscript{124} Acts, 1929, Ch. 527.