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THE TRUST AS AN INSTRUMENT OF LAW REFORM

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Professor Maitland, in one of his most brilliant essays,¹ said:

“The idea of a trust is so familiar to us all that we never wonder at it. And yet surely we ought to wonder. If we were asked what was the greatest and most distinctive achievement performed by Englishmen in the field of jurisprudence I cannot think that we could have any better answer to give than this, namely, the development from century to century of the trust idea.”

Maitland's dictum at first blush may seem to be an exaggeration, but when it is considered how much of the progress of the English law is due to the doctrines of the law of uses and trusts, its truth would seem to be clear. It was chiefly by means of uses and trusts that the feudal system was undermined in England, that the law of conveyancing was revolutionized, that the economic position of married women was ameliorated, that family settlements have been effected, whereby daughters and younger sons of landed proprietors have been enabled modestly to participate in the family wealth, that unincorporated associations have found a measure of protection, that business enterprizes of many kinds have been enabled to accomplish their purposes, that great sums of money have been devoted to charitable enterprizes; and by employing the analogy of a trust, by the invention of the so-called constructive trust, the courts have been enabled to give relief against all sorts of fraudulent schemes whereby scoundrels have sought to enrich themselves at the expense of other persons. Many of these reforms in the English law would doubtless have been brought about by other means;

¹ *The Unincorporated Body*. 3 Maitland, *Collected Papers* (1911) 271, 272.

but the fact remains that it was the trust device which actually was chiefly instrumental in bringing them to pass.

There are two sides to the picture. The trust has often served as a means of evading the law. Lord Bacon said that "the special intent unlawful and covinous was the original of uses, though after it induced to the lawful intent general and permanent."² The line between evasion and reform is after all a difficult one to draw. The evasion which in the long run proves successful is usually a reform. Mr. Justice Holmes, with characteristic discrimination, has said:³

"We do not speak of evasion, because, when the law draws a line, a case is on one side of it or the other, and if on the safe side is none the worse legally that a party has availed himself to the full of what the law permits. When an act is condemned as an evasion what is meant is that it is on the wrong side of the line indicated by the policy if not by the mere letter of the law."

A trust is a device for enabling one to enjoy various rights, powers, and privileges in respect to property greater than those enjoyed by owners of property, for enabling one to enjoy the benefits of ownership without subjection to all the duties and liabilities resulting from ownership. The question with which courts of equity have been compelled to struggle is how far it is possible to go without crossing the line which separates the legitimate use of the trust device from an illegal evasion of the letter or the policy of the law.

There have been four more or less definite periods in the history of the development of uses and trusts. For the use or trust, as Lord Bacon said, "grew to strength and credit by degrees." It did not, Minerva-like, spring full-grown into being. There were centuries of gestation before it became a legal institution, and centuries of growth before that institution took its place as the central figure in a "noble, rational and uniform system" of equity.

I

The first period began with the first employment of uses⁴ and continued until the beginning of the 15th century. During this period uses were not enforced by the courts; they were mere honorary obligations, resting upon gentlemen's agreements. The *cestui que use* had no legal rights, but on the other hand he was free from the burdens of owner-

² Bacon, *Reading on the Statute of Uses*, 24. "A trust is altogether the same that an use was before 27 Hen. 8, and they have the same parents, fraud and fear; and the same nurse, a court of conscience." Per Atkyns, *arguendo*, in *Attorney General v. Sands* (1669, Exch.) Hard. 488, 491.

³ *Bullen v. Wisconsin* (1916) 240 U. S. 625, 36 Sup. Ct. 473.

⁴ As to the origin of uses, see Ames, *Lectures on Legal History* (1913) 233; 2 Maitland, *op. cit.* 403; Holmes, *Early English Equity* (1885) 1 L. QUART. REV. 162.

ship. The courts were neutral; they did not help, but neither did they hinder.

Yet even in this period Parliament had to interfere in order to prevent the employment of uses to accomplish purposes which were too obviously opposed to the prevalent conceptions of public policy. In 1376 conveyances for the use of the transferor made for the purpose of defrauding his creditors, were condemned.⁵ In 1377 a statute was passed, characteristic of that turbulent time, providing that if a disseisor convey to "lords or other great men" or to persons unknown, to the use of the disseisor, in order to render it difficult if not impossible for the disseisee to recover the land, the conveyance should be void and the disseisee might sue the disseisor in possession, the "pernor of profits," and recover the land.⁶ In 1391 the mortmain statutes, whereby land conveyed to religious and other corporations was forfeited to the overlord, were extended to cover cases where land was conveyed to individuals to the use of such corporations.⁷ The *cestui que use* in these cases had no enforceable interest in the property conveyed, but the danger that the feoffee would carry out his moral obligation was so great, and the result of his so doing was regarded as so subversive of public policy, that Parliament felt impelled to interpose.

II

The second period began when, early in the 15th century, the Chancellor first undertook to enforce uses,⁸ and continued until the enactment of the Statute of Uses in 1536. The common law was at this time most inflexible and most complex. The common-law judges would have stunted uses by forcing them into the categories of conditions or covenants; and at the same time doubtless would have held many of the purposes for which uses were commonly employed invalid as against the policy of the law. Fortunately however during this highly critical stage of their development uses were subject to the exclusive jurisdiction of equity;⁹ and fortunately the Chancellors adopted them in a liberal spirit.

The Chancellors treated uses for many purposes as equitable estates in property, and not as mere choses in action, and applied to them by analogy many of the legal rules governing estates in property. As early as 1465 it was held that when the *cestui que use* dies his interest

⁵ 50 Edw. III, c. 6. See also (1379) 2 Rich. II, c. 3; (1487) 3 Hen. VII, c. 4; (1570) 13 Eliz. c. 5.

⁶ 1 Rich. II, c. 9. See also (1402) 4 Hen. IV, c. 7; (1433) 11 Hen. VI, c. 3; (1485) 1 Hen. VII, c. 1.

⁷ 15 Rich. II, c. 5.

⁸ The first recorded decree apparently was made in 1446. *Myrfyne v. Fallan*, 2 Cal. Ch. XXI. Professor Ames thinks that it is probable that uses were first enforced by the Chancellor some time in the reign of Henry V (1413-1422). Ames, *op. cit.* 237.

⁹ (1464) Y. B. 4 Edw. IV, p. 8, pl. 9.

descends in accordance with the rules governing descent of the land itself.¹⁰ Like land and unlike choses in action, uses were held to be assignable.¹¹ Estates in uses were recognized, estates in fee tail for example.¹² It was held that various classes of persons claiming under the feoffee to uses took subject to the uses, namely a purchaser with notice of the use,¹³ the executor or heir of the feoffee,¹⁴ and a transferee who paid no value.¹⁵

Although the use was thus regarded for many purposes as an equitable estate, the principle that equity follows the law was not at this time fully accepted or consistently applied. It was possible, therefore, by the employment of uses to avoid the application of many of the rules of law.

Equity refused to follow the technical legal rules governing the creation of estates. These rules rested upon feudal conceptions which, although they still flourished in the courts of law, were no longer required by public policy. Although a use was regarded as an equitable estate, yet the feudal doctrines governing seisin were not applied to uses. In creating legal estates the doctrines as to seisin required that there should be no overlapping of estates and no hiatus between estates; but the Chancellors allowed shifting and springing uses and executory devises. Moreover uses could be created without the formality of livery of seisin or other formalities necessary for the creation of legal estates.

Uses were frequently employed in this period by tenants to defeat the claims of their overlords. The feudal incidents of tenancy bore heavily upon the tenant. The overlord was entitled to a relief and in some cases to a heriot when the tenant died, and the land reverted to him by escheat if the tenant died without natural heirs or was attainted of felony. If the heir was an infant the overlord was entitled to act as guardian and to take the rents and profits until the heir became of age, and to sell the privilege of marrying the heir. He was entitled to aids when his eldest son was knighted and when his eldest daughter was married. These various burdensome incidents could be avoided in part at least by conveying the land to feoffees to the use of the tenant.¹⁶ There was no tenure of equitable estates. The *cestui que use* owed homage or fealty to no overlord. He held his estate of no one. The feoffees, it is true, were subject to the feudal incidents, but it was possible by employing several feoffees as joint tenants to avoid most of them. When it is remembered that during the Wars of the Roses most of the

¹⁰ (1465) Y. B. 5 Edw. IV, p. 7, pl. 16; (1481) Y. B. 21 Edw. IV, p. 24, pl. 10.

¹¹ St. Germain, *Doctor and Student* (1523) Dial. II, c. 22.

¹² Crompton, *Courts*, 60.

¹³ (1465) Y. B. 5 Edw. IV, p. 7, pl. 16; (1471) Y. B. 11 Edw. IV, p. 8; Fitzherbert, *Abridgment* (1492) tit. Subpoena, pl. 18.

¹⁴ Fitzherbert, *op. cit.* tit. Subpoena, pl. 14; (1501) Keil. 42, pl. 7.

¹⁵ (1522) Y. B. 14 Hen. VIII, p. 4, pl. 5.

¹⁶ (1535) Y. B. 27 Hen. VIII, p. 8, pl. 22; Jenk. C. C. 190.

land in England was held to uses, it will be seen how great a blow was given to the feudal system by the invention of uses. But although the courts would not help the overlord, Parliament gave him some relief. In 1487 a statute was passed providing that the lord should be entitled to wardship or relief on the death intestate of the *cestui que use* of land held by knights service;¹⁷ and in 1503 it was provided that on the death intestate of the *cestui que use* of lands held in socage, the lord should "have his relief, heriot, and all other duties."¹⁸

Similarly the courts did not help the king in the event of treason committed by a *cestui que use*. Men who were interested in politics had been unable to take part in that pastime without the danger of losing all their property. The favoring of the losing side was treason and the penalty for treason included forfeiture to the king of the traitor's property. During the Wars of the Roses the followers of the fortunes of Lancaster and of York were accustomed to vest their property to their own use in a peace-loving subject, usually a law clerk. This device however was ultimately defeated by acts of Parliament,¹⁹ which provided that uses as well as legal interests should be forfeited to the Crown upon attainder of treason.

During this period also uses were frequently employed for the purpose of devising land. The policy of the feudal system forbade devises. The defence of the realm rested on the assumption that a tenant's heir was best fitted to take his place as tenant on his death. The natural desire, however, to make testamentary dispositions, particularly with a view to making provision for daughters and younger sons, was widespread. Tenants would therefore make feoffments to the use of such persons as they might designate by will. The feudal system was fast losing its hold in England, and the courts were unwilling to hold that such dispositions were against public policy. When the Statute of Uses put an end to this practice by turning uses into legal titles, five years had not elapsed before Parliament expressly authorized devises of land.²⁰

A contemporary statement of the reasons why most of the land in England was held to uses before the end of this period, is given in that very interesting treatise by Christopher St. Germain called *Doctor and Student*, written in 1518.²¹

¹⁷ 4 Hen. VII, c. 17.

¹⁸ 19 Hen. VII, c. 15.

¹⁹ (1534) 26 Hen. VIII, c. 13, sec. 5; (1541) 33 Hen. VIII, c. 20. By special acts of Parliament from time to time the equitable interests of various individual traitors had been declared forfeited to the Crown. See e. g., (1387) 11 Rich. II, c. 3.

Conversely by other acts the property of certain loyal *cestuis que use* was saved to them although their feoffees had committed treason. See e. g. (1403) 5 Hen. IV, c. 1; (1405) 7 Hen. IV, c. 5.

²⁰ (1540) 32 Hen. VIII, c. 1. See also (1542) 34 & 35 Hen. VIII, c. 5.

²¹ Dial. II, ch. 22.

"*Doctor.* I pray thee touch shortly some of the causes, why there hath been so many persons put in estate of lands to the use of others as there have been; for, as I hear say, few men be sole seised of their own land.

"*Student.* There have been many causes thereof, of the which some be put away by divers statutes, and some remain yet. Wherefore thou shalt understand, that some put their land in feoffment secretly, to the intent that they that have right to the land should not know against whom to bring their action, and that is somewhat remedied by divers statutes that give actions against perners and takers of the profits. And sometime such feoffments of trust have been made to have maintenance and bearing of their feoffees, which peradventure were great lords or rulers in the country: and therefore to put away such maintenance, treble damages be given by statute against them that make such feoffments for maintenance. And sometime they were made to the use of mortmain, which might then be made without forfeiture, though it were prohibited that the freehold might not be given in mortmain: but that is put away by the statute of R. 2. And sometime they were made to defraud the lords of wards, reliefs, heriots, and of the lands of their villeins: but those points be put away by divers statutes made in the time of King H. the 7th. Sometime they were made to avoid executions upon a statute-staple, statute-merchant, and recognisance: and remedy is provided for that, that a man shall have execution of all such lands as any person is seised of to the use of him that is so bound at the time of execution sued, in the 19th year of H. 7. And yet remain feoffments, fines, and recoveries in use for many other causes, in manner as many as there did before the said estatute. And one cause why they be yet thus used is, to put away tenancy by the courtesy and titles of dower. Another cause is, for that the lands in use shall not be put in execution upon a statute-staple, statute-merchant, nor recognisance, but such as be in the hands of the recognisor at the time of the execution sued. And sometime lands be put in use, that they should not be put in execution upon a writ of *extendi facias ad valentiam*. And sometime such uses be made that he to whose use, etc., may declare his will thereon: and sometime for surety of divers covenants in indentures of marriage and other bargains. And these two last articles be the chief and principal cause why so much land is put in use."

III

The third period began with the enactment of the Statute of Uses²² in 1536 and lasted for about a century. The purposes of that Statute are expressed in its preamble. Uses had been employed to disinherit heirs, to create estates without solemn formalities, to deprive lords of their feudal claims, to deceive purchasers, to deprive widowers of curtesy and widows of dower, to deprive the King of his claim to property of persons attainted of treason, to give to aliens interests in land. To remedy these evils which followed from the separation of the legal and equitable titles, the Statute provided that the *cestui que use* should have the legal title.

One evil arising from the creation of uses the Statute did not cure, namely, the secrecy attending the creation of uses. The *cestui que use*

²² 27 Hen. VIII, c. 10.

might be in open possession, enjoying the rents and profits of the land, no man knowing who the legal owner might be.²³ The Statute did not require any new formalities, any notorious and open act, in the creation of uses, although the creation of uses now resulted in the creation of legal estates. A half-hearted attempt to cure the evils resulting from the secrecy with which uses could be created was made the same year, when Parliament passed the Statute of Enrolments²⁴ which required that a bargain and sale of a freehold estate should be by a writing sealed and enrolled in a public office. This Statute however accomplished little; for it had no applicability to a covenant to stand seised nor did it apply to a bargain and sale of a leasehold interest. The only real effect of the Statute of Enrolments was to require two steps in the creation or transfer of freehold estates, a lease and a release.

When by virtue of the Statute of Uses the courts of common law were driven to take cognizance of uses, they evolved a more definite though more intricate philosophy of the law of uses. The use was regarded as a concrete thing which had certain inherent properties essential to its nature. These properties were not adduced merely by analogy to the technical rules of the common law, nor yet were they based altogether upon any consciously accepted principles of public policy. "A use in law hath no fellow," as Lord Coke observed. In some respects uses are "ordered and guided by conscience"; but in some respects they "ensue the nature of possessions." Hence the flexibility of the new science of conveyancing; and hence also the arbitrary limits to that flexibility. The science of the law of uses became more metaphysical in character, as it came to be administered by the courts of law, at a time when legal science was most metaphysical. If a use could be regarded as a use by way of remainder, the courts doggedly insisted on so regarding it, rather than as a shifting or springing use, although the consequence was to defeat the intention of the settlor, by bringing it under the technical rules of law as to remainders. Still when all is said and done the law of conveyancing was revolutionized through the employment of uses. The bargain and sale and the covenant to stand seised ultimately supplanted the feoffment. The system of conveyancing employed to-day in England and in the American states is based either directly upon the Statute of Uses, or upon statutes passed in the 19th century which pruned some of its outworn formalities from the system based upon the Statute of Uses. But whether the time is not now ripe for the introduction of a simpler system such as is now proposed in England is another question.²⁵

²³ The evils resulting from the secrecy with which uses might be created were recited in (1483) 1 Rich. III, c. 1, which provided that a conveyance by or execution against the *cestui que use* should be valid not only against him but also against the feoffee to uses.

²⁴ (1536) 27 Hen. VIII, c. 16.

²⁵ See Hudson, *Current Land Law Reform in England* (1921) 34 HARV. L. REV. 341.

IV

The fourth period began with the revival in the 17th century of the use as a passive trust. For a hundred years or so after the enactment of the Statute of Uses it appears that trusts were seldom created. Occasional active trusts there might be, but these were usually regarded as mere choses in action; and there were occasional trusts of terms for years and trusts of personal property; but the passive trust created by means of raising a use on a use was not enforced for about a century after the Statute of Uses. A use on a use had always been held even in equity to be repugnant and void; even in equity "a use could not be engendered of a use." Naturally therefore in *Tyrrel's Case*²⁶ the courts of law held that such a use was not executed by the statutes; and when equity reversed its former view, rejected the metaphysical idea of repugnancy, sought to carry out the intention of the parties, and held that such a use is valid,²⁷ it was too late for the law courts to overrule the decision in *Tyrrel's Case*, for to do so would have a disastrous effect upon purchasers who had relied upon that decision. This, as Professor Ames discovered, is the explanation of the origin of the modern passive trust.²⁸

When this passive trust arose in the 17th century the broad principle was accepted, receiving its impetus mainly from Lord Nottingham, Chancellor from 1673 to 1682, that equity should follow the law. As a result of this doctrine the law of trusts was systematized, and it became increasingly difficult to evade or improve the law by means of the trust device. It became necessary for courts of equity to determine how far the doctrines of the law expressed a real and living policy and ought therefore to be followed in equity, and how far on the other hand they were based upon some technical rule of law or upon some outworn conception of public policy. The necessary resulting inquiry into the fundamental principles of the law is one of the great contributions made by the law of trusts to Anglo-American law.

The old philosophy of uses evolved by the Chancellors of the 15th century and rendered more subtle and intricate by the courts of law in the 16th century, gave way to a new philosophy of trusts based upon clearer conceptions of public policy, of the nature and purposes of the law. Of these modern trusts Lord Mansfield said:²⁹

"In my apprehension, trusts were not on a true foundation, till Lord Nottingham held the great seal. By steadily pursuing, from plain principles, trusts in all their consequences, and by some assistance from the Legislature, a noble, rational, and uniform system of law has been since raised. Trusts are made to answer the exigencies of families and all purposes, without producing one inconvenience, fraud, or private mischief, which the statute Hen. 8 meant to avoid."

²⁶ (1557, K. B.) 2 Dyer, 155a.

²⁷ *Sambach v. Dalston* (1634, Ch.) Toth. 188.

²⁸ *Lectures on Legal History* (1913) 243. See Maitland, *Equity and the Forms of Action* (1909) 42.

²⁹ *Burgess v. Wheate* (1759, Ch.) 1 Wm. Bl. 123, 160.

What then is the part these trusts are to play in our modern system of law?

Family Settlements. Primarily of course trusts are employed for the purpose of making family settlements. That is, as always, their principal rôle. The trust is the most flexible instrument for the disposition of private property by will or *inter vivos*. In this country the marriage settlement is not as common as in England, but testamentary trusts are increasingly common, particularly in the older states.

The Widow's Dower. By means of trusts it has been possible to avoid widows' claims to dower. Before the Statute of Uses it was settled that wives had no dower and husbands no curtesy in equitable estates.³⁰ When, however, it was seen that this was an unwarrantable evasion of the policy of the law, the courts of equity faced about and held that husbands should have curtesy in their wives' equitable estates. Unfortunately for the wives, however, it was held by the courts impossible to make a similar holding in the case of dower, not, as has been suggested, because men and not women sat upon the woolsack, but because purchasers who had acted on the faith of the earlier decisions would have found that their titles were rendered imperfect by a departure from these decisions, or perhaps, as Maitland suggests, because dower was beginning to be recognized as an intolerable nuisance, restraining the alienation of land.³¹

Married Women's Separate Estate. In the 18th century equity took a step which revolutionized the economic position of married women, when, refusing to follow the analogy of the legal rule, it allowed a wife to have an equitable separate estate. When a daughter of well-to-do parents married, a marriage settlement would be drawn whereby property would be conveyed to trustees so that she might be assured of an income which she might enjoy independently of her husband. This far-reaching reform, however, hardly touched the position of women of the lower orders. If a prudent housekeeper or ambitious lady's maid managed first to put by a considerable sum out of her wages and then to secure a husband, and incautiously failed to employ a solicitor, the husband became entitled to her savings. The ultimate reform whereby the legal as well as the equitable estates of married women were freed from the claims of their husbands has been brought about by statutes passed in the 19th century. But the way was paved by the Chancellors who recognized that the old idea of the unity of husband and wife was becoming obsolete and that even a married woman may be entitled to economic independence.

³⁰ (1497) Y. B. 13 Hen. VII, p. 7, pl. 3.

³¹ Dower in equitable interests in land is allowed by statute in England, but the husband may deprive the wife of dower in legal as well as in equitable estates by conveyance *inter vivos* or by will. (1833) 3 & 4 Will. IV, c. 105. In some states in this country widows are entitled to dower in equitable estates.

Evading Creditors. To a certain extent trusts have been successfully employed for the purpose of evading creditors. The device of transferring property upon trust for the transferor himself was clearly doomed to failure. As we have seen, Parliament gave relief to creditors even before uses were enforced by the courts. When a trust is created by some one other than the debtor, the English courts have protected the creditors by allowing them in equity to reach the debtor's beneficial interest in the property. In this country in a considerable and growing number of the states, however, it is possible effectively to provide that the beneficial interest shall be free from the claims of creditors. Great differences of opinion have been expressed on the question whether it is in accordance with public policy to allow spendthrift trusts and thereby to create a favored class of persons who can live in idleness and in comfort or even in luxury without paying their debts. To some it may appear to be a reform, but to the writer it seems to violate the sound principles of personal responsibility upon which the doctrines of the common law are based.

Charities. By the employment of trusts it has been possible to devote huge sums of money to charitable purposes. At a time when corporate charters could only be obtained by special act of Parliament, the charitable trust afforded an easy method of disposing of property for charitable objects. The courts in England have always been most liberal in upholding charitable trusts. The Legislature however has sometimes interfered. We have already seen how by the early mortmain acts conveyances of land to corporations, or for their use, were forbidden as in derogation of the rights of the overlord. In the reign of George II Parliament went much farther and forbade devises of land for charitable purposes. Now however these statutes are repealed and, although there are still in England limitations upon the power of charitable corporations to hold land, the other restrictions have been removed.

In some of the American states there are to be found restrictions upon the power to make gifts for charitable purposes. In New York it was formerly held, and now in a few states it is still held, that gifts cannot be made to trustees for charitable purposes, but only to charitable corporations. In some states devises and bequests for charitable purposes are forbidden if the will is executed within a certain time of the death of the testator. In others a testator cannot devise or bequeath for charitable purposes more than a certain part of his property.

Unincorporated Associations. Unincorporated associations cannot hold the legal title to property; but property may be held in trust for them. It is by means of trusts that unincorporated social clubs, fraternal organizations, trade unions and the like, are able to maintain themselves. To-day however it has become increasingly common for such organizations to incorporate.

The Trust in Business. In modern times the trust device has been extensively applied to business transactions. Most corporations find it

convenient if not essential in order to raise the necessary capital for the prosecution of their undertakings to give a mortgage upon their property. As the amount required is usually more than any one individual would or could advance, it is necessary to issue a number of bonds of comparatively small denominations; and as it would manifestly be impracticable to give mortgages to the several bondholders, the property is conveyed to individual or more commonly corporate trustees by a deed of trust, the trustees holding the property in trust for the bondholders and for the debtor corporation. Thus it has come about that most of that huge aggregation of wealth devoted to transportation and to industry is held by trustees.

In America toward the end of the 19th century a favorite method of stifling competition between corporations engaged in the same line of business and of securing a monopoly, was by the creation of a trust of the shares of the competing companies. The trustees were enabled to control the activities of all the companies for the benefit of the stockholders of all. The purpose sought to be accomplished, however, was one which was regarded as against public policy. Such trusts therefore, together with other devices for stifling competition, were held illegal, and were finally outlawed by the federal statute known as the Sherman Act and by similar statutes in the various states. As a result of this misuse of the trust device the term "trust" became identified in the public mind with monopolistic organization and fell into general disrepute.

More recently the trust device has come into wide use as a substitute for incorporation. In Massachusetts corporations are forbidden to own land except for the purpose of carrying on their business. In the case of large office buildings or extensive schemes for land development, it was found necessary to procure more capital than any individual was willing to venture. Therefore the practice was adopted of vesting the title to the land in trustees to manage it for the benefit of beneficiaries, whose interests were represented by transferable certificates. Such certificates are bought and sold like shares of stock. The beneficiaries have most of the advantages of corporate stockholders without the burdens attaching to incorporation and are subject to few of the burdens attaching to individual ownership. In the last few years the scope of these business trusts or Massachusetts trusts, as they are sometimes called, has been widely extended. They have been used for the purpose of carrying on businesses of all sorts, in order to avoid the sometimes over-stringent laws as to corporations. These trusts are beginning to be widely used in other states. In Texas many of the new oil companies now being formed are trusts of this kind. In Oklahoma a recent statute has expressly authorized the creation of the trust with transferable shares for business purposes.

In other commercial transactions requiring a new method of conducting business, the trust affords a readily available instrument. In the

last few years as foreign trade has increased, the need of an adequate machinery for conducting that trade has become accentuated. One method which has come into common use in which the trust device is employed is the following: An importer of goods procures from his bank a letter of credit for the purpose of financing the importation. The foreign seller consigns the goods to the bank and draws upon it or upon its foreign correspondent for the price and attaches to the draft the invoice and bill of lading. Upon the arrival of the goods the bank indorses the bill of lading to the importing buyer, taking a trust receipt under which the buyer is given the right to sell the goods, he agreeing however that the goods or their proceeds shall be held in trust for the bank to secure the payment of the amount due to the bank.³²

The extreme adaptability of the trust is shown in the employment of it in other business transactions. It has recently been used by several railroads having a joint terminal. The Supreme Court of the United States decided a short time ago that the Des Moines Union Railway Company which holds the legal title to a railroad terminal in the city of Des Moines holds the terminal property under a trust for the several railroads using the terminal, and that purchasers of the stock of the terminal company are bound by the trust.³³

CONCLUSION

So it is abundantly clear that uses and trusts have played for over five hundred years and are still playing a notable part in the progress of the English law. And how typically English has been their development. There is, it is true, a certain analogy between uses and trusts and the *usus* or *usufructus* or *fidei-commissum* or *bonorum possessio* of the Roman law. But it is only an analogy.³⁴ Uses and trusts are in their origin and in their growth the peculiar product of England. The development of the trust idea has involved a great deal of muddling and a great deal of common sense; little of sound logic, but much of expediency. It is no wonder that Gierke said to Maitland that he could not understand the English trust. No logician, no philosopher, could have evolved it. It has developed as it has as a practical means of accomplishing certain results which could not otherwise have been easily attained.

³² See *Vaughan v. Mass. Hide Corporation* (1913, D. D. Mass.) 209 Fed. 667.

³³ *Chicago, etc. Ry. v. Des Moines, etc. Ry.* (1920) 254 U. S. 196, 41 Sup. Ct. 81.

³⁴ See 2 Maitland, *Collected Papers* (1911) 403, 416.