public as partners of the deceased. Let judgment of affirmance be entered in the case, and a statement of this decision be certified to the Supreme Court of Nevada.*

AFFIRMANCE AND CERTIFICATE ACCORDINGLY.

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## SHEETS v. SELDEN'S LESSEE.

1. When a deed is executed on behalf of a State by a public officer duly authorized, and this fact appears upon the face of the instrument, it is the deed of the State, notwithstanding the officer may be described as one of the parties, and may have affixed his individual name and seal. In such case the State alone is bound by the deed, and can alone claim its benefits.

   Accordingly, where the legislature of Indiana passed two acts, one authorizing the Governor, and the other the Governor and Auditor of the State to sell certain property of the State, and to execute a deed of the same to the purchaser on behalf of and in the name of the State, and such property being sold, the Governor and Auditor executed to the purchaser a deed, naming themselves as parties of the first part, but referring therein to the acts of the legislature authorizing the sale, and to a joint resolution approving the same, and declaring that, by virtue of the power vested in them by the acts and joint resolution, they conveyed the property sold, "being all the right, title, interest, claim and demand which the State held or possessed," such deed was sufficient to pass the title of the State.

2. Land will often pass without any specific designation of it in the conveyance as land. Everything essential to the beneficial use and enjoyment of the property designated is, in the absence of language indicating a different intention on the part of the grantor, to be considered as passing by the conveyance.

   Accordingly, where the conveyance was of a division or branch of a canal, "including its *banks, margins, tow-paths, side-cuts, feeders, basins, right of way, dams, water-power, structures*, and all the appurtenances thereunto belonging," certain adjoining parcels of land belonging to the grantor which were necessary to the use of the canal and water-power, and were used with it at the time, but which could not be included in any of the terms above, in Italics, passed by the conveyance.

3. At the common law the grantee of a reversion could not enter or bring ejectment for breach of the covenants of a lease; and the statute of 32 Henry VIII, giving the right of entry and of action to such grantee, is confined to leases under seal.

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* See Webster *v.* Reid, 11 Howard, 461.

Statement of the case.

4. The term "month," when used in contracts or deeds, must be construed, where the parties have not themselves given to it a definition, and there is no legislative provision on the subject, to mean calendar, and not lunar months. The term thus held in a lease of the State of Indiana.
5. In the interpretation of contracts, where time is to be computed from a particular day or a particular event, as when an act is to be performed within a specified period *from* or *after* a day named, the general rule is to exclude the day thus designated, and to include the last day of the specified period.

   Accordingly, where leases provided that the rents should be paid semi-annually on the first days of May and November; and that if any instalment should remain unpaid *for one month from the time it should become due,* all the rights and privileges secured to the lessees should cease and determine, &c., the one month from the first day of May, within which the payment of the rent due on that day was to be made to prevent a forfeiture, expired on the first day of June following. In the computation of the time, the day upon which the rent became due was to be excluded.
6. Verbal authority is sufficient for a person to act as agent or a lessor in the collection of rent, or in demanding its payment.

THE State of Indiana, being owner of the Northern Division of the Central Canal, and of *certain adjacent lands*, authorized its Board of Internal Improvement, to cause any surplus water, of which there was some, along "*with such portions of ground* belonging to the State as *might be necessary to its use*, to be leased." Under this act leases were made in 1839–40,—one to Yandes & Sheets, another to Sheets; each for the term of thirty years.

The leases reserved certain rents, payable semi-annually on the first of May and November, and they provided that if any rent should "remain unpaid *for one month* from the time it shall become due," "all the rights and privileges" of the lessees "shall cease and determine, and any authorized agent of the State, or lessee under the State, shall have power to *enter upon and take possession of the premises*," &c. The first lease, that to Yandes & Sheets, in addition to the use of the water-power, in consideration of the rents reserved, leased, also, as necessary, "*for the use of the water-power hereby leased*," and for the same term and on the same conditions "the particular portion of ground belonging to the State at said point, included within the following boun-

Statement of the case.

daries, to wit, [here a particular piece of ground was described] containing a little more than half an acre." The second lease, that to Sheets, in consideration of the rent reserved, leased also for the same term, and on the same conditions as the water-power was leased, "such part of the *ground* belonging to the State as in the opinion of the engineer having charge may be *necessary to the use of the water-power* hereby leased," to wit [here, also, a particular piece of ground, as thus necessary, was described]. The lease to Yandes & Sheets was executed on the part of the State by the President of the Board of Internal Improvement, and by the lessees in this form:

D. H. MAXWELL, [SEAL.]
President of the Board of Internal Improvement.
DANIEL YANDES, [SEAL.]
WILLIAM SHEETS. [SEAL.]

The lease to Sheets was executed by N. Noble, Acting Canal Commissioner, and Sheets, in this form:

N. NOBLE,
Acting Commissioner for the Northern Division
of the Central Canal.
WILLIAM SHEETS.

The "seals" which appear to the lease to Yandes & Sheets were ink scrawls. No seals of any kind appeared on the second lease,—that to Sheets.

Some time subsequently to the making of these leases the State passed two statutes. By the first, entitled "An act to authorize the Governor of Indiana to compromise with, and to cause suit to be brought against lessees of the water-power of the Northern Division of the Canal," the *Governor* was authorized to sell "all the right, title, and interest of the State of Indiana, in and to the Northern Division of the Central Canal, and all the rents that shall become due after the sale of the said property, and the water-power and *appurtenances* thereunto belonging."

By the second, entitled "An act to authorize the sale of the Northern Division of the Central Canal," the *Governor*

and *Auditor of the State* were "authorized to make sale and dispose of all the right, title, interest, claim, and demand which the State holds in the Northern Division of the Central Canal, situate in the said State of Indiana, with all the *water-power* and *appurtenances* thereunto belonging," and authorizing those officers to convey the same to the purchaser, on *behalf of the State, in the name of the State of Indiana.*

The Governor accordingly made public sale of certain property, advertised for sale, as "being all the right, title, interest, claim, and demand which the State may hold or possess in the Northern Division of the Central Canal, and all the rents which may have become, or shall become, due after the sale of said property, and the water-power, and the *appurtenances thereunto* belonging, including its *banks, margins, tow-paths, side-cuts*, feeders, basins, right of way, dams, water-power, structures, and all the *appurtenances* thereunto belonging." And having reported the sale to the legislature, that body confirmed it, directing him to convey the said portion of the canal, with the rights, privileges, and *appurtenances*, to the purchaser in fee.

The Governor and Auditor of the State (J. A. Wright and E. W. H. Ellis) afterwards executed to F. A. Conwell, who held under the purchaser, an instrument, which made one of the questions in the case. It purported to be made "between *Joseph A. Wright*, Governor of the State of Indiana, and *Erastus W. H. Ellis*, Auditor of said State, of *the first part*, and *F. A. Conwell* of *the second part*," and recited the sale, and referred to the several acts under which the instrument professed to have been executed, which are those hereinbefore recited; and acknowledged the payment of the purchase-money.

It then makes known that, by *virtue of the power vested in them by the acts and joint resolution therein named*, "We, Joseph A. Wright, *Governor of the State of Indiana*, and Erastus W. H. Ellis, *Auditor of the said State*, do hereby convey to the said F. A. Conwell," &c., in fee, all the estate, &c., herein described; the description being just as the property was sold, and as the same is above described; nothing, how-

ever, being described by metes and bounds, or in any form more specific than that above given; and, as the reporter inferred from the argument, neither parcel falling within the specific designation of "bank, margin, tow-path, side-cut, feeder, basin, right of way, dam, or structure."

The deed was thus executed and tested:

"In testimony whereof, *we* have hereunto set *our* hands and affixed the seal of said State, at the city of Indianapolis, the day and year first above written.

"JOSEPH A. WRIGHT,
"Governor.

{SEAL OF THE STATE OF INDIANA.}

"ERASTUS W. H. ELLIS,
"Auditor of State.

"C. H. TEST,
"Secretary of State."

Selden became owner of the property thus sold by the State; and Sheets, being in possession under the leases which the State had made, and having refused to pay rent, an agent of Selden, authorized by parol, formally demanded, on the first day of May, 1860, and afterwards *on the first day of June*, a short time before sunset, upon the premises, the rents due *on* the first of May of the year just named. Payment not being made, Selden, regarding the lease as forfeited, brought ejectment against Sheets (the only tenant in possession). The premises for which the action was brought were the parcels of land described in the two above leases, executed in 1839–40 by the Board of Internal Improvement, as property belonging to the State, and leased in connection with the surplus water, because *necessary to the use of such water*. The defences in substance were:

I. To the deed of the Governor and Auditor.

1. As not executed in the name of the State.

2. As not embracing the premises in controversy.

II. That the leases not being under seal, Selden, as grantee of the reversionary interest of the State, could not maintain ejectment upon breach of the covenants to pay.

III. That the demand for rent, if authorized at all, should have been made on the 31st May, and having been made on

the 1st June, was too late; moreover, that the agent who made the demand was not authorized in writing.

The court below—the Circuit Court of the District of Indiana—held none of these defences sufficient; and judgment was given for the plaintiff. The same reasons urged against recovery there were taken for reversal in error here.

*Mr. Dumont, for Sheets, plaintiff in error:* The deed by the Governor and Auditor is not a deed made on behalf of the State in the name of the State; which the statute declares that it must be. It is by Mr. Wright, the Governor, and Mr. Ellis, the Auditor. These persons do not profess to act even as attorneys of the State; and if they did, the thing would be irregular, for the deed should have been made in the name of the principal; that is to say, of the State by its attorneys; and not in the name of the Governor and Auditor, even if they represented themselves as attorneys of the State, which with such a mode of presentation would not be a grantor at all. "It was resolved," says Lord Coke, in *Combe's case*,* "that when any has authority to do any act, he ought to do it in *his* name who gives the authority; for he appoints the attorney to be in his place and to represent his person, and therefore the attorney cannot do it in his own name, nor as his proper act, but in the name and as the act of him who gives the authority." No rule in the law is better settled than this, and none has so uniformly received the sanction and approbation of the various judicial tribunals of the country.† In this case, however, as we have said, the attorneys do not even profess to act in the name of the State. They act in their own name; their official titles being added, just as the same titles might well have been added, and probably would have been added,—as descriptions of who the grantors were,—if the same individuals had been conveying lands belonging to themselves

* 9 Coke, 76, b.

† See Ewell *v.* Shaw, 1 American Leading Cases, 2d ed., 559, note; where authorities are collected.

Argument for the plaintiff in error.

personally. Indeed, it would be doubtful whether, *in any kind of contract*, titles thus appended would be held to be more than descriptive designation, or to relieve from personal liability; for Wright neither conveys nor signs *as* governor, nor Ellis *as* State auditor. In regard to a deed, however, the act of acts in the law, the case is stronger than the case of simple contracts, and, as we think, is quite plain. The statutes under which the sale was made have no such inherent force as to operate without regard to general law, as administered between private persons. They may or may not indicate what was *meant* to be sold; but they do not alter the ancient settled effect of those acts which *are* done. We concede that, in many cases of Government contracts, the intention to bind the Government and not the agent will prevail; as, for example, where, from the whole instrument, such intention is manifest; but this exception does not apply where the act of the agent, and the manner of its execution, are alike specifically pointed out by legislative direction; and especially does it not apply to a case like the present, where the effect of the act of the agent is to divest the State of title to a valuable freehold estate in lands, and important public franchises besides. Here the legislature has provided how that thing should be done, and by whom.

2. The State, no doubt, was owner of all the lands demised by the leases; but did the State authorize a sale of all *those* lands? The legislature describes specifically what should be sold. It is the "water-power" and the "appurtenances;" nothing else. Now, this ejectment is brought for certain pieces of land, meted and measured out; pieces of land which, confessedly, are not any one of the things either advertised for sale or sold, unless they are those "appurtenances" which, we admit, were sold. But "it seems now settled," says Tomlins,* citing authorities, "that lands will not pass by the word appurtenances." To insist that the particular tracts described in the leases are *appurtenant* to

* Law Dictionary, Tit. "Appurtenances;" citing the old reporters, Palmer, 375; Godbolt, 352; Hutton, 85; S. C. Littleton, 8.

some one or more of the things sold by the State, would be even more absurd than to maintain that *land* can be *appurtenant to land*. It would be maintaining that land can be appurtenant to a mere easement, a right of way, a water-power, or a stream of water, natural or artificial. The lands demised cannot be "*appurtenant*" to the *bed of the canal*, nor to its *banks*, nor its *margins*, nor its *tow-paths*, nor its *side-cuts*, nor its *feeders*, nor its *basins*, nor the *right of way*, nor the *dams*, nor the *water-power*, nor the *structures*, specified in the act. What the State meant to convey is not important. The question is, what has she conveyed? and that is to be determined by looking at the words of the statutes and deed, and interpreting them by the rules of law; rules which are of all time, and are the same whether the parties be States or subjects.

2. The leases are not under seal. Now, when a forfeiture is asserted, the party asserting it must prove the forfeiture strictly, for forfeitures are odious. Whence comes this right of re-entry at all? It comes from an English statute; a statute passed in the worst year of, perhaps, the worst of English kings,—in the 32d Henry VIII; but which, in common with most statutes of our mother country prior to the fourth year of James I, is confessedly in force by statute adoption of 1818* in Indiana. The language of the English statute is thus:

"The grantees or assignees shall have and enjoy the like advantages against the lessees, &c., by *entry for non-payment of rent, &c.*, and also shall and may have and enjoy all and every such like and the same advantage, benefits, and remedy, by action only, for not performing other conditions, covenants, and agreements, contained and expressed in *the indentures* of *their said leases, demises*, or *grants*, against all and every the said lessees, &c., as the said lessors or grantors themselves, &c., ought, should, or might have enjoyed, at any time or times, in like manner and form as if the reversion of such lands, &c., had not come to the hands of our said sovereign," &c.

* Revised Statutes of Indiana, 1818, p. 308.

This statute carries with it the construction which it has received in England, as well as with us. Now, in *Bickford* v. *Parson*,* Judges Wilde, Coltman, Maule, and Cresswell, severally gave opinions, each one of them assuming it to be settled law that to bring a case within this statute of 32 Henry VIII, 34, the *lease must be by deed;* Maule, J., saying, "*The demise not being by deed*, the right to sue is not transferred to the assignee of the reversion by force of the statute."

Doubtless, it will be said that the necessity for a seal in the true form is dispensed with by our Illinois statute of 1843. But is it? The statute provides† that an ink scrawl may be used, "except where any statute of this State shall require a *specific seal.*" Is it clear that, adopted by statute of Illinois as the statute of 32 Henry VIII will be conceded by all to have been, a "specific seal" is not necessary when you attempt to establish the forfeiture allowed by the English act; that forfeiture especially which there, as here, is odious, and in favor of which nothing will be intended nor benignantly construed? But even supposing that an ink scrawl, or even no seal, would be sufficient between private persons, yet certainly when the State is the lessor, the private ink scrawl of the State's agent is not sufficient.

3. *The demand was too late.* This court‡ has fully recognized the obligation of the common law requirements in regard to re-entry on the ground of forfeiture for non-payment of rent. One of these requirements is, that where, as in the present case, the agreement is, that "if the rent shall be behind and unpaid by the space of thirty or any other number of days after the days of payment, it shall be lawful for the lessor to re-enter; a demand must be made on the thirtieth *or other last day.*"§ The right to re-enter for breach here is by the terms of the lease suspended for one month from the time the rent became due. "The month, by the

* 5 Manning, Granger, and Scott (57 English Common Law), 920.

† Statutes of 1843, p. 592, § 25, chap. 33.

‡ Connor *v.* Bradley, 1 Howard, 217.

§ Duppa *v.* Mayo, 1 Saunders, 286, note 16.

common law," says Tomlins,* quoting good authorities, "is but 28 days, and in case of a condition for rent, the month shall be thus computed. So in the case of enrolment of deeds, and generally in all cases where a statute speaks of months." It is true that, by an Illinois "act in relation to the construction of *statutes* and the definition of terms," it is declared that the word "month" shall mean a calendar month; but this act relates only to the construction of statutes, and to the meaning of terms as used in *them*. So, too, the fact that in mercantile contracts, or in other contracts where there was, obviously, such an intention, the calendar month is assumed, is not important; for this business of forfeiture is a very strict proceeding under ancient common law. Admitting, however, that a calendar month was meant, and that the court will so construe the leases, yet then the authority is, that the demand must be *on the last day of the month.*† Here it was on the first of the succeeding.

*Mr. Hendricks, contra.*

Mr. Justice FIELD delivered the opinion of the court.

The objections taken by the defendant in the court below against a recovery, and urged in this court for a reversal of the judgment, which require consideration, relate, 1st, to the validity of the deed executed by the Governor and Auditor of Indiana to pass the title of the State to the premises in controversy; 2d, to the claim by the lessors of the plaintiff of a right to maintain ejectment for the premises upon a breach of the covenants to pay rent contained in the leases of the State; and 3d, to the proceedings taken to effect a forfeiture of the leases.

1. The objection to the deed of the Governor and Auditor is, that it is not executed in the name of the State, and does not cover the premises in controversy.

It is true that the form of the deed is not in literal com-

* Law Dictionary, tit. "Month;" and citing 1 Institutes, 135; 6 Reports, 62; Croke James, 167; 6 Term, 224.

† Duppa *v.* Mayo, 7 Saunders, 286, note 16.

pliance with the language of either of the acts of Indiana; it is not in terms between the State, of the one part and the assignee of the purchasers of the property of the other part; but it shows a completed transaction between the State and the grantee named. It refers to the acts of the legislature authorizing the sale; it sets forth a sale made pursuant to their provisions; it mentions the joint resolution affirming the sale; and it declares that the Governor and Auditor in virtue of the power vested in them by the acts and joint resolution convey the property sold, "being all the right, title, interest, claim and demand which the State" held or possessed therein.

In the execution of this instrument the Governor and Auditor acted officially and not personally, and in our judgment the deed was sufficient to pass the title of the State they represented. And it may be stated generally that when a deed is executed, or a contract is made on behalf of a State by a public officer duly authorized, and this fact appears upon the face of the instrument, it is the deed or contract of the State, notwithstanding that the officer may be described as one of the parties, and may have affixed his individual name and seal. In such cases the State alone is bound by the deed or contract, and can alone claim its benefits.*

The objection that the deed does not cover the premises in controversy rests upon the fact that it does not convey the parcels of land for which the action is brought, by specific designation and description. Such designation and desciption, though usual, are not always essential. Land will often pass by other terms. Thus a grant of a messuage or a messuage with the appurtenances will carry the dwelling-house and adjoining buildings, and also its orchard, garden, and curtilage.† The true rule on the subject is this, that everything essential to the beneficial use and enjoyment

* Hodgson *v.* Dexter, 1 Cranch, 345; Stinchfield *v.* Little, 1 Greenleaf, 231; The State *v.* McCauley, 15 California, 456.

† Shepherd's Touchstone, 94.

of the property designated is, in the absence of language indicating a different intention on the part of the grantor, to be considered as passing by the conveyance.* Thus the devise of a mill and its appurtenances was held by Mr. Justice Story to pass to the devisee not merely the building but all the land under the mill and necessary for its use, and commonly used with it.† So a conveyance "of a certain tenement, being one-half of a corn-mill situated," on a designated lot "with all the privileges and appurtenances" was held by the Supreme Court of New Hampshire to pass not only the mill, but the land on which it was situated, together with such portion of the water privilege as was essential to its use.‡ And the exception of a factory from a mortgage deed was held by the Supreme Court of Massachusetts to extend to the land under the factory, and the water privilege appurtenant thereto.§

In the deed from the Governor and Auditor the property conveyed is designated as "all the right, title, interest, claim, and demand, which the State may hold or possess in the Northern Division of the Central Canal, &c., and all the rents which may have become, or shall become due after the sale of said property, and the water-power, and the appurtenances thereunto belonging, including its banks, margins, tow-paths, side-cuts, feeders, basins, right of way, dams, water-power, structures, and all the appurtenances thereunto belonging."

This language is comprehensive enough to carry the several parcels of land described in the declaration. These parcels are described in almost identical language in the leases executed by the Board of Internal Improvement on behalf of the State. The law providing for leasing the surplus water, authorized at the same time the leasing of "such portions of ground belonging to the State as might be necessary to its use;" and the leases specify those particular

* Sparks v. Hess, 15 California, 196. † Whitney v. Olney, 3 Mason, 280.

‡ Gilson v. Brockway, 8 New Hampshire, 465.

§ See, also, to the same effect, Wise v. Wheeler, 6 Iredell, 196; and Blaine's Lessees v. Chambers, 1 Sergeant & Rawle, 169.

parcels as being necessary to the beneficial use and enjoyment of the water.

2. The objection that the lessors of the plaintiff, as grantees of the reversionary interest of the State, cannot maintain ejectment for the premises upon breach of the covenants to pay rent contained in the leases of the State, rests upon the supposition that the leases are not under seal.

It is conceded that at the common law the grantee of a reversion could not enter or bring ejectment for breach of the covenants of a lease; and that the statute of 32 Henry VIII, giving the right of entry and of action to such grantee, was confined to leases under seal. The statute speaks of conditions, covenants, and agreements, contained in *indentures* of leases, demises, and grants; language only applicable to sealed instruments. That statute was adopted in Indiana as early as 1818, but a law of the State passed in 1843 alters its rule, and extends its remedies to all leases.

3. The objection taken to the proceedings for the forfeiture of the leases is that the demand for the rent was not made on the proper day, nor by properly authorized agents.

The demand was made on the first day of May, and also on the first day of June. The first demand was premature; the question is as to the demand on the latter day. The leases provided that the rents should be paid semi-annually on the first days of May and November; and that if any instalment should remain unpaid *for one month from the time it should become due*, all the rights and privileges secured to the lessees should cease and determine, and any authorized agent or lessee of the State should have power to enter and take possession of the premises.

By the term "month" as here used is meant a calendar, and not a lunar month. The legislature of Indiana has attached this meaning to the term when it is used in the statutes of the State, but has not defined its meaning in contracts or deeds, and it is contended by the plaintiff in error that in the absence of any legislative provision on the subject, the term must be construed in these instruments to mean lunar and not calendar months. But this view cannot

be sustained. The term is not technical, and when the parties have not themselves given to it a definition, it must be construed in its ordinary and general sense, and there can be no doubt that in this sense calendar months are always understood. The reasons upon which a different rule rests in England with reference to other than mercantile contracts, do not outweigh this consideration.*

The rent becoming due on the first day of May, the one month from that time within which the payment was required to be made to prevent a forfeiture, expired on the first day of June following. In the computation of the time, the day upon which the rent became due was to be excluded. The general current of the modern authorities on the interpretation of contracts, and also of statutes, where time is to be computed from a particular day or a particular event, as when an act is to be performed within a specified period *from* or *after* a day named, is to exclude the day thus designated, and to include the last day of the specified period. "When the period allowed for doing an act," says Mr. Chief Justice Bronson, "is to be reckoned from the making of a contract, or the happening of any other event, the day on which the event happened may be regarded as an entirety, or a point of time; and so be excluded from the computation."†

The parties who made the demand for rent were duly authorized by the lessors of the plaintiff. Authority in writing was not essential; verbal authority was sufficient for the purpose.

JUDGMENT AFFIRMED.

* Gross *v.* Fowler, 21 California, 392; Strong *v.* Birchard, 5 Connecticut, 361; Brown *v.* Harris, 5 Grattan, 298.

† Cornell *v.* Moulton, 3 Denio, 16; see also Bigelow *v.* Wilson, 1 Pickering, 485.