

PROPERTY LAW AND EQUITY REFORM COMMITTEE

WORKING PAPER

SECTIONS 7, 8 AND 9 OF STATUTE  
OF FRAUDS

OBJECT

To consider the repeal and re-enactment of sections 7, 8, and 9 of the Statute of Frauds.

INTRODUCTION

1. Since 1931 it has been the policy in New Zealand to continue to repeal sections in the Statute of Frauds and replace them with sections in a modern statute: e.g. section 4 was repealed by and replaced in the Contracts Enforcement Act 1956. Sections 10, 11, 23 and 24 were repealed by s.84(2) of the Administration Act 1969. Section 22 was repealed by s.11(1) of the Wills Amendment Act 1955.
2. Sections 7, 8 and 9 of the Statute of Frauds (1677) 29 Car II cap 3 are in force in New Zealand by virtue of s.2 of the English Laws Act 1908.
3. S.7 of the Statute of Frauds requires a declaration of trust in respect of interests of land to be evidenced in writing. If there is no writing the trust is unenforceable. S.7 provides:

"That from and after the said four and twentieth Day of June all Declarations or Creations of Trusts or Confidences of any Lands, Tenements or Hereditments, shall be manifested and proved by some Writing signed by the Party who is by Law enabled to declare such Trust, or by his last Will in Writing, or else they shall be utterly void and of non Effect."
4. S.8 of the Statute of Frauds provides that the requirements as to writing shall not apply to trusts arising by implication or construction of law. S.8 provides:

"That where any Conveyance shall be made of any Lands or Tenements by which a Trust or Confidence shall or may arise or result by the implication or construction of Law, or be transferred or extinguished by an Act or Operation of Law, then and in every such Case such Trust or Confidence shall be of the like Force and Effect as the same would have been if this Statute had not been made; any Thing herein before contained to the contrary notwithstanding."

5. S.9 of the Statute of Frauds provides that all grants and assignments of any trust or confidence shall be in writing. S.9 provides:

"That all Grants and Assignments of any Trust or Confidence shall likewise be in Writing, signed by the Party granting or assigning the same, or by such last Will or Devise, or else shall likewise be utterly void and of none effect."

6. The committee is of opinion that these three sections of the Statute of Frauds should be repealed and replaced by a New Zealand enactment. Such a repeal and replacement has been effected in England. S.53 of the Law of Property Act 1925 (20 Halsbury's Statutes 2nd Ed 551) provides as follows:

"Instruments required to be in writing - (1) Subject to the provisions hereinafter contained with respect to the creation of interests in land by parol -

- (a) no interest in land can be created or disposed of except by writing signed by the person creating or conveying the same, or by his agent thereunto lawfully authorised in writing, or by will, or by operation of law;
- (b) a declaration of trust respecting any land or any interest therein must be manifested and proved by some writing signed by some person who is able to declare such trust or by his will;

(c) a disposition of an equitable interest or trust subsisting at the time of the disposition, must be in writing signed by the person disposing of the same, or by his agent thereunto lawfully authorised in writing or by will.

(2) This section does not affect the creation or operation of resulting, implied or constructive trusts."

It will be seen that s.53(1)(b) corresponds with s.7 of the Statute of Frauds; s.53(2) corresponds with s.8 of the Statute of Frauds; and s.53(1)(c) corresponds with s.9 of the Statute of Frauds.

7. S.53(1)(c) has been the subject of recent litigation in England in Grey v. I.R.C. (1960) A.C. 1 and Oughtred v. I.R.C. (1960) A.C. 206. It was held in Grey's case by reason of the process of legislation that s.53(1)(c) was not merely a consolidating section but was also an amending section and the expression "disposition" used in that paragraph had a wider meaning than the words "grants and assignments" used in s.9 of the Statute of Frauds. In Grey's case a man transferred property into the name of a nominee for him. He then orally directed the nominee to hold the property on certain trusts. The nominee recorded details of these trusts. The question arose as to whether the transaction was valid, there having been no writing signed by the original owner of the property. It was held that this was a disposition but it seems that it would not have been held to have been a grant or assignment under the original s.9 of the Statute of Frauds.

8. It seems desirable that the ancient English provisions should be replaced by modern and accessible New Zealand statutory provisions. In so doing the committee considers that it may be desirable to amend s.9 in the way in which it was amended in England making it plain that all dispositions of equitable interests should be in writing. This would accord with good conveyancing practice.

9. Accordingly, the committee recommends the repeal and replacement of sections 7, 8 and 9 of the Statute of Frauds.

SUBMISSIONS

The committee would be grateful for any criticisms of its suggestions. It requests that submissions be sent to the following address:

The Secretary,  
Property Law & Equity Reform Committee,  
Private Bag 1,  
Government Buildings,  
Wellington,

on or before the 1st day of October 1970.