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THE INS AND OUTS OF TWIG AND TURF

by

RICHARD L. CHAMPLIN

Students of colonial history, even casual readers of the chronicles of the seventeenth and eighteenth centuries, may encounter a phrase often used in deeds, a phrase with a long, curious past, namely, Twig and Turf. The customs surrounding this phrase reach back from those centuries to the England of Norman times and beyond to the Anglo-Saxon period. Being a legal custom, and known in legal parlance as Livery of Seisin, this tradition has to do with the transfer or conveyancing of property, either lands or dwellings, from one owner to another. The ceremony surrounding Turf and Twig formalized the property transfer.

Twig and Turf appears in the following, typical deed from the mid-seventeenth century:

"Certificate . . . Wannamachine, Sachem of Nianticott, having a tract of land, running S. & W. from ye rock of Pettiquamscott, including all ye land, from ye river Mucotugre, which run-neth from s'd Rock to ye sea S. & S.E. into ye river Saugatughet, which lyeth W. from ye former river, & runneth into ye Maine Sea, which s'd land was given to s'd Wannamachine by his father, having received a Sum of Money from John Porter, Sam'l Wilbor & partners, did April 19, 1661, did by plain Words & by twigg and Turfe, deliver full & absolute possession of said land . . ."¹

According to legal historians the ceremony that took place between buyer and seller consisted of the seller's digging a clod of turf on the land being conveyed and inserting in it a twig, then handing it to the buyer. This occurred within sight of the property, and may have included witnesses or not. Only if the buyer actually entered the property during the lifetime of the seller was the ceremony valid.

1. *Colonial Land Evidence*, transcribed by Dr. Henry Turner, Section 2, 49; Ms. at the Newport Historical Society.

The colonist dealt not just with his fellow-Englishman after this ancient, feudal custom, but as seen above, he did so with Roger Williams' children of the wilderness. The Indian, moreover, did have some precedent for this, as will appear later, nevertheless his loose sense of land ownership hardly matched the strict sense of property rights the Englishman had evolved. Hence the many disputes between Redskins and Whites which culminated in the Great Swamp Fight. The Indian may have been willing to sell land, but it hardly occurred to him that he had at the same time sold the rights to fishing on it and hunting.

This ancient method of transferring property continued into the eighteenth century, as seen in this deed:

"Newp. May 14, 1716, Wm. Wood, only surviving Executor of Joseph Wetherhead, of Newp. dec. did deliver to George Stanton of London, Gardiner, then upon the land of s'd Wetherhead dec. by Turf & Twig & left S'd George Stanton in possession of s'd land, he being the husband of Eliz'th daughter and the Sole Executrix of John Wetherhead, & according to verdict of Jury & Judgment of Court, in presence of Witn. Augustus Lucas, Peter Barker, sworn to, same date, by both Witnesses, bef. Nath'l Coddington, Asst. Rec., May 17, 1716, Richard Ward, Recorder."²

Very important to the English colonist was the requirement that the seller actually had lawful ownership, through inheritance or by previous sale, of the land to be transferred.

So far, the property mentioned has been of land, but Livery of Seisin applied as well to dwellings. Here the procedure differed, as in this deed and the confirmation following it:

"Ralph Chapman, of Newport, shipwright, in consideration of ye great love and entire affection yt I have and bare unto my well beloved wife, Mary Chapman, and for her better comfort and support of herself and for many other divers considerations hereunto moveing, doe give, grant . . . unto my honor'd father-in-law, Walter Clark, Esq., and Nathaniel Coddington, Merch't, both of Newport . . . in trust . . . my dwelling house in Newport with outhouses, gardens and orchards, on said land, with all ye land to ye houses belonging, at first laid out for four acres, bounded Westerly on ye street, Northerly on Capt. Pelham's land, Easterly on land of said Walter Clarke, Southerly on land of Capt. Stephen Mumford on ye

2. *Ibid.*, Section 3; 58.

highway and street, there being only two small lots sold out of ye same as by deed to Capt. Wm. Wanton and Jeremiah Gould and six other lots 53 feet sq., given to my children, to be my children's after my decease . . . for the present support of my sd wife Mary Chapman and ye child I had by her my said wife, called Walter Chapman, during her life."

Ralph Chapman

Newport, R. I., November 4, 1704

James Cole,
William Anthony, Witnesses
Benj. Belchor,

"Newport, Nov. 4, 1704. Personally appeared before me, James Cole and William Anthony, & gave oath that they were witnesses to the inst'mt above, and said they saw Ralph Chapman sign the same to Walter Clarke, Esq., & Nathaniel Coddington, Esq. Said Chapman came out of his house in Newport, and his wife with him, he did shut ye dore and did in our presence deliver unto them ye hous, ordering them to receive the same according to purport of sd. instrument, which instrument was the present, the which they did by taking hold of the string of ye dore and thus opening ye dore; afterwards desired us to take notis that said Chapman had possessed them of ye hous and land, so they gave him possession for ye present.

Before me, Samuel Cranston, Gov.

Recorded Nov. 11, 1704

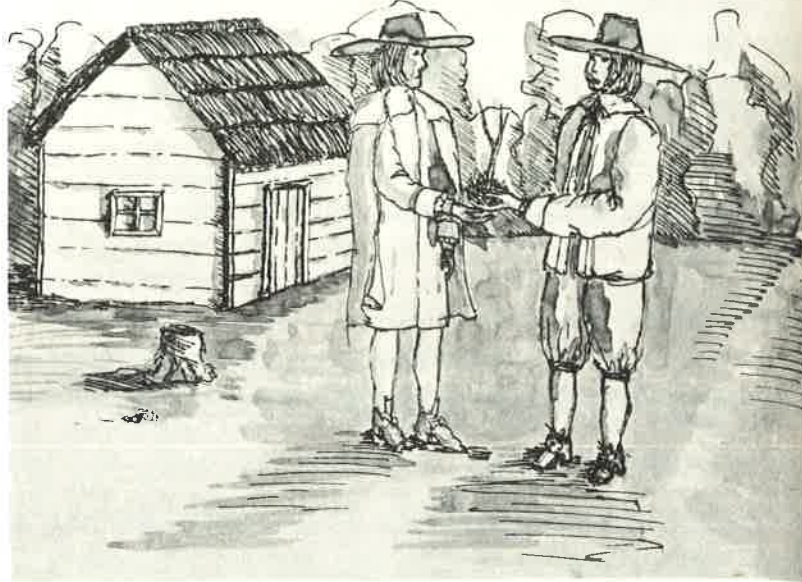
Weston Clarke, Recorder."³

In the antiquated lawbook known as Coke upon Littleton, the ceremony is described as a solemn act and words, which might involve the ring or hasp of a door, or the twig and turf, and it would be concluded with either of these suggested benedictions: "Enter into the house or land, and God give you joy"; or, "I am content you shall enjoy this land according to the deed."⁴

As defined by Blackstone the persons selling, called the feoffor, recited certain words to the feoffee (the buyer): ". . . the feoffor, if it be of land, delivers to the feoffee, all other persons being out of the ground, a clod or turf, or a twig or bough there growing, with

3. *The Newport Historical Magazine*, April 1881, Vol. I, No. 4.

4. Edward Coke, *The First Part of the Institutes of the Laws of England: or a Commentary upon Littleton*, not the name of the Author only, but of the Law Itself. 15th Ed., London, 1794. Lib. 1, Cap. 7, Sect. 59.



Drawn by Gordon Hayman

Photo by John Hopf

ENACTMENT OF CUSTOM
KNOWN IN LEGAL PARLANCE AS LIVERY OF SEISIN

words to the effect: 'I deliver these to you in the name of seisin of all the lands and tenements contained in this deed.' But if it be a house, the feoffor must take the ring or latch of the door, the house being empty, and deliver it to the feoffee in the same form; and then the feoffee must enter alone, and shut the door, and then open it and let in the others."⁵

In the Chapman deed, cited above, the buyer took possession "by taking hold of the string of ye dore and thus opening ye dore." The simple device here refers, of course, to the latch string. If the string were left out to begin with, that is put through a hole and left dangling outside the door, the new occupant could let himself in. Once in, he accordingly closed the door and then opened it to the outsiders, thus signifying his ownership. So the ceremony was complete. Incidentally, if the latch string were left out, this was a sign of hospitality. A latch string pulled in was an invitation to stay away.

5. Sir William Blackstone, *The Commentaries on the Laws of England*. 4th Ed. London, John Murray, 1876. Vol. 2; 267.

Doubtless these ceremonies occurred many more times than are recorded. Sometimes when a deed was questioned and investigated at a later date, the first mention is made then that the transfer had occurred by twig and turf. Such a case is the discussion of the Pettaquamscutt Purchase Deed, the purchase which gave settlers the right to most of the land comprising Washington County. When the authenticity was questioned, the claimants cited the twig and turf ceremony.⁶

That this usage prevailed outside Rhode Island is suggested in an account by the author, Benjamin H. Hibbard, who quotes a deed through which William Penn took possession of New Castle. The ceremony was consummated when the sellers presented to Penn one turf with a twig upon it, and a porringer with river water in it, thus typifying all the elements expressed in the deed.⁷ The location is, of course, Delaware.

Probably no one will ever discover the origin of this simple, yet effective and trusted ceremony, but a look at the usage of other peoples than the Anglo-Saxons and English, gives some insights. Blackstone found a Biblical antecedent. He wrote: "Among the Jews we find the evidence of a purchase thus defined in the Book of Ruth: 'Now this was the manner in former time in Israel, concerning redeeming and concerning changing, for to confirm all things: a man plucked off his shoe and gave it to his neighbour; and this was a testimony in Israel.' Among the ancient Goths and Swedes, contracts for the sale of lands were made in the presence of witnesses, who extended the cloak of the buyer, while the seller cast a clod of land into it, in order to give possession: and a staff or wand was also delivered from the vendor to the vendee, which passed through the hands of witnesses. With our Saxon ancestors the delivery of a turf was a necessary solemnity, to establish the conveyance of lands. And, to this day, the conveyance of our copyhold estates is usually made from the seller to the lord or his steward by delivery of a rod or verge, and then from the lord to the purchaser by re-delivery of the same, in the presence of a jury of tenants."⁸

6. An example is given in James N. Arnold's *The Records of the Proprietors of the Narragansett*, otherwise called the Fones Record. Providence, R. I., Narragansett Historical Publishing Company, 1894. Vol. I; 70-71.

7. James T. Adams, Ed., *Dictionary of American History*, N. Y., Scribner, 1940; Vol. 5; 330.

8. Blackstone, op. cit., 265.

Originally written deeds were not important to the transaction, so long as the ceremony actually took place and witnesses bore testimony to it. At a later time indentures came into use, which were literally pieces of a toothed document. More accurately, a document was cut in a jagged fashion and half given to the buyer while the seller retained the other matching piece. This tended to discourage forgery in deeds as only the persons having the exact match could make any claim to the legitimate ownership. As the Chinaman would put it, "No tickee, no shirtee."

Not far removed from these customs was that of the North American Indian. Authorities for his usage in matters of land transfers appear to be scarce, but the *Providence Journal* for Oct. 17, 1866 offers this account. Reporting the conditions of the Narragansett Indians, it notes: "About two thousand acres of their tribal lands are held by individual members of the tribe as their separate estate. Their titles were derived originally from the tribe, and rest upon tradition. The council grant the titles. Their mode of grant is interesting. The council go with the grantee upon the lot proposed to be granted. After the lot is marked out and bounded, the council cut a rod and place it upon the bare head of the grantee, and then, while he is upon the land and under the rod, they administer to him a solemn oath of allegiance to the tribal authority. This mode of investiture of title bears considerable analogy to the old common-law livery of siezin, and if this Indian custom antedates the landing of the Pilgrims, it might be suggested that there is a possibility that there was a community of origin in the two modes of grant."

Needless to say, these particular customs have long since ceased. It would be hard to find any instances in the Post-Revolutionary period. Perhaps the nearest thing to them in this age is the custom of presenting the key to the city. Some customs die hard.

CAPTAIN JOHN BOUTIN TO HIS NEPHEW JOHN BOUTIN ATKINSON

We present here, from the manuscript collection of our Society, a letter dated 1810.¹ In it are described some of the trials and tribulations of those seafarers who sailed to the Islands in the African trade.

* * *

Dear Nephew

Georgia, December 10, 1810

The reason why I address my letter to you is because you are a more Conspicuous Character in Newport than my Sister Nancy — On that Account it is more than probable you will receive my Letter the sooner — My Sisters may perhaps recollect that I Left Newport in the year 1774 or 75 in the Employment of Joseph & William Wanton in the african trade, and by the Carelessness of my mate, whose Name I think was Leech, we Unfortunately Lost the Brig I then Commanded — After being cast away we made the best of our way to Sennegal, through a thousand dangers from the Negroes who are Always hostile to those who have the misfortune to be driven on Their Shores — I was six weeks in Sennegal with Sir Charles Ohearne And Wrote for his Secretary paul Collins of Newport — Sir Charles With the greatest politness Commiserated my Missfortune and procured me a passage to the Island of Barbadoes — I there destitute of Every Thing, my pride would not Suffer me to return to my Native Country in a meanor condition than I Left it — from the Island of Barbadoes, I came a passenger to Norfolk in Virginia in a Brig belonging to Greenwood Ritson & Marsh & Co — Capt Cady with whome I came recommended me to them, Who immediately gave me the Command of a fine Brig to go (to) the Mediterranean, I loaded her with pitch Tar Turpentine pipe stems — The war then raged in almost Every part of the Union — Unfortunately again I was taken off the Capes Virginia by the *Fowler* 20 Jan ship on board of which was Lord Dinsmore who was once Governor of Virginia — After 21 days imprisonment And 14 days in Irons, after the battle of the great Bridge in Virginia When the Americans was Successful and made some of the Britons prisonners — I was soon afterwards rechanged and put on shore at portsmouth — Without Clothes without Money and without a friend, and turned abroad Upon the Cold Charity of an Unfeeling world — I entered afterwards into the Continental Army, where I Served four years under the Command of Gates & Washington Gates in the Southern Army at the Seige of