

## TO THE WITNESSES.

The same fees as are or shall be by law allowed to them in civil causes in the court of common pleas, and the like for serving subpoena on every witness.

## TO THE ATTORNEY.

For the trial of every cause, two dollars.

Penalty for default of juror or witness.

26. That every person summoned as a juror or subpoenaed as a witness, who shall not appear, or appearing shall refuse to serve or to give evidence in any prosecution instituted by virtue of this act, shall forfeit and pay for every such default or refusal, unless some reasonable cause be assigned, such fine not exceeding five dollars nor less than one dollar in the case of a juror, and not exceeding twenty dollars nor less than five in the case of a witness, as the said justice shall think proper to impose; and such justice is hereby authorized and required to issue an execution directed to any constable of the said county, to levy the same of the goods and chattels of the offender; which fine when recovered, shall be applied by the said justice to the use of the said county.

## Frauds and Perjuries.

## I. WHAT CONTRACTS, ETC., TO BE IN WRITING.

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3. Declarations or creations of trust shall be in writing.
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## An act for the prevention of frauds and perjuries.

Rev. 148.

R. S. 499, 864.

P. L. 1873, p. 50.

Parol leases and interests in lands by parol to have effect of estates at will only.

R. S. 499, § 9.

Except leases not exceeding three years.  
Amended.

Grants, assignments, and surrenders to be in writing.  
Ib. § 10.

Revision—Approved March 27, 1874.

## I. What contracts, etc., to be in writing.

1. That all leases, estates, interests of freehold or term of years, or any uncertain interests of, in, to, or out of any messuages, lands, tenements or hereditaments, made or created, or hereafter to be made or created, by livery and seisin only, or by parol, and not put in writing, and signed by the parties so making or creating the same, or their agents thereunto, lawfully authorized by writing, shall have the force and effect of leases or estates at will only, and shall not, either in law or equity, be deemed or taken to have any other or greater force or effect, any consideration for making any such parol leases or estates notwithstanding; except nevertheless all leases not exceeding the term of three years from the making thereof.<sup>(a)</sup>

2. No lease, estate<sup>(b)</sup> or interest, either of freehold or term of years, or any uncertain interest of, in, to, or out of any messuages, lands, tenements or hereditaments, shall be assigned, granted or surrendered,<sup>(c)</sup> unless it be

(a) A written lease for more than three years, signed by the party, but not under seal, is good. *Mayberry v. Johnson*, 3 Gr. 116. A parol demise for longer than three years operates as a demise from year to year. *Drake v. Newton*, 3 Zab. 111. Such lease is valid although the tenant never enter into the possession. *Birchhead v. Cummins*, 4 Fr. 44. *Hunt v. Young*, 2 South. \*813. A party suing on a parol lease must show that "the rent reserved to the landlord during such term shall amount to two-third parts, at the least, of the full improved value of the thing demised." *Gano v. Vanderveer*, 5 Vr. 293. [The clause in quotation marks is omitted in the present act].

(b) An equity of redemption can be released or conveyed only by writing. *Clark v. Condit*, 3 C. E. Gr. 358. *Van Keuren v. McLaughlin*, 4 C. E. Gr. 187. The land to be conveyed

must be described or designated in the writing. *Robeson v. Hornbaker*, 2 Gr. Ch. 60. *Carr v. Passaic Land Co.*, 4 C. E. Gr. 424. 7 C. E. Gr. 85. *Force v. Dutcher*, 3 C. E. Gr. 401. *Welsh v. Bayaud*, 6 C. E. Gr. 186. A parol partition is not binding. *Woodhull v. Longstreet*, 3 Harr. 405. *Lloyd v. Conover*, 1 Dutch. 47. It may be in equity. *Scudder v. Stout*, 2 Stock. 377. Or where the parties have held peaceable possession thereunder for twenty years. *Den. Watson v. Kelly*, 1 Harr. 517. Dower cannot be released by parol. *Keeler v. Tatnell*, 3 Zab. 62. See *White v. White*, 1 Harr. 202.

(c) A parol surrender of demised premises will be sustained in equity, when consummated by the delivery of the counterpart of the lease, the key of the dwelling and the possession of the premises to the landlord. *Stotesbury v. Vail*, 2 Beas. 390. See *Maris v. Sparks*, 2 South. \*513 (d).

by deed or note in writing, signed(a) by the party so assigning, granting or surrendering the same, or his, her, or their agent or agents thereunto, lawfully authorized by writing, or by act and operation of law.(b)

3. All declarations and creations of trust or confidence of or in any lands, tenements or hereditaments, shall be manifested and proved by some writing, signed by the party, who is or shall be by law enabled to declare such trust, or by his or her last will in writing, or else they shall be utterly void and of no effect;(c) *provided always*, that where any conveyance hath been, or shall be made of any lands, tenements or hereditaments, by which a trust or confidence shall or may arise or result by implication or construction of law, or be transferred or extinguished by act or operation of law, such trust or confidence shall be of the like force and effect, as the same would have been if this act had not been made.(d)

4. All grants and assignments of any trust or confidence shall be in writing, signed by the party granting or assigning the same, or by his or her last will in writing, or else shall be utterly void and of no effect.

5. No action shall be brought (1,) to charge any executor or administrator, upon any special promise, to answer damages out of his own estate; or (2,) to charge the defendant, upon any special promise, to answer for the debt, default or miscarriage of another person;(e) or (3,) to charge any person upon any agreement made upon consideration of marriage; or (4,) upon any contract or sale of lands, tenements or hereditaments, or any interest in or concerning them;(g) or (5,) upon any agreement, that is not to be performed within one year from the making thereof;(h) unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him or her lawfully authorized.

6. Every contract for the sale(k) of goods, wares and merchandise, for the price of thirty dollars or upwards shall be void; unless (1,) a note or memorandum of such contract be made in writing, and signed by the party to be charged thereby or by his agent thereunto lawfully authorized;(m) or (2,) unless the buyer shall accept part of the goods so sold, and actually receive the same;(n) or (3,) unless the buyer shall give something in earnest to bind the bargain or pay some part of the purchase money.

(a) A signing by the hand of another is sufficient. *Stevens v. Vanclvee*, 4 Wash. C. C. 263, 269. Or, by an auctioneer's clerk, *Johnson v. Buck*, 6 Vr. 338.

(b) The employment of an agent to buy a house must be in writing, *Wallace v. Brown*, 2 Stock. 308. But see *Hoagland v. Hoagland*, 1 Gr. Ch. 501.

(c) Any writing that shows a trust is intended, is sufficient. *Brown ads. Combs*, 5 Dutch. 36. It only applies to trusts of lands, and not of personalty, *Kimball v. Morton*, 1 Hul. Ch. 26. *Hooper v. Holmes*, 3 Stock. 122. *Sayre v. Frederick*, 1 C. E. Gr. 205. But if a parol trust be executed, money paid thereon cannot be recovered, *Eaton v. Eaton*, 6 Vr. 290. See *Smith v. Smith*, 4 Dutch. 208. A grantor or mortgagor cannot set up or prove by parol a trust for the use and benefit of himself, *Servis v. Nelson*, 1 McCart. 94. *Whyte v. Arthur*, 2 C. E. Gr. 521. Nor a grantee, *Servis v. Nelson*, 1 McCart. 94. A promise to execute a deed or writing in the nature of a trust cannot be proved by parol, *Marshman v. Conklin*, 6 C. E. Gr. 546. The instrument which proves the trust need not be subscribed, a signing anywhere in the instrument is sufficient, *Smith v. Howell*, 3 Stock. 349. The trust may be proved by affidavits outside of the record, *Green v. Beatty*, *Coze* 142. It cannot be destroyed by parol, *Peer v. Peer*, 3 Stock. 432.

(d) A resulting trust may be established by parol, *Hutchinson v. Tindall*, 2 Gr. Ch. 357. *Brannin v. Brannin*, 3 C. E. Gr. 212. *Johnson v. Dougherty*, Id. 406. *Baldwin v. Johnson*, *Sax*. 441. And an implied trust, arising from the operation of law, *Sayre v. Frederick*, 1 C. E. Gr. 205. A resulting trust must arise at the time of executing the deed. *Culler v. Tuttle*, 4 C. E. Gr. 549. *Tunnard v. Littell*, 8 C. E. Gr. 264. *Midmer v. Midmer*, 11 C. E. Gr. 299. See *Howell v. Howell*, 2 McCart. 75. A resulting trust may be destroyed by parol evidence, *Baldwin v. Campfield*, 4 Hal. Ch. 891. *Peer v. Peer*, 3 Stock. 432. A resulting trust cannot arise to a grantor because his deed was made without any consideration paid, *Hogan v. Jaques*, 4 C. E. Gr. 123, 126.

(e) The following are cases on this clause, *Rose v. Johnson*, Pen. \*5. *South v. Toomey*, Pen. \*98. *Ayres v. Herbert*, Pen. \*662. *Hoffman v. Larue*, Pen. \*685. *Shymer v. Westbrook*, Pen. \*976. *Hoppock v. Wilson*, 1 South. \*149. *Dilts v. Parke*, 1 South. \*219. *Scudder v. Wade*, 1 South. \*249, reversed, p. \*259, note, 2 South. \*681. *Nixon v. Vanhise*, 2 South. \*491. *Buckley v. Beardlee*, 2 South. \*570. *Youngs v. Shough*, 3 Gr. 27. *Mundy v. Ross*, 3 Gr. 466. *Saxton v. Landis*, 1 Harr. 302. *Hatfield v. Dow*, 3 Dutch. 440. *Joslin v. New Jersey Car Spring*

Declarations or creations of trust shall be in writing. Ib. § 11, 12. Amended.

Trusts arising, transferred or extinguished by operation of law excepted.

Grants and assignments of trusts to be in writing. Ib. § 13

Certain promises and agreements not binding unless in writing Ib. § 14.

Parol contracts for sale of goods of thirty dollars void unless the buyer accepts part of the goods or pays part of the price. Ib. § 15.

*Company*, 7 Vr. 141. *Williams v. Doran*, 8 C. E. Gr. 385. *Appar v. Hiler*, 4 Zab. 812. If founded on a new consideration such promise is not within the statute, *Clark v. Hall*, 6 Hal. 78. *Kutzmeyer v. Ennis*, 3 Dutch. 372. *Hatfield v. Dow*, Id. 440. *Cowenhoven v. Howell*, 7 Vr. 323.

(g) An agreement to exchange a house and money for land and money must be in writing, *Rutan v. Hinckman*, 1 Vr. 255; 2 Vr. 496. Where a charter of a railroad company provides that the company must obtain the consent of the land owner before entering upon his lands, a parol consent is not sufficient, *Hatfield v. Central Railroad Co.*, 5 Dutch. 571. A sale of standing timber is within the statute, *Slocum v. Seymour*, 7 Vr. 138. See *Caldwell v. Fifield*, 4 Zab. 150, 161. A verbal agreement by a co-tenant to convey, is not binding, *Pohemus v. Hodson*, 4 C. E. Gr. 63. An agreement to take sand out of a pit, signed by the plaintiff only, cannot be enforced, *O'Donnell v. Brehen*, 7 Vr. 257. The signing by the plaintiff is immaterial, it must be signed by the defendant, *Houghwout v. Boisubin*, 3 C. E. Gr. 315.

(h) This clause only applies to cases where neither party is to perform the contract within a year, *Berry v. Doremus*, 1 Vr. 399, 403. See *King v. King*, 1 Stock. 44. *Uppike v. Ten Broeck*, 3 Vr. 105.

(k) When a contract is made for an article not in existence at the time, and such article is to be made according to order, it is not for a sale, but for work and materials and not within the statute, *Finney v. Appar*, 3 Vr. 268. Nor a contract to deliver at a certain price trees which are to be grown afterwards, *Parsons v. Woodward*, 2 Zab. 196. B may prove that articles delivered to him by A were to be paid for by C in stoneware, and such agreement is not within the statute, *Price v. Combs*, 7 Hal. 188. See also *Clark v. Hall*, 6 Hal. 78.

(m) See *Carman v. Smick*, 3 Gr. 252.

(n) A contract made in New Jersey of goods lying and to be delivered in Pennsylvania must comply with the New Jersey statute, *Dacosta v. Davis*, 4 Zab. 319. Depositing the articles in a public highway at a point designated by the purchaser and notifying him and his promise of payment, do not amount to an acceptance, *Finney v. Appar*, 2 Vr. 268. When a joint contract is proved to sell and deliver corn owned by two persons in severalty, and one of them delivers a part of his parcel, this is sufficient, *Field v. Runk*, 2 Zab. 525. Money paid by one for a joint purchase of a sloop is not within the statute, *Reeves v. Goff*, Pen. \*609.

Promise to pay debt contracted during infancy, to be in writing.

7. No action shall be maintained to charge any person, upon any promise made after full age, to pay any debt contracted during infancy, to which infancy would be a defence, unless such promise be put in writing and signed by the party to be charged therewith.

Promise of bankrupt to pay after discharge, void unless in writing.

8. No action shall be maintained against any person who may have been discharged as a bankrupt under the laws of the United States, upon any promise, made after such discharge, to pay any debt or demand, from which he was or shall be released by such discharge, unless such promise be put in writing and signed by the party to be charged therewith.

How consideration may be proved.

9. The consideration of any promise, contract or agreement, required by this act to be put in writing, need not be set forth or expressed in such writing, but may be proved by any other legal evidence. (a)

Broker selling lands not entitled to commissions unless employed by writing.

10. No broker or real estate agent, selling or exchanging land for or on account of the owner, shall be entitled to any commission for the sale or exchange of any real estate, unless the authority for selling or exchanging such land is in writing, and signed by the owner or his authorized agent, and the rate of commission on the dollar shall have been stated in such authority.

P. L. 1873, p. 50.

## II. Fraudulent conveyances.

What conveyances of goods void.

11. Every deed of gift and every conveyance, transfer and assignment of goods, chattels or things in action, made in trust for the use of the person making the same, shall be void as against creditors.

R. S. 499, § 1.

Conveyances and judgments in fraud of creditors, void.

12. Every conveyance, grant, or alienation of lands, tenements, hereditaments, or goods and chattels, or of any estate or interest therein, whether made by writing or otherwise, and every judgment and execution which have been or shall be contrived in fraud, covin or collusion, with intent to hinder, delay or defraud creditors and others of their lawful actions, debts, damages or demands, shall be deemed and taken (only as against those persons, their executors, administrators or assigns, whose actions, debts, damages or demands are or may be hindered or defeated by such covinous or fraudulent devices and practices) to be utterly void and of no effect; any feigned consideration, color or other pretence to the contrary notwithstanding. (b)

Ib. § 2.

Only as against persons defrauded.

Fraudulent conveyances made to deceive purchaser are void.

13. Every conveyance, grant, or alienation of lands, tenements or hereditaments, or of any estate or interest therein, which has been or hereafter shall be made with intent to defraud and deceive such person or persons as have purchased or shall purchase any such lands, tenements or hereditaments, or any estate, right or interest therein, shall be deemed and taken (only as against such persons, their heirs, executors, administrators or assigns as have purchased, or shall hereafter purchase such lands, tenements or hereditaments, or any part thereof, or any estate, right or interest therein for money or other good consideration) to be utterly void and of no effect; any feigned consideration, color or other pretence to the contrary notwithstanding.

Ib. § 3.

Only as against purchaser for money or good consideration.

Conveyances with condition of revocation, void as against subsequent purchasers.

14. If any person has made, or hereafter shall make, any conveyance, gift, grant, demise, charge, or assurance of any lands, tenements or hereditaments, with any clause, provision, or condition of revocation or alteration, at his or her will or pleasure, contained or mentioned in any writing, deed or indenture; and after such conveyance, gift, grant, demise, charge, or assurance so made, shall bargain, sell, demise, grant, convey or charge, the same lands, tenements, or hereditaments, or any part or parcel thereof, to any person or persons, for money or other good consideration

Ib. § 5.

(a) Whether the consideration of the promise must be set out in the agreement, see *Buckley v. Beardslee*, 2 South. \*570. *Shepherd v. Layton*, Pen. \*618. *Herbert v. Cooper*, Pen. \*1044. *Youngs v. Shoygh*, 3 Gr. 27. *Mandy v. Ross*, 3 Gr. 466. *Ashcroft v. Clark*, 2 South. \*577. *Crozer v. Chambers*, Spen. 258. *Laing v. Le*, Spen. 387. And see *Bigelow v. Pine*, Pen. \*523. (b) See *Henricks ads. Mount*, 2 South. \*738, note (c). *Mulford v. Peterson*, 6 Vr. 127. *Satterthwaite v. Emley*, 3 Gr. Ch. 489. *Cooper v. Cooper*, 1 Hal. Ch. 498. *Doughty v. King*, 2 Stock. 396. *Cook v. Johnson*, 1 Beas. 51. *Knight v. Parker*, 1 Beas. 214. *Beckman v. Montgomery*, 1 McCart. 106. *Coley v. Coley*, 1 McCart. 350. *Smith v. Vreeland*, 1 C. E. Gr. 198. *Belford v. Crane*, 1 C. E. Gr. 265. *Robert v. Hodges*, 1 C. E. Gr. 299. *Cramer v. Reford*, 2 C. E. Gr. 367. *King v. Storey*, 4 C. E. Gr. 83. *Mead v. Combs*, 4 C. E. Gr. 112. *Green v. Tanton*, 4 C. E. Gr. 105, 574, and 6 C. E. Gr. 364. *Van Kowen v. McLaughlin*, 4 C. E. Gr. 187, 575. *Cutler v. Tuttle*, 4 C. E. Gr. 550. *National Bank of Metropolis v. Sprague*, 5 C. E. Gr. 14; 6 C. E. Gr. 530. *Metropolitan Bank v. Durand*, 7 C. E. Gr. 35. 9 C. E. Gr. 556.

*Walker v. Hill*, 7 C. E. Gr. 514. *Wheeler v. Kirtland*, 8 C. E. Gr. 13; 9 C. E. Gr. 552. *Morris Canal Co. v. Stearns*, 8 C. E. Gr. 414; 9 C. E. Gr. 588. *Annin v. Annin*, 9 C. E. Gr. 184. *Phepys v. Morrison*, 9 C. E. Gr. 195; 10 C. E. Gr. 538. *Van Doren v. Stickle*, 9 C. E. Gr. 331; affirmed on appeal. *Kline v. McGackin*, 9 C. E. Gr. 411. *Clinton Station Manufacturing Co. v. Hummell*, 10 C. E. Gr. 45; affirmed on appeal. *Gardner v. Schooley*, 10 C. E. Gr. 150. *Clarke v. McGeihan*, 10 C. E. Gr. 423. *Kuhl v. Martin*, 11 C. E. Gr. 60. *Scott v. Hartman*, 11 C. E. Gr. 89. *Anderson v. Tuttle*, 11 C. E. Gr. 144. *Higgins v. Gillesheimer*, 11 C. E. Gr. 308. *Miller v. Jamison*, 11 C. E. Gr. 404. *Ridgeway v. Underwood*, 4 Wash. C. C. 129. The following cases were held not to be fraudulent within the meaning of the statute, *Smith v. Espy*, 1 Stock. 160. *Atwood v. Emppson*, 5 C. E. Gr. 150. *Stillman v. Stillman*, 6 C. E. Gr. 126. *Merchants Bank v. Northrup*, 7 C. E. Gr. 58; 8 C. E. Gr. 582. *Mellon v. Mulvey*, 8 C. E. Gr. 198. *Carpenter v. Carpenter*, 10 C. E. Gr. 194; reversed on appeal. *Magniac v. Thompson*, *Bald.* C. C. 344. See *Den v. Jaques*, 5 Hal. 259.

paid or given (the said first conveyance, gift, grant, demise, charge, or assurance, not having been revoked or altered, according to the power and authority reserved or expressed in the said secret conveyance, assurance, gift or grant), then the said former conveyance, gift, grant, demise, charge or assurance of the said lands, tenements or hereditaments, shall be void and of no effect, as against such subsequent bargainees, vendees, lessees, grantees, and every of them, their heirs, successors, executors, administrators and assigns, and every person or persons who may lawfully have or claim any thing, by, from, or under them, or any of them.

15. *Provided always*, That nothing in this act contained, shall be construed to impeach, defeat or make void, any conveyance, assignment, grant or sale of any lands, tenements or hereditaments, goods or chattels made, for a good consideration, and *bona fide*, to any person not having at the time of such conveyance, assurance or sale, any notice or knowledge of such covin, fraud, or collusion, as aforesaid; and also that no mortgage, made *bona fide* and without fraud or covin, and upon good consideration, shall be impeached or impaired by this act; but every such mortgage shall have like force and effect, as if this act had not been made.

Deeds and mortgages taken *bona fide* and on good consideration, not affected. Ib. § 6.

16. All conveyances and transfers of property, whether real or personal, made by any person holding, or who has held any office of trust or profit under the authority of this state, and who, while such officer has embezzled, or shall embezzle, or fraudulently dispose of any of the money, property, or securities committed to his keeping, with intent to defraud the state, or any county thereof, or any city, borough, township, or body corporate; and all mortgages and liens by judgments confessed, or other liens upon said property voluntarily given by such officer, whether upon valuable consideration or not, shall be deemed as against this state; and such county, city, borough, township, or body corporate, to be fraudulent and void in law; *provided*, that nothing in this act contained shall affect the rights of a *bona fide* purchaser, mortgagee or judgment creditor for valuable consideration, without notice that said officer has so embezzled or made such fraudulent disposition of money, property or securities committed to his keeping.

Conveyances by officers who have embezzled public property, void. R. S. 864.

## Game and Game Fish.

1. Carrying guns, where prohibited.
2. Hunting deer, where prohibited.
3. Forfeiture if non-resident.
4. Who deemed guilty.
5. What traps prohibited.
6. Setting loaded guns prohibited.
7. Owners excepted.
8. Watching with guns at night, where prohibited.
9. Remedy against non-residents.
10. Hunting or gunning after geese, ducks, etc., with stools or decoys.
11. Not lawful to hunt geese, ducks, etc., with light at night.
12. Penalty.
13. Killing and hunting geese, etc., in Barnegat bay.
14. Hunting on Sunday prohibited.
15. Fishing with hook and line prohibited on Sunday.
16. Killing of water fowl during certain seasons prohibited in Brick township, Ocean county.
17. Penalty for violation of act.
18. Actions brought under Sec. 1 to be in trespass.
19. Penalty for hunting rabbits with ferrets.
20. When deer shall not be killed.
21. When squirrels shall not be killed.
22. When rabbits shall not be killed.
23. How wild duck, brant or geese shall be killed.
24. When plover and gray snipe shall not be killed.
25. When woodcock shall not be killed.
26. When quail shall not be killed.
27. When prairie chicken shall not be killed.
28. When rail and reed bird shall not be killed.
29. Insectivorous birds shall not be killed.
30. Proviso.
31. Eggs of wild birds shall not be destroyed.
32. Wild pigeons not to be disturbed on nesting ground.
33. What birds shall not be trapped.
34. Speckled trout and bass, how to be caught.
35. When trout shall not be caught.
36. Penalty for trespassing to catch fish.
37. Penalty for catching or killing fish by medicated bait, etc.
38. Bass, pike or pickerel to be caught only with hook and line or scroll.
39. Fish not to be caught by drawing off the water.
40. Persons may have or sell pheasant and quail five days after time limited for killing.
41. Act not to interfere with special acts forbidding killing of game.
42. Common carriers may prove receiving of goods in other states.
43. Who may be arrested for violation of this act.
44. All persons to aid in arresting and prosecuting persons violating act.
45. When penalties not recovered, costs to be paid by county.
46. When cases to be tried by quarter sessions.
47. When actions shall be brought.