

nify the party in whose favor said judgment was rendered against all losses and damages which he may sustain by reason of final process being stayed.

What fees allowed.

**34. Sec. 8.** That the same fees shall be allowed for services performed under this act as are given by the act to which this is a supplement, except that the fees of the judge and clerk of said circuit court shall be such as are or shall be allowed for like services in other cases in said court.

## Frauds and Perjuries.

### I. WHAT CONTRACTS, &c., TO BE IN WRITING.

1. What deemed estates at will.
2. Grants, assignments and surrenders to be in writing.
3. Declarations or creations of trust shall be in writing.
4. Grants and assignments of trust to be in writing.
5. What promises, &c., must be in writing.
6. What contracts void.
7. Promise after full age to pay debt contracted in infancy to be in writing.
8. Promise of bankrupt to pay after discharge, void unless in writing.
9. How consideration may be proved.
10. Broker not entitled to commissions unless employed in writing.

### II. FRAUDULENT CONVEYANCES.

11. What conveyances of goods void.
12. Conveyances to defraud creditors void.
13. Conveyances to deceive purchasers void.
14. Conveyances with condition of revocation void, as against subsequent purchaser.
15. But deeds and mortgages taken *bona fide* and on good consideration not affected.
16. Conveyances by public officers embezzling property void.
17. Proceedings where debt is fraudulently contracted, &c.
18. Act to be liberally construed.

### I. What contracts, &c., to be in writing.

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.

### An act for the prevention of frauds and perjuries.

Revision—Approved March 27, 1874.

**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. (a)

**2.** That no lease, estate (b) 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, (c) unless it be by deed or note in writing, signed (d) 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. (e)

(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 Vr. 44. *Hunt v. Young*, 2 South. \*818. 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.] At common law, signing is not essential to the validity of a deed, but it is made so by the above section. *Mutual Benefit Life Insurance Co. v. Brown*, 3 Stew. 202. See *Rutan v. Crawford*, 18 Stew. 101.

(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 C. E. Gr. 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. Bayard*, 6 C. E. Gr. 186. A parol partition is not binding. *Woodhull v. Longstreet*, 3 Har. 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 Har. 517. Dower cannot be released by parol. *Keeler v. Tainell*, 3 Zab. 62. See *White v. White*, 1 Har. 202. *Ware v. Chew*, 16 Stew. 493. *Brands v. De Witt*, 17 Stew. 545. *Pfugger v. Fultz*, 16 Stew. 440. *Stocum v. Wooley*, 16 Stew. 454. A sale of a tenant's leasehold estate, made by a sheriff under an execution against the tenant, can be proven only by a note in writing. *Jostin v. Ervies*, 21 Vr. 33.

(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 *Mairs v. Sparks*, 2 South. \*513 (d).

(d) A signing by the hand of another is sufficient. *Stevens v. Vancleve*, 4 Wash. C. C. 262, 269. Or by an auctioneer's clerk. *Johnson v. Buck*, 6 Vr. 888. *Mutual Benefit Life Insurance Co. v. Brown*, 3 Stew. 193.

(e) 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.

3. That 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; (a) *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. (b)

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

4. That 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.

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

5. That 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; (c) 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; (d) or (5) upon any agreement, that it is not to be performed within one year from the making thereof; (e) 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.

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

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

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

Parol contracts for sale of goods of \$30 void unless the buyer accepts part of the goods or pays part of the price. *Ib.*, § 15.

(a) 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 personality. *Kimball v. Morton, 1 Hal. 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, Cox 142.* It cannot be destroyed by parol. *Peer v. Peer, 3 Stock. 482.* This section does not require that trusts of land shall be created in writing, but only that they shall be manifested and proven by that means. *Newkirk v. Place, 2 Dick. 477.*

(b) 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, 3 C. E. Gr. 406. Baldwin v. Johnson, Sac. 411.* And an implied trust, arising from the operation of law. *Sayre v. Fredericks, 1 C. E. Gr. 205.* A resulting trust must arise at the time of executing the deed. *Cutler v. Tuttle, 4 C. E. Gr. 549. Tunnard v. Little, 8 C. E. Gr. 264. Midamer v. Midamer, 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. 482.* 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.*

(c) 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. Hopcock v. Wilson, 1 South. \*149. Dills 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. Beardelee, 2 South. \*570. Youngs v. Shough, 3 Gr. 27. Mundy v. Ross, 3 Gr. 466. Saxton v. Landis, 1 Har. 302. Hetfield v. Dow, 3 Dutch. 440. Joslin v. New Jersey Car Springs Co., 7 Vr. 141. Williams v. Doran, 8 C. E. Gr. 385. Appgar v. Hiler, 4 Zab. 812. It founded on a new consideration, such promise is not within the statute. *Clark v. Hall, 6 Hal. 78. Kutzmeyer v. Ennis, 3 Dutch. 372. Hetfield v. Dow, 3 Dutch. 440. Cowenhoven v. Howell, 7 Vr. 323. Cortelyou v. Hoagland, 13 Stew. 1. Johnson v. Ramsey, 14 Vr. 279. Wills v. Shinn, 13 Vr. 138.**

(d) An agreement to exchange a house and money for land and money must be in writing. *Rutan v. Hinchman, 1 Vr. 255, 2 Vr. 496.* Where a charter of a railroad company provides

that the company must obtain the consent of the landowner before entering upon his lands, a parol consent is not sufficient. *Hetfield v. Central Railroad Co., 5 Dutch. 571.* A sale of standing timber is within the statute. *Stocum 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. *Polhemus 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.* See, also, *Wakeman v. Dadd, 12 C. E. Gr. 584. Brown v. Brown, 6 Stew. 650. Personette v. Fryme, 7 Stew. 28. Wharton v. Stoutenburgh, 8 Stew. 266. Larison v. Polhemus, 9 Stew. 508. Young v. Young, 13 Stew. 27. Borden v. Curtis, 1 Dick. 468. Schenck v. Spring Lake Beach Improvement Co., 2 Dick. 44. Nibert v. Baghurst, 2 Dick. 201. Jones v. Davis, 3 Dick. 493.*

(e) 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. Urdike v. Ten Broeck, 3 Vr. 105.*

(f) 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. Appgar, 2 Vr. 266.* 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. 138.* See, also, *Clark v. Hall, 6 Hal. 78. Parker v. Pettit, 14 Vr. 512.* A parol agreement to sell and assign a bond and mortgage is a contract for the sale of goods, wares and merchandise. *Greenwood v. Law, 28 Vr. 168.*

(h) See *Cayman v. Smick, 3 Gr. 252.*

(k) 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. Appgar, 2 Vr. 266.* When a joint contract is proved to sell and deliver corn owned by two persons in severally, 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. \*699.* When contracts for the purchase of goods, &c., have been orally made by a receiver, delivered to his agents empowered to examine and certify whether such goods should be accepted, and the receipt and acceptance thereof upon such examination and certificate and payment therefor, will satisfy the provision of this section. *Vanderbilt v. Central E. R. Co., 16 Stew. 670.*

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

7. That 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 defense, unless such promise be put in writing and signed by the party to be charged therewith. (a)

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

8. That 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. That 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. (b)

Broker selling lands not entitled to commissions unless employed by writing. P. L. 1873, p. 50.

10. That 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. (c)

## II. Fraudulent conveyances.

What conveyances of goods void. R. S. 499, § 1.

11. That 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.

Conveyances and judgments in fraud of creditors, void. Ib., § 2.

12. That 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 pretense to the contrary notwithstanding. (d)

Only as against persons defrauded.

Fraudulent conveyances made to deceive purchaser are void. Ib., § 3.

13. That 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,

Only as against purchaser for money or good consideration.

(a) If an infant, being entitled to a sum of money on attaining twenty-one years of age, induces his trustee to pay it to him during infancy by fraudulently representing himself to be older than he is, he will be bound by the payment. *Parker v. Hayes*, 12 *Stew.* 469.

(b) Whether the consideration of the promise must be set out in the agreement, see *Buckley v. Bearaslee*, 2 *South.* \*670. *Shepherd v. Layton*, *Pen.* \*618. *Herbert v. Cooper*, *Pen.* \*1044. *Youngs v. Shough*, 3 *Gr.* 27. *Mundy v. Ross*, 3 *Gr.* 488. *Ashcraft v. Clark*, 2 *South.* \*677. *Crozier v. Chambers*, *Spen.* 258. *Latig v. Lee*, *Spen.* 337. And see *Bigelow v. Pine*, *Pen.* \*523. *Nibert v. Baghurst*, 2 *Dick.* 208.

(c) The plaintiff, a real estate agent, was employed by the defendant to advertise her property for sale at auction, to secure the services of an auctioneer and to take charge of the sale. Before the day of sale she sold the property privately and agreed to pay the plaintiff two per cent. of the price for what he had done. Held, that this agreement was not within section 10 of this statute. *Griffith v. Daly*, 27 *Vr.* 466.

(d) See *Hendricks ads. Mount*, 2 *South.* \*733, note (a). *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. Packer*, 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. Belford*, 2 *C. E. Gr.* 367. *King v. Storey*, 4 *C. E. Gr.* 83. *Mead v. Combs*, 4 *C. E. Gr.* 112. *Green v. Tatum*, 4 *C. E. Gr.* 105, 574, and 6 *C. E. Gr.* 364. *Van Keuren v. McLaughlin*, 4 *C. E. Gr.* 187, 575. *Outler 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. Durant*, 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. *Phelps 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. Hammell*, 10 *C. E. Gr.* 45; affirmed on appeal. *Gardner v. Schooley*, 10 *C. E. Gr.* 150. *Clark v. McGehee*, 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.* 303. *Müller 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. Empson*, 5 *C. E. Gr.* 150. *Stillman v. Stillman*, 6 *C. E. Gr.* 128. *Merchants' Bank v. Northrup*, 7 *C. E. Gr.* 53, 8 *C. E. Gr.* 582. *Mellon v. Mubvey*, 8 *C. E. Gr.* 199. *Carpenter v. Carpenter*, 10 *C. E. Gr.* 194; reversed on appeal. *Magniac v. Thompson*, *Bald. C. C.* 314. See *Den v. Jaques*, 5 *Hal.* 259. A voluntary conveyance of all the firm property to one of the partners is invalid as against existing firm creditors. *Arnold v. Hagerman*, 18 *Stew.* 188. *Schmidt v. Opie & Retmer*, 6 *Stew.* 138; *Hoboken Bank v. Beckman*, 9 *Stew.* 83, 10 *Stew.* 331. *Aber v. Brand*, 9 *Stew.* 116. *Pillsbury v. Kingon*, 6 *Stew.* 291, 9 *Stew.* 413. *Fischel v. Keer*, 16 *Vr.* 507. *Muchmore v. Budd*, 24 *Vr.* 398. *Post v. Steiger*, 2 *Stew.* 558. *Bergen v. Porpoise Fishing Co.*, 15 *Stew.* 401. *North Ward National Bank v. Conklin*, 6 *Dick.* 15. *Eisner v. Heileman*, 23 *Vr.* 378. *Hagerman v. Buchanan*, 18 *Stew.* 293.

right or interest therein, for money or other good consideration) to be utterly void and of no effect; any feigned consideration, color or other pretense to the contrary notwithstanding. (a)

14. That 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, 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 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 anything, by, from, or under them, or any of them.

Conveyances with condition of revocation, void as against subsequent purchasers. *Ib.*, § 5.

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. (b)

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

16. That 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.

**An act in relation to debts fraudulently contracted and obligations fraudulently incurred.**

Passed February 19, 1895.

P. L. 1895, p. 87.

17. SEC 1. That whenever a debt shall be fraudulently contracted, or an obligation shall be fraudulently incurred, it shall be lawful for the party defrauded to institute a suit, action or proper proceedings at any time after such a debt was so fraudulently contracted, or such obligation fraudulently incurred, to recover the money owing on any such contract or obligation, or thereby contracted to be paid, notwithstanding the fact that by the terms of any such contract or obligation, the debt contracted or the money secured to be paid thereby shall not then be due or payable, and that in such cases, upon discovery of the fraud, the party defrauded may either rescind the contract wholly, and recover any property so obtained by fraud,

Proceedings where debt is fraudulently contracted, &c.

(a) A mortgage on lands, made to secure a money bond, gives to the mortgagee, before forfeiture, an "interest" in the land mortgaged, within the thirteenth section of this act. *Mellick v. Mellick*, 2 Dick. 86.

(b) See *De Witt v. Van Sickle*, 2 Stew. 212. *Gale's Executors v. Morris*, 2 Stew. 225.

or may at any time proceed by action on contract for the recovery of the moneys owing thereon, and that in all the cases mentioned in this section, the plaintiff or complainant in such action, suit or proceeding shall be entitled to all the remedies and processes to which he would be entitled in case the said debt or obligation was due and payable at the time of the beginning of such suit, action or proceeding.

Act to be liberally construed.

**18. SEC. 2.** That this act shall be construed in all courts of judicature in the most liberal manner for the detection of fraud, the advancement of justice and the benefit of creditors, and that this act shall take effect immediately.

## Gaming.

1. All wagers unlawful.
2. Money, if paid, may be recovered back.
3. Promises, &c., on account of any money wagered, void.
4. Property transferred for gaming debts shall go to heirs.
5. Suit for money lost.

6. If the loser does not sue within six months, any other person may prosecute.
7. Winner compelled to answer bills in equity.
8. Penalty for opening and drawing a lottery.
9. Sales and conveyance by lottery invalid.

R. S. 572, 589.

P. L. 1871, p. 109.

All wagers unlawful.

P. L. 1871, p. 109, § 1.

Money may be recovered back.  
Ib., § 2.  
Amended.

Promises, agreements, &c., on account of any money or property wagered, void.

R. S. 572, § 2.

P. L. 1871, p. 109, § 1.

Property transferred for gaming debts shall go to heirs, &c.

R. S. 572, § 3.

Amended.

Suit for money lost.

Ib., § 4.

Amended.

### An act to prevent gaming.

Revision—Approved March 27, 1874.

**1.** That all wagers, bets or stakes made to depend upon any race or game, or upon any gaming by lot or chance, or upon any lot, chance, casualty, or unknown or contingent event, shall be unlawful. (a)

**2.** That any person who shall pay, deliver or deposit any money, property or thing in action, upon the event of any wager or bet herein prohibited, or which is or shall be prohibited by any law of this state, may sue for and recover the same of the winner, or person to whom the same shall be paid or delivered, or of the stakeholder, or other person in whose hands the same shall be deposited, or any part thereof, whether the same shall have been delivered or paid over by such depository or stakeholder or not, and whether any such wager be lost or not. (b)

**3.** That all promises, agreements, notes, bills, bonds, contracts, judgments, mortgages, leases, or other securities or conveyances which shall be made, given, entered into, or executed by any person, where the whole or any part of the consideration thereof shall be for money, property, or thing in action whatsoever, laid, won or betted in violation of the first section of this act, or for reimbursing or repaying any money knowingly lent or advanced to help or facilitate such violation, shall be utterly void and of none effect.

**4.** That if any such sale, conveyance, lease, or mortgage of either real or personal estate, as is made void in the preceding section shall be made, the same shall enure to the use of the heirs or legal representatives of such vendor, bargainor, lessor, or mortgagor, and shall vest the whole estate and interest so attempted to be transferred in such property, to all intents and purposes, in such heirs or legal representatives, in the same manner as though such vendor, bargainor, lessor or mortgagor had died intestate; and all conveyances or other devices to evade this provision shall be utterly void.

**5.** That if any person shall lose any money, goods, chattels or other valuable thing, in violation of the first section of this act, and shall pay or deliver the same or any part thereof to the winner, or to any person to his use, or to a stakeholder, it shall be lawful for such person to sue for and recover said money, goods, chattels, or other valuable thing, from

(a) This section was not repealed or affected by section 222, on page 1090, *ante*. *McClellan v. State*, 20 Fr. 471. *Harving v. State*, 22 Fr. 387. Contracts for speculations in stocks upon margins, when the broker and the customer do not contemplate or intend that the stock purchased or sold shall become or be treated as the stock of the customer, but the real transaction is a mere dealing in the differences between prices, that is, in the pay-

ment of future profits or losses, as the event may be, are contracts of wager and unlawful under the act to prevent gaming. *Flagg v. Baldwin*, 11 Stew. 219. See, also, *Smith v. Jones*, 16 N. J. L. J. 245, 17 N. J. L. J. 187. *Tantum v. Arnold*, 15 Stew. 60. (b) See *Moore v. Tripp*, 263. *Huncke v. Francis*, 3 Dutch. 55. *Sutphin v. Crozer*, 1 Fr. 257; reversed in 3 Fr. 462. *State v. Hall*, 3 Fr. 158.