

## CHAPTER 15.

## AN ACT FOR PREVENTION OF FRAUDS AND PERJURIES.

11 Mass. 345.

For prevention of many fraudulent practices which are commonly endeavoured to be upheld by perjury and subornation of perjury,—

*Be it enacted and ordained by the Governour, Council and Representatives convened in General Court, and by the authority of the same,*

Parole leases and interest of freehold shall have the force of estates at will only.  
1 Pick. 45.

[SECT. 1.] That from and after the last day of December in this present year, one thousand six hundred ninety and two, all leases, estates, interests of freehold or term of years, or any uncertain interest of, in, or out of any messuages, lands, tenements or hereditaments, made or created by livery and seisin only, or by parole, and not put in writing and signed by the parties so making or creating of 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 parole leases or estates, or any former law or usage to the contrary notwithstanding: *except, nevertheless*, all leases not exceeding the term of three years from the making thereof whereupon the rent reserved to the landlord during such term shall amount unto two third parts at the least of the full improved value of the thing demised.

Except leases not exceeding three years, &c.

No leases or estates of freehold to be granted or surrendered by word.

*And, moreover*, that no leases, estates or interests, either of freehold or term of years, or any uncertain interest of, in, to or out of any messuages, lands, tenements or hereditaments, shall, at any time after the said last day of December, be assigned, granted or surrendered, unless it be by deed or note in writing, signed by the party so assigning, granting or surrendering the same, or their agents thereunto lawfully authorized by writing, or by act and operation of law.

*And be it further enacted by the authority aforesaid,*

Promises and agreements by parole.

[SECT. 2.] That from and after the said last day of December, no action shall be brought (1) whereby to charge any executor or administrator upon any special promise to answer damages out of his own estate; (2) or whereby to charge the defendant upon any special promise to answer for the debt, default or miscarriages of another person; (3) or to charge any person upon any agreement made upon consideration of marriage; (4) or upon any contract or\* sale of lands, tenements or hereditaments, or any interest in or concerning them; (5) or upon any agreement that is not to be performed within the space of one year from the making thereof; (6) 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 lawfully authorized.

*And be it further enacted by the authority aforesaid,*

Devises of lands to be in writing, and attested by three or four witnesses.  
11 Allen, 52.

[SECT. 3.] That from and after the said last day of December, all devises and bequests of any lands or tenements shall be in writing, and signed by the party so devising the same, or by some other person in his presence and by his express directions, and shall be attested and subscribed in the presence of the said devisor by three or four credible witnesses, or else shall be utterly void and of none effect.

How the same shall be revocable.

[SECT. 4.] *And, moreover*, no devise in writing of lands, tenements or hereditaments, or any clause thereof, shall, at any time after the said last day of December, be revocable otherwise than by some other will or codicil in writing, or other writing declaring the same, or by burning, cancelling, tearing or obliterating the same by the testator himself, or in his presence and by his directions and consent; (2) but all devises and bequests of lands and tenements shall remain and continue in full

\* *Sic.*—for ?

force until the same be burnt, cancelled, torn or obliterated by the testator, or his direction in manner aforesaid, or unless the same be altered by some other will or codicil in writing, or other writing of the deviser, signed in the presence of three or four witnesses, declaring the same; any former law or usage to the contrary notwithstanding.

*And be it further enacted by the authority aforesaid,*

[SECT. 5.] That from and after the said last day of December, all declarations or creations of trusts or confidences of any lands, tenements or hereditaments 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 none effect: *provided, always,* 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 act had not been made, anything herein before contained to the contrary notwithstanding.

All declarations or creations of trust to be in writing.  
2 Pick. 511.

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

*And be it further enacted,*

[SECT. 6.] That all grants and assignments of any trust or confidence shall likewise be in writing, signed by the party granting or assigning the same by such last will or devise, or else shall be utterly void and of none effect.

Assignments of trust shall be in writing.

*And be it further enacted by the authority aforesaid,*

[SECT. 7.] That from and after the said last day of December, no contract for the sale of any goods, wares and merchandizes, for the price of ten pounds or upwards, shall be allowed to be good, except the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the bargain or in part of payment, or that some note or memorandum in writing of the said bargain be made and signed by the parties to be charged by such contract, or their agents thereunto lawfully authorized.

Contract for sale of goods for ten pounds or more.

And, for prevention of fraudulent practices in setting up nuncupative wills, which have been the occasion of much perjury,—

Nuncupative wills.

*Be it enacted by the authority aforesaid,*

[SECT. 8.] That from and after the aforesaid last day of December, no nuncupative will shall be good, whereby the estate thereby bequeathed shall exceed the value of thirty pounds, that is not proved by the oaths of three witnesses (at the least) that were present at the making thereof, nor unless it be proved that the testator, at the time of pronouncing the same, did bid the persons present, or some of them, bear witness that such was his will, or to that effect; nor unless such nuncupative will were made in the time of the last sickness of the deceased, and in the house of his or their habitation or dwelling, or where he or she hath been resident for the space of ten days or more next before the making of such will, except where such person was surprized or taken sick, being from his own home, and dyed before he returned to the place of his or her dwelling.

*And be it further enacted,*

[SECT. 9.] That after six months passed after the speaking of the pretended testamentary words, no testimony shall be received to prove any will nuncupative, except the said testimony, or the substance thereof, were committed to writing within six days after the making of the said will.

*And be it further enacted,*

[SECT. 10.] That no letters testamentary or probate of any nuncupative will shall pass the seal of any court till fourteen days at the least after the decease of the testator be fully expired, nor shall any nuncupative will be at any time received to be proved, unless process have

Probate of nuncupative wills.  
6 Metc. 367.

first issued to call in the widow or next of kindred to the deceased, to the end they may contest the same if they please.

*And be it further enacted,*

Soldiers' and  
mariners' wills  
accepted.

[SECT. 11.] That no will in writing, concerning any goods or chattels or personal estate, shall be repealed, nor shall any clause, devise or bequest therein be altered or changed by any words or will, by word of mouth only, except the same be in the life of the testator, committed to writing, and read to the testator and allowed by him, and proved to be so done by three witnesses at the least: *provided, always,* that notwithstanding this act, any souldier being in actual military service, or any mariner or seaman being at sea, may dispose of his moveables, wages and personal estate as he or they might have done before the making of this act. [*Passed October 22.*]

## CHAPTER 16.

### AN ACT FOR THE EQUAL DISTRIBUTION OF INSOLVENT ESTATES.

*Be it enacted and ordained by the Governour, Council and Representatives, convened in General Court or Assembly, and it is enacted and ordained by the authority of the same,*

Disallowed by  
the privy coun-  
cil, August 22,  
1695.

Insolvent es-  
tates to be pro-  
portioned to  
the creditors.

The judge of  
probate to ap-  
point commis-  
sioners.

Public notice to  
be given in the  
county where  
the deceased  
last dwelt, and  
in the two next  
counties.

Six or twelve  
months to be  
allowed for  
bringing in of  
claims.  
The commis-  
sioners to make  
report.

The widow's  
dower saved.

[SECT. 1.] That where the estate of any person deceased shall be insolvent or insufficient to pay all just debts which the deceased owed, the same shall be set forth and distributed to and among all the creditors in proportion unto the sums to them respectively owing, so far as the said estate will extend. For which end the executors or administrators appointed to any such insolvent estate, before payment to any be made, shall represent the condition and circumstances thereof unto the judge for probate of wills and granting administrations, within the same county in which such deceased person last dwelt, and the said judge shall nominate and appoint two or more fitt persons to be commissioners, with full power to receive and examine all claims of the several creditors, and how they are made out. And such commissioners shall cause the time and place for their meeting to attend the creditors to be published and made known, by posting up the same in some publick places in the shire town of that county where such deceased person last dwelt, and of the two next adjoining countys; and six or twelve moneths time (as the circumstances of any estate may require) shall be allowed by the judge unto the creditors for the bringing in of their claims and proving their debts, at the end of which limited time such commissioners shall make their report, and present a list of all the claims unto the said judge, who shall order them meet recompence out of the estate for their care and labour in that affair; as also shall order the sickness and necessary funeral expences of the deceased to be first paid, and the residue and remainder of the estate to be paid and distributed to and among the creditors that shall have made out their claims, in due proportion to the sums to them respectively owing, according as the estate will bear, saving unto the widow (if any be) her right of dower, according to law, in houses and lands of the deceased, the widow's dower, at the expiration of her term, to be distributed among the creditors in a like proportion; and no process in law shall be allowed against the executors or administrators of any such insolvent estate so long as the same shall be depending as aforesaid. And whatsoever creditor shall not enter and make out his or her claim with such commissioners before the full expiration of the limited time, such person shall forever after be debarred of his or her debt, unless he or she can