ANNO VICESIMO NONO

# CAROLI II. REGIS.

******************************************************

## C A P. III.

## An Act for Prevention of Frauds and Perjuries.

FOR Prevention of many fraudulent Practices, which are commonly endeavoured to be upheld by Perjury and Subornation of Perjury, be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the Authority of the same, That, from and after the Four and twentieth Day of *June* which shall be in the Year of our Lord One thousand six hundred seventy and seven, all Leases, Estates, Interests of Freehold, or Terms of Years, or any uncertain Interest, of, in, to, or out of any Messuages, Manors, Lands, Tenements, or Hereditaments, 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, or any former Law or Usage, to the contrary notwithstanding.

**Parol Leases and Interests of Freehold shall have the Force of Estates at Will only;**

II. 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 least of the full improved Value of the Thing demised.

**except Leases not exceeding Three Years, &c.**

No Leases or Estates of Freehold shall be granted or surrendered by Word.

III. And moreover, That no Leases, Estates, or Interests, either of Freehold or Terms of Years, or any uncertain Interest, not being Copyhold or Customary Interest, of, in, to, or out of any Messuages, Manors, Lands, Tenements, or Hereditaments, shall at any Time after the said Four and twentieth Day of *June* 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.

Promises and Agreements by Parol.

IV. And be it further enacted by the Authority aforesaid, That from and after the said Four and twentieth Day of *June* no Action shall be brought whereby to charge any Executor or Administrator upon any special Promise to answer Damages out of his own Estate, or whereby to charge the Defendant upon any special Promise to answer for the Debt, Default, or Miscarriages of another Person, or to charge any Person upon any Agreement made upon Consideration of Marriage, or upon any Contract or Sale of Lands, Tenements, or Hereditaments, or any Interest in or concerning them, or upon any Agreement that is not to be performed within the Space of One Year from the making thereof; 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.

Devises of Lands shall be in Writing, and attested by Three or Four Witnesses.

V. And be it further enacted by the Authority aforesaid, That from and after the said Four and twentieth Day of *June* all Devises and Bequests of any Lands or Tenements devisable either by force of the Statute of Wills or by this Statute, or by force of the Custom of *Kent*, or the Custom of any Borough, or any other particular Custom, 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 they shall be utterly void and of none Effect.

How the same shall be revocable.

VI. And moreover, no Devise in Writing of Lands, Tenements, or Hereditaments, nor any Clause thereof, shall at any Time after the said Four and twentieth Day of *June*, 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, but all Devises and Bequests of Lands and Tenements shall remain and continue in force until the same be burnt, cancelled, torn, or obliterated by the Testator, or his Directions, in manner aforesaid, or unless the same be altered by some other Will or Codicil in Writing, or other Writing of the Devisor, signed in the Presence of Three or Four Witnesses, declaring the same, any former Law or Usage to the contrary notwithstanding.

Trusts shall be in Writing.

VII. And be it further enacted by the Authority aforesaid, 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 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.

VIII. Pro-

VIII. 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 Statute had not been made, anything herein-before contained to the contrary notwithstanding. Exception of Trusts by Implication of Law.

IX. And be it further enacted, 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. Assignments of Trusts shall be in Writing.

X. And be it further enacted by the Authority aforesaid, That from and after the said Four and twentieth Day of *June* it shall and may be lawful for every Sheriff or other Officer to whom any Writ or Precept is or shall be directed, at the Suit of any Person or Persons, of, for, and upon any Judgment, Statute, or Recognizance hereafter to be made or had, to do, make, and deliver Execution unto the Party in that Behalf suing of all such Lands, Tenements, Rectories, Tithes, Rents, and Hereditaments as any other Person or Persons be in any manner of wise seised or possessed, or hereafter shall be seised or possessed, in trust for him against whom Execution is so sued, like as the Sheriff or other Officer might or ought to have done if the said Party against whom Execution hereafter shall be so sued had been seised of such Lands, Tenements, Rectories, Tithes, Rents, or other Hereditaments of such Estate as they be seised of in trust for him at the Time of the said Execution sued; which Lands, Tenements, Rectories, Tithes, Rents, and other Hereditaments, by force and virtue of such Execution, shall accordingly be held and enjoyed freed and discharged from all Incumbrances of such Person or Persons as shall be so seised or possessed in trust for the Person against whom such Execution shall be sued; and if any Cestuique Trust hereafter shall die, leaving a Trust in Fee Simple to descend to his Heir, there and in every such Case such Trust shall be deemed and taken and is hereby declared to be Assets by Descent, and the Heir shall be liable to and chargeable with the obligation of his Ancestors for and by reason of such Assets, as fully and amply as he might or ought to have been if the Estate in Law had descended to him in possession in like Manner as the Trust descended, any Law, Custom, or Usage to the contrary in anywise notwithstanding.

Lands, &c. shall be liable to the Judgments, &c. of Cestuique Trusts.

Free from Incumbrances of Trustee.

Assets.

XI. Provided always, That no Heir that shall become chargeable by reason of any Estate or Trust made Assets in his Hands by this Law shall by reason of any Kind of Plea or Confession of the Action, or suffering Judgment by Nient dedire, or any other Matter, be chargeable to pay the Condemnation out of his own Estate, but Execution shall be sued of the whole Estate so made Assets in his Hands by Descent, in whose Hands soever it shall come after the Writ purchased, in the same Manner as it is to be at and by the Common Law, where the Heir-at-Law pleading a true Plea Judgment is prayed against him thereupon, anything in this present Act contained to the contrary notwithstanding.

No Heir shall by reason thereof become chargeable of his own Estate.

Estates pur auter vie devisable.

XII. And for the Amendment of the Law in the Particulars following, be it further enacted by the Authority aforesaid, That from henceforth any Estate *pur auter vie* shall be devisable by a Will in Writing signed by the Party so devising the same, or by some other Person in his Presence and by his express Directions, attested and subscribed in the Presence of the Devisor by Three or more Witnesses, and if no such Devise thereof be made the same shall be chargeable in the Hands of the Heir, if it shall come to him by reason of a special Occupancy, as Assets by Descent, as in case of Lands in Fee Simple; and in case there be no special Occupant thereof it shall go to the Executors or Administrators of the Party that had the Estate thereof by virtue of the Grant, and shall be Assets in their Hands.

And Assets.

Where no special Occupant, shall go to Executors.

XIII. And whereas it hath been found mischievous that Judgments in the King's Courts at *Westminster* do many Times relate to the First Day of the Term whereof they are entered, or to the Day of the Return of the Original, or filing the Bail, and bind the Defendant's Lands from that Time, although in Truth they were acknowledged or suffered and signed in the Vacation Time after the said Term, whereby many Times Purchasers find themselves aggrieved.

The day of signing any Judgment to be entered.

XIV. Be it enacted by the Authority aforesaid, That from and after the said Four and twentieth Day of *June* any Judge or Officer of any of His Majesty's Courts of *Westminster* that shall sign any Judgments shall at the signing of the same, without Fee for doing the same, set down the Day of the Month and Year of his so doing upon the Paper Book, Docket, or Record which he shall sign, which Day of the Month and Year shall be also entered upon the Margent of the Roll of the Record where the said Judgment shall be entered.

Judgments as against Purchasers shall relate to Time of signing only.

XV. And be it enacted, That such Judgments as against Purchasers *bonâ fide* for valuable Consideration of Lands, Tenements, or Hereditaments to be charged thereby shall in consideration of Law be Judgments only from such Time as they shall be so signed, and shall not relate to the First Day of the Term whereof they are entered, or the Day of the Return of the Original or filing the Bail, any Law, Usage, or Course of any Court to the contrary notwithstanding.

From what Time Writs of Execution shall bind.

XVI. And be it further enacted by the Authority aforesaid, That from and after the said Four and twentieth Day of *June* no Writ of Fieri facias or other Writ of Execution shall bind the Property of the Goods against whom such Writ of Execution is sued forth, but from the Time that such Writ shall be delivered to the Sheriff, Under Sheriff, or Coroners to be executed; and for the better Manifestation of the said Time the Sheriff, Under Sheriff, and Coroners, their Deputies and Agents, shall, upon the Receipt of any such Writ (without Fee for doing the same), endorse upon the Back thereof the Day of the Month or Year whereon he or they received the same.

Contracts for Sales of Goods for Ten Pounds or more.

XVII. And be it further enacted by the Authority aforesaid, That from and after the said Four and twentieth Day of *June* no Contract for the Sale of any Goods, Wares, and Merchandises for the Price of Ten Pounds Sterling

Sterling 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.

Enrolment of Recognizances.

XVIII. And be it further enacted by the Authority aforesaid, That the Day of the Month and Year of the Enrolment of the Recognizances shall be set down in the Margent of the Roll where the said Recognizances are enrolled, and that from and after the said Four and twentieth Day of *June* no Recognizance shall bind any Lands, Tenements, or Hereditaments in the Hands of any Purchaser *bonâ fide* and for valuable Consideration but from the Time of such Enrolment, any Law, Usage, or Course of any Court to the contrary in anywise notwithstanding.

Lands in the Hands of Purchasers.

Nuncupative Wills.

XIX. And for Prevention of fraudulent Practices in setting up Nuncupative Wills, which have been the Occasion of much Perjury, be it enacted by the Authority aforesaid, That from and after the aforesaid Four and twentieth Day of *June* no Nuncupative Will shall be good, where 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 her 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 surprised or taken sick, being from his own Home, and died before he returned to the Place of his or her Dwelling.

Testimony of Nuncupative Wills.

XX. And be it further enacted, 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.

Probates of Nuncupative Wills.

XXI. And be it further enacted, 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 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.

Repeal of Wills.

XXII. And be it further enacted, 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 after the Writing thereof read unto the Testator, and allowed by him, and proved to be so done by Three Witnesses at the least.

XXIII. Pro-

Soldiers and Mariners Wills excepted.

XXIII. Provided always, That notwithstanding this Act any Soldier 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.

The Jurisdiction of Courts saved.

XXIV. And it is hereby declared That nothing in this Act shall extend to alter or change the Jurisdiction or Right of Probate of Wills concerning Personal Estates, but that the Prerogative Court of the Archbishop of *Canterbury*, and other Ecclesiastical Courts, and other Courts having Right to the Probate of such Wills, shall retain the same Right and Power as they had before in every respect, subject nevertheless to the Rules and Directions of this Act.

Husbands not compellable to make Distribution of the Personal Estates of their Wives. 22 & 23 Car. 2. c. 10.

XXV. And for the explaining One Act of this present Parliament, intituled *An Act for the better settling Intestates Estates*, be it declared by the Authority aforesaid, That neither the said Act nor anything therein contained shall be construed to extend to the Estates of Feme Coverts that shall die Intestate, but that their Husbands may demand and have Administration of their Rights, Credits, and other Personal Estates, and recover and enjoy the same, as they might have done before the making of the said Act.

LONDON:
Printed by EYRE and SPOTTISWOODE,
Printers to the King's most Excellent Majesty. 1902.