

Acts of the General Assembly of His Majesty's Province of New-Brunswick passed in the year 1786. Saint John, NB: J. Ryan, 1786.

26 George III – Chapter 14

An Act for Prevention of Frauds and Perjuries

For prevention of many fraudulent practices, which are commonly endeavour'd to be upheld by perjury and subornation of perjury; Be it enacted by the Governor, Council and Assembly, That all leases, estates, interests, of freeholds, 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 parole, 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 parole, leases or estates, or any former law or usage, to the contrary notwithstanding.

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 the least of the full improved value of the thing demised.

III. And moreover. That no leases, estates or interests, either of freehold, or terms of years, or any uncertain interest, of, in, to or out of any messuages, manors, lands, tenements, or hereditaments, shall 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.

IV. And be it further enacted That 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 where-by 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.

V. And be it further enacted, That 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.

VI. 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 any thing herein before contained to the contrary notwithstanding.

VII. And be it further enacted, That all grants and alignments 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 be utterly void and of none effect.

VIII. And be it further enacted That 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, rents and hereditaments, as any other person or persons, be in any manner seized or possessed, or hereafter shall be seized 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 seized of such lands, tenements, rectories, rents or other hereditaments of such estate as they be seized of in trust for him at the time of the said execution sued; which lands, tenements, rectories, rents and other hereditaments by force and virtue of such execution, shall accordingly be held or enjoyed, freed and discharged from all incumbrances of such person or persons as shall be so seized or possessed in trust for the person against whom such execution shall be sued; and if any *cestuy que* trust hereafter shall die, leaving a trust in fee simple so 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 notwithstanding.

IX. 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 concession 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, judgement is prayed against him thereupon, anything in this present act contained, to the contrary notwithstanding.

X. And for the amendment of the law in the particulars following; Be it further enacted, that from henceforth any estate *pur auter vie*, shall be deviseable 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.

XI. Be it enacted, That any judge or officer of any of his Majesty's courts, that shall sign any judgments, shall at the signing of 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 enter'd upon the margent of the roll of the record where the said judgment shall be entered.

XII. And be it enacted, That such judgments as against purchasers bona 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 enter'd, or the day of the return of the original or filing the bail.

XIII. And be it further enacted, That no writ of *feri 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 and year whereon he or they receive the same.

XIV. And be it further enacted, That no contract for the sale of any goods, wares and merchandizes, for the price of ten pounds 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.

XV. And be it further enacted, 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 no recognizance shall bind any lands, tenements or hereditaments in the hands of any purchaser bona fide and for valuable consideration, but from the time of such enrolment, any law, usage or course of any court to the contrary notwithstanding.