Forcible Entry and Detainer.

Rev. 349.
Har. 308.
R. S. 77.

An act concerning forcible entries and detainers.

Approved April 16, 1846.

Unlawful entry prohibited.

1. That no person shall enter upon or into any lands, tenements, or other possessions, and detain or hold the same, but where entry is given by law, and then only in a peaceable manner.

What a forcible entry and detainer.

2. That if any person shall enter upon or into any lands, tenements, or other possessions, and detain or hold the same with force or strong hand, or with weapons, or by breaking open the doors, windows, or other part of a house, whether any person be in it or not, or by any kind of violence whatsoever, or by threatening to kill, maim, or beat the party in possession, or by such words, circumstances or actions, as have a natural tendency to excite fear or apprehension of danger, or by putting out of doors, or carrying away the goods of the party in possession, or by entering peaceably and then turning by force, or frightening by threats, or other circumstances or terror, the party out of possession; in such case, every person, so offending, shall be guilty of a forcible entry and detainer within the meaning of this act. (*a*)

What a forcible detainer.

3. That no person who shall lawfully or peaceably enter upon or into any lands, tenements, or other possessions, shall hold or keep the same unlawfully, and with force, or strong hand, or weapons, or violence, or menaces, or terrifying words, circumstances or actions aforesaid; and it is hereby declared, that whatever words or circumstances, conduct or actions, will make an entry forcible under this act, shall also make a detainer forcible. (*b*)

What estates comprehended.

4. That the three preceding sections of this act shall extend to and comprehend terms for years, and all estates, whether freehold or less than freehold.

What an unlawful detainer.

5. That if any tenant or tenants for term of life or lives, year or years, or other person or persons, who are or shall be in possession of any lands, tenements or hereditaments, by, from or under, or by collusion with such

(*a*) In forcible entry and detainer, both the entry and the detainer must be *forcible*. *Pullen* v. *Boney*, 1 *South.* *125 (*c*). *Hildreth* v. *Camp*, 12 *Vr.* 306. If there are no "threats or circumstances to excite fear or apprehension of danger," there is no forcible entry and detainer. *Brick* v. *Middleton*, 7 *Hal.* 266. *Butts* v. *Voorhees*, 1 *Gr.* 13. The force must be more than that technically necessary to constitute *trespass*, but need not excite fear of personal danger. Whether the facts amount to such force is a question for the jury. *Berry* v. *Williams*, 1 *Zab.* 423. *Hankins* v. *Hamilton*, 7 *Hal.* 203, *note*. But where the defendant broke open the door of the house, after the complainant had obtained possession thereof under the landlord and tenant act, re-entered and continued in possession, it constituted forcible entry and detainer. *Mason* v. *Powell*, 9 *Vr.* 576. An action for forcible entry and detainer can only be maintained by the *tenant*, who was in the actual possession of the premises at the time of the injury committed, and not by the landlord. *Bennett* v. *Montgomery*, 3 *Hal.* 48. *Mairs* v. *Sparks*, 2 *South.* *513 (*c*). The defendant may plead his three years' possession, and put in issue the *force*, &c. But a plea that those under whom defendant holds have been in possession three years is bad. *State* v. *Covenhoven*, 1 *Hal.* 396.

(*b*) The same threats, &c., which render an entry forcible, will make a *detainer* forcible. *Hendrickson* v. *Hendrickson*, 7 *Hal.* 202.

tenant or tenants, shall willfully and without force, hold over any lands tenements or hereditaments, after demand and notice in writing given for the delivery of the possession thereof,(*a*) by his, her or their landlord or landlords, lessor or lessors, or the person or persons to whom the remainder, or reversion of such lands, tenements or hereditaments shall belong, his, her or their agent or attorney, thereunto lawfully authorized, then such person or persons, so holding over, shall be guilty of an unlawful detainer.

Cognizable before justice.

6. That the aforesaid forcible entries and detainers, forcible detainers, and unlawful detainers, are hereby made cognizable before any justice of the peace or the county in which they are committed.(*b*)

On complaint, process to issue.

7. That when complaint to any justice of the peace of the proper county shall be made in writing, and signed by the party grieved, his agent or attorney, specifying the lands, tenements or other possessions so forcibly entered upon and detained, or forcibly or unlawfully detained,(*c*) by whom(*d*) and when done, and the estate therein, it shall be the duty of the said justice to issue a precept, under his hand and seal, directed to the sheriff(*e*) of the said county, commanding him to cause to come before the said justice, twelve(*g*) good and lawful men of the said county, qualified to serve as petit jurors in the court of general quarter sessions of the peace, to inquire into and try such forcible entry and detainer, or forcible or unlawful detainer; which precept shall be in the form or to the effect following, that is to say:

Form of precept.

——— county, to wit: The state of New Jersey to our sheriff of our county of ——— greeting: Whereas, complaint in writing is made to the subscriber, A. B., one of our justices of the peace in and for our said county, of a certain forcible entry and detainer (or if detainer only, then say of a certain forcible detainer, or of a certain unlawful detainer), made by E. F. into the messuage (or upon the lands) of C. D., in the county aforesaid; we therefore command you, that you cause to come before the said A. B., at ——— in the county aforesaid, at the hour of ——— in the ———noon of the ——— day of ———, twelve good and lawful men of the body of your county, being citizens of this state and resident within the county, above the age of twenty-one and under the age of sixty-five years, and who have a freehold in lands, messuages or tenements in the said county, and are in no wise of kin to the said C. D. or E. F., to make a jury of the country, to inquire of and try the said forcible entry and detainer (or forcible or unlawful detainer). Given under the hand and seal of the said A. B. the ——— day of ——— in the year of our Lord one thousand ———.

Summons to the party.

8. That the said justice shall issue a summons to the party complained against, in the words or to the effect following, that is to say:

Form.

——— county, to wit: The state of New Jersey to our sheriff of our county of ——— greeting: We command you, that you summon E. F. of ———, to appear before A. B., one of our justices of the peace in and for our said county, at ——— in the county aforesaid, at the hour of ——— in the ———noon of the ——— day of ——— to answer to and make defense against the complaint of C. D. of a forcible entry and detainer (or

(*a*) For *form* of notice, see *Adams* v. *Decker*, 6 *Hal.* 86. A notice served on April 5th, where the tenancy expired on April 1st, is good. *Allen* v. *Smith*, 7 *Hal.* 199. But it is not necessary that it should be served after the term has expired, the notice to quit given three months *before* the end of the term is good. *Townly* v. *Eutan*, *Spen.* 604, 1 *Zab.* 674. If it appears by the complaint filed that the summons was issued *before* a demand and notice in writing given for the delivery of the possession, the judgment will be reversed. *Mead* v. *Kirkpatrick*, 3 *Hal.* 368.

(*b*) An *indictment* will also lie. *Cruiser* v. *State*, 3 *Har.* 256.

(*c*) Technical nicety is not required; it is sufficient if a substantial cause of action appear. *Houghton* v. *Potter*, 3 *Zab.* 339, 4 *Zab.* 735. The complaint must state that the complainant was in *possession* of the premises, either in fact or in law. *Cortes* v. *Cortes*, 2 *Har.* 167. And must set out the *estate* of complainant and the *place* where the premises are situate. *Banks* v. *Murray*, 2 *South.* *842 (*a*). *Van Auken* v. *Decker*, *Pen.* *108. *Wall* v. *Hunt*, 4 *Hal.* 37. That the defendant detains "the messuage or dwelling-house," is too uncertain. *Applegate* v. *Applegate*, 1 *Har.* 321. It is a sufficient allegation of the *estate*, that "he was possessed as tenant for years of a leasehold estate not yet ended." *Berry* v. *Williams*, 1 *Zab.* 423. Notice to quit is not necessary. *Crane* v. *Dod*, *Pen.* *340. When a complaint is, on application of the complainant, allowed to be amended so as substantially to charge an allegation material to be charged and proved, the judgment thereon cannot be sustained. *Waters* v. *Haynes*, 20 *Vr.* 598. Such certainty of description in the complaint as apprises the defendant of the premises he is charged with entering, and will guide in executing the writ of restitution, is all that is requisite. It is not ground for error that the justice indorsed the summons as in the court for the trial of small causes. *O'Hagan* v. *Crossman*, 21 *Vr.* 516.

(*d*) Tenants holding the lands in severalty cannot be united in one action. *Kerr* v. *Phillips*, 2 *South.* *818 (*b*). So, if a tenancy of two or more be averred, it must be proved. *Snedeker* v. *Quick*, 7 *Hal.* 121. And if a jury find one guilty and the other not guilty, and the justice give judgment for restitution generally and for costs against the defendant found guilty, his judgment will be reversed. *Hilderbrand* v. *Linninger*, 3 *Gr.* 38. In order to render two defendants jointly liable, their *possession* must be joint. *Boylston* v. *Valentine*, 1 *Har.* 346. An allegation that the defendant *has been* a tenant, without averring that he *is*, is bad. *Ib.*

(*e*) Where the *venire* was directed to any one of the coroners, &c., without any suggestion that the sheriff was exceptionable, it is a fatal defect and not cured by verdict. *Hugg* v. *Kille*, 2 *Hal.* 435.

(*g*) It is no error for the sheriff to return a panel of twenty-four, if only twelve are sworn. *Adams* v. *Decker*, 6 *Hal.* 84.

if detainer only, then say of a forcible detainer, or of an unlawful detainer), made by the said E. F. into the messuage (or upon the lands) of the said C. D. in the county aforesaid; and have you then and there this precept, with a return of your proceedings therein. Given under the hand and seal of the said A. B. the ——— day of ——— in the year of our Lord one thousand ———. (*a*)

How served.

9. That the said summons shall be served upon the party against whom the said complaint is made, or a copy thereof left at his usual place of abode, six entire days before the day of appearance therein mentioned; and that such service of the said summons in any part of this state, as well without the said county as within it, shall be good and effectual in law; *and further*, that no jury shall, by virtue of this act, be sworn to inquire of and try any forcible entry and detainer, or forcible or unlawful detainer, where such previous notice shall not have been given as aforesaid. (*b*)

Plea and issue.

10. That the party against whom such complaint is made, may, at the time of appearance mentioned in the said summons, and before the said jury is sworn, plead not guilty to the said charge or complaint, or that he hath been three years in quiet possession, and his estate therein not ended or determined, agreeably to a subsequent clause in this act; and thereupon the said parties shall be at issue, and the said justice shall proceed to swear the jury so returned, to inquire of and try the same; and if the said party, against whom the complaint is made, as aforesaid, does not appear at the time specified in the said summons, or appearing, does not plead to the said complaint, then it shall be lawful for the said justice to proceed in the same manner as if he had pleaded not guilty.

Juror's oath.

11. That to the said jurors and each of them, who shall be returned to inquire of and try the said complaint, the said justice shall administer the following oath or affirmation:

You do swear (or affirm) that you will well and truly try this issue joined between C. D. and E. F. and a true verdict give according to evidence. (*c*)

Proceeding thereupon.

12. That when the jury shall be so sworn as aforesaid, the said justice shall cause the said complaint to be read to them, and then call upon the complainant to support the same. (*d*)

Verdict of guilty, judgment and writ.

13. That if the jury find the party, against whom such complaint is exhibited, guilty, or find against his plea of possession, it shall be the duty of the said justice to record the said verdict and to give judgment thereon, (*e*) with treble costs; (*g*) and also, to issue a writ of restitution, directed to the sheriff, to cause the complainant to be reseized or repossessed, to which shall be added a clause, commanding the said sheriff to levy the said costs of the goods and chattels of the offender, and, for want thereof, to take the body of such offender, and him safely to keep in close custody in the common jail of the county, until he shall pay the same, or be thence delivered by due course of law.

Writ, when issued and returned.

14. That no writ of restitution shall be issued by any justice of the peace, upon any judgment rendered by him in pursuance of the provisions of the preceding section of this act, until eight entire days, exclusive of Sundays, shall have elapsed after the rendition of such judgment; which writ of restitution, when issued, shall be returned within three months thereafter, by the sheriff or other officer to whom the same has been delivered, with his proceedings thereon, to the justice who issued the same.

(*a*) The *year* should be stated in the return, as well as the day and month, but it seems the omission is not fatal. *Pullen* v. *Boney*, 1 *South.* *125. It is not necessary that the return should be within fifteen days of the teste. *Berry* v. *Williams*, 1 *Zab.* 423.

(*b*) A return that the writ had been served "by leaving a copy fastened to the door of the house, which is said to be in the possession of defendant, as he was not therein," will be quashed. *Miller* v. *Doolittle*, 2 *South.* *845. A return "I have summoned the within-named, &c., as within I am commanded, on, &c., by reading the same to them, and leaving with each of them a copy thereof," is sufficient. *Drake* v. *Newton*, 3 *Zab.* 111. Defect in service cured by appearance. *Houghton* v. *Potter*, 3 *Zab.* 339.

(*c*) The inquisition must show who were sworn and who affirmed, and that the latter were "conscientiously scrupulous" of taking an oath. *State* v. *Putnam*, *Coxe* 260.

(*d*) After the jury is impaneled they are under the control of the *justice*, who may select a constable to take charge of them. *Smith* v. *Williamson*, 6 *Hal.* 313.

(*e*) The judgment should be a *restitution* to complainant. *Weller* v. *Parke*, *Pen.* *661. *Cowman* v. *Barber*, *Pen.* *688. *Kerr* v. *Phillips*, 2 *South.* *818. See *Hildebrand* v. *Linninger*, 3 *Gr.* 38, *supra*, Sec. 7, note (*d*).

(*g*) The costs are trebled by multiplying by three. *Mairs* v. *Sparks*, 2 *South.* *513 (*g*).

15. That if the jury find against the said complainant, the said justice shall record the said verdict and give judgment accordingly, with costs, and shall issue execution, directed as aforesaid, for the said costs, against the goods and chattels, and, in want thereof, against the body of the said complainant. Verdict against complainant.

16. That the said justice may, at the request of either party, and on good reasons being assigned, postpone the said trial to any time not exceeding fifteen days; but such postponment to be on the payment of costs. May postpone trial.

17. That it shall be the duty of the said justice to enter, on his minutes or docket, true copies of the complaint exhibited by virtue of this act, and of the summons and return, also the time of issuing the venire and how returned, (*a*) the names of the jurors, (*b*) their verdict and his judgment (*c*) thereon; and also the names of the witnesses and the admission of evidence objected to, and the rejection of evidence offered, (*d*) and all the proceedings before him had touching the said complaint. What to be entered on docket.

18. That if the sheriff of any county shall neglect or refuse to execute or return any precept, writ or other process to him directed and delivered, by virtue of this act, he shall, for every such offense, forfeit and pay two hundred dollars to the party grieved, to be recovered, with costs, by action of debt, in any court of record having cognizance of that sum. Penalty on sheriff for neglect.

19. That the proceedings had by virtue of this act, on such forcible entry and detainer, or forcible or unlawful detainer, may be removed before the supreme court by writ of certiorari, and in no other way, and then only after judgment. (*e*) Certiorari allowed.

20. That no justice of the supreme court shall grant or allow any certiorari to remove any judgment, order or proceeding to be had or made by virtue of this act, unless the party applying for such certiorari shall present to the said justice reasons for the allowance thereof, drawn up and subscribed by himself or some attorney-at-law, to be deemed by the said justice to contain a probable cause of reversal; and unless such applicant shall also enter into bond to the other party, in the sum of two hundred and fifty dollars, with one or more sufficient surety or sureties, being freeholders and residents of this state, conditioned that such applicant shall prosecute the said certiorari in the supreme court, shall pay the yearly value of the premises in dispute, from the time of granting the said certiorari to the determination of the same, together with the costs of the suit before the court below, and such further costs as may be taxed, if the judgment be affirmed; and shall in all things stand to and abide the judgment of the supreme court, respecting the judgment, order or proceeding given or made by the court below; which said bond, together with the reasons, shall be filed by the said justice, with the clerk of the supreme court, for the benefit and use of the obligee. Reasons and bond to be filed.

21. That every certiorari to remove any judgment, order or proceeding, to be had or made by virtue of this act, shall in every other respect be prosecuted, tried and determined in like manner, and be subject to the like rules and regulations as writs of certiorari to justices of the peace to remove proceedings had by virtue of the act constituting courts for the trial of small causes. How prosecuted and tried.

22. That neither the said judgment nor any thing in this act, shall bar or prevent the party injured from bringing an action of trespass or other action, against the aggressor or party offending. No bar to other action.

23. That the estate or merits of the title (*g*) shall in no wise be inquired into on any complaint which shall be exhibited by virtue of this act; Title not inquired into.

(*a*) A judgment of a justice was reversed for not entering in his docket a "true copy" of the return to a venire. *Prickett* v. *Prickett*, 7 *Hal.* 186. *Applegate* v. *Applegate*, 1 *Har.* 321.

(*b*) He is not required to enter at large in the docket the *oath* administered to the jurors. *Drake* v. *Newton*, 3 *Zab.* 111.

(*c*) See *Crane* v. *Dod*, *Pen.* *340.

(*d*) The *reasons* that influenced his mind must be entered by the justice on the docket. *Snediker* v. *Quick*, 1 *Gr.* 306. An omission to do so will be fatal. *Saunière* v. *Wode*, 3 *Har.* 296. But he need not record that objections were made to evidence offered. *It seems* this part of the statute is *directory* only, and a failure to comply with it will not vitiate the proceedings. *Houghton* v. *Potter*, 3 *Zab.* 339, 4 *Zab.* 735.

(*e*) The *certiorari* may be allowed before judgment, and the court will not inquire into the time of its allowance. *Mairs* v. *Sparks*, 1 *South.* *369 (*a*), 2 *South.* *592. Nor will it be quashed because presented to the justice *before* he renders judgment. *Delancy* v. *Laurence*, 6 *Hal.* 25.

(*g*) The *estate* must be set out, but the title is not to be tried. *Barnes* v. *Nicholson*, *Pen.* *326. *Youngs* v. *Freeman*, 3 *Gr.* 30. *Mercereau* v. *Bergen*, 3 *Gr.* 244. Nor will the defendant be permitted to show that the estate of the complainant is different from that set out in the complaint. *Allen* v. *Smith*, 7 *Hal.* 199. *Drake* v. *Newton*, 3 *Zab.* 111. See *Banks* v. *Murray*, 2 *South.* *849 (*a*). *Wilson* v. *Bayley*, 13 *Vr.* 132.

Proviso.

provided always, that this act shall not extend to any person who hath had the uninterrupted occupation, or been in the quiet possession of any lands or tenements for the space of three whole years together, immediately preceding such complaint so exhibited to the said justice, and whose estate therein is not ended or determined; but every such person may plead the same to the said complaint, which shall be tried in the manner hereinbefore prescribed.

Subpœna for witnesses.

24. That every justice of the peace before whom any prosecution shall be instituted by virtue of this act, shall be and he is hereby authorized to issue writs of subpœna ad testificandum into any county of this state.

Fees.

25. That in prosecutions under this act, the following fees shall be allowed:

TO THE JUSTICE.

For every summons, thirty cents;
For every venire facias, forty cents;
For entering copies of every complaint, summons, and return, one dollar;
For subpœna for every witness, twelve cents;
For swearing the jury, twenty cents;
For administering every oath or affirmation, five cents;
For entering every verdict, twelve cents;
For entering every judgment, twelve cents;
For every trial, two dollars;
For return to every certiorari, one dollar;

TO THE SHERIFF.

For serving every summons and return, one dollar;
For summoning every jury, returning the precept, and attending the trial, four dollars;
For executing every writ of restitution, two dollars;
For serving every execution for costs, advertising property for sale, &c., the same fees as are allowed for the like services in the court of common pleas;

TO THE JURORS.

Every juror for each cause in which he is sworn or affirmed, twenty-five cents; (*a*)
For each cause in which he appears, but is not sworn or affirmed, twelve cents;

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 subpœna 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 subpœnaed 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

(*a*) The fees of the jurors should be taxed at twenty-five cents and then trebled. The subsequent acts of the legislature in regard to jurors' fees do not affect this provision. *Youngs* v. *Sutherland* 3 *Gr.* 32.

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.

Supplement.

Approved March 14, 1879. P. L. 1879, p. 268.

Justices of the supreme court may, on application, direct proceedings to be removed out of justice's court into circuit court.

27. SEC. 1. That any time after a summons has been issued according to the eighth section of the act to which this is a supplement, and before the return thereof, either the party plaintiff or party defendant may apply to a justice of the supreme court, who, if he shall deem the case of sufficient importance, may issue an order under his hand directing the said justice of the peace to file forthwith the said complaint, and all the other papers appertaining to the proceedings, in the office of the clerk of the circuit court of the county in which said proceedings were commenced, and thereupon said circuit court shall have full and exclusive cognizance of the case; and said circuit court shall be always open for such purpose.

Judge of circuit to cause a venire facias for a jury to be issued.

28. SEC. 2. That immediately upon such papers being filed in said clerk's office, the judge of said circuit court shall cause a venire facias for a jury to be issued, returnable into said court in not more than two weeks from the time of issuing the same, and which writ shall be executed by the sheriff or other officer according to the practice of said court in like cases, and on the day of the return of said writ the case shall be tried, unless for good cause shown the said trial shall be adjourned, in which case such adjournment and all other adjournments shall be for the shortest periods practicable.

Notice of trial, &c.

29. SEC. 3. That such notice of the trial shall be given as the said judge may direct; the parties, if they shall agree to do so, may waive a trial by jury, and submit the case to the judge on the law and facts.

Qualification of jurors.

30. SEC. 4. That the jurors to be summoned by virtue of said writ of venire facias, shall be such as would be qualified to serve as jurors under the act to which this is a supplement, and shall have administered to them the same oath that is required by the eleventh section of said act, and the trial of said case shall be conducted in all things in accordance with the directions of said act.

Proceedings in case judgment be entered in favor of complainant.

31. SEC. 5. That a judgment shall be entered on the finding of the judge or the jury, and if the same be in favor of the complainant, he shall recover treble costs, including treble of all costs incurred before the justice of the peace, and a writ of restitution shall issue to the sheriff of the county, commanding him to cause the complainant to be reseized or repossessed, and to which shall be added a clause commanding said sheriff to levy said treble costs of the goods and chattels and lands of the offender, and for want thereof to take the body of such offender and him safely keep in close custody in the common jail of the county until he shall pay the same, or be thence delivered by due course of law.

Issue and return of writ of restitution.

32. SEC. 6. That no writ of restitution shall be issued upon any judgment rendered in pursuance of this act until eight entire days, exclusive of Sundays, shall have elapsed after the rendition of such judgment, which writ when issued shall be returned into said circuit court within three months thereafter by the sheriff or other officer to whom the same shall have been delivered, with his proceedings thereon; if judgment be rendered for the defendant he shall have execution in like manner for his costs.

Costs of defendant.

Power of the court over verdict and judgment.

Writ of error.

33. SEC. 7. That said circuit court shall have the same power with respect to said proceedings, and the same control over the verdict and judgment as it has in other cases within its jurisdiction, and from the judgment so entered a writ of error shall lie to the supreme court; but such writ shall not stay the execution of such judgment, unless upon an order to that effect indorsed on said writ by said circuit judge, and upon a bond with sufficient surety being given in an amount which he shall designate, conditioned to indem-

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.

An act for the prevention of frauds and perjuries.

Revision—Approved March 27, 1874.

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.

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*)

Except leases not exceeding three years.
Amended.

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

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. *Birckhead* v. *Cummins*, 4 *Vr.* 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.] 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. *Tatnell*, 3 *Zab* 62. See *White* v. *White*, 1 *Har.* 202. *Ware* v. *Chew*, 16 *Stew.* 493. *Brands* v. *De Witt*, 17 *Stew.* 545. *Pflugar* v. *Pultz*, 16 *Stew.* 440. *Slocum* 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. *Joslin* v. *Ervien*, 21 *Vr.* 39.

(*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.* 338. *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.