

they are to be proved, and it results from the inflexible rule of the law of evidence that when a contract is reduced to writing it shall be proved by that writing alone. When a written instrument is constituted by the parties the expositor of their intentions, it must, in order to effectuate that object, be the only proof of their intentions. If contemporaneous oral evidence were admitted to vary the terms of a written contract it would substitute loose recollection and uncertainty of memory for faithful records, and would introduce looseness and uncertainty in titles to property and would make these depend on the uncertain memories of witnesses.

The second great difference between simple contracts by mere words and simple contracts in writing is that though there are several matters which, although they may become the subject of simple contract, cannot be contracted for without writing so as to give either party a right of action on such contract, and by far the most important class of contracts subject to this observation are those falling within the Statute of Frauds.

You will remember that I defined a deed to be a written instrument sealed and delivered, and that signing under the common law was not necessary. Consequent upon this state of things and also in consequence of any or all transfers of real estate being valid if made by parole, perjury and fraud became frequent. The Statute of Frauds passed in the twenty-ninth year of the reign of Charles II, a period of English History which is noted for good laws but bad administrations, passed at a time when the democratic voice spoke with unmistakeable tones against the despotic haughtiness of the hapless Stuarts, was introduced into Canada in the thirty-first year of the reign of George III., enacts in effect by its first section, that all real estate transactions be authenticated by the signature of the party to be charged, and

that all leases, estates, interests of freehold or terms for years must be in writing signed by the party making such lease, deed or assignment.

The second section allows leases for a term of three years to be made by parole. An anomaly occurs here, in that while a landlord can make a verbal lease for a term of three years, an agreement for a lease must be in writing. What would be the effect of a man's making a verbal lease of lands say for four years? It would be simply a tenancy at will and no more.

The third section requires all assignments of real estate to be in writing, signed by the party making such assignment.

The fourth section is very important, so much so that an eminent English jurist declared every line to be worth a subsidy, it enacts:—

“That no action shall be brought to charge an executor or administrator upon any special promise to answer for the debt, default or miscarriage 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, 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 on 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.”

The contracts provided by this section are therefore:—

1st.—Promises by an executor or administrator to answer damages out of his own estate.

2nd.—Promises to answer for the debt, default or miscarriage of another person.

3rd.—Agreements in consideration of marriage.