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THE ORIGINAL DRAFTS OF THE STATUTE OF FRAUDS (29 Car. II c. 3) AND THEIR AUTHORS

BY CRAWFORD D. HENING

The judicial interpretations of the Statute of Frauds would fill many volumes. It is strange that in the many years of controversy as to its meaning no one has sought to interpret the statute by examining the bills which were tentatively introduced and modified by successive rejection of parts and by insertion of new provisions. Rejected language tends to show what the legislature did *not* mean. Later additions tend to explain or supplement the original draft.

Again, the authorship of the statute is obviously of some importance in connection with its interpretation.

If the statute was the work of some careless or unskilled draftsman, we would be justified in interpreting his words by the aid of Doctor Johnson's Dictionary and by an appeal to the layman's conception of the good and useful to be attained by a given interpretation of the language.

If, on the other hand, the contrary be true and the statute was drawn after careful reflection and deliberation by experienced lawyers, we are justified in giving to their language any technical

legal meaning which then would have properly attached to it; and further, we should ascertain their intention by filling in as a background to the statute those general principles of law current at the Restoration.

Naturally, in the absence of accessible proof of authorship, both the technical and the non-technical interpretation has alternately found judicial favor. Those familiar with the decision of *Wain v. Warlters*, 5 East 10, will recall how Chief Justice Holt once based a famous technical interpretation of the statute upon the assertion that its author was Chief Justice Hale. On another occasion Lord Mansfield announced a non-technical interpretation of another section to be correct because, (as he very hastily and unadvisedly concluded;) "the act was introduced into Parliament in the common way and not upon any reference to the judges." *Wyndham v. Chetwynd*, 1 Burr. 418.

Tradition has always ascribed the authorship of the statute to some four or five different and distinguished judges. As, however, its pedigree has never been more accurately determined than by tradition supplemented by the Journal of the House of Lords, an examination of the original manuscripts was made by the writer in the hope of settling the question of authorship.

In the following pages I have endeavored to present all the evidence obtainable as to the different bills which were introduced in Parliament and their amendments in Committee, together with all the proof of authorship accessible in public records.

In searching for this evidence I may properly say that I was directed aright and chiefly assisted by the Ninth Report of the Historical Manuscripts Commission, wherein the manuscripts of the House of Lords are most carefully calendared by the late Mr. E. Fairfax Taylor and by Mr. Felix Skene.¹

My thanks are especially due to Mr. Cuthbert Headlam, one of the Clerks of the House of Lords, for the opportunity to inspect, take copies of, and to photograph the original manuscripts, which are now in the Victoria Tower.

¹ Ninth Report of The Royal Commission on Historical Manuscripts. Part II Report and Appendix. Presented to both Houses of Parliament by Command of Her Majesty. London: Printed by Eyre and Spottiswoode, Printers to the Queen's Most Excellent Majesty. For her Majesty's Stationery Office, 1883. Price, 5 s, 2 d.

I have given all dates exactly as they appear in the documents, i. e.—in the “old style.”

I

THE LORDS' BILL OF 1673

Though the final draft of the bill, as passed by both houses and assented to by the Crown, was not made until April 16, 1677, the proposed legislation made its first appearance in the form of the following bill introduced in the House of Lords, on Feb. 16, 1673:

“An Act for Prevention of Frauds & Perjuries.

For prevention of many fraudulent practises which are commonly endeavored to bee upheld by Perjury and Subbornaçon of perjury

BEE it ENACTED that from and after the _____ day of _____ All Leases Estates Interests or Termes of Yeares of in to or out of any Measuages Mannors Lands Tenements or Hereditaments made or created by Paroll and not put into writing by direction of the parties thereunto shall have the force and effect of leases or estates at will, only, and shall not either in Law or Equity bee deemed or taken to have any other or greater force or effect Any consideration for making such paroll Leases or Estates or any former Law or usage to the contrary notwithstanding.

And moreover no Leases Estates Interests or Terms of years of in to or out of any Messuages manors Lands Tenemts or Hereditaments shall at any time hereafter be Assigned Transferred or Surrendered unless it be by Deed or Note in writing or by Act and operation of Law.

And be it further enacted by the Authority aforesaid That in all actions upon the Case Actions of Debt or other personal Actions which from and after the _____ day of _____ shall be commenced upon any Assumpsit Promise Contract or Agreement made or supposed to be made by Paroll and whereof noe Memorandum Note or Memoriall in writing shall bee taken by the Direction of the parties thereunto noe greater damages shall at any time be recovered than the some of Any Law or usage to the Contrary notwithstanding.

Provided that this Act shall not Extend to such Actions or suites which shall or may bee grounded upon Contracts or Agreements for wares sold or money lent or upon any *Quantum meruit* or any other Assumpsits or promises which are created by the Construcion or opperacon of Law But that all and every such Actions shall and may bee sued and prosecuted in such manner as the same might have beene before the makeing of this Act. Anything hereinbefore to the contrary notwithstanding.

AND BE IT FURTHER ENACTED by the Authority aforesaid, That from and after the ——— day of ——— Every last Will or Testament in writing made in time of sicknesse whereby any Lands Tenements or Hereditaments are devised or bequeathed shall bee utterly void and of no effect unlesse the person soe makeing his last Will and Testament shall after the makeing thereof Live to goe abroad againe and bee seene in some Church in the time of divine Service or in some publike and open markett place. And moreover noe will in writeing whereby any lands Tenements or Hereditaments are devised or bequeathed nor any clause thereof shall att any time after the said ——— day of ——— bee Revocable by parol or otherwise then by some other will codicill or Instrument in writeing. But all devises and bequests of Lands and Tenements shall remaine and continue in force untill the Same be altered by some other will Codicill or Instrument in writeing Any former Law or usage to the Contrary notwithstanding.

AND BEE it further Enacted by the Authority aforesaid That from and after the ——— day of ——— All Declarations or Creations of Trusts or Confidences by paroll shall bee utterly voyd and of noe effect And where any Trust or Confidence is or shall be made and declared in writeing All assignements of such TRUST or Confidence by paroll shall likewise be utterly void and of noe effect.

PROVIDED alwaies that where any Conveyance shall bee made of any Lands or Tenements by which a Trust or Confidence shall or may Arise or Result by the Implicacon or Construction of Law Then and in every such case such Trust or Confidence shall bee of the like force and effect as the same would have beene if this Statute had not beene made. Anything hereinbefore contened to the Contrary notwithstanding.

AND BEE ITT FURTHER ENACTED by the Authority aforesaid That from and after the _____ Day of _____ itt shall and may bee Lawful for every Sheriffe or other officer to whom any writt or Precept is or shall be directed at the Suite of any person or persons of for and upon any Judgement Statute or Recognizance hereafter to bee made or had, to doe make and deliver execution unto the partie in that behalfe suing of all such lands and tenements as any other person or persons bee in any manner of wise Seized or hereafter Shall be seized in Trust for him only against whom Execution is soe sued Like as the Sheriffs or other officer might or ought to have done if the said partie against whom Execution hereafter shall bee soe sued had beene solely seized of such Lands and Tenements of such Estate as they bee seized of in Trust for him att the time of the Said Execution sued.

AND IF ANY CESTUY QUE TRUST hereafter shall dye leaveing A Trust in fee simple to descend to his Heire There and in every such case Such Trust Shall be deemed and taken And is hereby declared to bee Assets by descent and the Heire Shall bee lyable to and chargeable with the obligation of his Auncestor for and by reason of Such Assetts as fully and amply as hee might or ought to have been if the Land itselfe and the Inheritance thereof had descended to him in possession in like manner as the Trust descended. Any Law Custome or usage to the Contrary in any wise notwithstanding.

The above bill is endorsed as follows (the first line being in the same hand as the interlineations):

"An Act for Prevention of Frauds and Perjurys."

"1^{ma} vice lecta 16 Febr: 1673

"2^{da} vice lecta 20 Febr: 1673

"and committed."

The portions above underscored show the interlineations in the handwriting of Lord Nottingham—hereinafter described and photographically reproduced.

This bill of 1673 above transcribed was read for a second time on Feb. 20th, 1673, at a session of the Lords, there being present, among other notables, "Ds. Finch, Ds. Custos Magni Sigilli."¹

¹ Lords' Journal.

The bill was then referred to a committee of 45 peers—spiritual and temporal—of which Earl Shaftsbury was chairman. "Their Lordships or any Five; to meet Tomorrow at three of the clock in the Afternoon in the Prince's Lodgings: and to adjourn as they shall think fit."³

This committee never took any action; but merely met and adjourned.⁴

THE AUTHORSHIP OF THE BILL OF 1673

A photographic reproduction of a part of the first page of the bill of 1673 is here given, marked Exhibit No. 1.

It will be seen that the body of this bill is written by an expert and graceful scrivener. The interlineations show a striking resemblance to the handwriting of the Lord Keeper Finch, afterwards the first Earl of Nottingham. The two gentlemen who calendared these manuscripts for the Historical Manuscripts Commission expressed the opinion that, "This draft is apparently in the careful handwriting of Lord Keeper Finch; the corrections upon it are undoubtedly in his hand."⁵ By comparing these interlineations (in Exhibit No. 1) with the letter of the Lord Keeper Finch⁶ written to his brother in 1673 (Exhibit No. 2)

³ Lords' Journal.

⁴ In the Ninth Report of the Royal Commission on Historical Manuscripts, Part II, Appendix, p. 45, London, 1884, the facts are thus summarized:

"174. Feb. 16. Frauds and Perjuries Bill.—Draft of an Act for prevention of frauds and perjuries. The text of this draft is given under No. 202 when it was first dealt with in Committee, on its revival in April 1675. (Read 1st this day, and dropped with the Session after Commitment. L. J. XII, 638, 645. The title wrongly given in the Journal on first reading is the preamble of the draft. This draft is apparently in the careful handwriting of Lord Keeper Finch; the corrections upon it are undoubtedly in his hand. He was not included however in the committee, of which E. Shaftesbury was Chairman. Nothing was done by this Committee beyond a formal meeting for adjournment. Com. Book 21 Feb.)."

⁵ Historical Ms. Comm: Appendix to Ninth Report, p. 45, par. 174.

⁶ Sir Heneage Finch, Member of the Inner Temple in 1638; called to the bar in 1645. "In 1670, he succeeded to the office of Attorney-general which he held for three years and a half; and on the removal of Lord Shaftesbury from the Chancellorship, the Great Seal was on November 9, 1673, placed in his hands, where it remained till his death, a period of nine years. Two months after his advancement, he was raised to the peerage as Baron Finch of Daventry. For two years he was distinguished by the title of lord keeper only, but at the end of that time, on Dec. 19, 1675, he was constituted lord high Chancellor, and in 1681 he was further honored with the Earldom of Nottingham."—Foss, *Biographical Dictionary of the Judges of England*, pp. 252, 253.

the conclusion that Lord Nottingham wrote the interlineations seems irresistible. The documentary evidence thus conclusively corroborates the express statement of Lord Nottingham in *Ash v. Abdy*, 3 Swanst. 664 (1667):

"And I said that I had some reason to know the meaning of this law; for it had its first rise from me, who brought in the bill into the Lords' House, though it afterwards received some additions and improvements from the Judges and the Civilians."

A further examination of the documentary evidence preserved in the archives of the Lords enables us to ascertain with precision how far the title of Lord Nottingham to the authorship of the final enactment of 1677 is a joint title shared with "the Judges and the Civilians."

GENERAL OBSERVATIONS CONCERNING THE LORDS' BILL OF 1673

The more striking points of contrast between this bill of 1673 and the final enactment of 1677 may be thus summarized:

1. Like the statute, the bill of 1673 was directed against "all leases, estates, interests or terms of years of in to or out of any messuages, manors, lands, etc. made or created by parol and not put into writing by direction of the parties thereunto:" and made them "leases or estates at will only." But there was no provision in the bill of 1673 that the persons creating the estate or lease must sign and no provision for execution by agents of such parties.

2. The bill of 1673 proposed that *all agreements* should be in writing or be unenforceable in certain actions beyond a certain maximum of damages to be afterwards inserted in the bill; with the proviso that the act should not extend to "Contracts or agreements for wares sold or money lent or upon any *Quantum Meruit* or any other Assumpsits or promises which are created by the construction or operation of law."

There was no provision that the writing must be signed by either of the contracting parties. The draftsman of this bill was satisfied if a "Memorandum, note or memorial in writing shall be taken *by the direction of the parties thereunto.*"

3. The bill of 1673 aimed to prevent the making of wills of lands *in extremis* by providing that such wills "shall be utterly void and of no effect unless the person so making his last will and testament shall after the making thereof live to go abroad again, etc."

The bill proposed that no revocation of a devise of lands could be made except by instrument in writing.

Nothing was said about written or nuncupative wills of personalty.

4. The bill of 1673 made all declarations or creations of trusts or confidences by parol utterly void and of no effect, saving conveyances "by which a trust or confidence shall or may arise or result by the implication or construction of law."

5. The bill of 1673 provided for taking trust estates on execution and this paragraph with some extensions in its scope became Section 10 of the enactment.

6. The bill of 1673 aimed to make trust estates assets by descent and is substantially the same in design as Section 10 of the final enactment.

The limitation contained in Section 11 of the act is absent in this first bill.

II

THE LORDS' BILL OF 1675

A new bill was introduced April 14, 1675.⁷ This is an exact transcript of the bill of 1673 as interlined by Lord Nottingham, the interlineations above shown being now transcribed into the body of the new bill.

This bill (now extant among the Lords' records) is endorsed:

"An Act for Prevention of Frauds and Perjuries.

"^{1ma} vice lecta 14^o Aprilis 1675

"^{2da} vice lecta 15 Aprilis 1675

"Committee Reported the 10th of May 75 with amendments and ordered to be engrossed."

The handwriting of the body of this bill is probably that of a scrivener or clerk and is certainly not that of any of those persons who are reputed to have drafted portions of the act.

⁷ 12 Journal of the House of Lords, 656.

Among those present at the introduction of this bill we note in the Lords' Journal the name of Ds. Finch, Ds. Custos Sigilli.

The bill was referred to a committee of forty-three peers—spiritual and temporal—of which Earl Aylisbury was chairman.

"Their Lordships, or any Five; to meet on Saturday next, at Three of the Clock in the Afternoon in the Prince's Lodgings; and to adjourn as they please."*

The Lord Keeper was not a member of the Committee.

It was, however, in the deliberations and meetings of this committee—which extended from April 17 to May 6, 1675, that the draft of the bill was wholly altered in structure and detail; and the bill as finally reported by this committee has in general the scope, and, with only some minor differences, the exact language of the statute.

The best idea of the extent to which this committee of peers was assisted by the judges will be obtained by reading the various entries in the Committee Book of the Lords *seriatim*.

THE COMMITTEE BOOK OF THE LORDS

(April 17 to May 6, 1675)

Die Sabathi 17^o Aprilis 1675

E. Aylisbury

Fraudes &
Perjuries

The Bill is reade entire.

The Bill is begunne to be reade by Paragraphs.

The Title is postponed

The Preamble agreed to

The first enacting clause is reade and postponed and a minute (?) to be made that the Judges be advised with whether Leases in writing should not be under hand and seale.

That the Judges be asked whether Copyhold Estates be included in the 2nd Paragraph.

That the House be moved that some of the Judges may attend this Committee.

Adj: to Tuesday at 9^o.

* 12 Journal of the House of Lords, 659.

Die Martis 20° Aprilis 1675

E. Aylisbury

L. Chief Justice

Perjuries

If a Deed be in writing it is understood to be under hand and Seale.

If there be a Note in writing it will prevent Perjury.

That It be putt in writing in the presence of the Parties.

A Copyhold Estate in the Eye of the Law is but an Estate at Will.

1 Sh 81

After (the) Insert (twentieth) and after (of) Reade (February which shall be in the yeare of our Lord 1675)

12 1.

After (writeing) Leave out (by direction of) and Reade (and Signed by) and Instead of (thereunto) Reade (or their Agents thereunto lawfully authorized by writing)

16 1

After (notwithstanding) Insert (Except nevertheless all Leases not exceeding the term of three years from the making thereof, whereupon the Rent reserved to the Landlord during such Terme shall amount unto two third parts at the least of the full improved value of the thing demised).

2 Sh. 31

After (writeing) Read (Signed by the Partie or Parties soo assigning granting or surrendering the Same or their Agents thereunto lawfully authorized by writing)

The 2d enacting clause is reade and the Judges appointed to offer some amendments to it the next meeting.

Adj. to Thursday at 9°

Die Jovis 22° Aprilis 1675

E. Aylisbury

The Bill is proceded in by Paragraphs

Perjuries

2 Sh. 41

Leave out from the word (that) to the word (And) in the 4th l of the 3d Sh, and instead thereof Reade (from and after the said twentieth day of

February noe Action shall be brought whereby to charge an Executor or Administrator upon any speciall promise to answere damages out of his own estate, or whereby to charge the Defendant upon any speciall promise to answere for the debt, default, or miscarriages of another person or to charge any person upon an Agreement made in Consideration of Marriage or upon any Contract or Sale of Lands tenements or Hereditaments or any interest concerning them, or upon any agreement that is not to be performed within the space of one yeare from the making thereof, unlesse 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).

3 Sh. 4

The Clauses concerning Wills postponed to (And Moreover) in the 11th l and the Judges to offer Amendments.

14 l

After (Sd) Read (20th Day of February)

15 l

Leave out (by Paroll or)

16 l

After (Will) Read (or) and after (Codicill) leave out (or Instrument) and after (writing) reade (or other writeing declaring the same or by burning cancelling tearing or obliterating y^e same by the testator himselfe or in his presence or by his directions and consent).

18 l

After (Will) Reade (or) and after (codicill) leave out (or Instrument) and after (writeing) reade (or other writeing of the Devisor Signed in the presence of 3 or more witnesses declaring the same); after (be) reade (burnt cancelled torn or obliterated by the testator or his directions in manner aforesaid or unless the same be)

4 th 3 l

After (the) Reade (Sd. 20th day of February)

4 l

Instead of (by Paroll) Reade (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)

After (effect) Reade the Provisoe beginning at the 8th line. And after ye Sd Provisoe Reade ye words in ye 5th 6th & 7th as amended.

7 Instead of (by Paroll) Reade (Shall be in writing signed by the Party granting or assigning the Same or by such last will or else)

10 1 After (Law) Add (or be transferred or extinguished by the Act or operation of Law)

15 Fill the blank with (aforesaid 20th day of February)

5 Sh. 4 1. Leave out (and) and after (tenements) Reade (Rectories Tythes Rents and other Hereditaments)

6 1. After (seised) Reade (or possessed) Leave out (only) and after (seised) Reade (or possessed)

9 1. Leave out (Solely) and after (Lands) leave out (and) and after (Tenements) Reade (Rectories Tythes Rents and other Hereditaments)

16 1. After (the) leave out (Land itselfe and the Inheritance thereof) and Reade (Estates in Law)

The Judges to offer further Additions at the next meeting.

Adj to Tuesday at 9°

Die Jovis 29 Aprilis 1675

E. Aylisbury

Frauds &
Perjuries

8 Sh. 5 1.

The L. C. Just North proposes instead of the clause concerning Wills which was postponed the clause fol., which was agreed to.

After (the) leave out to ye words (And Moreover) in the 11th line and Reade (Sd 20th day of February All devises and Bequests of any Lands Tenements or Hereditaments devisable Either by force of the Statute of Wills or by this Statute or by force of the Custome of Kent or the custome of any Burrough or any other particular Custome shall be in writing and signed by the Party soo devising the same or any other person in his presence or by his

express directions and shall be attested and subscribed in the presence of the Devisor by three or more witnesses, or else they shall be utterly void and of noe effect).

My Ld. Ch. Just. offers some other Amendments and Clauses which are agreed to.

Judge of the
Prerogative
Court to attend

Ordered by Committee (?) That the Judge of the Prerogative Court the Kings Advocate and Proctor doe attend their Lopps on Monday next at 9° in the morning in the Prince's Lodgings neare the House of Peeres Concerning the better ascertaining of Nuncupative Wills than they are yet by Law.

Adj. to Mund at 9°

1 Sh. 9 1

After (Interest) Reade (of freehold)

10 1

After (yeares) Add (or any incertaine interest)

11 1

After (created) Reade (by Livery and Seisin only or)

12

After (Parties) Reade (soo making or creating the same)

17

After (Interests) Reade (either of freehold) and after (years) Reade (or any incertaine interest)

2 Sh. 2 1

Instead of (transferred) read (granted)

3 Sh. 11

Instead of (Will) Reade (Devise) and instead of (whereby any) Reade (of)

12 1

Leave out (are devised or bequeathed)

4 Sh. 5 1

After (And) Reade (Bee it further Enacted that) and leave out to the word (All) in y^e 6th l. and after (all) reade (Grants and) and instead of (Such) Reade (any)

Die Lunae 3 Maii 1675.

E. Ayllisbury
Perjures

Sr. Lion. Jenkins offers some Articles which are reade

Adj. to Morrow at 9°

Die Martis 4 Maii 1675

At the end of the Bill Add the clauses marked (A) the Clauses offered yesterday by Sr. Lionel

Jenkins are read, and ordered that they be drawn into enacting clauses by y^e Judges with Such a Preamble as fol—In regard of the many uncertainties and Inconveniences that have beene observed and by experience found in and concerning Nuncupative Wills for remedy thereof Bee It Enacted.

After the Articles brought in by Sr. Lyonel Jenkins shall be added a clause to reform the jurisdiction of the Prerogative Court and other Ecclesiastical Courts in these Cases Subject to these Rules and Alterations.

Adj. to tomorrow at 9^o

Die Jovis 6^o Maii 1675

E. Ayllsbury
Perjures.

The Ld. Chiefe Just. North offers the clauses which he was to draw up which is read⁹

he also offers another clause¹⁰ which is read and both clauses agreed to be added at the End of the Bill.

The Title is agreed to.

Ordered to be reported with the sd Amendments and Enacting Clauses.

DOCUMENTS RELATING TO THE ABOVE PROCEEDINGS OF THE COMMITTEE OF THE LORDS APRIL 17 TO MAY 6, 1675.

In the files of the House of Lords, accompanying the Bill of 1675, is a document endorsed as follows:

"Clauses offered by the Ld. Chief

"Justice North to be added to the

"Bill concerning Perjuries and

"agreed to."

This endorsement is apparently in the hand of the person who kept the Committee Book of the Lords above mentioned.

The document itself will next be presented *in extenso*. In corroboration of the fact stated in the endorsement, viz: that

⁹ These clauses are those hereinafter printed.

¹⁰ This clause is Exhibit, No. 5.

Lord Chief Justice North¹¹ presented these following clauses, the writer offers a photographic copy of the first page of this document, showing interlineations in the hand of the Lord Chief Justice. (Exhibit No. 3). When these interlineations are compared with the standard of the Lord Chief Justice North's writing (Exhibit No. 6) the authorship of this document is settled beyond controversy. Throughout the entire document all the interlineations, printed as below indicated, are in the hand of the Chief Justice.

This document is marked (A) and is so referred to at the conclusion of the Bill of 1675, as part thereof.

"CLAUSES OFFERED BY THE LORD CHIEF JUSTICE NORTH TO BE ADDED TO THE BILL CONCERNING PERJURIES AND AGREED TO."

"And for the Amendment of the Law in the particulars following Be it further Enacted by the authority aforesaid that from henceforth any estate per autor vye shall be devisable by a will in writing Signed by the party so devising the Same or by some other person in his presence & by his expresse directions & attested &

¹¹ Francis North, born Oct. 22, 1637. On Nov. 7, 1655, he was entered in the Middle Temple. 1671 made Solicitor-general and knighted. Attorney-general, Nov. 12, 1673, and retained his seat in Parliament. Jan. 23, 1675, made Chief Justice of the Common Pleas. "For four years he enjoyed the quiet of a judicial life unbroken by the anxieties of politics." "Sir Francis was made Lord Keeper on Dec. 20, 1682. . . . in less than a year after his appointment he was called to the peerage by the title of Baron Guilford on Sept. 27, 1683."—Foss, *Biographical Dictionary*, pp. 484, 485.

Of Sir Francis North and Sir Matthew Hale, Foss asserts "It appears that each had such a violent dislike to the other as was likely to lead to frequent contentions."

Sir Francis' biography has been written by his brother, Roger North, and by Henry Roscoe, in his "Lives of Eminent British Lawyers," also by Lord Campbell.

His brother, Hon. Roger North, Esq., in this biography says of the Lord Keeper: "He had a great hand in the Statute of Frauds and Perjuries, of which the Lord Nottingham said that every line was worth a subsidy. But, at that Time, the Lord Chief Justice Hales had the Pre-eminence, and was chief in the fixing that Law: Although the urging part lay upon him, and I have reason to think it had the first Spring from his Lordship's Motion. For I find in some Notes of his and Hints of Amendments in the Law, every one of those Points which were there taken care of."—*Life of Lord Keeper Guilford*, p. 109, London, MDCCXLII. The book contains a fine steel engraving of Lord Guilford.

D. Loggan ad vivum delin. G. Vertue sculp.

subscribed in y^e presence of y^e devisor by three or more
witnesses¹² in the same manner as an estate in fee simple
is by virtue of the Statute of Wills made in the Reigne of
Such
King Henry the Eighth of famous Memory, and if no ^

be made
 devise ^ thereof the same Shall be chargeable in
 the hands of the heire 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 bee noe special
 occupant thereof it shall goe to y^e executors or adminis-
 trators of the party y^t had the estate thereof by virtue

And
 of the Crant and Shall be assets in their hands. ^
 WHEREAS it hath been found mischievous that Judg-
 mts in the King's Courts att Westmr doe many times
 relate to the first day of the Terme whereof they are
(or filing y^e Bayl)

entered or to the day of y^e Return of the Originall ^
 and bind the Defendts to Lands from y^t time although
 in truth they were acknowledged or Suffered and Signed
 in the Vaccacon time after y^e said Termes whereby many
 times purchasers find themselves aggrieved—

BE IT ENACTED by the authority aforesaid that
 from and after the said twentieth day of February any
 Judge or officer of any of his Mats Courts of Westmr
 that Shall signe any Judgmts shall at the signing of the
(without fee for doing y^e same)

Same ^ Sett down the day of the month and year
 of his Soo doing upon y^e paper Book Dockett or
 Record which hee shall Signe which day of the month
 and year Shall bee also Entred upon the Margent
 of the Roll of y^e Record where the said Judgment
 shall be entred AND BE IT ENACTED that Such
 Judgmts as against purchasers *bona fide* for valuable

¹² The underscored words are evidently in the handwriting of Lord Chief Justice North as are also all the interlineations in this document.

Consideraçon of Lands tenements or Hereditaments—
 endeavored to bee charged thereby Shall in Construction
 of Law be Judgmts only from such time as they shall be
 soe Signed and Shall not relate to the first day of the
 Terme whereof they are entered or the day of the
 (or filing y^e Bayl)

return of the Originall [^] any Law Usage Or Course
 of any Court to the Contrary Notwithstanding. And
 bee it further Enacted that from and after y^e Said
 20th day of February noe writt of fieri facias or other
 Writt of execution shall bind the property or the Goods
 of the person against whome such writt of Execuçon is
 sued forth but from the time y^t such Writt shall bee
 delivered to the Sheriffe Under Sheriffe or Coroners to
 be executed and for the better manifestaçon of the Said
 time y^e Sheriffe Under Sheriffe and Coroners their
 deputies and Agents Shall upon the receipt of any such
 (without fee for doing the Same)

Writt [^] endorse upon the back thereof the day of the
 month and year whereon he recd the Same.

And be it further enacted that from and after the
 Sd 20th day of February noe Contract for the Sale of any
 goods wares or merchandizes for the price of ten pounds
 or upwards shall be allowed to bee good, except the buyer
 Shall accept part of the goods soe sold, and actually re-
 ceive the Same or give something in earnest to bind the
 bargain or in part of paymt or y^t Some note or memor-
 andum in writing of the Said bargain be made and Signed
 by the parties to bee charged by such Contract or their
 Agents thereunto Lawfully authorized.

And bee it further enacted that the day of the month
 and year of the enrollmt of all Recognizances shall be
 sett down in the margent of the Roll where y^e Sd Recogn-
 izances are Enrolled, and that from and after the Said
 20th day of February no Recognizances shall bind
lands

any [^] tenements or hereditaments in the hands of any
 purchaser *bona fide* and for valuable consideraçon but

from ye time of such enrollmt. Any Law usage or ye Course of any Court to the contrary in any wise notwithstanding."

In response to the Committee's Request for propositions from Sir Leoline Jenkins^{12a} concerning nuncupative wills (See *ante* Committee Book April 29 and May 3d and 4th, 1675) he offered a paper which is now also among the Lords' records.

The document bears the following endorsement:

"Sr Lionell Jenkins

"Proposition

"Nuncupative Wills."

The handwriting of the endorsement and of the document itself is that of the person who kept the Committee Book and is not that of Sir Leoline Jenkins. A transcript of this document is here presented:

"1. No Nuncupative Will to be allowed to Stand, or the probate thereof put under the seal of any Court, but what is made in the time of the last sickness of him that dies, and in the house or place where deceased formerly lived or made his abode and died; except Such person be surprised or taken Sick being from his own home or in his journey, and dies.

2. Nor Except the Same be certified by the oaths of three witnesses at the best.

3. That if a Will for land or goods be once made in writing, no subsequent words or Will by word of mouth, not committed to writing and after read over to him, or by him, and by him allowed and so verified as is aforesaid, Shall set aside the first Will in writing, or alter or change any clause, devise or bequest in the former Will contained.

4. That no Nuncupative Will shall be good, nor anything thereby given of any force, except those that are standers by be bid by the deceased to bear witness that those words are his Will, or that he Speak words to that effect.

^{12a} In Wynne's Life of Sir Leoline Jenkins there is the following mention made of his part in framing the statute of frauds (liii):

"He had likewise some Hand in preparing the Statute of Frauds and Perjuries; especially that Proviso in it, which excepts the Wills of Soldiers and Seamen from the Strict Formalities required in the Wills of other persons, leaving them to the full Privilege of the old Roman Military Testament." — The Life of Sir Leoline Jenkins, Judge of the High Court of Admiralty, and Prerogative Court of Canterbury, etc., Ambassador and Plenipotentiary for the General Peace at Cologne and Nimwegen, and Secretary of State to K. Charles II; London, 1724.

5. That no Nuncupative Will shall be pleaded or proved in any court where — months are expired since the pretended testamentary words were spoken.

Provided that any soldier, being in actual military service, or any mariner or seaman, being at sea, may by Will by word of mouth dispose of his moveables, wages, or personal estate, in presence of two witnesses.

6. That no Nuncupative Will shall pass the seal of any Court till fourteen days after the death of the party be fully expired nor then neither except a process do first issue to call the widow or next of kin to see the same proved, in case the estate or the greatest part thereof be given from them or either of them to a stranger in blood."

The above document is also photographically reproduced in Exhibit No. 7.

The above six proposals of Sir Lionel Jenkins were incorporated into the following enacting clauses by the judges. This paper is marked (B) and is so referred to at the conclusion of the Bill of 1675, as part thereof.

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 twentyeth day of February no nuncupative will shall be good¹³ 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 habitation, or dwelling, except where such person was surprised or taken sick being from his own home and dyed before he returned to his place of dwelling.

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

¹³ Short additions and changes made in committee. See *post* 312.

thereof were committed to writing within three days after the making of the said will.

And be it further enacted that no letters testamentary or probate of any nuncupative will shall pass the seal of any Court until fourteen days¹⁴ 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 kin¹⁵ to the deceased to the end they may contest the same if they please.

And be it further enacted that no will in writing concerning any goods or chattels or personal estate shall be revoked¹⁶ 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 & proved¹⁷ to be so done by three witnesses at the least.

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 movables wages or personal estate as he or they might have done before the making of this act.

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 same¹⁸ as they had before in every respect Subject nevertheless to the Rules and directions of this act.

And for the explaining one act of this present Parliament entitled an act for the better settling of Intestates Estates Be it declared by the authority aforesaid,

¹⁴ In 1676, the words were interpolated, "till fourteen days at the least."

¹⁵ "Kindred" substituted for "kin" in 1676 bill.

¹⁶ Altered to "repealed" in bill of 1676.

¹⁷ The words & *proved* are in North's hand.

¹⁸ In bill of 1676, the words "right and power" were here interpolated.

that¹⁹ the said Act nor anything therein contained shall be construed to extend to the estate of feme couverts that shall die Intestate but their husbands may demand and have administration of their Rights Credits and other personal estate and recover and enjoy the same as they might have done before the making of the said Act.

FINAL DRAFT OF THE LORDS' BILL OF 1675 AS REPORTED BY THE COMMITTEE AND AS IT PASSED THE LORDS MAY 12, 1675

The various proposed changes referred to in the Committee Book were incorporated, by the person who kept that book, into the text of the bill. In order to show all these changes and additions (to which we must also understand were added clauses offered by Lord Chief Justice North and by Sir Lionel Jenkins, as modified by the Justice and Committee) the following amended draft of the bill of 1675, as reported to the Lords, is next presented—the main text being that of the bill of 1675, the cancelled portions being the parts omitted by the Committee and the under-scored words and clauses being those added by the Committee.²⁰

I have indicated by bracketed references in the margin the places (by sheet and line) corresponding to those marked in the draft of the bill and referred to in the margin of the Committee Book so that the reader can follow the changes made by the Committee.

“For prevention of many fraudulent practices, which are commonly endeavored 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 Par-

¹⁹ In bill of Oct. 14, 1675, the word “neither” was added.

²⁰ A printed copy of this amended draft of the bill of 1675 is to be found in the Ninth Report of the Royal Commission on Historical Manuscripts, Part II, Appendix and Index, p. 48.

I have here reproduced this amended draft as it appears in the Report of the Royal Commission with the arrangement of type adopted by the Commission, and as thus described by them:

“The original text including the expunged portions is the bill of 1673-4 re-copied. The additions now made in Committee are shown by italics, the omissions by the expunged type.”

- liament assembled, and by the authority of the Same.
- [1 Sh. 8 i] That from and after the Twentieth day of February which shall be in the year of our Lord 1675 all Leases
- [9 i] Estates, Interests of Freehold or terms of years, or
- [10 i] any uncertain interest of, in, to or out of any Mes-
suages, Manors, Lands, Tenements, or Heredita-
- [11 i] ments made or created by Livery and Seisin only or
- [12 i] by Parole, and not put into writing by direction
of the Parties thereunto, 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 Such Parole Leases, or
- [16 i] 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 thirds part
at the least of the full improved value of the thing
demised. And moreover no Leases, Estates, Interests,
either of Freehold, or terms of years, or any uncertain
interest,²¹ of, in, to, or out of any Messuages, Manors,
Lands, Tenements, or Hereditaments shall at any
time hereafter be assigned, transferred, granted or sur-
- 2 Sh. 2 i] rendered, unless it be by deed or note in writing, signed
- 2 Sh. 3 i] by the party or parties so assigning granting, or sur-
rendering the Same, or their agents thereunto lawfully
authorized by writing, or by Act and operation of Law.
- [2 Sh. 4 i] “And be it further enacted by the authority afore-
said that, ~~in all Actions upon the case, Actions of~~
~~debt, or other personal actions, which from and after~~
~~the ——— day of ——— shall be commenced upon~~

²¹ Not being copyhold or customary interest in the Act § *iii*. This was an amendment made in 1676-7

~~any Assumpsit, Promise, Contract or Agreement made or supposed to be made by Parole, and whereof no Memorandum, Note or Memorial in writing shall be taken by the direction of the parties thereunto, no greater damages shall at any time be recovered than the sum of — any law or usage to the Contrary notwithstanding.~~

~~Provided that this Act shall not extend to Such Actions or Suits which shall or may be grounded upon Contracts or Agreements for wares sold, or money lent, or upon any Quantum Meruit, or any other Assumpsits or promises which are created by the construction or operation of Law; But that all and every Such actions shall and may be sued and prosecuted in such manner as the same might have been before the making of this Act, anything hereinbefore to the contrary notwithstanding from and after the said twentieth day of February, no action Shall be brought whereby to charge an Executor or Administrator upon any especial 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 an agreement made in consideration of marriage, or upon any contract or sale of lands tenements, or hereditaments, or any interest 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.~~

[3 Sh. 4 l]

[3 Sh. 5.]

“And be it further enacted by the authority aforesaid That from and after the said twentieth day of February, every last Will or Testament in writing made in time of Sicknes, whereby any lands, tena-

~~ments, or hereditaments are devised or bequeathed, shall be utterly void, and of no effect, unless the person So making his last Will and Testament shall, after the making thereof, live to go abroad again, and~~

~~Service, be Seen in Some Church in the time of Divine~~ [^] ~~or in Some public and open market place~~ all devises and bequests of any lands, tenements or hereditaments 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 party²² so devising the Same, or any other person in his presence or by his express directions, and shall be attested and subscribed in the presence of the devisor by three or more witnesses²³ or else they shall be utterly void and of no effect.

[3 Sh. 11 l]

"And moreover no will Devise in writing whereby any of lands, tenements, or hereditaments, are devised or bequeathed, nor any clause thereof, shall, at any time after the said twentieth day of February be revocable by Parole or otherwise than by some other Will or Codicil or Instrument 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 by his directions, in manner aforesaid, (or) unless the

[12 l]

[3 Sh. 14 l]

[15 l]

[16 l]

[18 l]

Instrument in writing, or other writing of the Devisor,

²² Altered to ("and no other person") in the Bill of 14 Oct., 1675 and amended as in the Act §v., in the final Bill of 17 Feb., 1676-7.

²³ "Credible witnesses" in the Bill of 14 Oct., 1675, as in the Act § v.

Signed in the presence of three or more witnesses, declaring the Same, any former law or usage to the contrary notwithstanding.

[4 Sh. 3 l] “And be it further enacted by the authority aforesaid that, from and after the Said twentieth day of February, all declarations or creations of Trusts or
[4 l] Confidences by Parole 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
[4 Sh. 5 l] writing, or else they shall be utterly void and of no effect. And where any trust or confidence is or shall be made and declared in writing be it further Enacted
[7 l] that all grants and assignments of Such any Trust or Confidence by Parole Shall be in writing, Signed by the party granting or assigning the Same, or by such last Will or else shall likewise be utterly void and of no effect.

[8 l] Provided always that where any conveyance
[10 l] 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 the 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 hereinbefore contained to the contrary notwithstanding.

[15 l] “And be it further enacted by the authority aforesaid that, from and after the aforesaid twentieth day of February, 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, or upon any Judgment, Statute, or Recognizance hereafter to be made or had, to do, make, and deliver execution unto the party in that
[5 Sh. 4 l] behalf Suing, of all such lands, and tenements, rec-

tories, titles, rents, and other hereditaments as any other person or persons be in any manner of wise
 [6 1] Seised or possessed or hereafter shall be seised or
possessed, ~~in trust for him only~~ against whom Execu-
 tion is so sued, like as the Sheriff or other officer
 [9 1] might or ought to have done if the Said party, against
 whom Execution hereafter Shall be so sued, ~~had been~~
~~solely~~ seised of such lands and tenements, rectories,
titles, rents, and other hereditaments of such estate
 as they be Seised of, in trust for him, at the time
 of the Said Execution sued.²⁴

“And if any cestuy que 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 as-
 sets by descent, and the heir shall be liable to, and
 chargeable with, the obligation of his ancestor for and
 by reason of such assets, as fully and amply as he
 [16 1] might or ought to have been if the ~~land itself and the~~
~~inheritance thereof~~ Estate in law had descended to
 him in possession, in like manner as the Trust de-
 scended, any law, custom, or usage to the contrary
 in any wise notwithstanding.²⁵

After all the above proposals and suggestions for modifica-
 tions had been made by Lord Chief Justice North, by his associate
 justices and by Sir Leoline Jenkins, they were adopted by the
 Committee; then the Clerk of the Committee (or whoever wrote
 the entries in the Committee Book) prepared a paper (which also
 is now extant among the archives of the Lords in the Victoria
 Tower) entitled “Amendments to the Bill for the Prevention of

²⁴ The words in the act which follow here were inserted in the final Bill of 17 Feb. 1676-7 (No. 336).

²⁵ The proviso (§xi of the Act) which follows here, was inserted in the final Bill of 17 Feb., 1676-7. The draft has reference to two notes, (A) and (B).

NOTE—(A) is the draft of Clauses offered by Lord North and interlined by him.

(B) is the modification of the Jenkins' proposals and extended in the handwriting of some clerk and interlined in one place by Lord North.

Frauds and Perjuries." This document incorporated all the amendments referred to in the Committee Book. This revised draft is of importance on the question of authorship because after completion interlineations were made which are evidently in the handwriting of Lord Chief Justice North. The reader will find a photographic reproduction of part of the second page of this revised draft in Exhibit No. 4; which on comparison with the standard of the handwriting of the Chief Justice (Exhibit No. 6) appears to be by the same hand.

This document I have not transcribed as the substance of it appears in the above reprint from the report of the Historical Manuscripts Commission.

At a session of the Lords held on May 10th 1675—present "Ds. Finch, Ds. Custos Magni Sigilli"—"The Earl of Ailesbury reported, 'That the Committee appointed to consider of the Bill for Prevention of Frauds and Perjuries have met several Times; and have, upon the Advice of the Judges made several Amendments therein, which are offered to the Consideration of the House.'

"Then the Said Amendments were read twice, and Agreed to; and the Bill is ordered to be engrossed, with the said Amendments."

On May 12, 1675 at a session of the Lords—present Ds. Finch Ds. Custos Sigilli—the following entry on the Journal was made:

"*Hodie 3^a vice lecta est Billa.* 'An Act for Prevention of Frauds and Perjuries.'

"The Question being put: 'Whether this Bill shall pass as a Law?'

"It was resolved in the Affirmative.

"A Message was sent to the House of Commons, by Mr. Attorney-General and Sir Andrewe Hacket: To deliver the Bill for Prevention of Frauds and Perjuries and to desire their concurrence therein."

The bill was never committed by the House and, owing to the fact that Parliament was shortly afterwards prorogued, the bill never reached a second reading.

Late in the same year, 1675, *viz*, on Oct. 14, effort was made

in the Lords to pass another bill²⁶ substantially identical with that which had just previously failed in the Commons.

Again we note the significant presence of "Ds. Finch, Ds. Custos Magni Sigilli."

On the 12th of November following, Lord Keeper Finch being again present this bill was read for the second time, and then committed to fifty peers, spiritual and temporal—"The Lord Chief Baron²⁷ and Baron Littleton²⁸ to assist their Lordships: Their Lordships or any Five; to meet To-morrow morning at Nine of the Clock, in the Prince's Lodgings; and to adjourn as they Please."²⁹ The Lord Keeper was neither now nor on any other previous or subsequent occasion a member of the Committee to consider the bill. Earl Aylisbury was the chairman.

THE COMMITTEE BOOK SHOWING MEETINGS AND ACTION OF
COMMITTEE, NOVEMBER 15, 1675 TO NOVEMBER 18, 1675

E. Aylisbury "Die Lunae 15^o Novembris 1675
Frauds & Perjuries The Bill is reade entire
The Bill began to be read by paragraphs
The Title Postponed
Agreed to y^e 9th l of 8 sh.
Ordered That the Judges appointed to assist the
Committee attend at the next meeting.
Adj. to Thursday at 3^o

E. Aylisbury "Die Jovis 18^o Novembris 1675
Frauds & Perjuries My Ld. Chief Baron saith that he and Mr Baron
Littleton have perused the Bill and finde not a worde
to be altered in it.

²⁶ Lords' Journal, XIII, 7, 20.

²⁷ Probably Edwd. Turner, Knt., who, according to Dugdale, was made Chief Baron of the Exchequer, 23 May, 1671.

²⁸ Timothy Littleton, seventh son of Sir Edward Littleton, of Henley, in Shropshire, was admitted to the Inner Temple in 1626; called to the bar in 1645; and elected a Bencher in 1640. At Restoration held office of Recorder of Bewdley and was appointed one of the Welsh Judges. Constituted a Baron of the Exchequer, Feb. 1, 1670. He died in 1679.—Foss.

²⁹ Lords' Journal, XIII, 7, 20.

The Enacting Clause beginning in the 9th l of
8 Sh is reade.

After Debate

Adj. to Tuesday at 3°

III

THE LORDS' BILL OF 1676 WHICH ULTIMATELY WAS ENACTED
INTO THE STATUTE ON APRIL 16, 1677

The bill of 1675, which, as above stated, after being passed by the Lords, had died in the Commons was resuscitated and re-introduced in the Lords Feb. 17, 1676 under the title: "An Act for Prevention of Frauds and Perjuries."²⁰ The Lord Chancellor Finch was again on the woolsack.

This bill was immediately committed to a large committee of forty-seven peers—"their Lordships or any five of them to meet in the Prince's Lodgings To Morrow Morning at nine of the clock; and to adjourn themselves from time to time as they please."²¹

Again the Chief Justice of the Common Pleas and his *puisne* justices Windham Jones and Scrogs were ordered by the House "to assist."²²

The sittings of this committee extended from February 20, 1676, to March 6, 1676.

The changes made by this Committee were not many and have been summarized as follows by the Historical Manuscripts Commission²³ with reference to the statute itself:

"Amendments made by Lords' Committee on 1, 2 and 6 March. These are to introduce the words 'not being copyhold or customary interest,' in sec. iii., l. 2, and the words, 'in or,' before 'concerning' in sec. iv., l. 6, to change 'and no other person' into 'or by some other person' in sec. v., l. 4, to introduce the words 'which lands and tenements Rectories, Tythes, Rents and other Hereditaments by force and virtue of such

²⁰ Lords' Journal, XIII, p. 43.

²¹ Lords' Journal, XIII, p. 45.

²² *Ib.*

²³ Appendix to 9th Report, p. 69.

execution shall accordingly be held and enjoyed free and discharged from all incumbrances of such person or persons as shall be soo seized or possessed in trust for y^e person against whome such execution shall be sued, in sec. x, ll. 9-12, and the words 'till fourteen days at the least,' in sec. xx., l. 2."

Attention should be particularly called to a proviso offered by Lord Chief Justice North on March 2, 1676, agreed to by the Committee, and reported. This proviso ultimately became without any alteration section xi of the statute. It is written entirely in the handwriting of Lord North and a photographic copy is given in Exhibit No. 5.

The Historical Manuscripts Commission³⁴ thus succinctly contrasts the bill as it came from this Committee with the words of the Statute itself:

"As amended in the Lords' Committee it is identical with the Act 29 Car. II. C. 3., except that the words 'Where the estate thereby bequeathed shall exceed the value of twenty pounds,' and 'or where he or she shall hath been resident for the space of ten days or more next before the making of such will' in sec. xviii are wanting in the Draft, which moreover has 'three days' instead of 'six days' in sec. xix."

In the House of Lords, the Lord Chancellor (Finch) being present, on the 6th day of March, 1676, the Earl of Dorset reported, "That the Committee for the Bill for preventing Frauds and Perjuries have met several times; and are of opinion that the said bill is fit to be engrossed with some Amendments."³⁵ This was agreed to.

In the Lords on the seventh of March (the Lord Chancellor being present) the bill was read for the third time and passed.³⁶

The above as amended in the Lords' Committee was sent to the Commons March 7, 1677.³⁷

The bill was referred in the Commons to a Committee of over fifty members "and all the members of this House that are of the Long Robe."

³⁴ Appendix to 9th Report, p. 69.

³⁵ Lords' Journals XIII, p. 62.

³⁶ Lords' Journals, XIII, p. 63.

³⁷ Journal of the House of Commons, Mar. 7, 1676.

The Committee Records of the House of Commons perished in the fire that destroyed the Houses of Parliament so that nothing can be ascertained of the discussion of the bill by that Committee. Scarcely any changes,³⁸ however, were made in the Lords' Bill by the House of Commons.

On April 12, 1677 the bill "with a few amendments" was returned to the Lords in precisely the form in which four days later it was enacted into a law.

The Lords immediately agreed to the "few amendments" of the Commons.³⁹

Nothing was now lacking but the Royal assent.

The oft-quoted remark of Lord Nottingham that *every line was worth a subsidy* is not merely a rhetorical estimate of the great worth of the statute, but seems to refer specifically to the passage of two bills on the same day, but prior to the Statute of Frauds—the first being a subsidy bill for a royal navy and the second being a taxation measure.

Those two bills form Chapters I and II of the Act of 29, Car. II and Chapter III is the Statute of Frauds.

The Journal of the Lords gives this narrative:

Die Lunae 16^o die Aprilis, post meridiem.

"Then the House was adjourned during pleasure and the peers robed themselves.

The House being resumed and His Majesty Sitting in His Royal Throne, adorned with his Regal Ornaments (the Peers being also in their Robes): the Gentleman Usher of the Black Rod was commanded to signify to the House of Commons His Majesty's Pleasure 'That they come up presently and attend him, with their Speaker.'

"Who being come; the Speaker (after a Short Speech) humbly presented his Majesty with two bills, which being received at the bar by the Clerk of the Parliament and brought to the Table, the Clerk of the Crown read the Titles of them as follows:

"1. An Act for raising the Sum of Five Hundred Eighty four thousand nine hundred and Seventy-Eight Pounds, Two Shillings, and Two pence Half penny for the speedy building of Thirty Ships of war.

"2. An Act for an additional excise upon Beer, Ale, and other Liquors for Three Years."

³⁸ See the Report of the Historical Manuscripts Commission, appendix to 9th Report, p. 69.

³⁹ Journals of the Lords, XIII, p. 111.

"To which two bills the Clerk of the Parliaments pronounced the Royal Assent in these words, "Le Roy remerciant ses bons Subjects, accepte leur Benevolence et ainsi le veult."

In the same manner other Public Bills were passed; as,

"1. An Act for Prevention of Frauds and Perjuries.

* * * *

"6. An Act for taking away the writ *de Haertico Comburendo*.

"7. An Act for erecting a Judicature to determine Differences touching Houses burnt and demolished by the late dreadful Fire in Southwarke.

"8. An Act for the better observation of the Lord's day commonly called Sunday.

"To these the Royal Assent was pronounced in these words:
'Le Roy le veult.'"⁴⁰

IV

CONCLUSION AS TO THE AUTHORSHIP OF VARIOUS SECTIONS OF THE STATUTE

Section I. Probably originally drawn and certainly interlined and after corrections introduced by Lord Nottingham *supra* p. 286.

II. Drafted in Committee of Lords April 20, 1675 with assistance of Lord Chief Justice North. (See Committee Book of Lords *eo die supra* p. 292).

III. Lord Nottingham drew this entire section in his own hand and interlined it in the Lord's Bill of 1673. See Exhibit No. 1 and the draft of said bill *supra* p. 285.

IV. Drafted in Committee of Lords April 22, 1675 with assistance of Lord Chief Justice North, and other justices of the Common Pleas. (See Committee Book of Lords *eo die supra* pp. 292-293).

V. Drawn by Lord Chief Justice North with his own hand as appears from his interlineation of the Amended Draft of the Bill of 1675. (See Exhibit No. 4.)

VI. The original scheme was that of Lord Nottingham (See draft of Lords' Bill of 1673 *supra* p. 286), changed in Committee of Lords on April 29, 1675. See *supra* p. 294.

⁴⁰ XIII, Lords' Journals, pp. 120-121.

- VII. This section in almost identical language was in the original or Nottingham draft of 1673. (See draft of Lords' Bill of 1673 *supra* p. 286).
- VIII. This section in almost identical language was in the original or Nottingham draft of 1673. (See draft of Lords' Bill of 1673 *supra* p. 286).
- IX. This section originally appeared in slightly less comprehensive form in the Nottingham bill of 1673, *supra* p. 286, and was altered in committee of the Lords (April 22, 1675) to the words of the Act.
- X. This section in almost identical language was in the original or Nottingham draft of 1673. (See draft of Lords' Bill of 1673 *supra* p. 287). A clause was added by the Committee of the Lords which gave the section more definite meaning.
- XI. Drawn and offered by Lord Chief Justice North as appears from clauses offered by him marked (A). (See Exhibit No. 5).
- XII. Drawn and offered by Lord Chief Justice North as appears from clauses offered by him marked (A). (See Exhibit No. 3 and the transcript of his clauses *supra* p. 297, etc).
- XIII. Drawn and offered by Lord Chief Justice North as appears from the clauses offered by him and marked (A). (See transcript of his clauses *supra* p. 298). (See also Exhibit No. 3).
- XIV. Drawn and offered by Lord Chief Justice North as appears from the clauses offered by him and marked (A). (See transcript of his clauses *supra* p. 298).
- XV. Drawn and offered by Lord Chief Justice North as appears from the Clauses offered by him and marked (A). (See transcript of his clauses *supra* p. 298).
- XVI. Drawn and offered by Lord Chief Justice North as appears from the clauses offered by him and marked (A). (See transcript of his clauses *supra* p. 299).
- XVII. Drawn and offered by Lord Chief Justice North as appears by the clauses offered by him and marked (A). (See transcript of his clauses *supra* p. 299).

XVIII. Drawn and offered by Lord Chief Justice North as appears from the clauses offered by him and marked (A).
(See transcript of his clauses *supra* p. 299).

XIX. }
XX. } These six sections are based upon the six proposals of
XXI. } Sir Lionel Jenkins (See Exhibit No. 7) as modified
XXII. } by the subsequent draft of these proposals into
XXIII. } Enacting Clauses. (See *Supra* pp. 301-302).
XXIV. }

XXV. Prepared by the judges—North C. J. and associates.
(See *Supra* pp. 302-303).

Crawford D. Henning.

University of Pennsylvania
March, 1913