

QUEENSLAND LAW REFORM COMMISSION

**A REVIEW OF - THE STATUTE OF FRAUDS 1677;
THE STATUTE OF FRAUDS AMENDMENT ACT 1828;
THE STATUTE OF FRAUDS AND LIMITATIONS OF 1867 (Qld); AND
THE SALE OF GOODS ACT 1896 (Qld)**

REPORT NO. 6

8 June 1970

A Report of the Queensland Law Reform Commission

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Q U E E N S L A N D

A REPORT OF THE LAW REFORM COMMISSION

ON A REVIEW OF

THE STATUTE OF FRAUDS 1677 (29 Car. II, c.3)
and

THE STATUTE OF FRAUDS AMENDMENT ACT, 1828 (9 Geo. IV, c.14)
and

THE STATUTE OF FRAUDS AND LIMITATIONS OF 1867 (Qld.) (31 Vic.
No.22)
and

THE SALE OF GOODS ACT OF 1896 (Qld.) (60 Vic. No.6) (Sect. 7)

Q. L. R. C. R. 6

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THE STATUTE OF FRAUDS, 1677 (29 Car. II, c. 3)
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Q. L. R. C. 6

To the Honourable P. R. Delamothe, O. B. E., M. L. A.,
Minister for Justice and Attorney-General,
BRISBANE.

By the approved First Programme of the Law Reform Commission
of Queensland, the Commission is required in Item 1 of Part A:-

"to examine the law relating to the powers and duties
"of trustees with a view to preparing an improved
"and modern Trustee Act"

- and in Item 2:-

"to examine the law relating to relief from forfeiture
"of leases and certain aspects of the law relating
"to landlord and tenant."

The recommendations of the Commission with respect to the subject
matter of Item 2 are embodied in the Commission's Report numbered
Q. L. R. C. 1 which has lately been presented, and the topic of
trustees is at present receiving the attention of members of the
Commission.

A review has been made of the Statute of Frauds, 1677 (together
with an Amending Act of 1828 and the cognate Queensland legislation
represented by the Statute of Frauds and Limitations Act of 1867),
and the draft Bill is intended towards the repeal of those portions of
these statutes which are archaic and unnecessary, and the
restatement in modern language of such of the remainder as in our
opinion continue to perform a useful function.

A working paper comprising this draft Bill and a commentary has
been circulated to persons and bodies believed to be interested from
whom comment was invited. Account has been taken of some of the
suggestions received in preparing this draft Bill.

The legislation in question is concerned primarily with a prescription of the formalities under the general law governing the creation and transfer of a diverse range of legal and equitable interests (including leases and trusts) and the contracts which commonly precede such transactions; and, although the approved Programme does not in terms make reference to the Statute of Frauds, experience in the preparation of our recommendations on the topics of leases and trustees has shown that attention to the subject matter of the Statute of 1677 is an essential prerequisite to the duty of examining the law of property with a view to formulating a modern Law of Property Act, which is envisaged in Item 1 of Part B of the Programme.

In addition, the accompanying proposals represent an important step in the paramount task of reviewing, repealing and re-enacting with modifications an Imperial Statute which is not only archaic but a frequent source of injustice and in urgent need of reform.

W. B. Campbell. Chairman

B. McKenna Member

Raymond Smith Member

[Signature] Member

BRISBANE
8th June, 1970.

EXPLANATORY COMMENTARY

Clause 1(3): Acts repealed

Legislation bearing the title "Statute of Frauds" is represented in the United Kingdom by the two Imperial Acts known as the Statute of Frauds, 1677 (29 Car. II, c. 3) and the Statute of Frauds Amendment Act, 1828 (9 Geo. IV, c. 14), commonly referred to as Lord Tenterden's Act.

There is no doubt whatever that the first of these statutes was received in New South Wales and hence in Queensland as part of the law applicable at the founding of these colonies, and its provisions continue to apply in this State except to the extent that particular sections of the statute have since been repealed expressly or by necessary implication. The applicability in Queensland of the amending Act of 1828 is by no means as clear, and there appears to be no authority directly covering the point. The editors of the Australian edition of Cheshire and Fifoot's Law of Contract (2nd ed.) consider that the Act of 1828 "appears to apply, having been received as part of the common law of England": op. cit., at p. 510, n. 5; p. 522, n. 70. This view is doubtless founded upon the fact that, as appears from vol. 2 of Chitty's Statutes at p. 1261, the Act was assented to in England on 9th May, 1828, and that s. 24 of the Australian Courts Act, 1828 (9 Geo. IV, c. 83), which was passed on 25th July, 1828, provides in s. 24 that "all laws and statutes in force within the realm of England at the time of the passing of this Act. . . . shall be applied in the administration of justice in the courts of New South Wales. . . . so far as the same can be applied in the said (colony). . . .". On the other hand, s. 10 of the Statute of Frauds Amendment Act expressly provides that it shall "take effect" on 1st January, 1829, and in view of this it may well be doubted whether it can be said to have been "in force" in England on 25th July, 1828, the date mentioned in s. 24 of the Australian Courts Act.

In addition to the problem arising from the date of Lord Tenterden's Act, some further difficulties are presented in Queensland by local legislation in the form of the Statute of Frauds and Limitations of 1867 which expressly re-enacted some but by no means all of the provisions of the Statute of Frauds, 1677 and of the Amendment Act of 1828. An important and quite inexplicable omission was the provisions of sections 7, 8, 9 of the Act of 1677 dealing with declarations of trust of lands and also assignments of trusts, which are respectively required to be manifested and proved by writing and to be in writing, saving the exceptions in s. 8 in favour of trusts arising by implication or construction of law. These sections have been held to apply in Queensland: see, for example, Meyenberg v. Pattison (1890) 3 Q. L. J. 184 (Full Court); Taylor v. Lowe (1901) 11 Q. L. J. 90. Whether, in respect of those sections of the two statutes which have been expressly reproduced in the Queensland legislation, it can be said that there has been a repeal by implication seems to us to be a question which will be rendered academic by adoption of the proposal which we make here for repeal of all three statutes, and the same applies to those portions of the Statute of Frauds which are now reproduced in, or have been superseded by, provisions of The Succession Acts, 1867 to 1968. In the case of the Act of 1828, we suggest this course

irrespective of whether that statute in strictness applies in Queensland, since no possible disadvantage can result from its purported repeal if it does not so apply.

The practical effect of our proposals for repeal can best be demonstrated by reference to the tabular analysis which appears as the Schedule to this commentary. The only provisions of which specific mention is necessary are sections 12 and 13 of the Queensland Act of 1867, corresponding to sections 5 and 6 of the Statute of Frauds Amendment Act of 1828.

Of these, section 5 imposes a requirement of writing in respect of (i) any promise made after full age to pay any debt contracted during infancy; and (ii) any ratification after full age of any promise or simple contract made during infancy. The precise scope of this provision is a matter of some doubt and is described as "perplexing" by the authors of the Australian edition of Cheshire and Fifoot's Law of Contract (2nd edn.) at p. 522. However, it is generally accepted that at common law infants' contracts are capable of being divided into three categories, viz., beneficial contracts of service and contracts for necessary goods or services, which are valid and binding irrespective of infancy; contracts for the acquisition of an interest of a permanent nature, which are binding unless avoided or "disaffirmed" upon reaching majority or within a reasonable time thereafter; and other contracts not falling within the preceding two categories, which are "void" unless ratified or affirmed upon reaching majority. It seems likely that section 12 of the Act of 1867 was intended to apply to contracts of the latter sort although, as is pointed out in the Australian edition of Cheshire and Fifoot (loc. cit.), the question is to some extent bound up with forms of action which have since become obsolete. Whatever its scope and purpose, we do not think there is, in the changed social conditions of this century, any justification for maintaining the specially privileged position of infants to the extent of requiring that words or conduct amounting to ratification after attaining full age should be ineffective unless accompanied also by a signed memorandum. In short, we recommend the repeal, without re-enactment, of section 12 of the Act of 1867.

Section 13 imposes a requirement of writing as a prerequisite to an action upon any representation, assurance, etc., relating to the character, conduct, credit, ability, trade or dealings of a person, which is intended to enable that person to obtain credit, money or goods thereon. Judicial interpretation has limited the application of the section to representations which are fraudulent in character (see Banbury v. Bank of Montreal (1918) A.C. 626; M.L. & C. Assurance Company Limited v. Evatt (1968) 42 A.L.J.R. 316, at pp. 325, 341), which has the surprising consequence that it may prove to be in the interest of a defendant to establish his own fraud and so escape liability in reliance upon the absence of the written memorandum required by section 13. Repeal of the section will thus remove this anomaly and also abolish a provision which experience has not shown to have produced an improvement in the law. A similar recommendation has recently been made by the California Law Revision Commission with respect to the analogous provision in section 1974 of the Californian Code of Civil Procedure.

Clause 1(3) is intended to give effect to the above recommendations for repeal, without affecting contracts, promises, assurances, etc., made before the commencement of the Act. In relation to the Acts of which repeal is proposed, we have slightly altered the formula in clause 1(3)(a) from that employed in clause 2 of the Leases and Instruments Bill in order to take account of the

difficulty presented by the Statute of Frauds Amendment Act, 1828, which has been explained above.

Clause 2: Definitions

The definition clause closely follows in material respects that of the Conveyancing Act 1919-1967 (New South Wales) and calls for no special remark. The definition of "disposition", when read with the operative provisions of cl. 3, will ensure that the applicability of the decision of the High Court of Australia in Horton v. Jones (1935) 53 C. L. R. 475 will not be affected by the Bill.

Clause 3: Contracts of sale, etc. of land to be in writing

If our recommendations are adopted clause 3 and clause 4 (discussed below) will become the sole remnant of the famous s. 4 of the Statute of Frauds 1677, reproduced in Queensland as s. 5 of the Act of 1867. By s. 4 in its original form, a written memorandum signed by the party to be charged, or his duly authorised agent, is required to sustain an action brought upon a contract or promise falling within any of the following categories:-

- (1) Special promises by an executor or administrator to answer damages out of his own estate. Such promises were of importance in times when a personal representative was entitled to retain for himself any residuary personalty not disposed of by the testator. Now, however, such personalty is, by s. 34 of The Succession Acts, 1867 to 1968, deemed to be held by the executor on trust for the next of kin of the testator. This requirement of the Statute is therefore obsolete and may be abolished.
- (2) Agreements made in consideration of marriage. This provision of s. 4 was concerned primarily with promises to pay marriage portions or to make marriage settlements, and not with the contract of marriage itself. Marriage settlements in the strict sense are a vanishing social phenomenon in modern society, and no useful purpose will be served by retaining this requirement.
- (3) Special promises to answer for the debt, default or miscarriage of another.
These are the subject-matter of cl. 4 below.
- (4) Agreements not to be performed within a year of the making thereof. This may conveniently be discussed in conjunction with the consideration (which follows) of the general policy of the Statute of Frauds, and of the proposal for retention of the requirement of writing in the case of:-
- (5) Contracts for sale or other disposition of land or any interest therein.

The policy of requiring writing as a condition precedent to the enforcement of simple contracts or promises is one which, so far as English law is concerned, has its origin in the Statute of Frauds 1677. The Statute recites as its object "the prevention of many fraudulent practices, which are commonly endeavoured to be upheld by perjury

and subornation of perjury", and Cheshire and Fifoot: The Law of Contract (6th ed.), at p. 156, attribute the passing of the Statute to the unsettled state of English society following upon the Civil War. (For an account of the history of the Statute, see Holdsworth: History of English Law, vol. 6, pp. 379-397). Whatever its original justification, the legislation is now unanimously regarded as having in the main outlived any usefulness which it may have had. In many instances s. 4 has undoubtedly proved to be an engine of fraud rather than an instrument of its suppression and as such has probably attracted more criticism, both judicial and academic, than any other single piece of legislation. Lord Mansfield, Sir Frederick Pollock, Sir William Holdsworth, and Professor Williams (The Statute of Frauds, Section IV), may be named as amongst its detractors. In England the Law Revision Committee in 1937 recommended the abolition of those portions of s. 4 then remaining as part of English law, and this was eventually followed in 1954 by the enactment of the Law Reform (Enforcement of Contracts) Act, 1954, which, with the saving hereafter to be mentioned, repealed the provisions of s. 4 of the Act of 1677. Similar legislation has been passed in Western Australia (the Law Reform (Statute of Frauds) Act, 1962) and more recently in New South Wales (Imperial Acts Application Act, 1969).

We can see no good reason for retaining in its present form s. 4 of the Statute of Frauds or the equivalent s. 5 of the Act of 1867. As indicated above, we consider that those parts of the section dealing with special promises by an executor, and agreements in consideration of marriage are quite obsolete and should in any event be repealed. The same course should, we recommend, be followed in the case of agreements not to be performed within a year: in practice this title tends to embrace principally contracts of service, some kinds of building contracts, and probably also certain partnership agreements, and in respect of such contracts we think that the criticisms mentioned above are well-founded. This applies equally to s. 7 of The Sale of Goods Act of 1896, which originally formed s. 17 of the Statute of Frauds 1677, was confirmed in its application to executed contracts of sale by s. 7 of Lord Tenterden's Act, reproduced in s. 8 of the Queensland legislation of 1867, and was ultimately re-enacted in s. 7 of The Sale of Goods Act. The requirement of writing which it continues to impose in the case of contracts for sale of goods of value £10 or upwards is clearly not in accord with modern commercial realities and its abolition will produce conformity with the law of England where this step has been taken. We appreciate that the topic of sale of goods is at present receiving the attention of the Standing Committee of Attorneys-General, but we do not think that this measure of reform should await the outcome of the deliberations of that Committee, particularly in view of the illogical situation which would follow from the retention of s. 7 in the face of the abolition of other requirements of writing which we propose.

The foregoing remarks serve to introduce the content of cl. 3 of the Bill. This is concerned with contracts for the sale or other disposition of land or any interest therein. The formality, and comparative solemnity and often complexity, of transactions involving land affords, we think, a sufficient justification for requiring a written memorandum in the case of such contracts, and the equitable doctrine of part performance, which is expressly preserved by cl. 8(d) of the Bill, has mollified many of the worst

features of the legislation. In recommending the retention of the requirement of writing in the case of such contracts, the Bill follows the pattern set in England by s. 40 of the Law of Property Act 1925, and in New South Wales by s. 54A of the Conveyancing Act 1919-1967. Clause 4 is modelled in the main upon the latter section and departs from it only in the express omission of the exclusions in favour of part performance and sales by the court (which instead appear in cl. 8 of the Bill) and omission of the express inclusion of land under the Real Property Acts, which we consider to be unnecessary, since such land is clearly within the scope of the provision and has always been so regarded.

Clause 4: Guarantees to be in writing

The remaining title under s. 4 of the Statute of 1677 is, as indicated above, the "special promise to answer for the debt, default or miscarriage of another". The latter words have given rise to some difficulty in interpretation, but the provision is generally now regarded as embracing guarantees of another's liability of any kind: see Cheshire and Fifoot, *op. cit.*, at pp. 160-161. The Bill in cl. 4 will now so provide, and will also preserve the provision of s. 6 of the Queensland Act of 1867 dispensing with the necessity for the consideration to appear in writing, which dates from the English Mercantile Law Amendment Act, 1856.

The continuation of the requirement of a written memorandum in the case of contracts of guarantee has been the subject of anxious consideration by the members of the Commission. This requirement has recently been recommended for abolition in New South Wales, although retained in England and in Western Australia, following the recommendation of the English Law Reform Committee in 1953 (Cmd. 8809). We are conscious of the desirability of uniformity, particularly where the law of a neighbouring State is concerned, and we can perceive the advantages of the course recommended in New South Wales. On the other hand, we consider that the retention of the requirement of writing is justified in the case of guarantees by wider considerations of policy, such as the desirability of retaining an element of formality and deliberation in a form of transaction having such consequences that it ought, we think, not to be lightly undertaken or enforced. Such a philosophy appears to be implicit in the similar but more extensive provisions relating to guarantees which are to be found in s. 19 of The Hire Purchase Act of 1959.

Clause 5: Assurances of land to be in writing

Clause 5 of the Bill states in modern language the effect of s. 3 of the Act of 1677 requiring any assignment, grant or surrender of an interest in land to be in writing and signed by the assignor, grantor, etc. The clause follows s. 52 of the English Law of Property Act 1925 and s. 23B of the New South Wales Conveyancing Act, departing from these statutes only in permitting effect at law to an assurance (which is defined in cl. 2) effected in writing as well as one effected by deed. In this it accords with the original section of the Statute of Frauds and so avoids some of the unnecessary complexity consequent upon the introduction by the more modern

property statutes of the requirement of a deed for this purpose: see, for example, the position with respect to leases in New South Wales as expressed in Helmore: The Law of Real Property (2nd ed.) at pp. 100-101.

Speaking generally, the purpose of s. 3 of the Statute of Frauds was to deny effect at law to a grant of an interest in land unless the statutory requirement of writing was complied with, with the result that the common law conveyance by livery of seisin alone would not suffice in the absence of writing. Leases and tenancies not required by law to be made in writing, which include short leases as provided in cl. 7(2), are specifically excepted from cl. 5, as are various other forms of assurance, including disclaimers. In s. 23B of the Conveyancing Act, disclaimers under the Bankruptcy Act are expressly excluded from the requirement of a deed, but this is unnecessary in terms of cl. 5, which requires only writing and not a deed for that purpose.

In practical terms the effect of cl. 5, as we see it, will be as follows:-

- (1) Old system (unregistered) land. Livery of seisin is not necessary to the validity of a feoffment effected prior to 3rd January 1842: Titles to Land Act of 1858; in respect of conveyances thereafter the deposit with the Registrar of Deeds of a certified copy of the deed of feoffment is equivalent to livery of seisin: Registration of Deeds Act, 1843, s. 25. However, registration is not necessary to give efficacy to the deed where no question of priority arises: Fuller v. Goodwin (1865) 4 S. C. R. (N. S. W.) 66, and the effect of cl. 5, in cases where registration is not carried out, will be to continue the present requirement of a deed or writing in addition to livery of seisin.
- (2) Land under The Real Property Acts. Clause 5 will not alter the present law requiring execution of the appropriate prescribed instrument of transfer etc. stipulated by the Acts. Such instrument need only be in writing but, upon registration, is deemed to have been sealed and delivered: The Real Property Acts, 1861 to 1963, s. 35.
- (3) Land under the Land Acts. Land under the provisions of the Land Acts or other special statute is covered by the exception in cl. 5(2)(e) in favour of "assurances taking effect under any Act", and so is not affected by cl. 5.
- (4) Short leases. The effect of short leases of any of the above land is preserved by cl. 7(2), with the difference that we can see no good reason for retaining the limitation in s. 3 of the Act of 1867 (s. 2 of the Act of 1677) which restricts the exception in favour of short leases to those on which the rent reserved amounts to two thirds at least of the value of the thing demised. In other words, our proposal will mean that any lease taking effect in possession for a term not exceeding three years will not be required to be in writing.

Clause 6: Instruments required to be in writing

Clause 6 is concerned broadly with the effect of equitable dispositions of land, and follows section 23C of the Conveyancing Act of New South Wales save in one respect. This is the omission from clause 6(1)(c) of the requirement in section 23C(1)(c) of the Conveyancing Act which stipulates that a disposition of an equitable interest or trust must be "in writing", as distinct from merely being manifested and proved by some writing signed by the disponor as is sufficient in the case of a declaration of trust respecting land (section 23C(1)(b) of the Act and clause 6(1)(b) of the Bill). It is difficult to understand why the assignment of an equitable interest in personalty, as compared with the creation of a trust interest in land, should be attended with greater formality, and the effect of section 23C(1)(c), which is a rescript of section 53(1)(c) of the English Law of Property Act, is that such an assignment, if not actually in writing, is void: Grey v. I. R. C. (1960) A. C. 1. In the absence of some compelling reason for adopting this distinction, we prefer to avoid it by casting clause 6(1)(c) in the form in which it appears in the Bill.

Clause 7: Creation of interests in land by parol

Clause 7, following section 54 of the English Act and section 23D of the New South Wales Act, simply supplies the corollary to the preceding clause 5(1) and 6(1) by providing that interests created otherwise than in writing shall have the force and effect of interests at will only. This corresponds with section 1 of the Statute of 1677, and, in clause 7(2), preserves the exception in favour of short leases, which was provided in section 2 of the Statute, and which has been mentioned above.

Clause 8: Savings in regard to ss. 3, 5, 6 or 7

This clause preserves the effect of various acts and dispositions which might otherwise be invalidated by the preceding provisions, and in particular maintains the equitable doctrine of part performance already mentioned.

Appended to this Commentary are the following:-

- A. Schedule showing effect of proposed amendments.
 - B. Statute of Frauds, 1677.
 - C. Statute of Frauds Amendment Act, 1828.
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APPENDIX A

THE SCHEDULE

STATUTE OF FRAUDS, 1677

<u>Section No.</u>	<u>Subject-matter</u>	<u>Corresponding section in Statute of Frauds and Limitations Act of 1867 (or as the case may be)</u>	<u>Proposal</u>	<u>No. of Clause in Bill</u>
1	Leases and interests in land to have force of estates at will only unless in writing	2	Repeal of sections in both Acts and re-enactment	(cl. 1 (cl. 7
2	Excepting leases not exceeding three years	3	Repeal of sections in both Acts and re-enactment	(cl. 1 (cl. 5(2)(b); cl. 7(2)
3	Assignments, grants or surrenders of leases or freehold estates required to be by deed or note in writing	4	Repeal of sections in both Acts and re-enactment	(cl. 1 (cl. 5
4	Memorandum in writing required of certain promises and agreements	5	Repeal of sections in both Acts and partial re-enactment	(cl. 1 (cll. 3, 4
5	Devises and bequests of land to be in writing and attested	The Succession Acts, s. 39	Repeal of s. 5 of Act of 1867	cl. 1
6	Revocation of devises and wills, how effected	The Succession Acts, s. 52	Repeal of s. 5 of Act of 1867	cl. 1
7	Declarations of trusts of land to be proved by writing		Repeal and re-enactment	(cl. 1 (cl. 6(1)(b)

<u>Section No.</u>	<u>Subject-matter</u>	<u>Corresponding Section</u>	<u>Proposal</u>	<u>No. of Clause in Bill</u>
8	Proviso in favour of trusts by implication or construction of law	-	Repeal and re-enactment	(cl. 1 (cl. 6(2))
9	Assignment of interests in trusts	-	Repeal and re-enactment	(cl. 1 (cl. 6(1)(c))
10	Lands to be liable to judgments of cestui que trust	Obsolete (See now The Common Law Process Act, ss. 57, 61)	Repeal of s. 10 of Act of 1677	cl. 1
11	Proviso in favour of own estate of heir in respect of the above	Obsolete	Obsolete	cl. 1
12	Estates pur autre vie devisable, etc.	The Succession Acts, s. 36	Repeal of s. 12 of Act of 1677	cl. 1
13 14	Judgments not to date from first day of term on which signed and entered	Obsolete	Repeal of ss. 12, 13 of Act of 1677	cl. 1
15	Judgments to date from day on which signed and to bind lands of purchasers accordingly	Obsolete (cf. R. S. C. O. 44, rr. 2, 3; The Common Law Practice Acts, s. 45)	Repeal of s. 15 of Act of 1677	cl. 1
16	Writ of execution not to bind goods until delivery	The Sale of Goods Act, s. 28	Repeal of s. 16 of Act of 1677	cl. 1
17	Memorandum required of contract for sale of goods of £10 or upwards	The Sale of Goods Act, s. 7	Repeal of s. 7 of Sale of Goods Act	cl. 1
18	Recognizances not to bind land except from date of enrolment	Obsolete	Repeal of s. 18 of Act of 1677	cl. 1

<u>Section No.</u>	<u>Subject-matter</u>	<u>Corresponding section</u>	<u>Proposal</u>	<u>No. of Clause in Bill</u>
19	Nuncupative wills invalidated in certain cases	Obsolete (See now The Succession Acts, s. 39)	Repeal of s. 19 of Act of 1677	cl. 1
20	Nuncupative wills	Obsolete (See now The Succession Acts s. 39)	Repeal of s. 20 of Act of 1677	cl. 1
21	Probate of nuncupative wills	Obsolete	Repeal of s. 21 of Act of 1677	cl. 1
22	Revocation or alteration of wills of chattels, to be in writing and witnessed	The Succession Acts, s. 52	Repeal of s. 22 of Act of 1677	cl. 1
23	Soldiers' and seamen's wills	Obsolete (See now The Wills Act of 1940)	Repeal of s. 23 of Act of 1677	cl. 1
24	Jurisdiction in Probate of Court of Arches	Obsolete	Repeal of s. 24 of Act of 1677	cl. 1
25	Perpetuation of 1 Jac. 2, c. 17, s. 5 concerning intestate estates of married women	Obsolete (See now Succession Acts, Part III)	Repeal of s. 25 of Act of 1677	cl. 1

STATUTE OF FRAUDS AMENDMENT ACT, 1828

<u>Section No.</u>	<u>Subject-matter</u>	<u>Corresponding section</u>	<u>Proposal</u>	<u>No. of Clause in Bill</u>
1	Acknowledgements in actions of debt to bar running of time	The Limitations Act of 1960, s. 33	Repeal of s. 1 of Act of 1828	cl. 1
2	Pleas in abatement	Obsolete (See now R. S. C. O. 26, r. 20)	Repeal of s. 2 of Act of 1828	cl. 1
3	Effect upon running of time of indorsement of payment upon bill of exchange	11 Obsolete (See now The Limitations Act of 1960, ss. 28-30)	Repeal of sections of both Acts	cl. 1
4	Defence of set-off not available in respect of statute-barred debt	Obsolete (See now The Limitations Act of 1960, s. 33)	Repeal of s. 4 of Act of 1867	cl. 1
5	Affirmation in writing of infants promises on reaching majority	12	Repeal of sections of both Acts	cl. 1
6	Representations as to character or credit	13	Repeal of sections of both Acts	cl. 1
7	Application of s. 17 of Act of 1677 to executed contracts for sale of goods	-	Repeal	cl. 1
8	Certain memoranda exempt from Stamp Duty	Obsolete	Repeal	cl. 1
9	Act not to extend to Scotland	Inapplicable	Repeal	cl. 1
10	Act to take effect on 1 January, 1829		Repeal	cl. 1

STATUTE OF FRAUDS AND LIMITATIONS ACT OF 1867

<u>Section No.</u>	<u>Subject-matter</u>	<u>Corresponding section</u>	<u>Proposal</u>	<u>No. of Clause in Bill</u>
1	Australia deemed not beyond the seas	Obsolete (See now The Limitations Act of 1960)	Repeal of s. 1 of Act of 1867	cl. 1
2 - 5 (inclusive)	see above	see above	see above	see above
6	Consideration for guarantee need not appear in writing	see above	Repeal	
7	Revocation of continuing guarantee by partnership	Repealed by the Partnership Act; see s. 21		
8	Contracts for sale of goods of £10 or upwards	Repealed by the Sale of Goods Act; see s. 7	Repeal of s. 7 of Sale of Goods Act	cl. 1
9	Acknowledgements to bar time to be in writing or part payment required	Obsolete (See now The Limitations Act of 1960, ss. 28-30)	Repeal of s. 9 of Act of 1867	cl. 1
10	Extended to acknowledgements by agents	Obsolete (See now The Limitations Act of 1960, ss. 28-30)		
11 - 15 (inclusive)	see above	see above	see above	see above
16 - 29 (inclusive)	Limitations	Repealed by The Limitations Act of 1960		

APPENDIX B

29 Car. II, C. 3 - STATUTE OF FRAUDS, 1677

'For Prevention of many fraudulent Practices, which are commonly endeavoured to be upheld by Perjury and Subornation of Perjury;' (2) Be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the four and twentieth Day of June, which shall be in the Year of our Lord one thousand six hundred seventy and seven, all Leases, Estates, Interests of Freehold, or Terms of Years, or any uncertain Interest of, in, to or out of any Messuages, Manors, Lands, Tenements or Hereditaments, made or created by Livery and Seisin only, or by Parol, and not put in Writing, and signed by the Parties so making or creating the same, or their Agents thereunto lawfully authorized by Writing, shall have the Force and Effect of Leases or Estates at Will only, and shall not either in Law or Equity be deemed or taken to have any other or greater Force or Effect; any Consideration for making any such Parol Leases or Estates, or any former Law or Usage, to the contrary notwithstanding.

II. Except nevertheless all Leases not exceeding the Term of three Years from the making thereof, whereupon the Rent reserved to the Landlord, during such Term, shall amount unto two third Parts at the least of the full improved Value of the Thing demised.

III. And moreover, That no Leases, Estates or Interests, either of Freehold, or Terms of Years, or any uncertain Interest, not being Copyhold or customary Interest, of, in, to or out of any Messuages, Manors, Lands, Tenements or Hereditaments, shall at any Time after the said four and twentieth Day of June be assigned, granted or surrendered, unless it be by Deed or Note in Writing, signed by the Party so assigning, granting or surrendering the same, or their Agents thereunto lawfully authorized by Writing, or by Act and Operation of Law.

IV. And be it further enacted by the Authority aforesaid, That from and after the said four and twentieth Day of June no Action shall be brought whereby to charge any Executor or Administrator upon any special Promise, to answer Damages out of his own Estate; (2) or whereby to charge the Defendant upon any special Promise to answer for the Debt, Default or Miscarriages of another Person; (3) or to charge any Person upon any Agreement made upon Consideration of Marriage; (4) or upon any Contract or Sale of Lands, Tenements or Hereditaments, or any Interest in or concerning them; (5) or upon any Agreement that is not to be performed within the Space of one Year from the making thereof; (6) unless the Agreement upon which such Action shall be brought, or some Memorandum or Note thereof, shall be in Writing, and signed by the Party to be charged therewith, or some other Person thereunto by him lawfully authorized.

V. And be it further enacted by the Authority aforesaid, That from and after the said four and twentieth Day of June all Devises and Bequests of any Lands or Tenements, deviseable either by Force of the Statute of Wills, or by this Statute, or by Force of the Custom of Kent, or the Custom of any Borough, or any other particular Custom, shall be in Writing, and signed by the Party so devising the same, or by some other Person in his Presence and by his express Directions,

Statute of Frauds, 1677

and shall be attested and subscribed in the Presence of the said Devisor by three or four credible Witnesses, or else they shall be utterly void and of none Effect.

VI. And moreover, No Devise in Writing of Lands, Tenements or Hereditaments, nor any Clause thereof, shall at any Time after the said four and twentieth Day of June be revocable, otherwise than by some other Will or Codicil in Writing, or other Writing declaring the same, or by Burning, Cancelling, Tearing or Obliterating the same by the Testator himself, or in his Presence and by his Directions and Consent; (2) but all Devises and Bequests of Lands and Tenements shall remain and continue in Force, until the same be Burnt, Cancelled, Torn or Obliterated by the Testator, or his Directions, in Manner aforesaid, or unless the same be altered by some other Will or Codicil in Writing, or other Writing of the Devisor signed in the Presence of three or four Witnesses, declaring the same; any former Law or Usage to the contrary notwithstanding.

VII. And be it further enacted by the Authority aforesaid, That from and after the said four and twentieth Day of June all Declarations or Creations of Trusts or Confidences of any Lands, Tenements or Hereditaments, shall be manifested and proved by some Writing signed by the Party who is by Law enabled to declare such Trust, or by his last Will in Writing, or else they shall be utterly void and of none Effect.

VIII. Provided always, That where any Conveyance shall be made of any Lands or Tenements by which a Trust or Confidence shall or may arise or result by the Implication or Construction of Law, or be transferred or extinguished by an Act or Operration of Law, then and in every such Case such Trust or Confidence shall be of the like Force and Effect as the same would have been if this Statute had not been made; any Thing herein before contained to the contrary notwithstanding.

IX. And be it further enacted, That all Grants and Assignments of any Trust or Confidence shall likewise by in Writing, signed by the Party granting or assigning the same, or by such Last Will or Devise, or else shall likewise be utterly void and of none Effect.

X. And be it further enacted by the Authority aforesaid, That from and after the said four and twentieth Day of June it shall and may be lawful for every Sheriff or other Officer to whom any Writ or Precept is or shall be directed, at the Suit of any Person or Persons, of, for and upon any Judgment, Statute or Recognizance hereafter to be made or had, to do, make and deliver Execution unto the Party in that Behalf, suing, of all such Lands, Tenements, Rectories, Tithes, Rents and Hereditaments, as any other Person or Persons be in any manner of wise seised or possessed, or hereafter shall be seised or possessed, in Truth for him against whom Execution is so sued, like as the Sheriff or other Officer might or ought to have done, if the said Party against whom Execution hereafter shall be so sued, had been seised of such Lands, Tenements, Rectories, Tithes, Rents or other Hereditaments of such Estate as they be seised of in Truth for him at the Time of the said Execution sued; (2) which Lands, Tenements, Rectories, Tithes, Rents and other Hereditaments, by force and Virtue of such Execution, shall accordingly be held or enjoyed freed and discharged from all Incumbrances of such Person or Persons as shall be so seised or possessed in Trust for the Person against whom such Execution shall be sued; (3) and if any Cestuy que

Statute of Frauds, 1677

Trust hereafter shall die, leaving a Trust in Fee-simple to descend to his Heir, there and in every such Case such Trust shall be deemed and taken, and is hereby declared to be, Assets by Descent, and the Heir shall be liable to and chargeable with the Obligation of his Ancestors for and by reason of such Assets, as fully and amply as he might or ought to have been, if the Estate in Law had descended to him in Possession in like manner as the Trust descended; any Law, Custom, or Usage to the contrary in any wise notwithstanding.

XI. Provided always, That no Heir that shall become chargeable by reason of any Estate or Trust made Assets in his Hands by this Law, shall by reason of any kind of Plea or Confession of the Action, or suffering Judgment by Nient dedire, or any other Matter, be chargeable to pay the Condemnation out of his own Estate; (2) but Execution shall be sued of the whole Estate so made Assets in his Hands by Descent, in whose Hands soever it shall come after the Writ purchased, in the same Manner as it is to be at and by the Common Law, where the Heir at Law pleading a true Plea, Judgment is prayed against him thereupon; any Thing in this present Act contained to the contrary notwithstanding.

XII. And for the Amendment of the Law in the Particulars following; (2) Be it further enacted by the Authority aforesaid, That from henceforth any Estate pur auter vie shall be deviseable by a Will in Writing, signed by the Party so devising the same, or by some other Person in his Presence and by his express Directions, attested and subscribed in the Presence of the Devisor by three or more Witnesses; (3) and if no such Devise thereof be made, the same shall be chargeable in the Hands of the Heir, if it shall come to him by reason of a special Occupancy, or Assets by Descent, as in case of Lands in Fee-simple; (4) and in case there be no special Occupant thereof, it shall go to the Executors or Administrators of the Party that had the Estate thereof, by virtue of the Grant, and shall be Assets in their Hands.

'XIII. And whereas it hath been found mischievous, that Judgments in the King's Courts at Westmister do many times relate to the first Day of the Term whereof they are entred, or to the Day of the Return of the Original, or Filing the Bail, and bind the Defendants Lands from that Time, although in Truth they were acknowledged or suffered and signed in the Vacation-time after the said Term, whereby many Times Purchasers find themselves aggrieved.'

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

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

Statute of Frauds, 1677

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

XVII. And be it further enacted by the Authority aforesaid, That from and after the said four and twentieth Day of June no Contract for the Sale of any Goods, Wares and Merchandizes, for the Price of ten Pounds Sterling or upwards, shall be allowed to be good, except the Buyer shall accept Part of the Goods so sold, and actually receive the same, or give something in earnest to bind the Bargain, or in Part of Payment, or that some Note or Memorandum in Writing of the said Bargain be made and signed by the Parties to be charged by such Contract, or their Agents thereunto lawfully authorized.

XVIII. And be it further enacted by the Authority aforesaid, That the Day of the Month and Year of the Enrolment of the Recognizances shall be set down in the Margent of the Roll where the said Recognizances are enrolled; (2) and that from and after the said four and twentieth Day of June no Recognizance shall bind any Lands, Tenements or Hereditaments in the Hands of any Purchaser bona fide and for valuable Consideration, but from the Time of such Enrolment; any Law, Usage or Course of any Court to the contrary in any wise notwithstanding.

XIX. And for Prevention of fraudulent Practices in setting up Nuncupative Wills, which have been the Occasion of much Perjury; (2) Be it enacted by the Authority aforesaid, That from and after the aforesaid four and twentieth Day of June no Nuncupative Will shall be good, where the Estate thereby bequeathed shall exceed the Value of thirty Pounds, that is not proved by the Oaths of three Witnesses (at the least) that were present at the Making thereof; (3) 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; (4) nor unless such Nuncupative Will were made in the Time of the last Sickness of the Deceased, and in the House of his or her Habitation or Dwelling, or where he or she hath been resident for the Space of ten Days or more next before the making of such Will, except where such Person was surprized or taken sick, being from his own Home, and died before he returned to the Place of his or her Dwelling.

XX. And be it further enacted, That after six Months passed after the speaking of the pretended Testamentary Words, no Testimony shall be received to prove any Will Nuncupative, except the said Testimony, or the Substance thereof, were committed to Writing within six Days after the making of the said Will.

XXI. And be it further enacted, That no Letters Testamentary or Probate of any Nuncupative Will shall pass the Seal of any Court, till fourteen Days at the least after the Decease of the Testator be fully expired; (2) nor shall any Nuncupative Will be at any Time received to be proved, unless Process have first issued to call in the Widow,

Statute of Frauds, 1677

or next of Kindred to the Deceased, to the End they may contest the same, if they please.

XXII. And be it further enacted, That no Will in Writing concerning any Goods or Chattels, or Personal Estate, shall be repealed, nor shall any Clause, Devise or Bequest therein, be altered or changed by any Words, or Will by Word of Mouth only, except the same be in the Life of the Testator committed to Writing, and after the Writing thereof read unto the Testator, and allowed by him, and proved to be so done by three Witnesses at the least.

XXIII. Provided always, That notwithstanding this Act, any Soldier being in actual Military Service, or any Mariner or Seaman being at Sea, may dispose of his Moveables, Wages and Personal Estate, as he or they might have done before the making of this Act.

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

XXV. And for the explaining one Act of this present Parliament, intituled, An Act for the better settling of Intestates Estates; (2) Be it declared by the Authority aforesaid, That neither the said Act, nor any Thing therein contained, shall be construed to extend to the Estates of Feme Coverts that shall die intestate, but that their Husbands may demand and have Administration of their Rights, Credits, and other Personal Estates, and recover and enjoy the same, as they might have done before the making of the said Act.
(Made perpetual by I Jac. 2 c. 17).

APPENDIX C

9 Geo. IV, C. 14 - STATUTE OF FRAUDS AMENDMENT
ACT, 1828

An Act for rendering a written Memorandum necessary to the Validity of certain Promises and Engagements. (9th May 1828).

'WHEREAS by an Act passed in England in the Twenty-first Year of the Reign of King James the First, it was, among other Things, enacted, that all Actions of Account and upon the Case, other than such Accounts as concern the Trade of Merchandize between Merchant and Merchant, their Factors or Servants, all Actions of Debt grounded upon any Lending or Contract without Specialty, and all Actions of Debt for Arrearages of Rent, should be commenced within Three Years after the End of the then present Session of Parliament, or within Six Years next after the Cause of such Actions or Suit, and not after: And Whereas a similar Enactment is contained in an Act passed in Ireland in the Tenth Year of the Reign of King Charles the First: And Whereas various Questions have arisen in Actions founded on Simple Contract, as to the Proof and effect of Acknowledgments and Promises offered in Evidence for the Purpose of taking Cases out of the Operation of the said Enactments; and it is expedient to prevent such Questions, and to make Provision for giving effect to the said Enactments, and to the Intention thereof:' Be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That in Actions of Debt or upon the Case grounded upon any Simple Contract no Acknowledgment or Promise by Words only shall be deemed sufficient Evidence of a new or continuing Contract, whereby to take any Case out of the Operation of the said Enactments or either of them, or to deprive any Party of the Benefit thereof, unless such Acknowledgment or Promise shall be made or contained by or in some Writing to be signed by the Party chargeable thereby; and that where there shall be Two or more Joint Contractors, or Executors or Administrators of any Contractor, no such Joint Contractor, Executor, or Administrator shall lose the Benefit of the said Enactments or either of them, so as to be chargeable in respect or by reason only of any written Acknowledgment or Promise made and signed by any other or others of them: Provided always, that nothing herein contained shall alter or take away or lessen the Effect of any Payment of any Principal or Interest made by any Person whatsoever: Provided also, that in Actions to be commenced against Two or more such Joint Contractors, or Executors or Administrators, if it shall appear at the Trial or otherwise that the Plaintiff, though barred by either of the said recited Acts or this Act, as to One or more of such Joint Contractors, or Executors or Administrators, shall nevertheless be entitled to recover against any other or others of the Defendants, by virtue of a new Acknowledgment or Promise, or otherwise, Judgment may be given and Costs allowed for the Plaintiff as to such Defendant or Defendants against whom he shall recover, and for the other Defendant or Defendants against the Plaintiff.

II. And be it further enacted, That if any Defendant or Defendants in any Action on any Simple Contract shall plead any Matter in Abatement, to the Effect that any other Person or Persons ought to be jointly sued, and Issue be joined on such Plea, and it shall appear at

Statute of Frauds Amendment Act, 1828.

the Trial that the Action could not, by reason of the said recited Acts or this Act, or of either of them, be maintained against the other Person or Persons named in such Plea, or any of them, the Issue joined on such Plea shall be found against the Party pleading the same.

III. And be it further enacted, That no Indorsement or Memorandum of any Payment written or made after the Time appointed for this Act to take effect, upon any Promissory Note, Bill of Exchange, or other Writing, by or on the Behalf of the Party to whom such Payment shall be made, shall be deemed sufficient Proof of such Payment, so as to take the Case out of the Operation of either of the said Statutes.

IV. And be it further enacted, That the said recited Acts and this Act shall be deemed and taken to apply to the Case of any Debt on Simple Contract alleged by way of Set-off on the Part of any Defendant, either by Plea, Notice, or otherwise.

V. And be it further enacted, That no Action shall be maintained whereby to charge any Person upon any Promise made after full Age to pay any Debt contracted during Infancy, or upon any Ratification after full Age of any Promise or Simple Contract made during Infancy, unless such Promise or Ratification shall be made by some Writing signed by the Party to be charged therewith.

VI. And be it further enacted, That no Action shall be brought whereby to charge any Person upon or by reason of any Representation or Assurance made or given concerning or relating to the Character, Conduct, Credit, Ability, Trade or Dealings of any other Person, to the Intent or Purpose that such other Person may obtain Credit, Money, or Goods upon, unless such Representation or Assurance be made in Writing, signed by the Party to be charged therewith.

VII. And Whereas by an Act passed in England in the Twenty-ninth Year of the Reign of King Charles the Second, intituled An Act for the Prevention of Frauds and Perjuries, it is, among other Things, enacted, that from and after the Twenty-fourth Day of June One Thousand six hundred and seventy-seven, no Contract for the Sale of any Goods, Wares, and Merchandizes, for the Price of Ten Pounds Sterling or upwards, shall be allowed to be good, except the Buyer shall accept Part of the Goods so sold, and actually receive the same, or give something in earnest to bind the Bargain, or in part of Payment, or that some Note or Memorandum in Writing of the said Bargain be made and signed by the Parties to be charged by such Contract, or their Agents thereunto lawfully authorized : And whereas a similar Enactment is contained in an Act passed in Ireland in the Seventh Year of the Reign of King William the Third : And Whereas it has been held, that the said recited Enactments do not extend to certain Executory Contracts for the Sale of Goods, which nevertheless are within the Mischief thereby intended to be remedied; and it is expedient to extend the said Enactments to such Executory Contracts; Be it enacted, That the said Enactments shall extend to all Contracts for the Sale of Goods of the Value of Ten Pounds Sterling and upwards, notwithstanding the Goods may be intended to be delivered at some future Time, or may not at the Time of such Contract be actually made, procured, or provided, or fit or ready for Delivery, or some Act may be requisite for the making or completing thereof, or rendering the same fit for Delivery.

Statute of Frauds Amendment Act, 1828

VIII. And be it further enacted, That no Memorandum or other Writing made necessary by this Act shall be deemed to be an Agreement within the Meaning of any Statute relating to the Duties of Stamps.

IX. And be it further enacted, That nothing in this Act contained shall extend to Scotland.

X. And be it further enacted, That this Act shall commence and take effect on the First Day of January One thousand eight hundred and twenty-nine.

No. _____ of 1970

A Bill to Repeal the Statute of Frauds 1677, the Statute of Frauds Amendment Act 1828, the Statute of Frauds and Limitations of 1867, and section seven of The Sale of Goods Act of 1896.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:-

1. Short Title. (1) This Act may be cited as the Statute of Frauds 1970.

(2) Application of Act. This Act applies to any contract, promise, assurance or disposition made, or any interest created, after the commencement of this Act.

(3) Acts Repealed. The Acts mentioned in the Schedule to this Act (herein referred to as "the repealed Acts") are repealed to the extent indicated in the Schedule: Provided that:-

(a) the repeal by this Act of any of the repealed Acts shall not be taken to imply that such repealed Act applied or, but for the passing of this Act, would have applied in Queensland;

(b) the repeal by this Act of any of the repealed Acts shall not apply in relation to any contract, promise, ratification, assurance or disposition made, or any interest created, before the commencement of this Act.

(c) a reference in any other Act to any of the repealed Acts shall be construed as a reference to this Act.

(4) Abbreviations. The following abbreviations are used in the marginal notes to this Act: 1677 - Statute of Frauds 1677; Qld. 1867 - Statute of Frauds and Limitations of 1867; Eng. 1925 - Law of Property Act 1925; N. S. W. - Conveyancing Act 1919-1967.

N. S. W.
s. 7(1).

2. Definitions. In this Act, unless the context otherwise indicates, the following terms have the meanings respectively assigned to them, that is to say:-

"Assurance" includes a conveyance and a disposition made otherwise than by will; and "assure" has a corresponding meaning.

"Commonwealth" means Commonwealth of Australia, and "Commonwealth Act" means an Act passed by the Parliament of the Commonwealth and includes any Act amending or substituted for the same.

"Conveyance" includes any assignment, appointment, lease, settlement or other assurance.

"Disposition" includes a conveyance, vesting instrument, declaration of trust, disclaimer, release and every other assurance of property by any instrument except a will, and also a release, devise, bequest, or an appointment of property contained in a will; and "dispose" has a corresponding meaning.

"Land" includes tenements and hereditaments, corporeal and incorporeal, and every estate and interest therein whether vested or contingent, freehold or leasehold, and whether at law or in equity.

cf. 1677, s. 4;
Qld. 1867, s. 5;
Eng. 1925, s. 40.

3. Contracts for sale etc. of land to be in writing. No action may be brought upon any contract for the sale or other disposition of land or any interest in land unless the contract upon which such action is brought, or some memorandum or note thereof, is in writing, and signed by the party to be charged, or by some person thereunto by him lawfully authorised.

cf. 1677, s. 4;
Qld. 1867, s. 5.

4. Guarantees to be in writing. (1) No action may be brought upon any promise to guarantee any liability of another unless the promise upon which such action is brought, or some memorandum or note thereof, is in writing, and signed by the party to be charged, or by some other person thereunto by him lawfully authorised.

(2) A promise, or memorandum or note thereof, in writing shall not be treated as insufficient for the purpose of this section by reason only that the consideration for such promise does not appear in writing or by necessary inference from a written document.

cf. 1677, s. 3;
Qld. 1867, s. 4;
Eng. 1925, s. 52;
N. S. W.
s. 23B.

5. Assurances of land to be in writing. (1) No assurance of land shall be valid to pass an interest at law unless made by deed or in writing signed by the person making such assurance.

(2) This section does not apply to -

- (a) a disclaimer not required to be evidenced in writing;
- (b) a surrender by operation of law, and a surrender which may, by law, be effective without writing;
- (c) a lease or tenancy or other assurance not required by law to be made in writing;
- (d) a vesting order;
- (e) an assurance taking effect under any Act or Commonwealth Act.

cf. 1677, ss. 3,
7, 8, 9;
Qld. 1867, s.4;
Eng. 1925, s.53;
N.S.W. s.23C.

6. Instruments required to be in writing. (1) Subject to the provisions of this Act with respect to the creation of interests in land by parol -

- (a) no interest in land can be created or disposed of except by writing signed by the person creating or conveying the same, or by his agent thereunto lawfully authorised, in writing or by will, or by operation of law;
- (b) a declaration of trust respecting any land or any interest therein must be manifested and proved by some writing signed by some person who is able to declare such trust or by his will;
- (c) a disposition of an equitable interest or trust subsisting at the time of the disposition, must be manifested and proved by some writing signed by the person disposing of the same or by his will, or by his agent thereunto lawfully authorised in writing.

(2) This section does not affect the creation or operation of resulting, implied, or constructive trusts.

cf. 1677, ss.1,2;
Qld. 1867, ss.
2, 3;
Eng. 1925, s.54;
N.S.W. s.23D.

7. Creation of interests in land by parol. (1) All interests in land created by parol and not put in writing and signed by the person so creating the same, or by his agent thereunto lawfully authorised, shall have, notwithstanding any consideration having been given for the same, the force and effect of interests at will only.

(2) Nothing in this Act shall affect the creation by parol of a lease taking effect in possession for a term not exceeding three years, with or without a right for the lessee to extend the term for any period which with the term would not exceed three years.

8. Savings in regard to ss. 3, 5, 6 or 7. Nothing in sections 3, 5, 6 or 7 of this Act shall -

- (a) invalidate any disposition by will; or
 - (b) affect any interest validly created before the commencement of this Act; or
 - (c) affect the right to acquire an interest in land by virtue of taking possession; or
 - (d) affect the operation of the law relating to part performance; or
 - (e) affect a sale by the Court.
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THE SCHEDULE

Citation	Short Title	Extent of Repeal
29 Car.II, c. 3	Statute of Frauds 1677	The whole
9 Geo.IV, c.14	Statute of Frauds Amendment Act 1828	The whole
31 Vic., No. 22	Statute of Frauds and Limitations of 1867	The whole
60 Vic., No. 6	The Sale of Goods Act of 1896	Section seven

This Report was circulated to the following:-

1. The Attorney-General
2. The Hon. Sir William G. Mack
3. The Hon. Mr. Justice Sheehy
4. The Hon. Mr. Justice M. Hanger
5. The Hon. Mr. Justice C.G. Wanstall
6. The Hon. Mr. Justice N.S. Stable
7. The Hon. Mr. Justice G.L. Hart
8. The Hon. Mr. Justice G.A.G. Lucas
9. The Hon. Mr. Justice J.A. Douglas
10. The Hon. Mr. Justice M.B. Hoare
11. The Hon. Mr. Justice R.H. Matthews
12. The Hon. Mr. Justice J.P.G. Kneipp
13. The Hon. Mr. Justice R.W. Skerman
14. The Hon. Mr. Justice D.M. Campbell
15. Judge D.G. Andrews
16. Queensland Law Society Inc.
17. Bar Association of Queensland
18. University Law School
19. Under Secretary, Department of Justice
20. Under Secretary, Department of Lands
21. Under Secretary, Treasury Department
22. Solicitor General
23. Public Curator
24. Registrar of Titles
25. Parliamentary Draftsman
26. Queensland Trustees Ltd.
27. Union-Fidelity Trustee Co. of Australia Ltd.
28. Real Estate Institute of Queensland
29. The Hon. Mr. Justice H. T. Gibbs (Sydney)
30. The Law Commission, London
31. The Law Reform Commission, New South Wales
32. The Law Reform Committee, Western Australia
33. The Law Reform Committee, South Australia
34. Parliamentary Draftsman, Victoria.

Comments were received from the following:-

1. Public Curator
2. Queensland Trustees Ltd.
3. Real Estate Institute of Queensland
4. Land Administration Commission.
5. Queensland Law Society Inc.