parol will suffice to make a party a trustee, Nab v. Nab, 10 Mod. 404 (from which it seems, also, that an instrument, invalid as a will from some informality, may be good as a creation of trust); McFadden v. Jenkyns, 1 Hare, 461; S. C. 1 Phill. 147; Peckham v. Taylor, 31 Beav. 250; nor to shares in mining co-partnerships, where the shares are personalty, Forster v. Hale, 3 Ves. Jun. 696; S. C. 5 Ves. Jun. 308, which case is said in Smith v. Matthews, 30 L. J. Chan. 445, to lay down the reasonable, sound and just construction of this section, *vide infra*. So in Harris v. Alcock, 10 G. & J. 226, it was decided that it was no objection to the validity of a judgment confessed to one for the benefit of himself and other creditors of the defendant, that the trust did not appear on record; and so of money secured by mortgage, Benbow v. Townshend, 1 Myl. & K. 506.

Trusts only to be *evidenced* by writing.—It is well settled, however, that as this section does not provide that trusts shall be constituted by writing, it is enough if they be proved by some writing signed by the party creating them according to its terms. The principal case on the subject in Maryland is Maccubbin v. Cromwell, 7 G. & J. 157. There it is laid down, that the writing may be prior or subsequent in date to the original transaction,[102] and the trust may be manifested by an answer in Chancery, see Freeman v. Tatham, 5 Hare, 329, or by a letter, note, or memorandum in writing promising to execute the trust, by a bond to perform the trusts of a conveyance, though they be not stated in the bond, by a recital in a deed, or by any other written declaration that a purchase was made with trust-money, or with the money of another, or by any writing, though without seal or stamp, if it sufficiently indicate an intention that a trust should subsist; and the trust takes effect from the time of its creation, see also, Symons v. Rutter, 2 Vern. 228. And though the deed in that case was absolute, its object being explicitly admitted by the defendant in his answer (he denying only that he had accepted the trust), the trust was established, see Green v. Drummond, 31 Md. 71; Dorsey v. Clark, 4 H. & J. 551; Jones v. Slubey, 5 H. & J. 372; McElderry v. Shipley, 2 Md. 25; Albert v. Winn & Ross, 5 Md. 66; Hertle v. McDonald, 2 Md. Ch. Dec. 128; Barrow v. Greenough, 3 Ves. Jun. 152. It therefore follows, that a bill need not charge the trust to be in writing, at least it is not demurrable on that account, for the writing is no part of the trust, but only the evidence to prove it at the hearing, Davies v. Otty, 33 Beav. 540, affirmed on appeal, *ibid. n;* Forster v. Hale *supra*.

The writing must be signed by the party enabled by law to declare the trust, who is, in general, the grantor, when the paper is executed prior to or contemporaneously with the act of disposition. He is not, however, necessarily the owner of the legal estate, but the owner of the beneficial interest must declare the trust, Tierney v. Wood, 19 Beav. 330; Bridge v. Bridge, 16 Beav. 315.[103] But if an estate be given by *will, it **547** cannot be declared by a separate paper that the trusts of the land shall be

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[102] Gordon v. McCulloh, 66 Md. 245; Plummer v. Jarman, 44 Md. 632; Hill v. Hill, 38 Md. 185; Langley v. Jones, 33 Md. 180; Rochefoucauld v. Boustead, (1897) 1 Ch. 196.

[103] Kronheim v. Johnson, 7 Ch. D. 60.