

[No. 111.]

A N A C T

To abolish Imprisonment for debt, and to punish Fraudulent debtors.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same,* That from and after the passage of this act no person shall be arrested or imprisoned on any civil process issuing out of any court of this Commonwealth, in any suit or proceeding instituted for the recovery of any money due upon any judgment or decree founded upon contract, or due upon any contract, express or implied, or for the recovery of any damages for the non-performance of any contract, excepting in proceeding as for contempt, to enforce civil remedies, action for fines or penalties, or on promises to marry, on moneys collected by any public officer, or for any misconduct or neglect in office, or in any professional employment, in which cases the remedies shall remain as heretofore: *Provided*, That this section shall not extend to any person who shall not have resided in this State for twenty days previous to the commencement of a suit against him. Imprisonment abolished.

SECTION 2. In all cases where by the preceding provisions, of this act, a party to a suit cannot be arrested or imprisoned, it shall be lawful for the party who shall have commenced a suit, or obtained a judgment in any court of record, to apply to any judge of the court in which the suit shall have been brought for a warrant to arrest the party against whom the suit shall have been commenced, or the judgment shall have been obtained, whereupon the said judge shall require of the said party satisfactory evidence, either by the affidavit of the party making such application or some other person or persons, that there is a debt or demand due to the party making such application from the other party in the suit or judgment, in which affidavit the nature and amount of the indebtedness shall be set forth as near as may be. Warrant to issue.

SECTION 3. If the demand set forth in the affidavit, be such that the party could not, according to the provisions of this act,

be arrested, and if the affidavit shall establish to the satisfaction of the judge, one or more of the following particulars to wit:

Fraudulent removal of property. That the party is about to remove any of his property out of the jurisdiction of the court in which such suit is brought, with intent to defraud his creditors:

Concealment. Or, that he has property which he fraudulently conceals:

Or, that he has rights in action, or some interest in any public or corporate stock, money or evidence of debt, which he unjustly refuses to apply to the payment of any such judgment or judgments, which shall have been rendered against him, belonging to the complainant:

Or, that he has assigned, removed, or disposed of, or is about to dispose of, any of his property with the intent to defraud his creditors:

Or, that he fraudulently contracted the debt or incurred the obligation respecting which suit is brought.

It shall be the duty of the said judge to issue a warrant of arrest in the form following, to wit:

SECTION 4.

County, ss.

Form of warrant. The Commonwealth of Pennsylvania, to the sheriff or any constable of _____ county,

Greeting:

Whereas, complaint has this day been made before me, on the oath (or affirmation as the case may be) of (here insert the name of the party making the affidavit) setting forth (here briefly set forth the complaint.)

These are therefore to command you to arrest the said _____ and bring him (or them as the case may be) before me at my office in (here insert the residence of the judge,) without delay, to be dealt with according to law. And have you there also this precept.

Witness my hand at _____ this day of _____

_____, Judge.

Which warrant shall be accompanied by a copy of all affidavits presented to the judge, upon which the warrant is issued, which shall be certified by such judge, and shall be delivered to the party at the time of serving the warrant by the officer serving the same.

Duty of officer.

SECTION 5. The officer to whom such warrant shall be delivered, shall execute the same by arresting the person or persons therein named, and bringing him or them before the judge issuing the warrant, and shall keep him in custody until he shall be duly discharged or committed as hereinafter provided.

Appearance.

SECTION 6. On the appearance of the person so arrested, before the judge, he may controvert any of the facts and cir-

cumstances, on which such warrant issued, and may at his option verify his allegations by his affidavit, and in case of his so verifying the same, the complainant may examine him on oath, touching any fact or circumstance material to the inquiry and the answers on such examination shall be reduced to writing, and subscribed by him and the officer conducting such inquiry shall also receive such other proof as the parties may offer, either at the time of such first appearance or at such other times as such hearing shall be adjourned to, and in case of an adjournment the judge may take a bond with or without surety for the appearance of the party arrested at the adjourned hearing.

SECTION 7. The judge conducting such inquiry shall have Powers of the same powers to issue subpoena to enforce the attendance judge. of witnesses and to punish witnesses refusing to testify as is vested in the court of which he is a judge.

SECTION 8. If such judge is satisfied that the allegations of the complainant are substantiated, and that the party arrested has done, or is about to do any one of the acts specified in the third section of this act, he shall issue a commitment Commitment. under his hand, reciting the facts of the case, and directing that such party be committed to the jail of the county in which such hearing is had, to be there detained until he shall be discharged by law, and such party shall be committed and detained accordingly.

SECTION 9. Such commitment shall not be granted if the Commitment defendant shall pay the debt or demand claimed with cost of restricted. suit, and of the proceedings against him, or give security to the satisfaction of the judge before whom the hearing shall be had, that the debt or demand, with the costs of the suit and proceedings against him shall be paid with interest, within sixty days, if the demand be in judgment, and the length of time for stay of execution given by law on debts of like amount has expired, and if the said length of time has not elapsed then, that the same shall be paid at the expiration of that time, if that shall be sixty days distant from the time of giving said surety, and if not then, that the same shall be paid within sixty days from the time of giving the same. If the demand be not in judgment at the time of giving said surety, the day of payment shall be regulated by the same rule, but in no case shall the party be required to give surety for the payment of the debt before the recovering of judgment.

SECTION 10. Such commitment shall not be granted if the party arrested shall give bond to the complainant in a penalty of not less than twice the amount of the debt, or demand claimed with such sureties as shall be approved by such judge, conditioned that he will not remove any property which he then has, out of the jurisdiction of the court in which suit is brought, with the intent to defraud any of his creditors, and restrictions continued.

that he will not assign, sell, convey, or dispose of any of his property with such intent, or with a view to give a preference to any creditor for any debt, antecedent to such assignment, sale, conveyance, or disposition, until the demand of the complainant, with costs, shall be satisfied, or until thirty days after final judgment shall be rendered in the suit brought for the recovery of such demand: *Provided however*, That this section shall apply only to cases where the only fraudulent design established against the party arrested is, that he is about to remove any of his property out of the jurisdiction of the court in which such suit is brought with intent to defraud his creditors.

Further
restrictions.

SECTION 11. Such commitment shall not be granted if the person arrested shall enter into a bond to the complainant in the penalty and with the securities prescribed in the preceding section, conditioned that he will, within thirty days apply by petition, to the court of common pleas of the county, or to a judge thereof, if the court shall not within that time be in session, for the benefit of the insolvent laws of this Commonwealth, and that he will comply with all the requisitions of the said law, and abide all orders of the said court in that behalf, or in default thereof, and if he fail in obtaining his discharge as an insolvent debtor, that he shall, on the day of his so failing, surrender himself to the jail of said county.

Custody of
defendant.

SECTION 12. Any defendant committed agreeably to the eighth section of this act, shall remain in custody until a final judgment shall have been rendered in his favour in the suit prosecuted by the creditor, at whose instance he shall have been committed, or until he shall have assigned his property and obtained his discharge as provided in the subsequent sections of this act, but such person may at any time be discharged by any judge of the county, on his paying the debt or demand claimed, and costs, or by giving the security for the payment thereof, as provided in the ninth section of this act, or on his executing either of the bonds mentioned in the tenth and eleventh sections of this act.

Petition, as-
signment and
benefit of this
act.

SECTION 13. Any person committed as above provided, or who shall have given the bond specified in the eleventh section of this act, or against whom any suit shall have been commenced in a court of record, in which such person, by the provisions of this act, cannot be arrested or imprisoned, may present a petition to the court of common pleas of the county in which he shall be imprisoned, or in which the said suit is pending, or to the judge thereof, praying that he may assign his property and have the benefit of the provisions of this act.

SECTION 14. The petition aforesaid shall set forth all the Requirements matters required to be set forth by the ninth section of the act to claim bene- of the sixteenth day of June, one thousand eight hundred and fit of this act. thirty-six, entitled "an act relating to insolvent debtors," and

shall be verified in like manner. Upon the presentation of the said petition the court or judge shall fix a time for the hearing of the same, which shall be during the next session of the court of common pleas: *Provided*, Thirty days shall intervene between the presentation of the petition and the time for hearing the same, and the petitioner and his creditors shall be heard before the judges of the court of common pleas, unless the said court shall make an order that a single judge shall hear the case and decide it, in which case the judge shall have all the powers herein conferred upon the court.

SECTION 15. The court or judge shall proceed agreeably Procedure of
court or judge to the provisions of the aforesaid act of the sixteenth day of June, one thousand eight hundred and thirty-six, in causing notice to be given to the creditors of the petitioner, in deciding upon his case, in making orders, in permitting an assignment to be made by said petitioner, in the oath to be administered to him, and in all proceedings thereafter touching his property, and shall have the same power over the trustees to whom an assignment shall be made as is therein specified.

SECTION 16. The trustees of any debtor, to whom an as- Trustee's signment shall be made under this act, shall have the same powers. powers, shall be liable to the same duties, and shall proceed in the same manner in all respects, to discharge the same as is given, imposed upon, and required of the trustees under the aforesaid act, and the rights of creditors and their remedies, shall be the same as under the said act, and the effect of a discharge of the petitioner by the said court shall be the same as under the said act so far as regards both his person and property, and all rights and remedies given by the said act, and all proceedings, both civil and criminal thereby authorized, may be had the same as if they were herein fully enacted at length, so far as the same can be applied to the case of a debtor upon a contract only.

SECTION 17. Any person who shall be imprisoned on civil process at the time of this act taking effect as a law, in a case where, by the preceding provisions of this act, such per- Notice of in-
tention to ap-
ply for dis-
charge from
confinement. son could not be arrested or imprisoned, may give ten days notice in writing to the plaintiff, his agent or attorney, of his intention to apply to a judge of the court of common pleas of the county in which he is imprisoned for a discharge from confinement. Upon proof of such notice having been given, it shall be the duty of any judge of said court to issue a writ of habeas corpus to the officer having such person in custody to bring him before the said judge at a time and place to be named, not less than two nor more than six days thereafter. If the plaintiff, or his agent, or attorney, shall not have filed with said judge an affidavit setting forth such facts as are required by section third of this act in order to obtain a warrant of arrest and the case be such an one that the party, by the

preceding provisions of this act, could not be imprisoned, it shall be the duty of the said judge to make an order discharging the party from imprisonment, but if such affidavit shall have been filed and the judge on hearing the case shall be satisfied that the imprisoned party, if at liberty, would be liable to an arrest under the provisions of this act, then and in that case the judge shall proceed in the same manner as if the party had been brought before him upon such warrant of arrest as hereinbefore provided.

Fees and
costs.

SECTION 18. When a complaint shall be made and a warrant of arrest issued, or upon a hearing under the seventeenth section of this act, and the complaint shall be dismissed, the party making the same shall be liable for all fees to officers and for all costs which the party arrested shall have incurred, and the fees of the officers shall be the same as for similar services in other cases. Witnesses shall receive the same fees as are allowed before justices of the peace, but if the complaint shall be sustained, the party making the same, shall recover the costs of the party arrested, upon the same being taxed or allowed by the proper officer, and shall be recovered with the other costs in the suit.

Forfeiture of
bond.

SECTION 19. Whenever any bond given under the preceding sections of this act shall become forfeited by the non-performance of the condition thereof, the obligee shall be entitled to recover thereon the amount due to him on the judgment, with costs obtained in the original suit.

Penalty for
secreted or
removing
property.

SECTION 20. Any person who shall remove any of his property out of any county with intent to prevent the same from being levied upon by any execution, or who shall secrete, assign, convey, or otherwise dispose of any of his property with intent to defraud any creditor, or to prevent such property being made liable for the payment of his debts, and any person who shall receive such property with such intent, or who shall, with like intent, collude with any debtor for the concealment of any part of his estate or effects, or for giving a false colour thereto, or shall conceal any grant, sale, lease, bond, or other instrument or proceeding, either in writing or by parole, or shall become a grantee, purchaser, lessee, obligee, or other like party in any such instrument or proceeding, with the like fraudulent intent, or shall act as broker, scrivener, agent or witness in regard to such instrument or proceeding, with the like intent, such person or persons on conviction thereof in the court of quarter sessions of the proper county shall be deemed guilty of misdemeanor, and shall forfeit and pay a sum not exceeding the value of the property or effects, so secreted, assigned, conveyed, or otherwise disposed of, or concealed, or in respect to which such collusion shall have taken place, and shall suffer imprisonment not exceeding one year.

SECTION 21. Every person who, with intent to cheat or defraud another, shall designedly, by colour of any false token, or writing, or by any false pretence whatsoever, obtain from any person any money, personal property, or other valuable things, upon conviction thereof, shall be imprisoned in the penitentiary, or in the county jail, at the discretion of the court before whom he shall be tried, not exceeding one year, or by fine not exceeding three times the value of the money or property, or other thing so obtained, or by both such fine and imprisonment. Penalty for fraud.

SECTION 22. No person shall be excused from answering any bill seeking a discovery in relation to any fraud prohibited by this act, or from answering as a witness in relation to any such fraud, but no such answer shall be used in evidence in any other suit or prosecution. Answering bill seeking a recovery.

SECTION 23. No execution issued on any judgment rendered by any alderman or justice of the peace, upon any demand arising upon contract, express or implied shall contain a clause authorizing an arrest or imprisonment of the person against whom the same shall issue, unless it shall be proved by the affidavit of the person in whose favour such execution shall issue, or that of some other person, to the satisfaction of the alderman or justice of the peace, either that such judgment was for the recovery of money collected by any public officer, or for official misconduct. Clause of commitment in executions abolished.

SECTION 24. No capias or warrant of arrest shall issue against any defendant in any case in which, by the provisions of the preceding section an execution on the judgment recovered, could not be issued against the body, and whenever a capias or warrant of arrest in such case shall issue the like affidavit, shall be required as for the issuing of an execution by the provisions of said section. Capias or warrant prohibited in certain cases.

SECTION 25. Whenever a plaintiff shall reside out of this Commonwealth, he may, upon giving bond, with sufficient surety, for the payment of all costs which he may become liable to pay, in the event of his failing to recover judgment against the defendant, have a capias or warrant of arrest, if he shall be entitled to such writ, on making the affidavit required in the twenty-third section of this act, or a summons, which may be made returnable not less than two nor more than four days from the date thereof, which shall be served at least two days before the time of appearance mentioned therein, and if the same shall be returned, personally served, the justice or alderman issuing the same may proceed to hear and determine the case in the manner heretofore allowed by law. Remedy for plaintiffs residing out of the state.

SECTION 26. Whenever, by the provisions of the twenty-fourth section of this act, no capias can issue, and the defendant shall reside out of the county, he shall be proceeded against by summons or attachment returnable not less than two nor Process against defendants out of the county.

more than four days from the date thereof, which shall be served at least two days before the time of appearance mentioned therein.

Attachment,
duties of
aldermen and
justices of the
peace.

Proviso.

SECTION 27. It shall be the duty of any alderman or justice of the peace, to issue an attachment against any defendant, on the application of the plaintiff in any case where- by the provisions of this act, no *capias* can issue upon proof, by the affidavit of the plaintiff or some other person or persons to the satisfaction of the alderman or justice, that the defendant is about to remove from the county any of his property with intent to defraud his creditors, or has assigned, disposed of, or secreted, or is about to assign, dispose of, or secrete, any of his property with the like fraudulent intent, which affidavit shall also specify the amount of the plaintiff's claim, or the balance thereof, over and above all discounts which the defendant may have against him, *Provided*, That before such attachment shall issue, the plaintiff or some one in his behalf shall execute a bond in the penalty of at least double the amount of the claim, with good and sufficient securities conditioned that in case the plaintiff shall fail to recover a judgment of at least one half the amount of his claim, he shall pay to the defendant his damages for the wrongful taking of any property over and above an amount sufficient to satisfy the judgment and costs, and that if the plaintiff shall fail in his action, he shall pay to the defendant his legal costs and all damages which he may sustain by reason of said attachment.

Return of at-
tachment.

SECTION 28. Every such attachment shall be made returnable not less than two, nor more than four days from the date thereof, and shall be served by the constable to whom the same shall be directed; by attaching so much of the defendant's property, not exempt by law from sale upon execution as will, be sufficient to pay the debt demanded, and by delivering to him a copy of the said attachment, and an inventory of the property attached, if he can be found in the county, and if not so to be found, then by leaving a copy of the same at his place of residence with some adult member of his family, or the family where he shall reside, or if he be a non-resident of the county, and cannot be found, then by leaving a copy of said attachment and inventory with the person in whose possession the said property may be.

Constable's
return.

SECTION 29. The constable shall state specifically in his return the manner in which he shall have served such attachment, and it shall be his duty to take the property attached into his possession unless the defendant or some other person for him, shall enter into a bond with sufficient surety in the penalty of double the amount of the claim, conditioned that in the event of the plaintiff recovering judgment against him, he will pay the debt and costs, at the expiration of the

stay of execution given by law to freeholders, or that he will surrender up the property attached, to any officer having an execution against him, on any judgment recorded in such attachment.

SECTION 30. If such attachment shall be returned personally served upon the defendant, at least two days before the return day thereof, the alderman or justice shall, on the return day proceed to hear and determine the same, in the same manner as upon a summons returned personally served. But if the same shall not have been so served, the alderman or justice shall issue a summons against the defendant, returnable as summonses issued by justices of the peace are now by law returnable, and if the said summons shall be returned personally served, or by leaving a copy at the residence of the defendant, or that the defendant, after diligent inquiry, cannot be found in the county, then, in either case, the alderman or justice of the peace shall proceed to hear and determine the cause, in the same manner as upon a summons personally served.

Proceedings on return of personal service.

SECTION 31. Any defendant against whom a judgment shall have been rendered in any case where the attachment or summons shall not have been personally served, may, within thirty days after the rendition of the same, apply to the alderman or justice rendering the same, for a hearing of the matter, and if he, or some other person, knowing the facts, shall, for him, make an affidavit setting forth that he has a just defence to the whole or part of the plaintiff's demand, it shall be the duty of the alderman or justice to open the judgment, and give notice to the plaintiff of the time when he will hear the parties, which time shall be not less than four, nor more than eight days distant. On the said hearing the justice shall proceed in the manner directed in the thirtieth section of this act.

Proceedings to final judgment in certain cases.

SECTION 32. A judgment obtained before any alderman or justice, in any suit commenced by attachment, when the defendant shall not be personally served with the attachment or summons, and shall not appear, shall be only presumptive evidence of indebtedness in any scire facias that may be brought thereon, and may be disproved by the defendant, and no execution issued upon such judgment shall be levied, upon any other property, than such as was seized under the attachment, nor shall any defendant in such case be barred of any set-off which he may have against the plaintiff.

Judgment by default only presumptive evidence of debt in certain cases.

SECTION 33. A defendant against whose body, by the provisions of this act, an execution cannot be issued by an alderman or justice of the peace, shall be required, in order to obtain an appeal, stay of execution or adjournment, to give a bond or recognizance in the nature of special bail, conditioned that

Special bail in certain cases.

no part of the property of the defendant which is liable to be taken in execution, shall be removed, secreted, assigned, or in any way disposed of, except for the necessary support of himself and family, until the plaintiff's demand shall be satisfied, or until the expiration of ten days after such plaintiff, shall be entitled to have an execution issued on the judgment, obtained in such cause, if he shall obtain such judgment; and if the condition of such bond or recognizance be broken, and an execution on such judgment be returned unsatisfied in whole or in part, the plaintiff in an action on such bond or recognizance, shall be entitled to recover the value of the property so removed, secreted or assigned.

Construction
of act.

SECTION 34. This act shall not be construed to extend the jurisdiction of justices of the peace and aldermen to demands above one hundred dollars, and the same right which is given to the parties respectively, to appeal from the decision of an alderman or justice of the peace, by the act of the twentieth day of March, one thousand eight hundred and ten, relating to the proceedings of justices of the peace, is hereby given to the parties respectively, in proceedings upon summons or attachments issued by aldermen or justices of the peace under this act. And all and singular the provisions of the said act, and its several supplements not hereby expressly repealed, and not inconsistent with the provisions of this act, are hereby declared to be in full force, and to apply to the provisions of this act, so far as the same relates to proceedings before aldermen or justices of the peace, and to the powers of the courts of record over the proceedings of justices of the peace.

Defendant not
to sell property
after execution
of bond.

SECTION 35. After the defendant in any case shall have executed the bond required by the eleventh section of this act, he shall not sell, assign or dispose of any part of his property which is not exempt by law from execution except so far as may be necessary for the support of himself and family, until he shall be discharged. And if proof shall be made on the hearing before the judge, or the court, that the applicant has so sold, assigned or disposed of his property, it shall be the duty of said judge or of the court to refuse to make the order directed by the aforesaid act of the sixteenth day of June, one thousand eight hundred and thirty-six.

Duty of
Secretary of
Commonwealth.

SECTION 36. After the passage of this act the secretary of the commonwealth shall immediately cause a sufficient number of copies of this act, to be printed by the printers of the bills of the House of Representatives, to supply every judge, sheriff, prothonotary, alderman and justice of the peace in the state, with a copy, which shall be by him transmitted to the prothonotaries of the different counties, and by them distributed to the officers entitled thereto, the expense of which printing

and transmission, shall be paid in the manner provided by law for the printing of the laws.

SECTION 37. So much of any act as is hereby altered or supplied is hereby repealed. Repealing
clause.

JAMES ROSS SNOWDEN,
Speaker of the House of Representatives.

JOHN STROHM,
Speaker of the Senate.

APPROVED—The twelfth day of July, one thousand eight hundred and forty-two.

DAVID R. PORTER.

[No. 112.]

A N A C T

To annul the Marriage contract of Emily Albro and William Albro, of the county of Luzerne.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same,* That the marriage contract entered into between Emily Albro and William Albro, of the county of Luzerne, be and the same is hereby annulled and made void, and the parties released and discharged from the said contract, and from all legal duties and obligations arising therefrom, as fully, effectually and absolutely as if they had never been joined in marriage. Contract an-
nulled

JAMES ROSS SNOWDEN,
Speaker of the House of Representatives.

JOHN STROHM,
Speaker of the Senate

We do certify that the bill entitled "An act to annul the marriage contract between Emily Albro and William Albro, of the county of Luzerne, was presented to the Governor on the twenty-ninth day of June, one thousand eight hundred and forty-two, and was not returned within ten days (Sundays excepted) after it had been presented to him; wherefore, it