

No. 344.

AN ACT

Relative to lien creditors becoming purchasers at judicial sales, and for other purposes.

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, whenever the purchaser or purchasers of real estate, at orphans' court or sheriff's sale, shall appear from the proper record to be entitled, as a lien creditor, to receive the whole, or any portion of the proceeds of said sale, it shall be the duty of the sheriff, administrator, executor, or other person making such sale, to receive the receipt of such purchaser or purchasers, for the amount which he or they would appear, from the record as aforesaid, to be entitled to receive: *Provided,* That this section shall not be so construed as to prevent the right of said sheriff, administrator, executor, or other person aforesaid, to demand and receive, at the time of sale, a sum sufficient to cover all legal costs entitled to be paid out of the proceeds of said sale: *And provided further,* That before any purchaser or purchasers shall receive the benefit of this section, he or they shall produce to the sheriff, or other person so making said sale, a duly certified statement from the proper records, under the hand and official seal of the proper officer, showing that he is a lien creditor, entitled to receive any part of the proceeds of sale, as aforesaid.

Sheriff or other person to take receipt of lien creditor on his purchasing real estate.

Proviso.

Proviso.

SECTION 2. It shall be the duty of the said sheriff, executor, administrator, or other person making sale as aforesaid, in all cases when he or they shall receive the receipt of the purchaser as aforesaid, to state the fact in the return of the proceedings of said sale, and attach thereto a list of the liens upon the property sold, which said return shall be read in open court, on some day during the term, to be fixed by the order of court; and if the right of said purchaser or purchasers, to the money mentioned in said return, shall be questioned or disputed by any person interested, the court shall, thereupon, appoint an auditor, who, after due notice given to the persons interested, in such manner as the court may direct, shall make a report, distributing the proceeds of such sale, with the facts and reasons upon which such distribution is made, to be approved by the court; or to direct an issue to determine the validity of said lien, and all further proceedings shall be stayed, until the said issue shall be decided; and in case it shall be determined that the said purchaser or purchasers were not entitled to receive said money, it shall be the duty of the proper court to set aside the sale, and direct the real estate to be resold, unless the money is paid to the sheriff, or other person making the sale, within ten days thereafter: *Provided,* That nothing in this act shall be so construed as to prevent the purchaser or purchasers, in case the said real estate, upon the second or subsequent sale, does not bring a sum equal to the amount bid by him or them, from being liable for such deficiency: *Provided,* That before an issue shall be directed upon the distribution of money arising from sales under execution, or orphans' court sales, the applicant for such issue shall make affidavit that there are material facts in dispute

Duty of sheriff or other person, in making return of sale.

Court may appoint an auditor or direct an issue.

Proviso.

Proviso.

therein, and shall set forth the nature and character thereof; upon which affidavit the court shall determine whether such issue shall be granted, subject to a writ of error or appeal by such applicant, if the issue be refused, in like manner, as in other cases, in which such writ now lies.

Court may direct moneys to be invested. SECTION 3. Upon granting any such issue, it shall be discretionary with the court, so soon as the money arising from such sale shall have been paid into court, upon the application of the party or parties appearing, by the record *prima facie*, entitled to the said fund, to order the same to be invested *pendente lite*, in the debt of the United States, or some other sufficient security, subject to the decree of the court.

Sales of sheriffs and coroners—certain acts extended to. SECTION 4. That the provisions of the first section of the act of April sixteenth, eighteen hundred and forty-five, entitled “An act concerning sheriffs’ and coroners’ sales, and for other purposes,” be and the same is hereby extended to all sales made by any sheriff or coroner, and for which deeds have been acknowledged, prior to the passage of this act, so far as to correct the error in making such sales, after the expiration of six days subsequently to the return day of the execution.

Additional powers conferred on courts of common pleas of 16th and 17th judicial districts. SECTION 5. That the several courts of common pleas of the sixteenth and seventeenth judicial districts of this commonwealth, shall have the same powers to make general rules and orders, as are given to the district court for the city and county of Philadelphia, by the act of the eleventh of March, one thousand eight hundred and thirty-six, entitled “A supplement to the act, entitled ‘An act to establish the district court for the city and county of Philadelphia,’ the twenty-eighth day of March, one thousand eight hundred and thirty-five.”

Actions of trespass regulated. SECTION 6. In all actions of trespass *quare clausum fregit* now pending, or which may hereafter be brought, in which, upon the trial of the cause, the value of any goods or property taken, and damages for such taking and detention, only shall be claimed, if the legal right to such goods or property shall be found to be in the plaintiff or plaintiffs, he or they shall be entitled to recover the value of such goods and property, and damages, aforesaid, in the same manner, as in actions of trespass, for taking goods and chattels without regard to the form of action, and notwithstanding the plaintiff may not have had the possession or title or claim to the land, in which the trespass is by the writ and declaration supposed to have been done.

FINDLEY PATTERSON,

Speaker of the House of Representatives.

DANIEL L. SHERWOOD,

Speaker of the Senate.

APPROVED—The twentieth day of April, one thousand eight hundred and forty-six.

FRS. R. SHUNK.