

1802.

## CHAPTER MMCCXCIII.

*An ACT authorizing the sale of Provisions, Vegetables and Fruit, in the markets of any city, borough or corporate town within this commonwealth.*

SECT. I. *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 passing of this act, it shall and may be lawful for any person or persons, to sell or expose to sale, provisions, vegetables or fruit, in the markets of any city, borough, or corporate town within this commonwealth: Provided always, That such provisions, vegetables or fruit, shall not have been previously purchased within the limits of such city, borough, or corporate town; any law to the contrary notwithstanding.*

Passed 6th April, 1802.—Recorded in Law Book No. VIII. page 181.

## CHAPTER MMCCXCIV.

*An ACT to enable purchasers at Sheriffs' or Coroners' sales to obtain possession.*

WHEREAS, great inconveniences have been experienced from the unjust detention of lands and tenements sold by sheriffs under executions from the several courts of this commonwealth, the purchasers whereof have been obliged to bring ejectments, and to subject themselves to all the delays and expenses incident to law proceedings, to recover the possession from the person as whose property the same was originally sold, the desperate circumstances of whom usually preclude the possibility of obtaining damages or any other compensation whatever, for such unjust detention: For remedy whereof,

SECT. I. *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 where any lands or tenements shall hereafter be sold by the sheriff or coroner of any county, by virtue of any execution issued out of any court of record of this commonwealth, it shall be lawful for the purchaser or purchasers thereof, to give notice to the defendant or defendants, as whose property the same has been or may be sold, or to the person or persons being in possession of the same lands and tenements, under him or them, that the same premises have been sold, and to require him or them to surrender up the possession to the purchaser or purchasers thereof, within three months after the date of such notice: and if the defendant or defendants, or person or persons in possession under him or them, shall neglect or refuse to comply therewith in three months after such notice shall so as aforesaid have been given, it shall and may be lawful to and for such purchaser or purchasers, his or their heirs or assigns, to complain thereof to any two justices of the city, town or county where the premises are situate, and upon due proof made before*

Any person may expose to sale provisions, &c. in the market of any city or corporate town, which shall not have been previously purchased within the same.

[See chap. 645, vol. I, pa. 370, and the notes thereto; and chap. 48, and 152, ib, pa. 7, 57, and the notes thereto.]

The purchaser of lands, &c. at sheriff's sale to give notice thereof to the defendant or person in possession, requiring him to surrender up the same, and manner of proceeding to gain the possession where it is withheld for 3 months after such notice.

the said justices, that the said complainant or complainants had purchased the said lands or tenements at sheriff's or coroner's sale (of which the deed poll executed by the said sheriff or coroner, if duly acknowledged in the proper court, and certified under the seal of the same court, shall be conclusive evidence) and that the person or persons then in possession, is or are the defendant or defendants as whose property the same lands or tenements were sold, or came into possession thereof under him or them, and that the same person or persons so in possession, had notice of such sale three months previous to such complaint and application; then and in such case, it shall and may be lawful for the said justices to whom complaint shall be made as aforesaid, and they are hereby enjoined and required forthwith to issue their warrant, in nature of a summons, directed to the sheriff of the county, thereby commanding the said sheriff to summon a jury of twelve good and lawful men of his bailiwick, to appear before the said justices within four days next after issuing thereof, and also to summon the said defendant or defendants, as whose property the same premises were sold, or the person or persons in possession under him or them, at the same time to appear before them the said justices and the jury aforesaid, to shew cause, if any he or they has or have, why delivery of the possession of the same lands and tenements should not be forthwith made to such purchaser or purchasers, his or their heirs or assigns, and if upon hearing the parties, or in case of the non-appearance of the said defendant or defendants; as whose property the same premises had been sold, or other person or persons claiming or coming into possession under him or them, after being duly summoned as aforesaid, it shall appear to the said justices and jury, that the complainant or complainants, or the person or persons under whom they claim, was or were the purchaser or purchasers, at sheriff's or coroner's sale, of the lands and tenements in question, of which the sheriff's or coroner's deed-poll, duly acknowledged and certified under the seal of the proper court, shall, as aforesaid, be full and conclusive evidence, and that the person or persons in possession of the premises, was or were the defendant or defendants named in the execution under which the same premises were sold, or came into possession under such defendant or defendants, and that such defendant or defendants, or the person or persons in possession of the premises under him or them, had notice of such sale three months before such application to the said justices, then and in every such case, it shall and may be lawful for the said two justices to make a record of such finding by them the said justices and jury aforesaid, and the said jury shall assess such damages as they think right, against the said defendant or defendants, as whose property the same premises were sold, or other person or persons in possession under him or them, for the unjust detention of the premises, for which damages and reasonable costs, judgment shall be entered by the said justices, which judgment shall be final and conclusive to the parties, and upon which the said justices shall, and they are hereby enjoined and required to issue their warrant, under their hands and seals, directed to the sheriff of the county, commanding him forthwith to deliver to the said complainant or complainants, his or their heirs or assigns,

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The mode of proceeding where the person in possession disclaims to hold under the defendant named in the execution by virtue whereof the sale was made.

SECT. II. *And be it further enacted by the authority aforesaid,* That if the person in possession of the premises shall make oath or affirmation before the said justices, that he hath not come into possession, and doth not claim to hold the same by, from, or under the defendant or defendants named in the execution by virtue whereof the same lands or tenements were sold, and that the title to the lands and tenements in question, is disputed and claimed by some person or persons (other than the defendant or defendants named in the execution under which the same were sold) whom he shall name, and if thereupon the person or persons so claiming, shall forthwith, or upon a summons immediately to be issued by the said justices, returnable within a reasonable time, not exceeding thirty days next following, appear before them, and on oath or affirmation, to be by the said justices administered, declare that he verily believes that he is legally entitled to the premises in dispute, and that he doth not claim the same by, from, or under the defendant or defendants as whose property the same were sold, but by a different title, and shall become bound, with one or more sufficient sureties, by recognizance, to the complainant or complainants, before the said justices, in a sum fully sufficient to cover and secure as well the value of the rents or mesne profits of the said lands or tenements, which may have accrued and which may be expected to accrue before the final decision of the said claim, as all costs and damages, conditioned to prosecute his claim with effect, at the next Court of Common Pleas to be held, for the county where the said lands and tenements shall be; and in case of failure to prosecute as aforesaid, to surrender up the said premises, and to pay to the said complainant or complainants, the full value of the rents or mesne profits of the premises accrued from the time of the purchase; then and in such case, but not otherwise, the said justices shall forbear to give the said judgment: *Provided always nevertheless,* That if the said claim shall not be prosecuted according to the intent and meaning of the said recognizance, it shall be forfeited to the use of the said complainant or complainants, and the justices aforesaid shall proceed to give judgment, and cause the lands and tenements aforesaid to be delivered up to the said complainant or complainants, in the manner herein before enjoined and directed.

SECT. III. *And be it further enacted by the authority aforesaid,* That where any lands or tenements shall hereafter be sold by any sheriff or coroner as aforesaid, which shall be at the time of such sale, or at any time afterwards, held or possessed by any tenant or lessee, or person holding or claiming to hold the same under the defendant or defendants named in the execution by virtue whereof the same lands or tenements shall be sold by such sheriff or coroner, the purchaser or purchasers of the same lands or tenements shall

Where a sale has been made in manner aforesaid of lands, &c. then under lease, the purchaser to stand in the place of the lessor and be entitled to

(after receiving the sheriff's or coroner's deed for the same) be considered as the landlord or landlords to such tenant or lessee, or person claiming to hold the same under the aforesaid defendant or defendants, and shall have the like remedies, by distress or otherwise, to recover any rents due subsequent to such sale, as the same defendant or defendants as whose property the same lands or tenements shall be so sold, might or could have, if no such sale should take place; and if after notice of such sale, the said tenant or lessee, or other person occupying the premises as aforesaid, shall pay any rent to the said defendant or defendants as whose property the same premises may have been or shall be sold as aforesaid, the said tenant or lessee, or other occupier as aforesaid, shall be liable to repay the same to the purchaser or purchasers aforesaid.

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receive the  
rents. &c.

SECT. IV. *And be it further enacted by the authority aforesaid,* That from and after the passing of this act, every tenant or other person, who now is or hereafter shall be in possession of any lands or tenements which heretofore have been sold by or at a sheriff's or coroner's sale, shall within three months after demand for that purpose, made by recognizance duly acknowledged, give to the purchaser or purchasers thereof at sale, their assigns or legal representatives, being in possession of the sheriff's or coroner's deed, duly acknowledged, sufficient sureties, to be approved of by at least one of the associate judges of the proper county, for all the mesne profits or rents that shall or may probably accrue from the time of such demand until the final decision of any ejectment now pending, or which shall hereafter be sued out or brought for recovering, under and by virtue of such deed, the possession of any lands or tenements so as aforesaid sold; but if any such tenant or other person so as aforesaid in possession, shall for three months after demand so as aforesaid made, neglect or refuse to give sureties in manner aforesaid, then and in every such case, it shall and may be lawful for such purchaser or purchasers, to proceed by distress or otherwise, for the recovery of such mesne profits or rents, in the same manner in which landlords now may lawfully proceed for the recovery of any rents due: *Provided always,* That nothing in this section contained, shall be so construed as to impair any contract heretofore made between any landlord or tenant.

Tenants  
within three  
months after  
demand  
made to give  
security to  
purchasers  
for the mesne  
profits  
that may ac-  
crue pending  
the suit for  
recovering  
possession,  
and in case  
of refusal  
shall be lia-  
ble to a dis-  
tress, &c.

Proviso in  
favour of  
contracts  
heretofore  
made.

Passed 6th April, 1802.—Recorded in Law Book No. VIII. page 183,

#### ADDENDUM.

THE Editor was not aware, at the time of the insertion of *Hurst v. Hurst*, ante. page 332, of the determination by the Supreme Court of Pennsylvania, in the case of "The Bank of North America v. Fitzsimmons," which has been since reported in 3d Binney. In which case, it is decided—That a judgment not revived by *scire facias*, within five years from its date, ceases to be a lien upon real estate, as well against subsequent judgment creditors, as against subsequent purchasers.