

CHAPTER CLII.

AN ACT FOR TAKING LANDS IN EXECUTION FOR PAYMENT OF DEBTS.

To the end that no creditors may be defrauded of their just debts due to them from persons who have sufficient real if not personal estates to satisfy the same:

[Section I.] Be it enacted by John Evans, Esquire, by the Queen's royal approbation Lieutenant-Governor under William Penn, Esquire, absolute Proprietary and Governor-in-Chief of the Province of Pennsylvania and Territories, by and with the advice and consent of the freemen of the said Province in General Assembly met, and by the authority of the same, That all such lands, tenements and hereditaments whatsoever within this province, where no sufficient personal estate can be found, shall be liable to be seized and sold, upon judgment and execution obtained.

Provided always, That when any debt is hereafter recovered, and damages awarded, or when any debt is acknowledged before such as have or shall have power to take cognizance thereof, and executions awarded thereupon, to be levied upon the lands, tenements or hereditaments of any person or persons whatsoever, it shall not be lawful for any sheriff or other officer, by virtue of such executions, or of any writ or writs thereupon, to sell or expose to sale any such lands, tenements or hereditaments in this province, which shall or may yield yearly rents or profits, beyond all reprises sufficient within the space of seven years to pay or satisfy such debts or damages, with costs of suit; but that all those lands, tenements and hereditaments shall, by virtue of the writ or writs of execution, be delivered to the party obtaining the same, until the debt or damages be levied by a reasonable extent, in the same manner and method as lands are delivered upon writs of *elegit* in England.

Provided nevertheless, That if the clear profits of such lands or tenements shall not be found, by inquest of twelve men, to be sufficient within seven years to satisfy the debt or damages in such executions; or if, before the extent be out any other

debts or damages shall be recovered against the same debtor or defendant, his heirs, executors or administrators, which, with what remains due upon such extent, cannot all be satisfied out of the yearly profits of the lands or tenements so extended within seven years, then and in every such case, the sheriff or other officer shall accordingly certify the same upon the return of such executions; whereupon writ or writs of *venditioni exponas* shall issue forth, to sell such lands and tenements for and towards satisfaction of what shall so remain due upon such extent, as also towards satisfaction of all the rest of the said debts or damages, in manner as is hereinafter directed concerning the sale of other lands.

[Section II.] And be it further enacted by the authority aforesaid, That it shall and may be lawful for the sheriff or other officer, by a writ of *levari facias*, to seize and take all other lands, tenements and hereditaments in execution, and thereupon with all convenient speed, either with or without any writ of *venditioni exponas* to make public sale thereof for the most they will yield and pay the price or value of the same to the party towards satisfaction of his debt, damages and costs. But before any such sale be made, the sheriff or other officer shall cause so many writings to be made, upon parchment or good paper, as the debtor or defendant shall reasonably desire or request, or so many without such request as may be sufficient to signify and give notice of such sales or vendues, and of the day and hour when and the place where the same will be, and what lands or tenements are to be so sold, and where they lie; which notice shall be given to the defendant, and the said parchments or papers fixed by the sheriff or other officer in the most public places of the county or city, at least ten days before sale; and upon such sale the sheriff or other officer shall make return thereof, endorsed or annexed to the said *levari facias*, and give the buyer a deed, duly executed and acknowledged in court, for what is sold, as has been heretofore used upon the sheriff's sale of lands. But in case the said lands and hereditaments so to be exposed cannot be sold, then the officer shall make return upon the writ, that he exposed such lands or tenements to sale, and the same remained in his hands unsold for want of buyers;

which return shall not make the officer liable to answer the debt or damages contained in such writ, but a writ called *liberari facias* shall forthwith be awarded, and directed to the proper officer, commanding him to deliver to the party such part or parts of those lands, tenements and hereditaments as shall satisfy his debt, damages and interest from the time of the judgment given, with costs of suit, according to the valuation of twelvemen; to hold to him as his free tenement in satisfaction of his debt, damages and costs, or so much thereof as those lands by the valuation thereof as aforesaid, shall amount unto. And if it fall short, the party may afterwards have execution for the residue against the defendant's body, lands or goods, as the laws of this province shall direct and appoint from time to time concerning other executions. All which said lands, tenements, hereditaments and premises, so as aforesaid to be sold or delivered by the sheriff or officer aforesaid, with all their appurtenances, shall and may be quietly and peaceably held and enjoyed by the person or persons or bodies politic to whom the same shall be sold or delivered, and by his and their heirs, successors or assigns, as fully and amply, and for such estate and estates and under such rents and services as he or they, for whose debt or duty the same shall be so sold or delivered, might, could or ought to do at or before the taking thereof in execution.

Provided always, That the messuage, lands or tenements upon which the defendant is chiefly seated shall not be exposed to sale before the expiration of one whole year after judgment is given, to the intent that the defendant, or any other for him, may redeem the same.

And forasmuch as divers persons have mortgaged their lands and tenements in this province for securing the payment of moneys, and some of them have died before the time of payment, and left others to succeed them, that have proved insolvent; and others have neglected to pay the mortgage-money; and so mortgages are become no effectual security, considering how low the annual profits of tenements and improved lands are here, and the discouragements which the mortgagees meet with by reason of the equity of redemption remaining in the mortgagors:

[Section III.] Be it therefore enacted by the authority aforesaid, That where default or defaults have been or shall be made or suffered by any mortgagor or mortgagors of any lands, tenements or other hereditaments within this province, or by his, her or their heirs, executors, administrators and assigns, of or in payment of the mortgage-money, or performance of the condition or conditions which they or any of them should have paid or performed, or ought to pay or perform in such manner and form and according to the purport, tenor and effect of the respective provisos, conditions or covenants comprised in their deeds of mortgage or defeasance, and at the days, times and places in the same deeds respectively mentioned and contained; that in every such case it shall and may be lawful to and for the mortgagee or mortgagees, and him, her or them that grant the said deeds of defeasance, and his, her and their heirs, executors, administrators or assigns, at any time after the expiration of twelve months next ensuing the last day whereon the said mortgage-money ought to be paid, or other conditions performed as aforesaid, to sue forth a writ or writs of *scire facias*, which the clerk of the court of common pleas for the county or city where the said mortgaged lands or hereditaments lie, and he is hereby empowered and required to make out and dispatch, directed to the proper officer, requiring him, by honest and lawful men of the neighborhood, to make known to the mortgagor or mortgagors, his, her or their heirs, executors or administrators, that he or they be and appear before the magistrates, judges or justices of the said court or courts, to show if anything he or they have to say wherefore the said mortgaged premises ought not to be seized and taken in execution for payment of the said mortgage-money, with interest, or to satisfy the damages which the plaintiff in such *scire facias* shall upon the record suggest for the breach or non-performance of the said conditions. And if the defendant in such *scire facias* appears, he or she may plead satisfaction or payment of part or all the mortgage-money, or any other lawful plea, in avoidance of the deed or debt, as the case may require; but if the defendants in such *scire facias* will not appear on the day whereon the same writ shall be made returnable, then, if the case be such as damages

only are to be recovered, an inquest shall be forthwith charged to inquire thereof, and the definitive judgment therein, as well as all other judgments to be given upon such *scire facias*, shall be entered, that the plaintiff in the *scire facias* shall have execution by *levari facias*, directed to the proper officer; by virtue whereof the said mortgaged premises shall be taken in execution, and exposed to sale in manner aforesaid; and upon sale, conveyed to the buyer or buyers thereof, and the money or price of the same rendered to the mortgagee or creditor; but for want of buyers, to be delivered and [*sic*] to the mortgagee or creditor in manner and form as is herein above directed concerning other lands and hereditaments to be sold or delivered upon executions for other debts or damages; and when the said lands and hereditaments shall be so sold or delivered as aforesaid, the person or persons to whom they shall be so sold or delivered shall and may hold and enjoy the same, with their appurtenances, for such estate or estates as they were sold or delivered, clearly discharged and freed from all equity and benefit of redemption and all other encumbrances made and suffered by the mortgagors, their heirs or assigns; and such sales shall be available in law, and the respective vendees, mortgagees or creditors, their heirs and assigns, shall hold and enjoy the same, freed and discharged as aforesaid; but before such sales be made, notice shall be given in writing in manner and form as is hereinabove directed concerning the sales of lands upon executions, any law or usage to the contrary notwithstanding.

[Section IV.] Provided also, and be it further enacted by the authority aforesaid, That when any of the said lands, tenements or hereditaments which by the direction and authority of this act are to be sold for payment of debts and damages in manner aforesaid, shall be sold for more than will satisfy the same debts or damages, and reasonable costs, then the sheriff or other officer who shall make the sale must render the overplus to the debtor or defendant; and then, and not before, the said officer shall be discharged thereof upon record, in the same court where he shall make return of his proceedings concerning the said sales.

Provided also, That no sale or delivery which shall be made by virtue of this act shall be extended to create any further term or estate to the vendees, mortgagees or creditors than the lands or hereditaments so sold or delivered shall appear to be mortgaged for by the said respective mortgages or defeasible deeds.

Provided also, That if any of the said judgments which do or shall warrant the awarding of the said writs of execution whereupon any lands, tenements or hereditaments have been or shall be sold, shall at any time hereafter be reversed for any error or errors; then and in every such case, none of the said lands, tenements or hereditaments so as aforesaid taken or sold, or to be taken or sold upon executions, nor any part thereof, shall be restored, nor the sheriff's sale or delivery thereof avoided, but restitution [shall be made], in such cases only of the money or price for which such lands were or shall be sold.

Passed January 12, 1705-6. Allowed to become a law by lapse of time in accordance with the proprietary charter, having been considered by the Queen in Council, October 24, 1709, and not acted upon. See the Acts passed August 27, 1727, Chapter 299; March 23, 1764, Chapter 510; February 24, 1770, Chapter 604; March 6, 1820, P. L.* 50; April 6, 1830, P. L. 293; June 16, 1836, P. L. 761.

CHAPTER CLIII.

AN ACT ABOUT ARRESTS AND MAKING DEBTORS PAY BY SERVITUDE.

[Section I.] Be it enacted by John Evans, Esquire, by the Queen's royal approbation Lieutenant-Governor under William Penn, Esquire, absolute Proprietary and Governor-in-Chief of the Province of Pennsylvania and Territories, by and with the advice and consent of the freemen of the said Province in General Assembly met, and by the authority of the same, That in case any person arrest another going out of this government, he shall be ready with his declaration and evidence the next day, and shall put in security to pay the charges and damages sustained by the party arrested, if he shall be found in the wrong; and that all persons of known estates (refusing to pay