

shall be and are hereby repealed to all intents and purposes whatsoever.

Passed March 20, 1724-25. Apparently never considered by the Crown, but allowed to become a law by lapse of time, in accordance with the proprietary charter. See Volume III, Appendix V, Section I, and notes to the (two) Acts of Assembly passed November 27, 1700, Chapters 32, 69; and the Acts of Assembly passed May 10, 1729, Chapter 302; August 13, 1732, Chapter 329; August 15, 1732, Chapter 330; March 29, 1735, Chapter 337; February 4, 1748-49, Chapter 376; January 27, 1749-50, Chapter 382; November 27, 1755, Chapter 406; March 4, 1763, Chapter 497; May 30, 1764, Chapter 513; September 26, 1767, Chapter 568; January 22, 1774, Chapter 692; (the Constitution of 1776, Plan of Government, Section 31;) February 12, 1777, Chapter 741; March 11, 1777, Chapter 745; March 16, 1779, Chapter 828; March 29, 1779, Chapter 381; October 1, 1779, Chapter 851; November 27, 1779, Chapter 875; March 18, 1780, Chapter 900; December 19, 1780, Chapter 921; April 13, 1782, Chapter 972; March 25, 1785, Chapter 1140; April 5, 1785, Chapter 1161; March 24, 1786, Chapter 1218; September 22, 1788, Chapter 1358; October 3, 1788, Chapter 1363; March 30, 1791, Chapter 1543; April 6, 1791, Chapter 1545; April 3, 1792, Chapter 1622; April 8, 1794, Chapter 1729; April 17, 1795, Chapter 1852; April 4, 1798, Chapter 1997. Repealed by the Act of Assembly passed April 11, 1799. Chapter 2095.

CHAPTER CCLXXXV.

AN ACT TO REGULATE THE PRACTICE UPON WRITS OF SUMMONS AND ARREST.

Whereas it hath been the earnest endeavors of the legislative power of this government to provide for the liberty of the subject by regulations of this kind without the least design of protecting men's estates from payment of their debts, but so far as justice would permit to maintain the freedom of their persons, according to the ancient common law of England, which suffered not the body in case of debt to be detained in prison, but be at liberty to follow his own affairs and business, &c. And it seems highly just that the same reason should take place in this new colony, where plantations are to be improved by hard labor and great diligence:

Therefore may it please the governor that it may be enacted:

[Section I.] And be it enacted by Sir William Keith, Baronet, Governor of the Province of Pennsylvania, &c., 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 no freeholder inhabiting in any part of this province who hath resided therein for the space of two years and has fifty acres of land or more in fee-simple well seated and twelve acres thereof or more well cleared or improved, or hath a dwelling house worth fifty pounds current money of America in some city or township within this province, clear estate, or hath unimproved land to the value of fifty pounds, like money, shall be arrested or detained in prison by any writ of arrest or *capias ad respondendum* in any civil action unless it be in the King's case or where a fine is or shall be due to the King, his heirs or successors, or unless they be such freeholders as by this act are made liable to be arrested, but that the original process against freeholders shall be a writ of summons under the hand and seal of one of the justices of the court of common pleas for the proper county directed to the sheriff or coroner there as the case may require, commanding [him] to summon the defendant, the form of which writ shall be as followeth, viz.:

George, by the grace of God, of Great Britain, France and Ireland, King, Defender of the Faith, &c. To the sheriff of the county of greeting. We command you, that you summon so that he be and appear before our justices at at our court of common pleas, there to be held day of next, to answer the complaint of of a plea, &c. Witness Esquire day of at in the year of our reign.

And if the defendant in such writ does not appear at the day of the return thereof, but makes default, and the officer to whom such writ was directed or his lawful deputy doth certify to the court upon oath or affirmation that on or before the day of the return of such writ he hath summoned the defendant (mentioning the day he did so) or left notice in writing of such summons at the house of the defendant, in the presence of one or more of his family or neighbors, signifying that the defendant should be and appear according to the contents of such

summons; upon which return, if the defendant has been so served ten days and the plaintiff had filed his declaration in the office of the prothonotary within the space of five days before the court to which such writ is returnable, it shall be lawful to and for the plaintiff in such action to file a common appearance for the defendant so making default, and proceed to judgment and execution by *nihil dicit*.

Provided always, That nothing herein contained shall exempt any person from being arrested or shall debar any person from taking out writs of arrest if the plaintiff in every such writ or somebody for him doth make appear by affidavit upon oath or affirmation (which the justice that grants such writ is hereby empowered and required to administer) testifying that the defendant in the same writ named hath signified his intention of going to sea or of removing out of this province or lurks in secret places or conceals himself in his own or others' houses; or that the defendant in such writs hath refused or neglected upon demand to give either real or personal security for the debt or refused without process to appear and put in special bail to the plaintiff's action for the debt or cause for which he complains; or that the defendant suffered himself to be arrested or judgment to be entered against him; or made over his lands or chattels to others, or suffered them to be attached and made no proper defense to such proceedings; or where the plaintiff can make appear from records or otherwise that so much of the defendant's estate is mortgaged, aliened, entailed or liable to one or more judgments suffered or ordered to be entered against such defendant, so that the value of his fee-simple estate in possession clear of those and all other incumbrances will not (as the deponent believes) be sufficient to satisfy the debt demanded; or that the defendant in such writ hath not been a resident in this province for the space of two years next before the date of the same writ: In all which cases writs of arrest shall be granted and the defendant held to special bail if the case requires it, and the justices that grant the same shall cause all the affidavits they take as above required to be filed by the clerk of the court where such writs are returnable.

But if any freeholder exempted from arrest by virtue of this act shall happen to be taken by any writ of arrest, the court

where such writ is depending shall forthwith upon the defendant's motion stay all further proceedings against him till they examine his circumstances, and if they find he is such as by this act is intended to be exempted, the court shall of their own accord abate the writ and allow the defendant thirty shillings cost, to be paid by him or them that procured such writ, and for non-payment thereof the court shall grant an attachment as in other cases where a rule of court is not complied with.

And if any of the justices or clerks of the said courts or practitioners at law shall contemn this act and willfully proceed in the premises contrary to the direction thereof, they shall be liable to answer, and be fined for the same at the supreme court of this province any sum not exceeding ten pounds.

[Section II.] And be it further enacted, That the act directing the process of summons against freeholders and every article, clause or thing therein contained shall be and are hereby repealed to all intents and purposes whatsoever.

Passed March 20, 1724-25. Apparently never considered by the Crown, but allowed to become a law by lapse of time in accordance with the proprietary charter. See Volume III, Appendix V, Section I, and the Acts of Assembly passed February 14, 1729-30, Chapter 315; January 2, 1778, Chapter 777; (the Constitution of 1790, Article I, Section 17; Article III, Section III;) April 4, 1798, Chapter 1999; March 21, 1806, P. L. 558; April 7, 1807, P. L. 155; April 13, 1807, P. L. 296; March 20, 1810, P. L. 208; March 1, 1811, P. L. 54; February 8, 1819, P. L. 57; March 16, 1833, P. L. 78; April 9, 1833, P. L. 480; March 28, 1835, P. L. 88; March 11, 1836, P. L. 76; June 13, 1836, P. L. 568; April 1, 1837, P. L. 132; April 4, 1837, P. L. 377; (the Constitution of 1838, Article I, Section 18; Article III, Section III;) March 23, 1839, P. L. 130; March 11, 1840, P. L. 122; March 12, 1842, P. L. 66; July 12, 1842, P. L. 339; July 16, 1842, P. L. 391; July 19, 1842, P. L. 498; April 4, 1843, P. L. 131; May 6, 1844, P. L. 564; April 14, 1846, P. L. 328; March 15, 1847, P. L. 361; April 10, 1848, P. L. 441; March 21, 1849, P. L. 216; April 10, 1849, P. L. 600; March 22, 1850, P. L. 257; March 25, 1850, P. L. 277; May 10, 1850, P. L. 1047; April 8, 1851, P. L. 353; April 14, 1851, P. L. 612; April 15, 1851, P. L. 669; May 4, 1852, P. L. 574; March 17, 1856, P. L. 388; April 2, 1856, P. L. 219; April 21, 1858, P. L. 403; April 17, 1861, P. L. 329; March 4, 1862, P. L. 79; March 17, 1869, P. L. 8; April 6, 1870, P. L. 960; (the Constitution of 1873, Article II, Section XV; Article VIII, Sections V and XIV;) May 14, 1874, P. L. 146; July 8, 1885, P. L. 269; May 24, 1887, P. L. 197; May 25, 1887, P. L. 271; April 22, 1889, P. L. 41.