

At a General Assembly begun and holden at Philadelphia the fourteenth day of October, A. D. 1735, and continued by adjournments until the fourteenth day of August, 1736, the following acts were passed:

CHAPTER CCCXLI.

AN ACT FOR THE MORE EASY AND SPEEDY RECOVERY OF SMALL DEBTS.

Whereas it is found by experience that a great number of the lawsuits which are commenced in this province are brought against the poorer sort of people for small sums of money, who are unable to bear the expenses arising by the common method of prosecution:

Therefore, for remedying thereof:

[Section I.] Be it enacted by Patrick Gordon, Esquire, with the King's royal approbation Lieutenant-Governor under the Honorable John Penn, Thomas Penn and Richard Penn, Esquires, true and absolute Proprietaries of the Province of Pennsylvania and of the counties of Newcastle, Kent and Sussex on Delaware, by and with the advice and consent of the representatives of the freemen of the said Province in General Assembly met, and by the authority of the same, That all actions for debt or other demands for the value of forty shillings and upwards and not exceeding five pounds (except such actions as are hereinafter excepted) shall from and after the twenty-fifth day of the month called March, next after the publication of this act, be and they are hereby made cognizable before any justice of the peace of any of the counties in this province in the county in which the defendant shall be or reside; and the said justices are hereby respectively empowered and required, upon complaint to either of them made, for any such debt or demand to issue a warrant in the nature of a summons or a *capias*, as the case may require, directed to the constable of the township

or district where the defendant dwells or can be found, commanding him to bring or cause such defendant to come with the plaintiff before him at the time and in the manner following: (That is to say) in cases where such process shall be in the nature of a *capias*, forthwith after the service thereof; but where a summons shall be issued, then on some certain day therein to be expressed not less than five nor exceeding eight days from the date of such process; and at the time appointed for the hearing of any such cause the said justice himself, or at the request of the parties by auditors or referees to that purpose by him appointed and approved of by the said parties, shall proceed to hear and examine the proofs and allegations of the plaintiff and defendant; and upon the return of such auditors or otherwise to give his judgment thereupon as the true merits and right of the cause shall appear to him, with such costs only as by the laws of this province are allowed in debts under forty shillings.

Provided always, That the process against a freeholder shall be by summons only, and service shall be made thereof on the person or a copy thereof left at the house of the defendant in the presence of one or more of his family or neighbors at least four days before the time appointed for a hearing; and in case the defendant does not appear at the time appointed, then a second summons shall be issued in manner aforesaid directed to the constable aforesaid, commanding him not only to summons the defendant but also to inquire why he or she did not appear on the return day of the first summons. And if the defendant shall not appear at the time appointed in the second summons, then on oath or affirmation made by the constable that the said summons were duly served in manner aforesaid, and the best account he may be able to give (after inquiry made as aforesaid) rendered why such defendant did not appear on the days appointed, the justice who granted the same summonses may either then or on such further day as he shall deem consistent with reason and the nature of the case to appoint and not otherwise, to proceed to hear and determine such cause or causes in the defendant's absence and give judgment and award execution thereupon as if the defendant had been personally present.

[Section II.] And be it further enacted by the authority aforesaid, That after judgment given in any of the cases aforesaid the justice who pronounced the same shall grant execution thereupon, directed to the constable aforesaid, commanding him to levy the debt or damages and costs of the defendant's goods or chattels (who by virtue thereof shall within the space of ten days next following expose the same to sale by public vendue, returning the overplus if any be to the defendant) and for want of sufficient distress to take the body of such defendant into custody and him or her to carry and convey to the common gaol of the county, there to remain until the said debt or damage with costs shall be fully satisfied.

Provided always, That no such execution shall be issued against any freeholder in less than the space of three months next after the entry of such judgment unless the plaintiff or some body for him or her shall on oath or affirmation declare that he or she hath good reason to believe that the debt will by such delay be lost, for that at the end of the said term or before it (he or she believes) the defendant will not have sufficient assets in the county on the which the said debt may be levied. And if any judgment to be given as aforesaid shall be against a person not a freeholder, such person shall have the execution against him or her respited for [the] like term of three months on his or her entering into recognizance to the plaintiff with one sufficient security in the nature of special bail on condition to deliver the body of the defendant to the sheriff of the county at the expiration of the time so to be allowed, or that the condemnation money shall then be paid, and in default of giving such security shall be committed to the common gaol of the county, there to remain until the debt and costs shall be paid or such defendant otherwise legally discharged.

Provided also, That where the plaintiff in any cause shall become nonsuit or judgment shall pass against him, then the justice is hereby required to assess the defendant his reasonable costs, to be levied in manner aforesaid.

Provided also, That it shall and may be lawful for the justices of the respective courts of common pleas to give such relief to any insolvent debtor or debtors prosecuted in pursuance

of this act as they might have done by the laws now in force in case this act had not been made.

Provided also, That if any person or persons shall conceive him, her or themselves aggrieved by any such judgment so to be given (cases determined on the return of auditors or referees as aforesaid only excepted) it shall and may be lawful for such person or persons at any time within the space of six days next following the giving of such judgment but not after to appeal therefrom to the next court of common pleas to be holden for the county in which such suit shall be commenced, he, she or they first entering into recognizance to the plaintiff with at least one sufficient security in double the value of the debt or damage sued for, and sufficient to answer all costs, to prosecute the said appeal with effect and to abide the order of the said court, or in default thereof to be sent by *mittimus* to the sheriff of the county, by him to be kept until he, she or they shall give such security or be otherwise legally discharged.

[Section III.] And be it further enacted by the authority aforesaid, That the said justices shall cause fair entries to be made in books by them to be provided to that purpose of the names of the plaintiff and defendant in all such causes as may come before them, with the debt and costs adjudged and the time when the same judgment was given; and upon any appeal made from any such judgment the justice who pronounced the same shall send a transcript thereof to the prothonotary of the court of common pleas of the county in which such appeal is made on or before the first day of the term next following any such appeal, for which transcript the justice shall be allowed in the costs to be taxed eighteen pence and no more.

[Section IV.] And be it further enacted by the authority aforesaid, That at the court to which any such appeal shall be made the person so appealing shall cause an entry of his suit to be made by the prothonotary of such court and shall either have his appearance entered or give bail to the action, as the nature of the case may require; or on neglect thereof and application of the appellee to the court for that end the appellant's default shall be recorded, the first judgment affirmed with reasonable costs and execution shall be issued out of the said court against the defendant's body, goods or chattels, as is usual in

other cases. And in case the defendant shall appear or give bail as aforesaid, the plaintiff or defendant in the appeal (as the case may require) shall file his or her declaration and the adverse party plead to issue in such time as shall be directed by the court, so always that the cause be tried by a jury of the country in the usual manner, either the court to which such appeal is made or the next term at farthest (unless the court on cause to them shown shall think fit to give the parties a longer day), and as the verdict shall be rendered in any of the said causes the court shall give judgment thereupon as the nature of the case may require with costs of suit.

Provided always, That if the parties appellant and appellee shall neglect or refuse to file his or her declaration or to plead to issue in such time as shall be directed by the court, a nonsuit or judgment by default may be entered for want thereof as usual.

Provided also, That the costs to be taxed in any such suit to the several officers and others concerned for the services by them respectively to be done shall be two-thirds parts only of the costs now usually taken in the said courts of common pleas.

Provided also, That none of the justices who by virtue of this act shall hear and determine any of the causes aforesaid out of court shall afterwards sit on the hearing and determining the same cause on an appeal made to any of the courts of common pleas aforesaid.

[Section V.] And be it further enacted by the authority aforesaid, That if any person or persons whosoever shall commence, sue or prosecute any suit or suits for any debts or demands made cognizable as aforesaid in other manner than is directed by this act, and shall obtain a verdict or judgment therein for debt or damages, which without costs of suit shall not amount to more than five pounds (not having caused an oath or affirmation to be made before the obtaining of the writ of summons or *capias* and filed the same in the prothonotary's office respectively that he, she or they so making oath or affirmation did truly believe the debt due or damage sustained exceeded the sum of five pounds), he, she or they so prosecuting shall not recover any costs in such suit, any law, usage or custom to the contrary in anywise notwithstanding.

Provided also, That this act nor anything herein contained shall be deemed, construed or understood to extend to actions of debt for rent, to actions of replevin or upon any real contract, nor to actions of trespass on the case for trover and conversion or slander, nor to actions of trespass for assault and battery or imprisonment, nor to such actions where the title of lands shall anyways come in question.

Provided also, That this act shall continue in force for the space of three years, and from thence to the end of the next sessions of assembly and no longer.

Passed February 21, 1735-36. See Appendix XII, Section I, and note to the Act of Assembly passed May 28, 1715, Chapter 211, and the Act of Assembly passed May 19, 1739, Chapter 352.

CHAPTER CCCXLII.

A SUPPLEMENT TO THE LAW FOR LAYING OUT OF HIGHWAYS AND PUBLIC ROADS.

Whereas by a law of this province enabling the justices in each county to lay out and conform all roads except the King's highways and public roads it is provided that all roads within this province laid out by the directions of the said act shall be public highways, and shall be cleared and maintained at the charge or by the inhabitants of the township in which the said road lies, and that if any part of such road, although the same be laid out for the conveniency of one or but few persons, shall happen to be laid out through the improved ground of any person, the said improved ground is to be valued as by the said act is directed and paid for out of the county stock, which parts of the said law have, since the great increase of our inhabitants, been found to be very inconvenient and burdensome as well to the public as to private persons:

For remedying of which inconveniency:

[Section I.] Be it enacted by Patrick Gordon, Esquire, with the King's royal approbation Lieutenant-Governor under the Honorable John Penn, Thomas Penn and Richard Penn, Es-