

where there may be verdict against verdict between the same parties and judgment thereon, a third ejectment in such case, and verdict and judgment thereon shall be final and conclusive, and bar the right, and the plea in ejectment shall be not guilty.

Section V. (Section V, P. L.) And be it further enacted by the authority aforesaid, That so much of the act to which this is a supplement as prescribes the form of execution, shall be, and the same is hereby repealed: Provided nevertheless, that no writ of *capias ad satisfaciendum*, shall issue in any case where any defendant or defendants may have real or personal estate to satisfy the plaintiff's demand, or if the whole cannot be satisfied, then only for the residue thereof.

Section VI. (Section VI, P. L.) And be it further enacted by the authority aforesaid, That on the execution of a *liberari facias*, where the defendant or his tenant is in possession of the premises to be extended, the sheriff shall deliver the actual possession thereof to the plaintiff or his agent.

Approved April 13, 1807. Recorded in L. B. No. 11, p. 132.  
Note (†) Chapter 2698; Supra this volume p. 229.

---

ACTS OF THE GENERAL ASSEMBLY OF PENNSYLVANIA.

---

Passed at a Session which was begun and held at Lancaster on Tuesday, December 8th, 1807, and thence continued until March 28th, 1808, (inclusive).

---

CHAPTER MMDCCCLXXXV.

---

AN ACT TO ALTER AND AMEND THE SEVERAL LAWS OF THIS COMMONWEALTH RELATIVE TO DOMESTIC ATTACHMENTS. (†)

Section I. (Section I, P. L.) 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 it shall and may be lawful for the respective courts of common pleas, on the oath or affirmation of any creditor or creditors, or any other credible person for him or them, of the truth of his or their debt, and that his or their debtor or debtors have absconded or departed from the place of his or their usual abode in this state, or remained absent from the state, or have confined him or themselves in his or their own house or houses, or concealed him or themselves elsewhere, with design, as is believed, to defraud his or their creditors; and that the said debtor has not left a clear real estate in fee simple within this state sufficient to pay his debts, so far as such deponent knows or believes, to issue writs of attachment against all the lands, tenements, goods and chattels of such person or persons so absconding, absenting, confining or concealing him or themselves: Provided always, that the said departure, absence or concealment shall be proved by the oath or affirmation of a disinterested witness.

Section II. (Section II, P. L.) And be it further enacted by the authority aforesaid, That the sheriff or coroner to whom the said writs of attachment shall be directed, shall attach all the lands, goods, chattels and effects of the defendant or defendants in whose hands soever the same can be found; and that all the said chattels and effects, attached by virtue of such writs, shall forthwith be appraised, inventoried and secured by the officer who executes the writs; and in case any perishable goods be attached, it shall be lawful for any judge of the court from which the process issued, in his discretion, to order such goods to be sold; and the monies arising from such sale shall be received by the sheriff and paid over by him to the trustees to be appointed in pursuance of this act.

Section III. (Section III, P. L.) And be it further enacted by the authority aforesaid, That it shall be the duty of the said court, on the return of the said writ, to appoint three honest and discreet men to be trustees for all the creditors of such debtor, with power to audit the accounts, and to ad-

just the demands of all the defendant's creditors, and to settle their shares or proportions of the defendant's estate, and make report of their proceedings therein to the said court; and the said trustees shall, before they proceed, take an oath or affirmation, to be administered by the court appointing them, well and truly to execute the trust reposed in them, according to the best of their skill and understanding; and the said court shall allow them a reasonable compensation for their trouble, out of the property attached as aforesaid.

Section IV. (Section IV, P. L.) And be it further enacted by the authority aforesaid, That the said trustees shall and may take into their possession all the estate of such debtor, whether attached as aforesaid, or afterwards discovered by them, and all books, vouchers and papers relating to the same; and the said trustees shall be deemed vested with all the estate of such debtor at the time of issuing the said attachment; and shall be capable to sue for and recover the same, and all debts and things in action, due or belonging to such debtor at that time or at any time thereafter, and all the estate attached as aforesaid, shall be by the sheriff who took the same, delivered over to the said trustees: Provided always, that in case of a bona fide purchase made, or assignment taken from or under such debtor for a valuable consideration by any person having no notice or knowledge of the attachment, such purchase or assignment shall not be invalidated or impeached: And provided also, that if any person, indebted to the party against whom an attachment has been issued as aforesaid, or having the possession of any of his property, shall bona fide pay the said debt, or deliver the said property to the said party without notice or knowledge of the attachment, he or she shall not be liable to pay or deliver the same to the trustees.

Section V. (Section V, P. L.) And be it further enacted by the authority aforesaid, That if such debtor, against whom an attachment shall have been issued as aforesaid, shall, prior thereto, have conveyed to any of his or her children or other persons, any lands or goods, or transferred his or her debts

or demands into other persons names, with intent to defraud his or her creditors, the said trustees shall have power to recover and dispose of the same, in as effectual a manner as if the said defendant had been actually seized or possessed thereof.

Section VI. (Section VI, P. L.) And be it further enacted by the authority aforesaid, That it shall and may be lawful for the said trustees to make public sale and assurance of all the lands and tenements, goods and chattels belonging to such debtor, which shall be good and effectual in law, against him, his heirs, executors and assigns; and it shall and may be lawful for the said trustees to grant and assign, or otherwise to order or dispose of, all or any of the debts, due or to be due to and for the benefit of said defendant, to the use of his creditors; and the same grant, assignment or disposition of the said debts, shall vest the right and interest thereof in the person or persons to whom it shall be so granted, assigned or ordered, so that such assignees may sue for and recover the said debts, in their own names, and detain the same to their own use; and that after such grant, assignment or disposition made of the said debts, neither the said defendant, nor any other to whom such debts shall be due, shall have power to recover the same, nor to make any release or discharge thereof.

Section VII. (Section VII, P. L.) And be it further enacted by the authority aforesaid, That if the said defendants shall have conveyed or assured any lands, goods, or estate unto any person upon condition or power of redemption, by payment of money or otherwise, it shall be lawful for the said trustees or for any person by them duly authorized for that purpose, by writing under their hands and seals, to make tender of money or other performance, according to the nature of such condition, as fully as the said defendant might have done, and the said trustees, after such performance or tender, shall have power to sell and dispose of such lands, goods, and estate for the benefit of the creditors.

Section VIII. (Section VIII, P. L.) And be it further enacted by the authority aforesaid, That the said trustees shall, immediately on their appointment, give notice thereof in two newspapers, printed in the city of Philadelphia, and in one newspaper in the county in which the attachment issued, or if there shall be no newspaper printed in such county, then by setting up four advertisements in four of the most public places in the county in which the attachment issued, and require all persons, indebted to the defendant, to pay and deliver all sums of money and property, due and belonging to such debtor, to the said trustees, and also to desire all creditors of the defendant to deliver to them their respective accounts and demands; and if any controversy shall arise, concerning any claim by any creditor, or concerning any debt or demand claimed by the said trustees, the trustees may agree with the opposite party to refer the decision of the said controversy to arbitrators, mutually chosen, and if the parties will not agree to a reference, an issue shall be made up between them, and a jury shall be impannelled as in other cases to try the same.

Section IX. (Section IX, P. L.) And be it further enacted by the authority aforesaid, That the said trustees may summon before them and examine all persons supposed to be indebted to the defendant, and such other persons as they shall think fit upon interrogatories or otherwise on oath or affirmation, which they are hereby empowered to administer touching the lands, tenements, goods, chattels, or effects of the defendant, and such other things as may tend to disclose their estates, or their secret grants or alienation of their effects; and if such persons shall refuse to attend, or shall refuse to be sworn or affirmed and to make answer to such questions or interrogatories as shall be administered, it shall be lawful for the trustees to commit such persons to prison, there to be detained until they shall submit themselves to be examined in manner aforesaid. And the said trustees may by warrants under their hands and seals, cause to be broke open any

houses, chambers, shops, warehouses, door, trunks, or chests of the defendants, where their goods or effects shall be or reputed to be, and seize the same for the use of their creditors.

Section X. (Section X, P. L.) And be it further enacted by the authority aforesaid, That every person, who shall have, bona fide, given credit to or taken securities payable at future days from such debtor not due at the time of the issuing of the said attachment, shall be admitted to prove their debts and contracts as if they were payable presently, and shall have a dividend in proportion to the other creditors, discounting where no interest is payable at the rate of so much per centum per annum as is equal to lawful interest, and where mutual credit has been given by such debtor and any other person, or mutual debts between them at any time before the issuing of the attachment, the trustees shall state the account between them, and one debt may be set off against the other, and what shall appear to be due on either side on the balance of such account after such set off, and no more, shall be claimed or paid on either side respectively.

Section XI. (Section XI, P. L.) And be it further enacted by the authority aforesaid, That at some time after the expiration of six months, and within nine months from and after the first public notice aforesaid, the said trustees shall proceed to make distribution among the creditors in proportion to their respective just demands of all monies that shall come to their hands for that purpose, first deducting thereout all legal charges and commissions, in which payment no preference shall be allowed to debts due on specialties; and if the whole of such debtor's estate be not then distributed, the said trustees shall at the expiration of three months thereafter, make a second dividend of all such monies as shall have come to their hands after the first division, and so from each period of three months, until a distribution shall have been made as aforesaid of all the estate of such debtor.

Section XII. (Section XII, P. L.) And be it further enacted by the authority aforesaid, That a majority of said trustees, may exercise all the powers and perform the duties

herein given to, and required of them, and in case of vacancy the court shall supply the same by a new appointment or appointments.

Section XIII. (Section XIII, P. L.) And be it further enacted by the authority aforesaid, That if the said debtor or any person on his or her behalf shall at any time during the term to which the process of attachment was returnable, disprove the facts of absconding, absence or concealment, upon which the attachment was grounded, the court shall and may dissolve the same.

Section XIV. (Section XIV, P. L.) And be it further enacted by the authority aforesaid, That it shall and may be lawful for the plaintiff in any case of attachment issued under or by virtue of this act to cause to be inserted in the body of the writ, a clause of *capias* against the garnishee, under the same rules and regulations as are prescribed by law in cases of foreign attachment.

Section XV. (Section XV, P. L.) And be it further enacted by the authority aforesaid, That the jurisdiction of the justices of the peace and aldermen shall be and the same is hereby extended to all cases of attachment authorized by this act, where the debt or demand of the plaintiff does not exceed one hundred dollars, subject otherwise to the same rules, regulations and restrictions prescribed in and by an act entitled, "An act for regulating attachments not exceeding five pounds," passed on the twenty-second day of August, one thousand seven hundred and fifty-two;<sup>(2)</sup> provided that the penalty on the justice mentioned in the first section of said act, be extended to one hundred dollars.

Section XVI. (Section XVI, P. L.) And be it further enacted by the authority aforesaid, That justices of the peace and aldermen shall have the like power with the courts of common pleas, to dissolve writs of attachment in cases within their jurisdiction, and upon the same proofs; provided that application be made for that purpose within twenty days after the return of the writ.

Section XVII. (Section XVII, P. L.) And be it further enacted by the authority aforesaid, That no second or other

attachment shall be issued against, or served upon the estate or effects of the same defendant unless the first attachment be not executed or be dissolved by the court, and that the overplus of the said debtor's estate if any there be, after all their debts and lawful charges are deducted, shall be returned to such debtors, their executors or administrators.

Section XVIII. (Section XVIII, P. L.) And be it further enacted by the authority aforesaid, That the death of the debtor after the issuing of the attachment shall not abate or affect the proceedings thereon, but the same shall go on to a final conclusion, and with equal validity, as if such debtor had lived.

Section XIX. (Section XIX, P. L.) And be it further enacted by the authority aforesaid, That nothing in this act contained, shall be construed to alter or affect the laws of this commonwealth relative to foreign attachments.

Section XX. (Section XX, P. L.) And be it further enacted by the authority aforesaid, That so much of any act of assembly as is hereby altered or supplied, be, and the same is hereby repealed: Provided, that the said repeal shall not affect any proceedings already commenced under such act or acts, but the same may be continued as though this act had not been passed.

WE DO CERTIFY, That the bill entitled "An act to alter and amend the several laws of this Commonwealth, relative to domestic attachments" was presented to the governor for his approbation near the close of the last session of the general assembly, and was not returned by him within three days after the meeting of the present: therefore agreeably to the constitution has become a law.

Lancaster,  
December 4th, 1807

J. THACKARA, Clerk of the House  
of Representatives,

GEO. BRYAN, Clerk of the Senate.

Note (\*) Chapter 142; 2 statutes at Large, p. 231.

Note (?) Chapter 399; 5 Statutes at Large, p. 179.