

CHAPTER CLXXIV.

*An ACT to regulate Arbitrations and Proceedings
in Courts of Justice.**Act, not passed
20th March 1810*

Section 1. **B**E 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 be lawful for any person or persons, desirous of settling any dispute or controversy by themselves, their agents or attorneys, to enter into an agreement in writing, to refer such dispute or controversy to certain persons to be by them mutually chosen; and it shall be the duty of the referees, to make out and award and deliver it to the party in whose favour it shall be made agreeably to the directions of this act, together with the written agreement entered into by the parties, and it shall be the duty of the prothonotary on the affidavit of a subscribing witness to the agreement, that it was duly executed by the parties to file the same in his office, and on the agreement being filed as aforesaid, he shall enter the award on record, which shall be as available in law as an award, made under a rule of reference, issued by the court or entered on the docket by the parties, and the same proceedings shall be had thereon, as are prescribed in the third section of this act.

Proceedings,
where the parties in any dispute agree to decide it by reference.

Sec. 2. *And be it further enacted by the authority aforesaid,* That in all cases where an action has been or hereafter may be depending in court, or an amicable suit is or may be entered in the prothonotary's office, the plaintiff and defendant may either in vacation or term time, by them-

The parties may enter into a rule of court to refer, either in vacation or term time.

themselves, their agents or attorneys, consent to a rule of court, for referring their cause to certain persons to be by them mutually chosen.

Sec. 3. *And be it further enacted by the authority aforesaid,* That the referees chosen in pursuance of the directions of this act, shall be sworn or affirmed, (unless the same shall be dispensed with by the consent of the parties), to try and determine the cause referred to them, and a just award make out under the hands and seals of a majority of them, agreeably to the terms of the submission; which award shall be sealed up by the referees and delivered to the person in whose favour it shall be made, who shall deliver the same without breaking the seal, to the prothonotary of the proper county, who shall enter the same of record in his office; and if the said award be entered by the prothonotary in vacation, it shall be the duty of the party in favour of whom it is made, to serve a copy thereof on the adverse party, his agent or attorney, at least ten days preceding the first day of the next term, and if no exceptions be filed against the same, during the said term, it shall have the same effect and be recovered in the same manner as a judgment entered by the court, on the verdict of a jury, and if the award be entered by the prothonotary in term time, it shall in such case, be the duty of the party in favour of whom it is made, to serve a copy thereof on the adverse party within ten days after the expiration of such term; and if no exceptions be filed with the prothonotary, within twenty days after receiving such notice, it shall become a judgment and be recovered as aforesaid; but in case either party file exceptions to the award entered as aforesaid, and the same being finally set aside by the court, if it be the plaintiff filing such excep-

Referees to be sworn or affirmed, unless dispensed with by the parties,

awards to be sealed up and delivered to the successful party, who shall deliver the same to the prothonotary of the proper county, to be entered of record in his office, if entered in vacation, notice to be given to the adverse party, and within what time exceptions must be filed,

if the award be entered in term time, what notice to be given, and within what time exceptions to be filed;

penalty on plaintiff, &c

file exceptions to an award, and in a second prosecution, recover no greater sum than was first awarded;

penalty on defendant filing exceptions, if the award be set aside and the plaintiff, in a new action, recover a sum equal or greater than that first awarded.

Similar provisions in cases of new trial after the verdict of a jury.

tions; and he shall again prosecute his action either in a court of justice or before other referees, and shall not recover a sum equal or greater than was first awarded, he shall not have judgment for costs, and shall pay the defendant seventy-five cents per day, while attending on the same, and if the defendant file such exceptions, and the award be set aside by the court, and the plaintiff by a new action, shall recover a sum equal or greater than the original award, then, and that case, the plaintiff shall have judgment for all the costs accrued on such suit, together with seventy-five cents per day, whilst attending the same, and in all cases, when a verdict of a jury shall be set aside, a new trial shall be had on the same conditions, as to cost and daily pay as are above prescribed, in cases of a new trial on the report of referees being set aside.

Daily allowance to referees; how to be taxed and paid.

Penalty on referees neglecting or refusing to serve.

Sec. 4. *And be it further enacted by the authority aforesaid,* That the referees chosen under the direction of this act, shall each be allowed one dollar per day for his services, which shall be taxed with other costs of suit, but if either of the parties do not appear on the day appointed for the referees to meet, the party neglecting to appear, either by himself, his agent or attorney, shall be liable for all costs which may have accrued on that day in said action, unless it be made appear to the satisfaction of the referees that the absent party could not attend, in which case, or for any other sufficient reason, the referees may postpone the trial to some other day certain, and if any referee so chosen and notified, shall neglect or refuse to attend at the time and place appointed to hear the parties, he shall for every such neglect or refusal, (unless prevented by sickness or other unavoidable accident), forfeit and pay the sum of two dollars, for the use

use of the poor, and where there are no poor, to be paid to the supervisors of the highways of the city, town, district or township, in which such persons neglecting or refusing shall reside, which fine shall be recoverable before any justice of the peace in the proper county, as other fines are by law recoverable: *Provided*, An action be brought therefor within thirty days after such neglect or refusal.

Sec. 5. *And be it further enacted by the authority aforesaid*, That in all cases where a suit is or may be brought in any court of record within this commonwealth, for the recovery of any debt founded on a verbal promise, book account, note, bond, penal, or single bill, or all, or any of them, and which from the amount thereof may not be cognizable before a justice of the peace, it shall be the duty of the plaintiff, either by himself, his agent or attorney, to file in the office of the prothonotary, a statement of his, her or their demand on or before the third day of the term, to which the process issued is returnable, particularly, specifying the date of the promise, book account, note, bond, penal, or single bill, or all, or any of them, on which the demand is founded, and the whole amount what, he, she or they believe is justly due to him, her or them from the defendant; and it shall be the duty of the defendant, at least twenty days, before the next succeeding term to which the process issued is returnable, to file in the office aforesaid, either by himself, his agent or attorney, a statement of his, her or their account, if any he or she hath against the plaintiff's demand, and particularly, specifying what he, she or they believe is justly due from him; her or them to the plaintiff; and it shall be the duty of the prothonotary, to file without the

In cases of debt not cognizable before a justice of the peace, the plaintiff is to file a statement of his demand in the prothonotary's office, within a certain time.

Purport of such statement;

and the defendant, within a given time a statement of his defence;

purport thereof.

The prothonotary to file such statements, without the agency of an attorney.

When the parties are to appear.

the agency of an attorney, such statements; and it shall be the duty of the parties to appear in their proper persons, by their agents or attorneys, on the third day of the next succeeding term, to which the process issued is returnable, when the term is for one week, and on the second Monday of the term when the same is to continue two weeks, before the court, which shall have issued the same; but if the plaintiff or plaintiffs shall neglect to appear as aforesaid, the court shall order a non-suit to be entered, and if the plaintiff shall appear, but the defendant or defendants shall neglect to appear as aforesaid, and make defence against the demand of the plaintiff or plaintiffs, it shall be the duty of the court to give judgment by default against the defendant for the sum which shall appear to be due; but if the parties appear as aforesaid, and the defendant refuse to confess judgment, the cause shall be tried by a jury, or on the agreement of the parties, it may be referred agreeably to the provisions of this act, and the plaintiff's attorney, shall not be entitled to a judgment fee, in any action of debt, whether the judgment be confessed by the defendant or rendered on the report of referees, or on the verdict of a jury, and if the plaintiff on trial being had as aforesaid, does not recover more than the amount for which the defendant was willing to confess judgment, he shall not recover any costs that accrued on the cause subsequent to the offer of confessing judgment, excepting the costs of issuing and serving a writ of execution when the same may be necessary.

Where the plaintiff fail to appear, court to order a non-suit; and if the defendant neglect to appear judgment to be entered by default.

If the parties appear and defendant refuse to confess judgment, the cause may be tried by a jury or referred at the option of the parties, &c.

Sec. 6. *And be it further enacted by the authority aforesaid,* That in all cases where any suit has been brought in any court of record within this commonwealth, the same shall not be

In what cases suits are not to be set aside for informality, &c.

be set aside for informality, if it appear that the process has issued in the name of the commonwealth, against the defendant for monies owing or due, or for damages by trespass, or otherwise, as the case may be, that said process was served on the defendant by the proper officer, and in due time, nor any plaintiff non-suited for informality in any statement or declaration filed, or by reason of any informality in entering a plea; but when in the opinion of the court such informality will affect the merits of the cause in controversy, the plaintiff shall be permitted to amend his declaration or statement, and the defendant may alter his plea or defence on or before the trial of the cause; and if by such alteration or amendment, the adverse party is taken by surprise, the trial shall be postponed until the next court, and the oath or affirmation to be administered to jurors, shall be in the form following, *viz.* " I A. B. do swear, (or affirm as the case may be) that I will well and truly try the issue joined between C. D. plaintiff and E. F. defendant, and a true verdict give according to the evidence, unless dismissed by the court, or the cause withdrawn by the parties."

but when such informalities will in the opinion of the court affect the merits of the cause, the plaintiff or defendant shall be permitted to amend or alter, respectively, his declaration or plea, before the trial of the cause, &c.
Form of the qualification of jurors.

Sec. 7. *And be it further enacted by the authority aforesaid,* That in all suits instituted either by *capias* or *summons*, in any court of record within this commonwealth, the writ of execution shall be stayed on the judgment, whether its is obtained by the confession of the defendant, by the report of referees, or by the verdict of a jury, if the judgment shall not exceed two hundred dollars, six months, if not exceeding four hundred dollars, nine months, and if exceeding four hundred dollars, twelve months, counting from the first day of the term to which the original process issued is returnable, if the

de-

Of the stay of execution where the defendant is a freeholder.

defendant in the opinion of the court, is possessed of a freehold estate, worth the amount of such judgment, clear of all incumbrances, but if the defendant is not a freeholder as aforesaid, then, execution may immediately issue, unless the defendant shall enter surety in the nature of special bail, in which case, there shall be stay of execution for thirty days, and if at or before the expiration of that term, the defendant shall give security for the amount of debt, interest and costs, such defendant shall be entitled to the same stay of execution, as if he was a freeholder, and the like stay of execution shall be had upon judgments obtained in amicable actions, unless when it is differently provided by the parties in the terms of their agreement, counting from the date of their agreement.

Duties enjoined on prothonotaries;

their compensation.

Sec. 8. *And be it further enacted by the authority aforesaid,* That it shall be the duty of the prothonotaries, respectively, on the application of any persons willing to become parties in an amicable suit, to enter the same without the agency of an attorney, and when thereunto required, and on confession in writing, executed in presence of two or more witnesses, expressing the amount due to the plaintiff, (which confession shall be filed in his office), he shall enter judgment against the defendant, for the amount expressed as aforesaid, with stay of execution as may be agreed upon by the parties and the prothonotary shall receive fifty cents, for every such entry, to be paid by the defendant in the suit, and when any suit is ended, the clerk of the court before which it was pending, shall on the request of the plaintiff expressed in writing, enter satisfaction thereon.

Sec. 9.

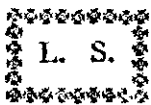
Sec. 9. *And be it further enacted by the authority aforesaid,* That in all civil suits or proceedings in any court within this commonwealth, every suitor and party concerned, shall have a right to be heard by himself and counsel, or either of them, and when it shall be made appear to the satisfaction of the court, that any attorney of such court has retained money belonging to his client after demand, made by the client for the payment thereof, it shall be the duty of the court to prevent such attorney from prosecuting longer in the said court, and to have his name stricken off the record of attorneys.

In all civil suits, the parties shall have a right to be heard in person or by attorney.

Penalty on attorneys retaining their clients money.

Sec. 10. *And be it further enacted by the authority aforesaid,* That it shall be the duty of the prothonotary of any court of record within this commonwealth, on the application in writing of any person, either by himself or his agent, who may be desirous to recover by legal process, any debt due to him, her or them by or from another, either by bond, note, book account, rent, damages or assumption, if from the amount it is not cognizable before a justice of the peace, to grant and issue against the party, defendant, if he, she or they be a freeholder, a precept in the following form, *viz.*

Made the duty of prothonotaries, on the application in writing, of any plaintiff, in person or by attorney, to issue against the defendant, if a freeholder, the following process.



COUNTY ff.
 L. S. THE COMMONWEALTH OF
 PENNSYLVANIA.

Form of the process

To the sheriff of county GREETING.

You are hereby commanded that you summon to be and appear before our judges of the court of common pleas, to be holden for said county, on the day of next, to answer of a plea of debt, by

(by bond, note, or otherwise, as the case may be), not exceeding _____ dollars, hereof fail not. Witness A. B. president (or judge, as the case may be), of our court, the _____ day of _____ and if the party defending shall not be a freeholder, then such prothonotary may issue a precept in the form following, *to wit* :

And if the defendant be not a freeholder, the process following.

Form of the process.

COUNTY ff.
 L. S. THE COMMONWEALTH OF PENNSYLVANIA.

To the sheriff of _____ county GREETING.

You are hereby commanded that you take the body of _____ so that you have him before our judges of the court of common pleas, to be holden for the said county, at _____ on the _____ day of _____ next, there to answer a plea of debt (by bond, note, or otherwise, as the case may be), hereof, fail not. Witness A. B. president (or judge, as the case may be) of our said court, the _____ day of _____

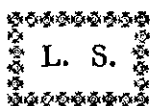
But in the latter case, the plaintiff may have either of those forms at his option

Provided always nevertheless, that it shall be lawful for the complainant to demand a precept in either of the forms above prescribed against a defendant, who may not be a freeholder.

Proceedings on executions for the recovery of money.

Sec. 11. *And be it further enacted by the authority aforesaid,* That the sheriff or coroner as the case may be, to whom may be directed any process of execution for the recovery of money, shall proceed to collect the same, and if the defendant shall refuse or neglect to pay the debt and costs, the said sheriff shall levy on his personal estate if sufficient he hath, and thereafter make sale thereof, first having given at least six days notice by not less than six hand-bills, to be put up at such places as he shall

shall deem best calculated to give information, and with the money arising from such sale, he shall pay the debt and all the costs accrued; but for want of personal estate sufficient to pay the debt and costs, the sheriff shall levy the real estate of the defendant, or such part thereof, (but not less than one whole tract or lot of land with the appurtenances), as he may deem sufficient to pay the same, whereupon such proceedings shall be had as the existing laws direct, and of his proceedings, the said sheriff shall make return to the next court, and all inquisitions for the condemnation of real estates, shall be held on the premises in execution if required by the defendant or his agent, of which notice shall be given, and the form of all executions to be issued, shall be as follows, and not otherwise, *viz.*



THE COMMONWEALTH OF
L. S.
PENNSYLVANIA.
COUNTY ff.

Form of such execution.

To the Sheriff of county

Whereas hath recovered judgment
in our court of for said county against
for a debt of and also

costs and the said having
hitherto neglected to pay the debt and costs
aforesaid, as of right he ought to have done.

These are therefore to command you that you
levy the debt and costs aforesaid, of the goods
and chattels of the said if sufficient

he hath, and of the same make sale according
to law, and that with the money arising
from such sale, you pay the debt and costs
aforesaid, and the costs of sale, but if the said

shall not have personal estate sufficient,
that then you levy his real estate according to
law, and that for want of estate real or per-

office of the prothonotary of the proper county, on or before the first day of the term, to which the process issued is returnable, a description of the land, together with the number of acres, which he claims and declares that the title is in him, and the defendant shall enter his defence (if any he hath) for the whole or any part thereof, before the next term, and thereupon issue shall be joined.

Sec. 13. *And be it further enacted by the authority aforesaid,* That in all cases where a remedy is provided or duty enjoined, or any thing directed to be done by any act or acts of Assembly of this commonwealth, the directions of the said acts, shall be strictly pursued, and no penalty shall be inflicted or any thing done agreeably to the provisions of the common law, in such cases, further than shall be necessary for carrying such act or acts into effect.

Acts of Assembly to be strictly pursued, &c.

Sec. 14. *And be it further enacted by the authority aforesaid,* That this act shall take effect and be in complete operation, from and after the first day of September next, and not before; at and after which time, so much of any law or laws now in force, as are hereby altered or supplied, shall become void and be of no further effect, and this act shall continue in force, until the first day of January, one thousand eight hundred and nine, and from thence until the end of the then existing Session of the Legislature.

When this act shall come into operation, and limitation thereof.

CHARLES PORTER, *Speaker*
of the House of Representatives.
JAMES BRADY, *Speaker*
of the Senate.

APPROVED—the twenty-first day of March, in the year one thousand eight hundred and six.

THOMAS M'KEAN.