

No. 170.

**An Act**

Relating to the commencement of actions.

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An act relating to the commencement of actions.

## F. OF THE COMMENCEMENT OF PERSONAL ACTIONS IN GENERAL.

SECTION. 1. *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 personal actions, except in cases where other process shall be especially provided, shall be commenced by a writ of summons, which shall be in the following form, to wit:

[L. S.] The Commonwealth of Pennsylvania, county, ss. to the sheriff of said county, greeting:  
We command you that you summon \_\_\_\_\_, so that he be and appear before our court of \_\_\_\_\_, to be holden at \_\_\_\_\_, in and for said county, on the day of \_\_\_\_\_ next, there to answer \_\_\_\_\_ of a plea. [setting forth briefly the cause of action or complaint] and have you then there this writ; Witness \_\_\_\_\_, president [or as the case may be] judge of our said court, the day of \_\_\_\_\_

Prothonotary.

SECTION 2. A writ of summons shall be executed by reading the same in the hearing of the defendant, or by giving

him notice of its contents, and by giving him a true and attested copy thereof; or if the defendant cannot conveniently be found, by leaving such copy at his dwelling house, in the presence of one or more of the adult members of his family; or if the defendant resides in the family of another, with one of the adult members of the family in which he resides.

SECTION 3. It shall be the duty of the prothonotary of any court having jurisdiction of the action, on the application of the plaintiff in any personal action, his agent or attorney, instead of the writ of summons as aforesaid, to issue a writ of *capias ad respondendum*, in the following form, to wit:

The Commonwealth of Pennsylvania,

[L. S.] County of \_\_\_\_\_, to the sheriff of  
county, greeting:

We command you that you take \_\_\_\_\_, if he shall be found in your bailiwick, and him safely keep until he shall have given bail, or made deposit according to law, so that he be and appear in our court of \_\_\_\_\_ on the day of \_\_\_\_\_ next, then and there to answer in an action of debt [or as the case may be] in our court of \_\_\_\_\_, at the suit of \_\_\_\_\_, or until the said \_\_\_\_\_ shall by other lawful means be discharged from your custody, and have you then there this writ; witness \_\_\_\_\_ president of said court, [or as the case may,] the \_\_\_\_\_ day of \_\_\_\_\_, A. D.

Prothonotary.

SECTION 4. *Provided*, That no writ of *capias ad respondendum* shall issue in any case, unless the plaintiff, his agent or attorney, shall previously thereto make affidavit, setting forth:—

First: The cause of action, and the amount in which the defendant is indebted to the plaintiff, or the value of the property taken or detained, or the damages sustained, as the case may be, to the best of the deponent's knowledge and belief; and

Second: That to the best of the deponent's knowledge or belief, the defendant is not an inhabitant of this commonwealth, or if such inhabitant, that he has no place of residence therein to the knowledge of the deponent, or that he is about to quit the commonwealth, without leaving sufficient real or personal estate therein to satisfy the demand; which affidavit shall be filed of record in the suit.

SECTION 5. *Provided*, That it shall be lawful for a plaintiff in any action founded upon actual force, or which shall be brought by reason of actual fraud or deceit, upon affidavit of the facts, to have a *capias* as aforesaid, against any person not otherwise liable to arrest.

SECTION 6. Nothing herein contained shall be taken to authorise the issuing of a *capias ad respondendum* against



, in said county, [yeoman,] and G. H. of the township of , in said county, [merchant,] at the suit of, A. B., in a plea of [describing the action as described in the bond.]

SECTION 12. It shall be the duty of the officer taking such bond, to make return of the same, at or before the return day of the writ, together with the *capias ad respondendum*, to the office of the prothonotary issuing the *capias*, who shall file the same, and enter upon his docket the names of the bail.

SECTION 13. It shall be the duty of every sheriff, taking bond as aforesaid, to give notice in writing of the names and places of residence of the bail, to the plaintiff in the action, his agent or attorney.

SECTION 14. The bail taken by the sheriff as aforesaid, may be excepted to by the plaintiff, his agent or attorney, at any time within twenty days after the return day of the writ, and notice given to him by the sheriff as aforesaid, and the bail so entered may justify, or new bail be added or substituted, and justify, within ten days after notice of the exception as aforesaid, according to the practice hitherto allowed with respect to special bail.

SECTION 15. *Provided nevertheless*, That it shall be lawful for any court to make such rules respecting the time and manner of giving notice of bail, excepting to bail, and justifying bail as aforesaid, taken upon process out of such court, as the convenient administration of justice in such court may require.

SECTION 16. The sheriff taking any bond as aforesaid, shall be responsible to the plaintiff for the sufficiency of the bail therein, but such responsibility shall cease and determine:—

First, If the plaintiff shall not except to the bail within the time allowed for that purpose; or

Second, If upon exception made, the bail shall justify, to the satisfaction of the court, or of the commissioner authorized for the purpose; or

Third, If upon such exception other bail shall be added or substituted, and justify as aforesaid.

SECTION 17. If a defendant, arrested or detained on a *capias ad respondendum* as aforesaid, shall not give bail as aforesaid, it shall be the duty of the sheriff to state the fact in his return, according to the practice now prevailing and allowed.

SECTION 18. If the officer charged with the execution of such writ, shall make return that he has taken the body of the defendant in such writ, or that such defendant hath surrendered himself to his custody, he shall be chargeable to have the body of such defendant at the day of the return of such writ, in the manner heretofore practised.

SECTION 19. It shall be lawful for any defendant committed to prison by virtue of any *capias ad respondendum*, or surrendered by his bail as aforesaid, to enter special bail to the action, in the manner now practised and allowed, at any time before final judgment obtained against him.

SECTION 20. It shall be lawful for the defendant in any writ of *capias ad respondendum*, either before or after arrest, or after bail given, and before the return of the writ, to deposit in the hands of the sheriff, in lieu of all bail, the sum in which bail is demanded, to abide the event of the suit, for which he shall be entitled to demand of such officer a receipt, and upon making such deposit, he shall be forthwith discharged from arrest in the action in which such deposit shall be made, and the liability of the bail, if any have been given, shall cease and determine.

SECTION 21. It shall be the duty of the officer receiving such deposit, to make return of the fact, and to pay the sum deposited with him thereon, into court; and if the plaintiff in such writ shall fail in his action, the money so deposited shall be forthwith returned to the defendant, upon application made to the court for that purpose.

SECTION 22. If judgment be rendered against the defendant in such action, the money deposited as aforesaid, or so much thereof as may be necessary, shall be applied by order of the court towards the satisfaction of such judgments, in like manner as money paid into court by a defendant in other cases.

SECTION 23. It shall also be lawful for any defendant, after the return of the writ, by the leave of the court, to deposit and pay into court the sum in which bail may be demanded as aforesaid, to abide the event of the suit, and to be disposed of in manner aforesaid, and thereupon, it shall be lawful for the said court to make an order for the discharge of the defendant from imprisonment, or of his bail, as the case may be, from liability.

SECTION 24. In any personal action, commenced by summons as aforesaid, if the plaintiff, his agent or attorney, shall, during the pendency of such action, make affidavit, to be filed of record, of his cause of action as aforesaid, and that the defendant is about to quit the commonwealth, as the deponent verily believes, without leaving sufficient real or personal estate therein to satisfy the demand, he may have a special *capias ad respondendum* against the defendant, in the following form:

County, ss.

The Commonwealth of Pennsylvania,

To the sheriff of \_\_\_\_\_ county, greeting:

Whereas, an action of debt (or as the case may be,) has been commenced in our court of \_\_\_\_\_, and is depending between A. B. and C. D. and the said A. B. (or as the case

(may be,) has made affidavit that the said C. D. is justly and truly indebted to him, (or as the case may be, reciting the cause of action,) and that the said C. D. is about to quit the commonwealth, as he verily believes, without leaving sufficient real or personal estate therein, to satisfy the demand; therefore, we command you that you take the said C. D., and him safely keep until he shall have given bail, or made deposit according to law, in the said action, or until the said                    shall by other lawful means be discharged from your custody; and you are to make return of this writ within ten days after the execution thereof, together with the manner in which you shall have executed the same, and the day of the execution thereof:

Witness                   , President of the said court,  
(or as the case may be,) the                    day of                     
A. D.                   

Prothonotary.

SECTION 25. The proceedings upon such special *capias ad respondendum*, shall be the same as are hereinbefore provided in the case where the action is commenced by a *capias*.

SECTION 26. Whenever any person, who shall have become bail of the defendant in any action, shall, pending the same, assign his effects for the benefit of creditors, or make application for the benefit of the insolvent laws of this commonwealth, or give bond for such purpose, or shall remove from this commonwealth, or signify an intention so to do, it shall be lawful for the plaintiff in such action, to require such defendant, by a rule to be entered by the prothonotary, as of course, in term time, or vacation, to find additional bail, and in case of his default, to issue a special writ of *capias* against him, reciting briefly the circumstances, and detain him thereon until he shall comply with such requisition.

SECTION 27. Every such rule shall be entered, after an affidavit of the fact upon which it is grounded; it shall stipulate that three days notice thereof be given by the plaintiff to the defendant, unless other notice shall be directed by a rule of court, and shall otherwise be subject in all respects, to such restrictions and regulations as the court shall make in that behalf.

SECTION 28. It shall be the duty of every prothonotary issuing a *capias ad respondendum* as aforesaid, whether original or special, to indorse thereon the amount of bail required by the plaintiff in the action.

SECTION 29. The court from which any original or special writ of *capias ad respondendum* shall issue, shall have the like power and authority to inquire into the cause of action, to quash the writ, with or without costs, to reduce the amount of bail required, or to discharge without bail, as are now possessed and exercised by the several courts of this commonwealth; and if any deposit shall have been made as aforesaid;

and the court shall decide that the plaintiff was not entitled, to, bail, or shall reduce the amount for which bail was demanded, the defendant shall be entitled to the repayment of the money deposited, or so much thereof as shall remain beyond the amount of bail authorized by the court.

SECTION 30. Every writ used for the commencement of an action; shall bear date on the day of the issuing thereof, and shall be made returnable on the first day of the term next succeeding the time at which it shall be issued.

SECTION 31. *Provided*, That in the case of a writ of summons, if there shall not be ten days between the issuing thereof and the first day of the term as aforesaid, the writ may be made returnable on the next day preceding the last day of such term, or upon the first day of the second term next after the issuing of the writ.

SECTION 32. In the courts for the city and county of Philadelphia, and county of Allegheny, all writs used for the commencement of actions may be made returnable on the first day of the next term as aforesaid, or on the first Monday of any intermediate month, at the election of the party suing out the writ.

SECTION 33. If the defendant in any writ of summons as aforesaid, shall not appear at the return day thereof, and the officer to whom such writ was directed, shall make return that it was served upon the defendant ten days before the return day aforesaid, it shall be lawful for the plaintiff, having filed his declaration, to take judgment thereon for default of appearance, according to the rules established by the court to regulate the practice in this respect.

SECTION 34. In case such writ shall not be served ten days before the return day thereof, if the defendant therein shall not appear in ten days after the day of service, it shall be lawful for the plaintiff, having filed his declaration, to take judgment thereon at any subsequent day in term time, for default of appearance, according to the rules established by the court to regulate the practice in this respect.

SECTION 35. If the defendant shall have deposited in the hands of the officer a sum of money in lieu of bail as aforesaid, he shall be deemed to have appeared in court at the return day, in like manner as if he had entered special bail to the action.

SECTION 36. Whenever any writ of *capias* as aforesaid, shall be issued against any person who may be confined in the jail of the county, a copy thereof shall be delivered to the defendant, by the officer holding the same, and another copy thereof shall be left by such officer with the jailor, and thereupon, such writ shall operate to detain such person, after the other cause or causes of his confinement shall have ceased, in like manner as if had been arrested and imprisoned, by virtue of such writ.

**SECTION 37.** In cases where a trespass or nuisance has been or may be committed on real estate, by non-residents of the county wherein such real estate is situated, it shall be lawful for the sheriff to go beyond his bailiwick, into an adjoining county, for the purpose of serving any process which may be issued out of the court of the proper county, in suits instituted for the recovery of damages, or abatement of the nuisance, and such service shall be as good and valid as if the same had been made by the sheriff within his bailiwick.

**SECTION 38.** The sheriff or other officer serving any writ of summons, shall in all cases state in his return, the time and manner in which the service thereof was made.

**SECTION 39.** In every case in which a writ of scire facias may by law be issued, it shall be served and returned in the same manner as is herein provided in the case of a summons in a personal action, and judgment for default of appearance may be taken at the same time, and in the same manner, as in the case of a summons as aforesaid, unless it be otherwise especially provided.

**SECTION 40.** It shall be lawful for any persons, willing to become parties to an amicable action, to enter into an agreement, in writing, for that purpose, either in their proper persons, or by their respective agents, or attorneys, and on the production of such agreement to the prothonotary of any court having jurisdiction of the subject matter, he shall enter the same on his docket, and from the time of such entry, the action shall be deemed to be depending, in like manner as if the defendant had appeared to a summons issued against him by the plaintiff.

## II. COMMENCEMENT OF PERSONAL ACTIONS IN PARTICULAR CASES.

### I. AGAINST CORPORATIONS.

**SECTION 41.** Every corporation, aggregate or sole, shall be amenable to answer upon a writ of summons as aforesaid, and in the case of a corporation aggregate, except counties and townships, service thereof shall be deemed sufficient, if made upon the president or other principal officer, or on the cashier, treasurer, secretary, or chief clerk of such corporation, in the manner hereinbefore provided.

**SECTION 42.** In actions for damages, occasioned by a trespass or injury done by a corporation, if the officers aforesaid of such corporation, or any of them, shall not reside in the county in which such trespass or injury shall be committed, it shall be lawful to serve the summons upon any officer or agent of the corporation, at any office or place of business of the corporation within the county, or if there be



The officer to whom such writ shall be directed, shall go to the person in whose hands or possession the defendant's goods or effects are supposed to be, and then and there declare, in the presence of one or more credible persons of the neighborhood, that he attaches the said goods or effects.

SECTION 49. In the case of real estate, the attachment shall be executed as follows:

I. If the attachment be levied on houses, other buildings, or lands, it shall be the duty of the sheriff to leave a copy of the writ with the tenant, or other person in actual possession, holding under the defendant in the attachment, and to summon him as garnishee.

II. If there be no person in actual possession as aforesaid, the sheriff shall publish a copy of the writ, for six weeks, in one newspaper printed in the county, if there be one, otherwise in one newspaper published nearest to the land attached, and such writ shall also be published in one or more newspapers in the city of Philadelphia, or elsewhere, as the court, if in session, or a judge thereof, in vacation at the time of issuing the same, having reference to the supposed place of residence of the defendant, shall direct.

III. If the attachment be levied on a rent charge, it shall be the duty of the sheriff to leave a copy of the writ with the owner of the messuage, lot, or land out of which such writ shall issue, or upon which the same shall be charged, or if such owner shall not reside within the county, upon the tenant or other person in possession of such messuage, lot, or land, and in either case, to summon such person as garnishee.

IV. In all other cases of incorporeal hereditaments, the attachment shall be executed by leaving a copy of the writ with the person or persons who may be liable to the payment of money to the defendant, or who may be charged with, or otherwise liable to the defendant in respect of such hereditament, and if there be no such person, by publication, as directed in the case of houses or lands of which there shall be no person in possession, as aforesaid.

SECTION 50. The goods and effects of the defendant in the attachment, in the hands of the garnishee, shall, after such service, be bound by such writ, and be in the officer's power, and if susceptible of seizure or manual occupation, the officer shall proceed to secure the same, to answer and abide the judgment of the court in that case, unless the person having the possession thereof, will give security therefor.

SECTION 51. Every writ of attachment executed upon real estate, shall bind the same as against purchasers and mortgagees, from the time of the execution thereof, and it shall be the duty of the sheriff to file in the office of the

prothonotary of the court, a description of the property attached, within five days after he shall have made the attachment, which description shall be entered by the prothonotary upon his docket, and the names of the parties, with the date of the execution of the writ, and the amount of bail required, shall also be entered by him upon his judgment docket.

SECTION 52. Whenever a clause of *capias* shall be added to any writ of attachment, as aforesaid, the garnishee shall find sufficient sureties, to appear in court, and make answer as by law is required, and further, to render his body to the prison of the respective county, or pay the condemnation money, if judgment shall pass against him.

SECTION 53. It shall be lawful for the plaintiff, at the third term of the court after the execution of the writ aforesaid, if he shall have filed his declaration, to take judgment thereon against the defendant for default of appearance, unless the attachment before that time be dissolved.

SECTION 54. After judgment against the defendant in manner aforesaid, the plaintiff may have a writ of *scire facias* against the garnishee, commanding him to appear before the said court at the next term, and shew cause, if any he have, why the plaintiff should not have execution of his said judgment, of the estate and effects of the said defendant, attached as aforesaid, in his hands or possession.

SECTION 55. After judgment as aforesaid, it shall also be lawful for plaintiff to exhibit in writing, to every garnishee as aforesaid, all such interrogatories as he may deem necessary, touching the estate and effects of the defendant, in his possession or charge, or due and owing from him, as the case may be, to the defendant, at the time of the service of such writ, or at any other time, and cause the same to be filed of record in the cause.

SECTION 56. Whenever interrogatories shall be filed as aforesaid, it shall be the duty of the court, upon the motion of the plaintiff, to grant a rule upon the garnishee, to appear before the said court, at a time and place in such rule to be named, and then and there to exhibit in writing, under his oath or affirmation, full, direct and true answers, to all and singular the interrogatories of the plaintiff exhibited and filed as aforesaid, or such of them as the court shall deem pertinent and proper.

SECTION 57. If the garnishee shall, after due service of rule as aforesaid, neglect or refuse to comply therewith, he shall be adjudged to have in his possession goods and effects of the defendant, liable to such writ of attachment, to an amount or value sufficient to satisfy the demand of the plaintiff, together with all legal costs of suit, and charges, and thereupon execution may issue against him, in like manner as in the case of a judgment rendered against such garnishee for his own proper debt.

SECTION 58. If issue be taken, and a trial be had upon any scire facias as aforesaid, the jury shall find what goods or effects, if any, were in the hands of the garnishee at the time the attachment was executed as aforesaid, or afterwards, and also the value thereof.

SECTION 59. After a verdict for the plaintiff on any scire facias as aforesaid, it shall be lawful for him to have execution of his judgment; in the attachment to be levied, of the goods or effects so found in the hands or possession of the garnishee, or of so much of them as shall be sufficient to satisfy his demand, together with legal costs of suit and charges, as aforesaid.

SECTION 60. The plaintiff may also at the same time, have execution against the garnishee upon the judgment obtained against him on the scire facias, as in the case of a judgment against him for his proper debt, to be executed, if the garnishee shall neglect or refuse, upon the lawful demand of the proper officers, to produce and deliver the goods and effects of the defendant, as aforesaid, or to pay the debt or duty attached, if the same shall be due and payable.

SECTION 61. But after judgment, before any execution shall be executed, the plaintiff shall give security, by recognizance and sufficient sureties, to be approved of by the court, or by one of the judges thereof, in vacation, with condition, that if the defendant in the attachment shall, within a year and a day next ensuing the date of such recognizance, by himself or attorney, come into court and disprove or avoid the debt recovered against him, or shall discharge the same, with costs, in such case the plaintiff shall restore to the defendant the goods or effects, or the value thereof, attached and condemned as aforesaid, or so much thereof as shall be disproved or discharged, or else, that they will do it for him.

SECTION 62. *Provided always*, That if the defendant or defendants in the attachment, and every of them, shall at any time before the money paid, put in and perfect bail to the plaintiff's action, in the sum demanded, or in such sum as the court, upon the cause of action shown, shall order, or if they shall make deposit, in the manner provided in the case of an arrest upon a *capias ad respondendum*, the attachment, and all proceedings had thereon as aforesaid, shall be dissolved, and the action shall proceed in due course, in like manner as if the same had been commenced by a writ of *capias ad respondendum*.

SECTION 63. If an attachment shall be dissolved as aforesaid, after any sale of real or personal property attached, such dissolution shall not have the effect of divesting any estate or interest acquired by virtue of such sale, by any

person not party to such attachment, but in such case, the proceeds of any such sale shall be paid or restored to the defendant in the attachment.

SECTION 64. It shall be lawful for any defendant in an attachment, instead of giving bail or security at his election, at any time before judgment obtained in the attachment, to cause an appearance to be entered for him, and to take defence to the action, in which case the action shall proceed as if commenced by a summons, but the attachment shall nevertheless, continue to bind the estate or effects attached, as in other cases, unless judgment be rendered for the defendant in such attachment, and if judgment be rendered for the plaintiff, such judgment shall have the like force and effect as in case of an action commenced by a summons: *Provided*, That the plaintiff may proceed by scire facias against the garnishee, and execution against the estate and effects attached, as in other cases of attachment, except that a recognizance to restore as aforesaid, shall not be necessary.

SECTION 65. In every case of a writ of attachment executed upon land, which shall have been demised for years, or otherwise, with a reservation of rent, the delivery of a copy of the writ of attachment to the tenant, as hereinbefore provided, shall have the effect of sequestering, in the hands of the tenant, all such sums or amount of rent as shall be due at the time of the execution of the writ, or that shall accrue until the execution against the garnishee, unless the attachment be sooner dissolved.

SECTION 66. It shall be lawful for the court, at any time after the return of the attachment, on application by the plaintiff, and affidavit of a just cause of action, to issue a writ to the sheriff, requiring him to collect and recover from the tenant of the premises, all such rent as shall have accrued at the time of the execution of the writ of attachment, or as may accrue thereafter, until the further order of the court.

SECTION 67. The sheriff or other officer, shall, by virtue of such writ, proceed from time to time, to recover such rents, in like manner, and with the like powers as are or shall be possessed by a landlord under the laws of this commonwealth, and it shall be his duty forthwith, on the receipt of any monies arising from the recovery of such rents, to bring the same into court.

SECTION 68. After judgment obtained on a scire facias, against such tenant as garnishee, it shall be lawful for the plaintiff to have execution, as hereinbefore provided, if the rents of the premises, or any part thereof, shall have remained in the hands of such tenant; or if such rents, or any part thereof, shall have been paid into court as aforesaid, then,



aforesaid; and he shall also be entitled to proceed against the defendants named in the clause of attachment, and their estate or effects, seized or bound thereby, in the manner hereinbefore provided where all the defendants in such writ are attached.

SECTION 73. If a judgment be rendered against the defendants who shall have appeared as aforesaid, execution thereof may be had, in like manner as in the case of a judgment rendered upon the confession of the defendant; and if such defendants have nothing, or not sufficient whereof to levy such judgment, it shall be lawful for the plaintiff to levy his judgment, or the residue thereof, of the goods and effects which may remain, subject to the attachment, proceeding therein in all respects, in the manner hereinbefore provided, where none of the defendants enter bail as aforesaid.

SECTION 74. *Provided nevertheless*, That the court may, if they see cause, award execution of the whole or any part of such judgment, against the goods or effects of the defendants attached in the first instance, saving, nevertheless, to all the defendants, their respective rights and claims against each other in that behalf.

SECTION 75. If any of such defendants against whom a summons or *capias* shall issue as aforesaid, shall plead any plea in bar of the whole action, in the manner and form in which it is brought, and a verdict and judgment absolute thereon, be rendered for such defendant, the attachment against the other defendant shall, upon the motion of any person interested, be dissolved, and the goods and effects thereby bound, shall be discharged, unless the plaintiff shall, within a year and a day thereafter, sue out and prosecute a writ of error to reverse such judgment, and in the mean time, and until such judgment be reversed, no further proceedings shall be had upon any judgment which may have been rendered against any defendant attached.

SECTION 76. A writ of attachment, in the form aforesaid, may be issued against any foreign corporation, aggregate or sole, and the proceedings aforesaid, may be had thereon, so far as the case will permit; and such attachment and proceedings may be dissolved as aforesaid, upon an appearance by an attorney, and a deposit made as aforesaid, or security given for the debt or demand in lieu thereof, in such sum and form as the court from which such writ issues, shall direct.

SECTION 77. If the person against whom any attachment as aforesaid shall be issued, shall be a female, it shall be lawful for such female, in lieu of bail, to give security for the debt or demand, or to deposit a sum of money, as provided in the case of a corporation; and thereupon, if such female shall cause an appearance to be entered to the action, in the

manner practised upon writs of summons, the attachment shall be dissolved.

### III. IN CASE OF A CONVICT.

SECTION 78. A writ of attachment, in the form aforesaid, may be issued against a person under sentence of imprisonment, upon conviction of a crime by a court of competent jurisdiction, and such attachment may be dissolved in the manner hereinbefore provided in the case of a foreign corporation, and not otherwise; but if in such case, the term of imprisonment of the defendant shall elapse, or if he shall be otherwise legally discharged therefrom; before the money shall be paid, it shall be lawful for him to put in and perfect special bail to the plaintiff's action, and thereupon, the security which may have been given by him in lieu of bail, shall cease and become void, and any deposit which may have been made aforesaid, shall be restored to him.

### III. COMMENCEMENT OF REAL ACTIONS.

SECTION 79. Actions of dower, partition, waste, ejectment, nuisance, and all other pleas of land, may be commenced in any court of the county wherein the lands or tenements in question are situate, having original jurisdiction thereof, either by agreement of the parties, in the manner and with the effect provided in the case of personal actions, or by writ.

SECTION 80. In cases where the subject of controversy shall be a tract of land, or any other single tenement, situate in different counties, it shall be lawful to commence an action as aforesaid, in either of the counties, and in such case, the sheriff of the county in which such writ shall issue, shall have power to execute the same, and all other process, whether original or final, which may be issued in such action, in like manner, and with like effect as if the said counties were within his proper bailwick.

SECTION 81. Whenever any action shall in such case be commenced in any such county, no other action between the same parties for the same cause, shall be instituted, during the pendency thereof, in any other county.

SECTION 82. The writ which shall be used for the commencement of any such action, shall be in all cases, unless otherwise especially provided, a writ of summons, which shall be directed to the sheriff of the county in which the action is commenced, and shall be made returnable in the manner, and according to the rules provided in the case of personal actions.

SECTION 83. If any defendant in any real action as aforesaid, shall be a minor, service of the writ shall be as follows:

J. If any such defendant have a guardian of his estate,

service thereof shall be made upon such guardian, in the manner directed by law.

II. If any such defendant be above the age of fourteen years, service thereof shall also be made upon him, in the same manner as is directed by law in the case of adults.

III. If any such defendant be under the age of fourteen years, and have no guardian as aforesaid, service thereof shall be made upon the next of kin of such defendant, residing in the county wherein such defendant shall reside, in the manner aforesaid.

But in every case in which any such defendant shall not have a guardian as aforesaid, it shall be the duty of the plaintiff, upon or after the day on which he might take judgment by default, against such minor, if he were of full age, and before any plea pleaded, or rule taken in the action, to make application to the court in which such action shall be brought, for the appointment of a guardian of such minor in that cause, if such minor shall not have appeared by his guardian as aforesaid, and such appointment being made, he shall give notice thereof to the person appointed.

SECTION 84. The court which shall appoint a guardian ad litem of a minor, defendant in any cause, shall have power to require security of such guardians for the faithful execution of the trust, and in all cases, whether such security shall be given or not, such guardians shall be responsible to their wards, in like manner as guardians appointed by the Orphans' court, and they shall also be entitled to a reasonable compensation for their services.

SECTION 85. If damages shall be recoverable, and shall be demanded, in any such action, it shall be lawful for the plaintiff by a rule, to require the defendant, if he would be liable to arrest in a personal action, to enter bail, or give security, in such sum as shall be sufficient, in the judgment of the court, to satisfy the damages and costs to which such plaintiff may be entitled, and the proceedings for that purpose, shall be conducted in such manner as the court in which such action may be depending, by their rules shall direct.

SECTION 86. The officer serving any such writ, shall in all cases state in his return the time and manner in which the service thereof was made, and in case the publication of the writ, or of the substance thereof, shall be required by law, or by any order of the court, compliance therewith shall be shewn by affidavit, or otherwise, to the satisfaction of the court.

SECTION 87. After the service of any such writ, or notice thereof, given as aforesaid, if the defendant shall not appear, it shall be lawful for the plaintiff, without other process, to file his declaration or statement, as by law shall be required or allowed, and at such time and manner as may be allowed

by law, have judgment thereon for such default of appearance, and no essoin or saver-default in any such case be received or allowed.

SECTION 88. Whenever it shall be lawful to cause service of any writ as aforesaid, to be made upon any defendant out of the county in which the action may be commenced, the sheriff of the county in which such defendant may reside or be found, shall by virtue of his office, have within his county, the power of a deputy to the sheriff of the county in which such writ shall have issued, for the purpose of executing such writ, without any special deputation for the purpose.

SECTION 89. That all laws hereby altered or supplied, so far as are inconsistent with this act, are hereby repealed.

SECTION 90. The provisions of this act, so far as they alter or add to existing laws or customs, shall go into effect from and after the first day of September next, and not before.

NER MIDDLEWSARTH,  
Speaker of the House of Representatives.

THOMAS S. CUNNINGHAM,  
Speaker of the Senate.

APPROVED—The thirteenth day of June, Anno Domini, eighteen hundred and thirty-six.

JOS: RITNER.

No. 171.

## An Act

Relating to lunatics and habitual drunkards.

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