

SECTION 68. All laws hereby altered or supplied, so far as are inconsistent with this act, are hereby repealed, and this act shall take effect from and after the first day of September next.

NER MIDDLESWARTH,
Speaker of the House of Representatives.

THOMAS S. CUNNINGHAM,
Speaker of the Senate.

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

JOS: RITNER,

No. 172.

An Act

Relating to Domestic Attachments.

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An act relating to Domestic Attachments.

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 writs of domestic attachments may be issued by the court of Common Pleas of the county in which any debtor, being an inhabitant of this commonwealth, may reside, if such debtor shall have absconded from the place of his usual abode, within the same, or shall have remained absent from this commonwealth, or shall have confined himself in his own house, or concealed himself elsewhere, with design, in either case, to defraud his creditors.

And the like proceedings may be had if any debtor, not having become an inhabitant of this commonwealth, shall confine or conceal himself within the county, with intent to avoid the service of process, and to defraud his creditors.

SECTION 2. But no such writ shall be issued, except upon oath or affirmation, previously made, by a creditor of such person, or by some one in his behalf, of the truth of his debt, and of the facts upon which the attachment shall be founded, which oath or affirmation shall be filed on record.

SECTION 3. The writ aforesaid shall be made according to the following form, viz:

County, ss.

The Commonwealth of Pennsylvania,

To the sheriff of county, greeting:

Whereas, A. B., late of the county, has absconded from the place of his usual abode in said county, (reciting the matters of fact contained in the affidavit, as the case may be,) with design to defraud his creditors, as it is said; therefore, we command you that you attach, all and singular the goods and chattels, lands and tenements of the said A. B. within your bailiwick, in whose hands or possession soever the same may be, for the benefit of C. D., who sues this writ, and of the other creditors of the said A. B.; and we further command you, that you cause the goods and chattels attached by virtue of this writ, forthwith to be secured and appraised, and an inventory thereof to be made, and how you shall have executed this writ make known to our judges at , in the county aforesaid, on the day of , and have you then there this writ, together with the said inventory and appraisement: Witness, &c.

SECTION 4. Every writ of domestic attachment, shall contain a clause requiring the sheriff, or other officer, to summon the garnishee, or person in whose hands any of the defendant's money or other effects may happen to be, to appear before the court from which the writ shall issue, at the day and place mentioned in the said writ, to abide the orders of the court in the premises.

SECTION 5. It shall be lawful for the plaintiff, in any case of attachment as aforesaid, 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 6. If real estate shall be attached within the county in which such writ of attachment shall issue, it shall be the duty of the sheriff to file a description thereof, and cause the same to be entered upon the docket of the prothonotary of the court out of which such attachment issued, in the manner provided by law in the case where real estate is attached by virtue of a writ of foreign attachment; and also, to cause a copy of said attachment, by him certified, to be put up in some conspicuous place on such real estate, and where there is a tenant, it shall be the duty of the sheriff to leave a copy of the writ with him, or any other person in actual possession, holding under the defendant, and to summon him as garnishee.

SECTION 7. It shall be lawful for any other creditor of such person, upon affidavit of his debt as aforesaid, to suggest his name upon the record, and thereupon, such creditor may proceed to prosecute the said writ, if the person suing the same shall refuse or neglect to proceed thereon, or if he shall fail to establish his right to prosecute the same, as a creditor of the defendant.

SECTION 8. In case any perishable goods shall be attached by virtue of such writ, it shall be lawful for the court, if in session, or for any judge thereof in vacation, on the application of any creditor as aforesaid, to order the same to be sold by the sheriff, and the monies arising from such sale shall be received by the sheriff, and paid over by him to the trustees, to be appointed as hereinafter mentioned.

SECTION 9. It shall be lawful for any creditor as aforesaid, to sue out from the said court, and with the original writ, or afterwards, other writs of attachments, into any other county in which such debtor may have goods or chattels, lands or tenements.

SECTION 10. Whenever any testatum writ of attachment shall be issued as aforesaid, the garnishee in whose hands any goods or effects shall be attached as aforesaid, shall be summoned to appear before the court of Common Pleas the county in which he shall reside, or, if a clause of *capias* against him shall be inserted in such writ, the proceedings thereon in respect to arrest and bail, shall be the same as if the writ had issued from the court of Common Pleas of such county.

SECTION 11. It shall be the duty of the sheriff to whom any testatum writ of attachment shall be directed as aforesaid, to execute the same in like manner as if the writ had issued from the court of Common Pleas of his own county,

and he shall cause the same to be entered upon the docket of the prothonotary of such court, in the manner provided in the case of testatum executions, together with a description of any real estate which he may attain by virtue thereof; and it shall be his duty to make one return, with the said writ, to the court from which it shall have issued, and a duplicate of such return to the court of Common Pleas of his own county.

SECTION 12. The court of Common Pleas of the county into which any testatum writ of attachment shall be sent as aforesaid, shall have power to make all such interlocutory orders respecting the garnishee, and for the delivery, custody, and sale of any personal property attached within their county, as they might do in the case of an attachment issuing from such court, and it shall be lawful for such court to make all necessary orders and decrees for the purpose of compelling answers to interrogatories, by any person within their jurisdiction, and delivery of all property within their jurisdiction, to the trustees appointed in such attachment.

SECTION 13. On the return of the writ as aforesaid, the court shall appoint three honest and discreet men, not being creditors of the defendant, to be trustees of the estate of the defendant, who, before proceeding upon the duties of their appointment, shall make oath or affirmation, before some person authorized to administer oaths, well and truly to execute the trust reposed in them, according to the best of their skill and understanding, which oath or affirmation, certified by the person before whom it was taken, shall be filed in the office of the prothonotary of the said court.

SECTION 14. If any trustee as aforesaid, shall decline to undertake the said office, or shall resign the same, or die, or become incapable to execute the same, the court shall appoint another suitable person to supply the vacancy.

SECTION 15. It shall be lawful for the court, at the time of the appointment of the said trustees, or at any time afterwards, to require the said trustees, to give security, in such form and amount as the court shall direct, for the due execution of the trust.

SECTION 16. It shall be the duty of the officer who shall have taken possession of any money or other personal property of the defendant, by virtue of the writ of attachment, to deliver the same to the trustees, upon demand made by them, and upon their producing a certificate from the prothonotary, that they have been duly qualified, and given security, if so required by the court.

SECTION 17. A majority of the trustees as aforesaid, shall be competent to exercise all the powers herein conferred upon them, and to perform all the duties herein required of them.

SECTION 18. It shall be the duty of the said trustees, immediately after their appointment, to give notice thereof in one newspaper, printed in the county in which the attachment issued, during at least six successive weeks, together with their names and respective places of residence, and in such other newspapers, or in such other manner, as the court at the time of their appointment, or afterwards, shall order and direct, and the said trustees shall, in such notice, require all persons indebted to the defendant, or holding property belonging to him, to pay and deliver all such sums of money and property due and belonging to such defendant, to the said trustees, and also, desire all creditors of the defendant to present their respective accounts or demands.

SECTION 19. The trustees aforesaid, shall be deemed to be vested with all the estate of the debtor, at the time of issuing the said attachment, subject to all liens existing at that time, and it shall be their duty to take into their possession all the said estate, whether attached as aforesaid, or afterwards discovered by them, and all books, vouchers, and papers relating to the same, and they shall be capable of suing for and recovering, in their own names, all the said estate, and all debts and things in action, due, or belonging to such debtor at the date of the attachment, or at any time thereafter.

SECTION 20. *Provided*, (1st.) That no purchase or assignment of the real estate of such debtor, made bona fide, and for a valuable consideration, before the attachment executed thereon and returned, and entered upon the docket as aforesaid, by or to any person having no notice or knowledge of such attachment, shall be invalidated or impeached thereby; and, (2d.) that no purchase or assignment of the personal property of such debtor, made bona fide, and for a valuable consideration, by or to any person having no notice or knowledge of the attachment, shall be invalidated or impeached thereby; and (3d.) that if any person indebted to the defendant in the attachment, or having possession of any of his property, shall bona fide pay the said debt, or deliver the said property to the said defendant, without notice or knowledge of the attachment, he shall not be liable to pay or deliver the same to the trustees; and (4th.) that the wife and family, (if any,) of such debtor, shall be entitled to retain for their own use, such articles as may by law be exempted from levy and sale upon execution.

SECTION 21. The trustees aforesaid, may summon before them, and examine, upon oath or affirmation, which they are hereby authorized to administer, and by interrogatories, or otherwise, all persons, residing within the county, supposed to be indebted to the defendant, and such other persons, residing as aforesaid, as they shall think fit, touching the real or personal estate of the defendant, and such other things as

may tend to disclose their estates, or their secret grants, or alienation of their effects.

SECTION 22. If any person summoned to attend before the trustees as aforesaid, shall refuse to attend, or shall refuse to be sworn or affirmed, or to make answers to such questions or interrogatories as shall be administered to him, by or on behalf of the said trustees, it shall be lawful for the said trustees to commit such person to the prison of the county, there to be detained until he shall submit to be examined as aforesaid.

SECTION 23. *Provided*, That any person arrested or detained by virtue of any such warrant, may be enlarged upon bail given, with condition that he shall appear at the next court of Common Pleas, to be holden for such county, then and there to answer all such interrogatories as shall be exhibited to him, under the direction of such court, and abide all orders which shall be made by such court on behalf of the said trustees.

SECTION 24. The like proceedings also, may be had in case any person having books, papers, vouchers or effects belonging to the defendant in the attachment, and discovered by the trustees, subsequent to the attachment executed as aforesaid, shall refuse to deliver the same to the said trustees, upon being legally required thereto.

SECTION 25. If any garnishee, or other person, having possession of the effects of the defendant in the attachment, or having knowledge of the same, or being indebted to the defendant, shall reside in another county, it shall be lawful for the trustees, to exhibit interrogatories, in writing, to such person in the manner authorized by law in the case of foreign attachment, and thereupon, the court of Common Pleas of the county in which such person shall reside, shall have power to compel such person to answer thereto, in like manner as in the case of a foreign attachment issued out of such court.

SECTION 26. It shall be lawful for the said trustees, by warrants, under their hands and seals, to cause to be broken open, in the day time, houses, chambers, shops, stores, or ware-houses of the defendant, or any doors therein, and any trunks or chests of the defendant, in which his goods or effects, books of account, or papers relating to his estate, shall be, or shall be reputed to be, and to seize the same for the benefit of his creditors.

SECTION 27. If the defendant in any attachment as aforesaid, shall, prior to the issuing thereof, have conveyed or transferred any part of his real or personal estate to his wife and children, or either of them, or to any person in trust for them, or either of them, or shall have conveyed or transferred the same to any other person, with intent to defraud his creditors, the trustees aforesaid, shall have power to recover

and dispose of the same, as fully and effectually, as if the said defendant had been actually seized or possessed thereof at the time of the attachment.

SECTION 28. If the defendant in the said attachment, shall have conveyed or transferred any of his real or personal estate unto any person, upon condition or power of redemption; by payment of money, or otherwise, it shall be lawful for the trustees 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 after such performance or tender, the said trustees shall have power to sell, or otherwise dispose of the said real or personal estate, for the benefit of the creditors, in the manner herein provided.

SECTION 29. It shall be lawful for the said trustees, at any time after the term next succeeding that to which the writ was returnable, to make public sale and assurance of all the goods and chattels of the defendant, and of his real estate, at any term after the third term succeeding that to which the original writ was returnable; and to grant and assign, or otherwise to order and dispose of, for the benefit of the creditors, all or any of the debts due or to become due to the defendant, and every such sale, grant, assurance or other disposition, shall be good and valid in law against the said defendant and his legal representatives, and shall vest all the right, title and interest of the defendant in the purchaser, grantee, or person to whom the same shall have been disposed of, so that such purchaser, grantee, or other person, may sue for and recover any such property or debts, in his own name, and to his own use; and after such grant, assignment, or other disposition of such debts, neither the said defendant, nor any other to whom such debts shall be due, shall have power to recover, release, or discharge the same.

SECTION 30. *Provided*, That before making sale of any of the real or personal estate of the defendant as aforesaid, it shall be the duty of the trustees to give at least ten days notice thereof, in the manner practised in the case of sales by sheriffs, upon executions: *And provided also*, That the said trustees may, at any time after their appointment, make sale of any perishable goods, upon leave of the court, or of a judge, granted in the manner hereinbefore provided.

SECTION 31. At some time after the expiration of six months from the first public notice given, as herein before provided, the trustees, having previously given public notice of the time and place fixed by them for the purpose, shall proceed to receive the proofs of the several creditors, and shall determine upon the same, and having stated their accounts, and ascertained the proportionate sum payable to each creditor, shall file their report of the same, in the office

of the prothonotary of the court out of which the attachment was issued.

SECTION 32. It shall be the duty of such prothonotary to give public notice of the filing of such report, by advertisement, in the manner directed by law in the case of the accounts of assignees under a voluntary assignment, and at the next stated term of the court, after the filing of the report, if exceptions shall not be presented at such time as may be directed by the rules of such court, the report may be confirmed by the courts, and the trustees shall thereupon make distribution accordingly.

SECTION 33. If the whole of the estate shall not have been distributed upon such report, the said trustees shall, at the expiration of three months after the order of the court upon such report, proceed to make a second dividend of all such monies as shall have come into their hands after the first dividend, and make report in like manner, and the same proceedings shall be had upon such report as are herein before provided, and so from time to time, until a distribution shall have been made of all the estate of such debtor.

SECTION 34. *Provided*, That in the distribution among the creditors of a defendant as aforesaid, no preference shall be allowed to debts due on specialties.

SECTION 35. If any person shall have, bona fide, given credit to such debtor, or taken securities from him, payable at future days, which shall not have expired or fallen due at the time of the issuing of the attachment, such creditor shall be admitted to prove his debt or contract, as if it were payable presently, and shall have a dividend, in proportion to the other creditors, discounting, where no interest is payable, at the rate of lawful interest.

SECTION 36. In all cases in which mutual credit has been given by such debtor and any other person, or mutual debts have existed 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, as the case may be.

SECTION 37. After payment of all just demands as aforesaid, and of the costs and charges of the attachment as aforesaid, the overplus, if any, shall be returned to the defendant, his executors, administrators, or assigns.

SECTION 38. When the trustees shall have completed the distribution of the debtors estate among the creditors, as aforesaid, they shall cause an account of the same to be stated, and filed in the office of the prothonotary of the court which the appointment took place.

SECTION 39. It shall be lawful for the court issuing any writ of attachment as aforesaid, at any time before the final decree for distribution, on the application of the defendant, supported by his oath or affirmation, denying the allegations upon which the attachment was founded, to grant a rule upon the creditors suing or prosecuting the writ, to show cause why the attachment should not be dissolved, and the court may at the same time, make an order, staying all further proceedings by the trustees, and upon the hearing of such rule, if the court shall be satisfied that the defendant was not liable to the attachment, they shall dissolve the same, either absolutely, or upon such terms as shall be equitable and just: *Provided*, That no order of the court, dissolving an attachment as aforesaid, shall have the effect of invalidating any sale of the estate of the defendant, made by such trustees, in conformity with law, or any payment to such trustees, made as aforesaid.

SECTION 40. It shall be lawful for the court by whom the attachments as aforesaid may be dissolved, to make such an order for the payment of the costs, either by the creditors suing or prosecuting such writ, or by the defendant therein, as shall be equitable and just, under all the circumstances of the case.

SECTION 41. No second or other attachment, excepting such as shall be issued into another county, as hereinbefore provided, 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.

SECTION 42. The death of the defendant after the issuing of the attachment, shall not abate, or otherwise affect the proceeding thereon, but the same shall be continued and concluded, in like manner as if such defendant had lived: *Provided*, That notice of the pendency of the attachment be given to the executors, administrators or heirs of such defendant.

SECTION 43. Any person aggrieved by any definite decree of any court of Common Pleas, in any case of domestic attachment, as aforesaid, may appeal from the same to the Supreme Court, in the proper district: *Provided*, Such appeal be entered within one year after such decree: *And provided also*, That in all cases, the party appealing shall first give security, in such sum as the said court of Common Pleas shall direct, conditioned to prosecute such appeal with effect, and shall also make oath or affirmation, that such appeal is not intended for delay.

SECTION 44. That all laws hereby altered or supplied, so far as are inconsistent with this act, are hereby repealed:

this act shall take effect on the first day of September next.

NER MIDDLESWARTH,
Speaker of the House of Representatives.

THOMAS S. CUNNINGHAM,
Speaker of the Senate.

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

JOS : RITNER.

No. 173.

An Act

Relating to the attachment of Vessels.

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SECTION I. Ships and vessels liable to a lien for debts contracted within this commonwealth, for materials and work in the building of the same.

2. The lien shall continue till the ship shall next proceed to sea.

3. Any of the said tradesmen or mechanics, may file a libel in the office of the prothonotary of the court of Common Pleas, or of the District court.

4. All of the said mechanics and tradesmen may join in one libel.

5. Any of the said mechanics, &c. may, pending a libel, become a party libellant therein.

6. If several suits be brought, they may be consolidated.

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8. But no such writ shall be issued against a vessel under seizure by process of the courts of the United States.

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