

No. 174.

An Act

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An act relating to writs of quo warranto and mandamus.

I. OF WRITS OF QUO WARRANTO.

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 quo warranto may be issued by the Supreme court, in the form and manner herein-after provided, in all cases in which the writ of quo warranto, at common law, may have been issued, and in which the said court has heretofore possessed the power of granting information, in nature of such writ.

SECTION 2: Writs of quo warranto in the form and manner hereinafter provided, may also be issued by the several courts of Common Pleas, concurrently with the Supreme court, in the following cases, to wit :

- I. In case any person shall usurp, intrude into, or unlawfully hold or exercise any county or township within the respective county.
 - II. In case any person, duly elected or appointed to any such office, shall have done, suffered, or omitted to do, any act, matter or thing, whereby a forfeiture of his office shall by law be created.
 - III. In case any question shall arise concerning the exercise of any office, in any corporation, created by authority of law, and having the chief place of business within the respective county.
- And in any such case, the writ aforesaid may be issued, upon the suggestion of the Attorney General, or his deputy, in the respective county, or of any person or persons desiring to prosecute the same.
- IV. In case any association, or number of persons, shall act as a corporation, or shall exercise any of the franchises or privileges of a corporation, within the respective county, without lawful authority.
 - V. In case any corporation as aforesaid, shall forfeit by misuser, or non-user, its corporate rights, privileges or franchises, or shall do, suffer, or omit to do, any act, matter or thing, whereby a forfeiture thereof shall by law be created, or shall exercise any power, privilege or franchise not granted or appertaining to such corporation.

And in any such case, the writ aforesaid may be issued upon the suggestion of the Attorney General, or his deputy, in the respective county, or of any person or persons desiring to prosecute the same.

SECTION 3. Whenever the Attorney General shall have reason to believe that any association as aforesaid, have acted as a corporation, or exercised any of the franchises or privileges thereof, without lawful authority, or that any corporation has forfeited its corporate rights, privileges, or franchises, as aforesaid, or exercised any power, privilege, or franchise, not granted or appertaining to such corporation, it shall be his duty to file, or cause to be filed, a suggestion as aforesaid, and to proceed thereon for the determination of the matter.

SECTION 4. Writs of quo warranto shall be in the following form, to wit:

County, ss. The Commonwealth of
 Pennsylvania, To the sheriff of said county, Greeting:
 We command you that you summon , so that
 be and appear before our court to be holden
 at , in and for the , on the day of
 next, and then and there to show by what authority
 claim to exercise the office of , in the county
 of , or to show by what authority he or they exercise
 within the said county, (or county of,) the liberties and
 franchises following, to wit: (setting them forth , or
 otherwise, as the case may be,) and have you then there this
 writ; Witness, &c.

SECTION 5. The writ aforesaid, may be issued out of the Supreme court, with the leave of the said court in term time, or of any judge of the said court in vacation, and out of the respective court of Common Pleas, with the leave of the said court in term time, or of the president judge thereof in vacation, and such writ may be made returnable at any time within term, at the discretion of the court or judge granting the same.

SECTION 6. The writ aforesaid, shall be served at least ten days before the return day, in the same manner as a writ of summons in a personal action, and if the party against whom such writ shall be issued shall not appear, judgment by default may be taken, without further process, in the manner allowed in a personal action.

SECTION 7. Every suggestion as aforesaid, shall set forth the facts as fully as has heretofore been required, in information aforesaid; it shall be verified by affidavit, and filed of record in the cause, and in every case, the name of the person at whose instance the writ shall issue, shall be endorsed thereon.

SECTION 8. If it shall appear to the court or judge as aforesaid, that the several rights of different persons may be properly determined by one writ, it shall be lawful for such court or such judge, to make such order or orders, for the introduction or addition of such persons into the writ, or for notice to such persons to appear and take defence, as shall be reasonable and just.

SECTION 9. The defendant in such writ, shall answer, plead or demur to the suggestion filed, as aforesaid; he may traverse all or any of the material facts contained therein, as in other cases, and the person or persons at whose instance such writ shall have been issued, shall reply, take issue or demur, and thereupon issue shall be joined in due course, as in other cases; and the court shall make such orders from time to time, in respect to such pleadings, as shall expedite

the decision of the cause, consistently with reasonable convenience to the parties.

SECTION 10. Whenever any issue of fact shall be joined upon any writ of quo warranto as aforesaid, issued by the Supreme court in any district, it shall be lawful for the said court, by an order to be made in the cause, to direct such issue to be tried in the court of Common Pleas of the county in which the matters complained of took place, or upon cause shown, in any other county of such district; and thereupon, a copy of the proceedings in such cause shall be certified to the said court of Common Pleas, and such issue shall be determined in like manner as issues of fact in causes originating in such court, and when judgment shall be rendered upon such issue in the said court of Common Pleas, the same shall be certified to the Supreme court, who shall proceed thereupon, to the final adjudication of the cause.

SECTION 11. If the defendant in any quo warranto as aforesaid, whether a natural person, or persons, or a corporation, be found or adjudged guilty of usurping or intruding into, or unlawfully holding or exercising the office, franchise, privilege or power mentioned in such writ, the court shall give judgment that such defendant be ousted, and altogether excluded from such office, franchise, privilege or power, and that the commonwealth, or party, suing the writ, as the case may be, recover costs from the defendant.

SECTION 12. If judgment be given for the defendant in any such writ, and the proceedings have been instituted on the relation of any private prosecutor, the court shall also give judgment, that the defendant recover his costs of such relator, to be levied by execution, as in cases of debt, if the proceedings have been instituted by the Attorney General, at his own instance, it shall be lawful for the court, in their discretion, on giving judgment for the defendant, to order that the costs be paid by the county in which the matters complained of were alleged to have taken place.

SECTION 13. If judgment of ouster and exclusion, as aforesaid, be given against any defendant, execution thereof shall be had by a writ of injunction, which shall be awarded by the court against such defendant, whether a natural person or persons, or a corporation; such injunction shall recite the judgment of the court, and shall enjoin the defendant, or defendants, from exercising the office, franchise privilege or power mentioned therein, and obedience thereto may be compelled by attachment and sequestration, in like manner as in other cases of injunction.

SECTION 14. If such injunction shall have been issued upon a judgment rendered by default, as aforesaid, the defendant therein may, nevertheless, upon the payment of

costs, and reasonable notice to the adverse party, and such other terms as the court shall deem equitable, plead to the suggestion as aforesaid, and thereupon, the parties shall proceed to issue and trial, in like manner as if the defendant had appeared at the return of the writ, and had pleaded in due course; and if judgment shall be rendered in favor of such defendant, the judgment by default shall be taken off, and the injunction aforesaid, shall thenceforth be dissolved.

SECTION 15. It shall be lawful for any person aggrieved by the judgment of any court of Common Pleas, upon any writ of quo warranto as aforesaid, to remove the same, by writ of error, into the Supreme court for the proper district, but it shall be lawful for the court to which such writ of error shall be directed, to award execution as aforesaid, notwithstanding such writ of error, if, in the discretion of the court, the case shall appear to require it.

SECTION 16. Every such writ of error may be made returnable forthwith, if the Supreme court shall be in session in the proper district, and shall be heard and decided by the judges thereof, at the term to which it is returnable.

SECTION 17. *Provided*, That nothing herein contained, shall debar any prosecution, for breach of any act of assembly in relation to corporations, corporate or other officers, or persons acting as corporations without lawful authority.

II. OF WRIT OF MANDAMUS.

SECTION 18. The several courts of Common Pleas, the president judge being present, shall, within their respective counties, have the like power with the Supreme court, to issue writs of mandamus to all officers and magistrates, elected or appointed, in or for the respective county, or in or for any township, district, or place within such county, and to all corporations, being or having their chief place of business within such county.

SECTION 19. The jurisdiction aforesaid, shall be exercised in the manner, and according to the rules, hitherto observed and practised in the Supreme court of this commonwealth, except so far as the same shall be altered by this act.

SECTION 20. Whenever any writ of mandamus shall issue out of the Supreme court, or out of any court of Common Pleas, the person or persons who, by the laws of this commonwealth, ought to make a return to such, shall make his or their return to the first writ of mandamus so issued.

SECTION 21. It shall be lawful for the person suing or prosecuting any such writ, to demur, or to plead to, or traverse all or any of the material facts contained in such return, and the person or persons making such return, shall reply, take issue, or demur, and such other and further proceeding may be had thereon, except as hereinafter pro-

vided, as might be had if the person suing such writ had brought his action for a false return.

SECTION 22. The said courts shall allow the persons suing or defending any such writ respectively, such convenient time to make return, plead, reply, rejoin, or demur, as shall be just and reasonable.

SECTION 23. If judgment shall be given for the party suing the writ, a peremptory writ of mandamus shall be granted, without delay, in like manner as if the return had been alledged insufficient.

SECTION 24. In the case of a writ of mandamus, issued by any court of Common Pleas as aforesaid, if a verdict shall be found for the person suing such writ, and judgment be rendered thereon, or if a judgment shall be given for him upon a demurrer, or by *nihil dicit*, or for want of a replication, or of any other pleading, he shall recover his damages and costs, in the same manner as he might have done in an action for a false return, as aforesaid.

SECTION 25. Whenever any issue of fact shall be joined upon the return of any writ of mandamus as aforesaid, issued out of the Supreme Court in any district, it shall be lawful for the said court, by an order to be made in the cause, to direct such issue to be tried in the court of Common Pleas of the proper county; and if the case shall require it, to direct that the damages, if any, be assessed on such trial, and the proceedings for such purpose, shall be the same as are herein before provided in the case of an issue of fact joined in the Supreme court, upon a writ of *quo warranto*.

SECTION 26. Whenever judgment shall be given in the Supreme court in any district, upon a demurrer, or by *nihil dicit*, or for want of a replication or other pleading, as aforesaid, the said court may award a writ of inquiry of damages, to be executed by the sheriff of the proper county, returnable to the said court, and upon the return of such writ, may give judgment for the damages and costs.

SECTION 27. If damages shall be recovered against any person making return as aforesaid, such recovery shall debar every other action for making such return.

SECTION 28. Whenever a peremptory mandamus shall be awarded, the person suing out the writ shall be entitled to costs, as in other actions, although he should not proceed for the recovery of damages.

SECTION 29. In case judgment shall be given for the person making such return of such writ, he shall recover his costs of suit.

SECTION 30. The costs of the application for a writ of mandamus, whether such writ shall be granted or not, also the costs of the writ if issued and obeyed, or not prosecuted to judgment, as aforesaid, may be given or refused, according to the discretion of the court.

SECTION 31. The damages and costs which shall be recovered as aforesaid, may be levied by execution, in the like manner as damages and costs recovered in other cases, may be levied.

SECTION 32. The party aggrieved by the proceeding had in any court of Common Pleas, upon any writ of mandamus, may remove the same after the first judgment, order or decree therein, by a writ of error, into the Supreme court, as in other cases, and such writ shall operate as a supersedeas to an execution, for damages or costs, upon bail, to be given as in other cases; but it shall be lawful for the court to which such writ shall be directed, notwithstanding such writ of error, to award a peremptory writ of mandamus as aforesaid, if the case shall, in their discretion, require it.

SECTION 33. Every such writ of error may be made returnable forthwith, if the Supreme court shall be in session in the proper district, and shall be heard and decided by the judges thereof, at the term to which it is returnable.

SECTION 34. 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 fourteenth day of June, Anno Domini, eighteen hundred and thirty-six.

JOS: RITNER.

No. 175

An Act

Relating to assignees for the benefit of creditors, and other trustees.

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