

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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An act relating to assignees for the benefit of creditors, and other trustees.

I. OF ASSIGNEES FOR THE BENEFIT OF CREDITORS, AND TRUSTEES OF INSOLVENT DEBTORS, AND TRUSTEES APPOINTED UNDER THE ACTS 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 in every case in which any person shall make a voluntary assignment of his estate, real or personal, or of any part thereof, to any other person or persons, in trust for his creditors, or some of them, it shall be the duty of the assignee or assignees, within thirty days after the execution thereof, to file in the office of the prothonotary of the court of Common Pleas of the county in which the assignor shall reside, an inventory or schedule of the estate or effects so assigned, accompanied with an affidavit by such assignees, that the same is a full and complete inventory of all such estate and effects, so far as the same has come to their knowledge.

SECTION 2. It shall be lawful for the court of Common Pleas of such county, or for any judge thereof, in vacation, to appoint two or more disinterested and competent persons, to appraise the estate and effects so assigned.

SECTION 3. The appraisers so appointed, or any two of them, having first taken an oath or affirmation, before some person having authority to administer oaths, to discharge their duties with fidelity, shall forthwith proceed to make an appraisement of the estates and effects assigned, accord-

ing to the best of their judgment, and having completed the same, shall return the inventory and appraisement to the court, where it shall be filed of record.

SECTION 4. The appraisers aforesaid, shall receive the same compensation as is now allowed by law to appraisers of the estate of a decedent.

SECTION 5. The assignee or assignees as aforesaid, shall, as soon as such inventory and appraisement shall have been filed, give a bond or bonds, with at least two sufficient sureties, to be approved of by one of the judges of the said court, in double the amount of the appraised value of the estate so assigned.

SECTION 6. The bond so to be given, shall be taken in the name of the Commonwealth of Pennsylvania, and the condition thereof shall be as follows, viz:

The condition of this obligation is such, that if the above bounden A. B. and C. D. assignees of E. F., shall, in all all things, comply with the provisions of the acts of assembly in such case made, and shall faithfully execute the trust confided to them, then the above obligation to be void, otherwise to be and remain in full force and virtue.

And such bond shall be filed in the office of the prothonotary of the said court, and shall by him be entered of record, and shall enure to the use of all persons interested in the property assigned.

SECTION 7. It shall be lawful for the court of Common Pleas of the proper county, on the application of any person interested, or co-trustee or co-assignee, to issue a citation, to any assignee or trustee for the benefit of creditors, whether appointed by any voluntary assignment, or in pursuance of the laws relating to insolvent debtors and domestic attachments, requiring such assignee or trustee to appear and exhibit, under oath or affirmation, the accounts of the trust in the said court, within a certain time, to be named in such citation.

SECTION 8. *Provided*, That no such citation shall be issued, until after the expiration of one year from the date of the assignment to, or appointment of such assignees or trustees.

SECTION 9. The several courts of Common Pleas shall, by a general order, or by such order as the circumstances of any particular case may require, direct the prothonotary of any particular court to give notice of the exhibition and filing of every account as aforesaid, during such time; and in such public newspapers as they shall appoint, setting forth in such notice, that the accounts will be allowed by the courts, at a certain time, to be stated in such notice, unless cause be shown why such account should not be allowed.

SECTION 10. The expense of advertising as aforesaid, shall be paid by the assignees or trustees, at the time of

exhibiting their accounts as aforesaid, and shall be passed to their credit in such account.

SECTION 11. Whenever it shall be made to appear in a court of Common Pleas, having jurisdiction as aforesaid, that an assignee or trustee as aforesaid, has neglected or refused, when required by law, to file a true and complete inventory, or to give bond with surety, when so required by law, or to file the accounts of his trust, or that such assignee or trustee is wasting, neglecting, or mismanaging the trust estate, or is in failing circumstances, or about to remove out of the jurisdiction of the court, in any such case, it shall be lawful for such court to issue a citation to such assignee or trustee, to appear before the court, at a time to be therein named, to show cause why he should not be dismissed from his trust.

SECTION 12. On the return of such citation, the court may require such security, or such other and further security, from such assignee or trustee, as they may think reasonable, or may proceed at once to dismiss such assignee or trustee from the trust.

SECTION 13. The like proceedings may be had, whenever it shall be made to appear to such court, that any person who shall have become surety for any assignee or trustee as aforesaid, in any bond, given for the due execution of the trust, is in failing circumstances, or has removed out of this commonwealth, or signified his intention so to do.

SECTION 14. An assignee or trustee as aforesaid, may, with the leave of the court having jurisdiction, as aforesaid, make a voluntary settlement of his accounts, so far as he may have executed the trust, and the same being filed in the office of the prothonotary of the court, the like proceedings shall be had thereon as in the case of a settlement of such accounts after citation.

II. OF TRUSTEES IN OTHER CASES.

SECTION 15. Whenever any assignment, conveyance, or transfer, (excepting assignments or transfers for the benefit of creditors, as hereinbefore mentioned,) shall have been made, or shall hereafter be made, by deed, will, or otherwise, of any estate, real or personal, to any person or corporation, in trust for, or for the use or benefit of any person, or association of persons, or corporation; also, whenever any trust shall arise by operation or implication of law, the court of Common Pleas of the county in which any such trustee shall have resided at the commencement of the trust, or, if such trustee be a corporation, in which such corporation is situate, or in which its principal officers shall have resided, as aforesaid, shall exercise the jurisdiction and powers given by law in regard to such trust: *Provided*, That nothing herein contained, shall extend to trusts created by will, and vested in executors or administrators, either by the words of the will,

or by the provisions or operations of law, whenever such executors or administrators are by the existing laws amenable to the Orphans court.

SECTION 16. It shall be lawful for the court of Common Pleas, having jurisdiction as aforesaid, or for any judge thereof, on the application of any person interested in the trust estate or fund, co-trustee or co-assignee, and upon affidavit that any trustee as aforesaid, is wasting, neglecting, or mismanaging such estate or fund, or is in failing circumstances, or about to remove out of the commonwealth, to issue a citation to such trustee to appear before the court, at a time to be therein named, to show cause why he should not be dismissed from his trust.

SECTION 17. On the return of such citation, and after due notice to all persons interested, the court may, in their discretion, either require security from such trustee for the due execution of the trust, or dismiss such trustee from the trust, or make such other order in the cause as may be agreeable to the rules of equity.

SECTION 18. In case of the infancy, or temporary absence of any trustee, it shall be lawful for the court having jurisdiction as aforesaid, to appoint a trustee during such infancy or absence, and the trustee so appointed, shall, during such period, have all the powers necessary for the due administration of the trust.

SECTION 19. It shall be lawful for any court of Common Pleas having jurisdiction as aforesaid, or for any judge thereof, on the application, by bill or petition, of any co-trustee or co-assignee, or any person or persons interested, in the trust estate or fund, setting forth the facts, to issue a citation to any trustee, or his legal representatives, requiring him, or them, to appear in the said court, at a certain time to be specified therein, to answer the said bill or petition, and exhibit an account of the management of the trust estate or funds, or to perform such other acts or things as may be required by, or shall be consistent with the duties of the trust.

III. GENERAL PROVISIONS, RELATING TO ALL ASSIGNEES AND OTHER TRUSTEES.

SECTION 20. When any assignee or trustee shall have been duly declared to be a lunatic or habitual drunkard, or shall have removed from the state, or ceased to have a known place of residence therein, during the period of a year or more, it shall be lawful for the court having jurisdiction, on due proof thereof, to dismiss such assignee or trustee.

SECTION 21. When any assignee or trustee shall be dismissed from the trust, it shall be lawful for the court to order and direct all books, papers, monies, and effects in the hands of such dismissed assignee or trustee, to be forth-

with delivered or transferred to such other person or persons, as the court may appoint to receive the same, upon security being given by such receiver, according to the order of the court.

SECTION 22. The court having jurisdiction as aforesaid, shall have power, upon the application by bill or petition of any assignee or trustee, setting forth such facts as in equity would entitle him to relief, to discharge him from the trust: *Provided*, That no such discharge shall take place, unless the accounts of such assignee or trustee shall have been duly settled or confirmed as aforesaid, so far as he shall have acted in the trust, nor unless notice of such application shall have been given to all parties interested, either personally, or by advertisement, in such public newspapers as may be directed by the court, nor until such assignee or trustee, shall have surrendered the trust estate remaining in his hands, to some other assignee or trustee, or other person appointed by the court to receive the same, and shall have performed all such other matters as may be required in equity.

SECTION 23. The several courts having jurisdiction as aforesaid, shall have power to appoint assignees or trustees as aforesaid, in the following cases, viz:

- I. When any sole assignee or trustee shall renounce the trust, or refuse to act under, or fully to execute the same:
- II. When any such assignee or trustee shall die, or be dismissed by the court from the trust, or shall be discharged by the court therefrom:
- III. When one or more of several assignees or trustees, shall renounce or refuse as aforesaid, or shall die, or be dismissed or discharged as aforesaid, and the duties of the trust require the joint act of the trustees:
- IV. In any case in which a trust shall have been created, and no person appointed, either by name or by description, to execute the same.

SECTION 24. The power of appointment as aforesaid, may be exercised on the application by bill or petition, of any person interested in the estate or property which is the subject of the trust, and not otherwise, and after due notice to all parties concerned.

SECTION 25. Every assignee and trustee appointed by the court as aforesaid, shall be liable to the same duties, shall have the same powers and authorities in relation to the trust, or to the further execution of the same, as the case may be, and shall be subject to the jurisdiction and control of the court, in the same manner, to all intents and purposes, as his predecessor or predecessors in the trust.

SECTION 26. Upon the appointment by the court of any assignee or trustee as aforesaid, and upon his giving security, if he shall be so required by the authority of law, all the trust

estate, and effects whatsoever, shall forthwith, and without any act or deed, pass to and be vested in such succeeding assignee or trustee.

SECTION 27. When any assignee or trustee shall have been discharged by the court as aforesaid, from the further execution of the trust, it shall be lawful for the court to make an order that the sureties of such assignee or trustee in any bond, which may have been given by him for the due execution of the trust, shall, upon compliance by such assignee or trustee, with all orders of the court in the premises, be discharged from liability for any acts of such assignee or trustee after the date of such order.

SECTION 28. It shall be lawful for the court having jurisdiction as aforesaid, to make such orders and decrees from time to time, for carrying into effect any trusts as aforesaid, either for distribution of monies in the hands of assignees, or trustees for the benefit of creditors, or for the payment or transfer of funds or effects in the hands of other trustees, or otherwise, as shall be according to law, or the terms or intent of the trust.

SECTION 29. It shall be lawful for any court having jurisdiction as aforesaid, whenever compensation shall not have been otherwise provided, to allow such compensation to assignees, and other trustees, out of the effects in their hands, for their services, as shall be reasonable and just.

SECTION 30. The several courts aforesaid, shall have power, on the application of the party interested, to compel the conveyance by trustees, of the legal estate, when the trust has been executed, or has expired.

SECTION 31. It shall be lawful for the court in which the accounts of any assignee or trustee as aforesaid, may be exhibited, to refer the same to an auditor or auditors, who shall be sworn or affirmed, well and truly to audit and adjust the same, and make a true report thereof, according to the evidence.

SECTION 32. The several courts of Common Pleas, and all auditors appointed by them for the purpose of examining the accounts of assignees and trustees aforesaid, shall have power to examine such assignees and trustees, upon oath or affirmation, touching the execution of the trust, and the said courts shall have power to compel the production of any books, papers, or other documents necessary to a just decision of any question before them, or before auditors, as aforesaid.

SECTION 33. The several courts of Common Pleas shall have the same powers and authorities, and the manner of proceeding to obtain the appearance of persons amenable to their jurisdiction, in cases of trusts, and to compel obedience to their orders and decrees, and enforce execution thereof, shall be the same as are now by law vested in and provided for the several Orphans' courts of this commonwealth.

SECTION 34. It shall be lawful for any judge issuing a citation to any assignee or trustee, as herein before provided, if the circumstances of the case shall appear to him to require it, to order such citation to be returned to a special court, to be convened for the purpose, in the manner allowed by the laws relating to the Orphans' courts.

SECTION 35. When any assignee or trustee shall remove out of the county in which he resided at the time of his appointment, or of the commencement of the trust, as the case may be, or shall not possess real or personal estate in such county, sufficient to satisfy any order or decree of the court of Common Pleas of such county, it shall be lawful for such court to issue process to the county in which such assignee or trustee may be, or in which he may have any real or personal estate amenable to such process, and such process shall be executed by the sheriff or coroner, as the case may require, of the county in which such assignee or trustee may be, or may have real or personal estate, as aforesaid.

SECTION 36. Any person aggrieved by a definite decree or judgment of any court of Common Pleas, in any case relating to assignees or trustees 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 or judgment, in cases relating to assignees or trustees, for the benefit of creditors, as aforesaid, and within three years in other cases of trust: *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 37. Nothing in this act shall be so construed, as to impair or effect the powers and jurisdiction conferred by act of assembly on any District court of this commonwealth.

NER MIDDLESWARTH,
Speaker of the House of Representatives.

THOMAS S. CUNNINGHAM,
Speaker of the Senate.

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

JOS: RITNER.