

## No. 176.

**An Act**

Relating to Bonds, with Penalties and Official Bonds.

## TABLE OF CONTENTS.

**SECTION 1.** In actions upon bonds for a penal sum, for non-performance of a written agreement, the plaintiff shall assign all the breaches for which damage has accrued, up to the time of suit brought, and may take judgment for the penalty, and execution for the damages assessed.

2. Scire facias shall be issued in case of subsequent breaches; setting them forth.

3. Defendant may pay into court the damages and costs, and a stay of execution shall then be entered of record.

4. Defendant may pay upon execution, the damages and costs, and his body and estate shall then be discharged.

5. But the judgment for the penalty shall remain as a farther security.

6. Bonds given to the commonwealth by public officers, executors, administrators, guardians, committees, assignees, receivers, trustees, &c. may be sued as follows:

I. The writ shall be issued in the name of the commonwealth, and the names of the persons suing shall be suggested, &c.:

II. Persons having several interests, may join in the writ, and declare separately, or join in the declaration, and in the replication, separately allege breaches:

III. Persons not originally party to the writ, may, by suggestion and leave of the court, become party thereto, at any time before judgment.

IV. The defendants may plead performance of the condition, as it respects the persons suing the writ, or any of them.

V. If several join in the writ, and separate issues be taken, they may have separate trials, or all the issues may be tried at the same time, by the same jury.

VI. The parties to each issue, shall be liable for the costs of the trial thereof.

VII. If judgment be given for defendants on all the issues, it shall not debar any other persons of any right of action therein, or the same plaintiffs of any subsequent cause of action.

VIII. Judgments against the defendants, shall be entered for the commonwealth, in the amount of the bond, and

- for the person giving the writ, in the amount of the damages assessed, and the costs.
- IX. Judgment entered for the commonwealth, shall not be a lien unless the commonwealth commenced the action.
- X. Judgment for the person suing the writ shall be a lien.
- XI. A scire facias may be issued on the judgment, entered for the commonwealth, in case of a breach subsequent thereto, the party suing the writ suggesting his interest in the judgment.
- XII. Judgments for the plaintiff in such writ of scire facias, to have like effect as judgments in personal actions.
- XIII. The sureties may pay into court the whole amount of the penalty and costs, and thereupon be discharged, but their discharge shall not affect the liability of their principal.

An act relative to Bonds, with Penalties and Official Bonds.

I. OF BONDS AND PENALTIES, TO SECURE THE PERFORMANCE OF AGREEMENT IN WRITING.

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 all actions which shall be brought in any court of record of this commonwealth, upon any bond, or for any penal sum, for the non-performance of any covenant or written agreement, the plaintiff shall assign in his declaration, replication, or otherwise, upon the record, all and singular, the breaches of such covenant or agreement, for which damages shall have accrued, at and before the time of the writ sued out, and thereupon, he shall have judgment for the amount of such bond or penalty, in due course of law, and execution thereof, for such damages as shall be assessed for the breaches of such covenant or agreement, assigned as aforesaid, with costs of suit, and no more.

SECTION 2. In case of any subsequent breach of such covenant or agreement, it shall be lawful for the plaintiff in such judgment, by a writ of scire facias thereon, setting forth such breaches, to assess against the defendant, his heirs, executors, administrators or assigns, such further damages

as he shall have sustained by reason of such subsequent breach, and thereupon, he shall have judgment and execution for such damages, with costs of suit, and for no more, and the plaintiff may proceed in like manner, as often as a breach shall occur subsequently to any such proceeding.

SECTION 3. If the defendant in any such judgment shall, before execution executed, pay into the court where such action shall have been brought, the damages assessed as aforesaid, together with the costs, a stay of execution of the said judgment shall be entered on the record.

SECTION 4. If the defendant in such judgment shall pay upon an execution issued thereon, the damages assessed as aforesaid, together with the costs of suit, and the costs of such execution, such payment shall be entered upon record, and the body, goods, and real estate of such defendant, shall thereupon be discharged from such execution.

SECTION 5. *Provided*, That judgments obtained upon any bond, for any penalty as aforesaid, shall remain as a further security for such damages, as the plaintiff, his executors or administrators, shall sustain, by any further breach of any covenant or agreement as aforesaid.

## II. OF OFFICIAL BONDS.

SECTION 6. Every bond and obligation which shall be given to the commonwealth by any public officer, or by any person appointed under authority of law to execute any public trust; also, every bond which shall be given by any executor, administrator, guardian, committee, assignee, receiver or trustee, with intent, in every of the said cases, to secure the faithful execution of the respective offices, employment or trust, and for the use of all such persons and bodies politic and corporate, as may be affected by the official acts or neglect of such officer or person, may be sued and prosecute in the manner following, to wit:

- I. The writ shall in such case, be issued in the name of the commonwealth, and the names of the persons by whom the same shall be sued out, shall be suggested as plaintiffs therein, and such persons shall be liable for the costs of the suit, in like manner as plaintiffs in other cases.
- II. If two or more persons having several interests, shall join in suing such writ, it shall be lawful for them to declare separately thereon, and set forth in their declarations respectively, the breaches of the condition of such bond or obligation, which shall have been made to their particular injury, or they may join in declaration thereon, and afterwards in their replications, or otherwise, according to the course of practice in like cases, set forth upon the record the breaches of the condition aforesaid.

- III. It shall be lawful for any other person to whom a cause of action shall have accrued on such bond or obligation, at any time before judgment, upon a suggestion filed with leave of the court, to be made a party plaintiff in such writ, and thereupon, he may declare and set forth the breaches of condition of such bond or obligation, to his particular injury, as aforesaid.
- IV. The obligors in any such bond or obligation, may plead, performance of the condition thereof, so far as it respects the persons by whom such writ was sued, or any of them, and if such fact be confessed or found, such persons shall be debarred of their action upon that writ.
- V. If several persons shall join as aforesaid, in any such writ, and if issues be taken by them separately from each other, against the defendants, it shall be lawful for them to have a separate trial thereof, or at their election, such issues may be tried at the same time, and if they be issues in fact, by one and the same jury.
- VI. The parties to any issue taken as aforesaid, shall be liable for the costs of the trial thereof, in like manner as if they only were parties in the proceeding.
- VII. If judgment, upon all issues taken as aforesaid, be rendered for the defendants, such judgments, and the pleadings and proceedings upon which they shall be founded, shall not estop, debar, or otherwise affect the action which any other person, or body politic or corporate, may at any time have upon such bond, nor shall such judgment debar any action which the said plaintiffs may have therein, for any subsequent breach or cause.
- VIII. If final judgment be rendered against the defendants, upon any issue taken as aforesaid, such judgment shall be as follows, to wit:
- First*, for the commonwealth, in the amount of such obligation or bond.
- Second*, for the plaintiff in such issue, in the amount of damages assessed, and for the costs accrued between such plaintiff and the defendants.
- IX. The judgment of the commonwealth as aforesaid, shall remain for the satisfaction of all persons entitled to the benefit of the bond or obligation upon which it was rendered, and for all and singular, the like uses and purposes; but the said judgment shall not be a lien upon the real estate of the defendants, unless the commonwealth shall have commenced the action, nor shall execution thereof be had, except in the manner hereinafter provided.
- X. The judgment for the plaintiff in such issue as aforesaid, shall be a lien upon the real estate of the defendants, to the amount thereof, and such plaintiff may have execution thereof, on a writ of seire facias, or other action thereon, in

like manner as may be had in the case of judgments in other personal actions.

XI. In all cases where the condition of any such bond shall be broken, after a judgment rendered for the commonwealth, as aforesaid, it shall be lawful for the party aggrieved, to proceed by a writ of scire facias upon such judgment, suggesting his interest therein, to assess and recover the damages which he shall have sustained, in the manner herein before provided in the case of the breach of the condition of a bond taken to secure the performance of a covenant, after a judgment had upon such bond.

XII. Every judgment rendered for the plaintiff in any such writ of scire facias, shall be of like effect, to all intents and purposes, as judgments obtained by plaintiffs in other personal actions.

XIII. It shall be lawful for the sureties in any bond as aforesaid, to pay into court, at any time after suit brought thereon, as aforesaid, the whole amount of the penalty of the bond, with all costs of suit up to that time, and thereupon, they shall be discharged from all further liability by reason thereof; but nothing herein contained shall debar any person of his action, or of his execution against the officer, trustee, or other person for whom such security was given, for any damages which shall not be paid out of such bond.

SECTION 7. That this act shall take effect from and after the first day of September next, and all such acts of assembly as are hereby altered or supplied, shall be, and are hereby repealed, except so far as may be necessary to finish proceedings commenced before that time.

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.