

No. 191.

An Act

Relating to executions.

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87. The court shall direct an issue to settle any fact connected with such distribution, if requested, in writing.

88. The whole record shall be returned upon a writ of error, and persons aggrieved by the decree of distribution, may take exceptions, &c.

89. Any person aggrieved by a decree of distribution, may appeal, within twenty days, to the Supreme court.

90. If a writ of error be not taken within twenty days, the court may order the money to be paid, according to the decree.

91. Persons suing a writ of error, or appealing, shall make affidavit, and give security.

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An act relating to executions.

I. OF THE TIME DURING WHICH EXECUTION OF A JUDGMENT MAY BE HAD, AND OF A SCIRE FACIAS QUARE EXECUTIONEM NON.

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 execution of any judgment may be had, at any time within a year and a day from the first day of the term at which it was rendered: *Provided,* That if there be a stay of execution, the period aforesaid shall be computed from the expiration of such stay.

SECTION 2. After the expiration of the period aforesaid, no execution shall be issued upon any judgment, unless the party against whom it shall have been rendered, his heirs, executors or administrators, shall be first warned by a writ of scire facias, to show cause, if any he or they have, why an execution should not issue upon such judgment.

II. OF THE STAY OF EXECUTION.

SECTION 3. In all actions instituted by writ for the recovery of money due by contract, or of damages arising from a breach of contract, except actions of debt and scire facias upon judgments, and actions of scire facias upon mortgages, if the defendant shall be possessed of an estate in fee simple, within the respective county, worth, in the opinion of the court, the amount of the judgment recovered therein, or the sum for which the plaintiff may be entitled to have execution by virtue thereof, clear of all incumbrances, he shall be entitled to a stay of execution upon such judgment, to be computed from the first day of the term to which the action was commenced, as follows, to wit:

- I. If the amount or sum aforesaid, shall not exceed two hundred dollars, six months.
- II. If such amount or sum shall exceed two hundred dollars, and be less than five hundred dollars, nine months.
- III. If such amount or sum shall exceed five hundred dollars, twelve months.

SECTION 4. Every defendant in any judgment obtained as aforesaid, may upon entering security, in the nature of special bail, have a stay of execution thereon, during thirty days from the rendition of such judgment, and if during that period, he shall give security, to be approved of by the court, or by a judge thereof, for the sum recovered, together with interest and costs, he shall be entitled to the stay of execution hereinbefore provided, in the case of a person owning real estate.

SECTION 5. In amicable actions, the defendant shall be entitled to like stay of execution, if he possess an estate in fee simple, or give security as aforesaid, and in such cases, the stay shall be computed from the date of their agreement, unless it be otherwise provided therein by the party.

SECTION 6. No execution shall issue upon any judgment on special cases, for the security of the demand.

SECTION 7. Execution shall not be stayed upon any judgment in any civil action or proceeding, by reason of any writ of error from the Supreme court to any other court of this commonwealth, unless the plaintiff in such writ, or some one in his behalf, with sufficient sureties, shall become bound by recognizance, to the party in whose favor such judgment shall be given, with condition to prosecute such writ of error with effect, and if the judgment be affirmed, or

the writ of error be discontinued, or non prossed, to pay the debt, damages and costs, (as the case may be,) adjudged accruing upon such judgment, and all other damages and costs that may be awarded upon such writ of error.

SECTION 8. *Provided*, 1. That the preceding section shall not extend to any writ of error brought by an executor or administrator, or by any guardian in behalf of his ward, or by any other person suing or defending in a representative character: *And provided*, 2. That if a writ of error in any such case shall be issued, served, and bail entered as aforesaid, within three weeks from the day on which the judgment shall be entered, such writ of execution shall be stayed and superseded, upon the payment of costs, although the service or execution thereof shall have begun, and if such execution shall have been fully executed, the defendant therein may have from the court which issued the same, a writ of restitution of the proceeds thereof, as the case may require.

III. OF PROCEEDINGS TO DISCOVER THE DEFENDANT'S EFFECTS.

SECTION 9. It shall be lawful for the plaintiff in any judgment for the recovery of money obtained in any court of this commonwealth, to have a bill for the discovery of the real and personal estate of the defendant in such judgment.

SECTION 10. Such bill may be filed against the defendant in the judgment, and against any person having possession of such real or personal estate, or who may owe, or be accountable for the same, or may have knowledge of the same, and shall be filed in the court of Common Pleas of the county in which such judgment may be; or if the person of whom discovery may be sought, shall reside out of such county, such bill may be filed in the court of Common Pleas of the county where such person shall reside.

SECTION 11. Every such bill shall set forth—

- I. The recovery of a judgment, as aforesaid, and the amount actually due thereon.
- II. That there is reason to believe that the defendant in such judgment has real or personal estate, wherewith the same may be satisfied.
- III. That such real estate has been conveyed, transferred, or incumbered, or that such personal estate has been removed, transferred, or concealed, or that by reason of concealment, or fraudulent transfer, or incumbrance thereof, the complainant is prevented from having execution of his judgment.
- IV. If such bill shall be filed against any person other than the defendant in such judgment, it shall set forth also, that such person has possession or knowledge of such real or personal estate, or that he can make discovery of such facts as will enable the plaintiff to have satisfaction of his judgment.

SECTION 12. But no such bill shall be filed, unless the complainant therein shall make oath or affirmation, to be filed therewith, that he verily believes the facts set forth therein to be true.

SECTION 13. The complainant in such bill may also, either in the said bill, or by interrogatories to be filed therewith, propound to the defendants therein named, such questions touching the subject matter thereof, as may be necessary or proper for the purposes thereof, and as may be according to the rules and practice of courts of equity.

SECTION 14. Upon the filing of such bill, it shall be lawful for the court, or any judge thereof in vacation, to award a writ of scire facias to the sheriff, requiring him to make known to the defendants therein named, that they be and appear, at a certain time to be appointed by the said court, to answer the said bill, and all such interrogatories as shall be propounded to them, or shew cause why they should not, and abide the judgment of the court in the premises.

SECTION 15. But no such defendant shall be compelled to answer such bill or interrogatories, at the time so appointed, unless a copy of such bill and interrogatories shall have been served upon him, at least ten days previously thereto.

SECTION 16. It shall be lawful for the court or judge, at the time of answering such writ of scire facias, to order that a clause of capias be inserted in such writ, against the defendants, or any one or more of them, under the rules and regulations provided on the case of a garnishee in a foreign attachment.

SECTION 17. From the time of the service of any scire facias as aforesaid, upon any person other than the defendant in the judgment, the personal property of the defendant in the hands of such person, shall be bound thereby, and shall be liable to be taken in execution, at the instance of the plaintiff in such judgment, in like manner as goods or effects in the hands of the garnishee in a foreign attachment; and if such person shall transfer such personal property to any other person, after such service, he shall be liable to pay the value thereof to the complainant, out of his own proper goods and chattels.

SECTION 18. The costs of all proceedings as aforesaid, shall be within the discretion of the court, in which such bill shall be filed, who shall have power to direct payment of the same, by either of the parties, to such bill, according to the rules of equity and justice.

IV. OF THE LIABILITY OF THE DEFENDANT'S ESTATE AND PERSON TO EXECUTION.

SECTION 19. The plaintiff in every judgment which shall be obtained in any court of this commonwealth, for the recovery of money, may have execution thereof, subject to

the restrictions and qualifications herein provided, against the person and estate of the defendant, in the following order, to wit:

I. Upon the personal estate of the defendant.

II. Upon his real estate.

III. If he have neither personal nor real estate liable to execution, then upon the person of the defendant.

SECTION 20. *Provided*, That it shall be lawful for the plaintiff to have execution against the real estate of the defendant, or against his person, in the manner hitherto allowed, or at his election, he may proceed to obtain the satisfaction of his judgment out of such personal estate, as is by the act now first made liable to execution.

SECTION 21. If any person against whom a judgment in any civil action of proceedings shall have been rendered, shall be charged, committed to prison, or convicted of any crime, it shall be lawful for the plaintiff in such judgment, to have execution thereof against the real and personal estate of such person, in like manner as in other cases.

SECTION 22. The stock owned by any defendant in any body corporate, also, deposites of money in any bank, or with any person or body, corporate or politic, belonging to him, and debts due to him, shall be liable to execution, like other goods or chattels subject nevertheless, to all lawful claims thereupon, of such body corporate, or person.

SECTION 23. Goods or chattels of the defendant in any writ of fieri facias, which shall have been pawned or pledged by him as security for any debt or liability, or which have been demised, or in any manner delivered or bailed, for a term, shall be liable to sale, upon execution as aforesaid, subject, nevertheless, to all and singular, the rights and interests of the pawnee, bailee, or lessee, to the possession or otherwise, of such chattels or goods, by reason of such pledge, demise or bailment.

SECTION 24. It shall be lawful for the officer charged with the execution of any writ of fieri facias, when he can find no other real or personal estate of the defendant, to seize and take the amount to be levied by such writ, of any current gold, silver, or copper coin, belonging to the defendant, in satisfaction thereof, or he may take the amount aforesaid, of any bank notes, or current bills, for the payment of money issued by any monied corporation, at the par value of such notes.

SECTION 25. *Provided*, That such officer shall not take any coin or bills as aforesaid, from the person of the defendant, nor shall he take or retain any money, which shall have been levied by him, at the suit or instance of the defendant, upon any other execution.

SECTION 26. The following articles of property, owned by or in possession of any debtor, shall be exempt from levy or

safe, on any execution, for any debt contracted after the first day of September, one thousand eight hundred and twenty-eight, and also, for damages recovered since that day, except it be for damages done to real estate, to wit:

I. Household utensils, not exceeding in value thirty dollars.

II. The necessary tools of a tradesman, not exceeding in value thirty dollars.

III. All wearing apparel of the defendant and his family.

IV. Four beds, and the necessary bedding.

V. A spinning wheel and reel.

VI. A stove, with the pipe of the same, and necessary fuel for three months.

VII. One cow, two hogs, also, six sheep, with the wool thereof, or the yarn or cloth manufactured therefrom, and feed sufficient for the said cow, hogs, and sheep, from the first day of November, until the last day of May.

VIII. Any quantity of meat not exceeding two hundred pounds, twenty bushels of potatoes, ten bushels of grain, or the meal made therefrom.

IX. Any quantity of flax not exceeding ten pounds, or the thread or linen made therefrom.

X. All bibles and school books in the use of the family.

SECTION 27. The plaintiff in any such judgment, may have at the same time, thereon, a writ of fieri facias, or a writ of capias ad satisfaciendum, to levy the same, together with the costs of such execution.

SECTION 28. No writ of capias ad satisfaciendum, shall in any case be executed, where the defendant has real or personal estate within the county sufficient to satisfy the judgment, and if the defendant shall not have sufficient fully to satisfy the judgment, and costs of execution, then such writ may be executed for the deficiency, and for no more.

SECTION 29. No female shall be arrested or imprisoned by virtue of any such writ, for any debt contracted since the eighth day of February, one thousand eight hundred and nineteen, nor for any damages recovered for the breach of a contract, entered into after the passing of this act.

SECTION 30. And no citizen of this commonwealth shall be arrested or imprisoned by virtue of any such writ, for any sum of money less than five dollars and thirty-four cents, due or recovered, for the breach of any contract made since the fourth day of July, one thousand eight hundred and thirty-three.

SECTION 31. A judgment shall be deemed to be satisfied by the arrest or imprisonment of the defendant, upon a capias ad satisfaciendum, if such defendant die in prison, or escape, or be discharged therefrom by reason of any privilege, or at his own request, but the party entitled to the benefit of the judgment, may have such remedies at law for the recovery thereof, as he would have been entitled to if such capias ad

satisfaciendum had not been issued; saving nevertheless, all rights and interests which may have accrued to any other persons, between the execution of such writ, and the death or escape of such party.

V. OF PROCEEDINGS TO LEVY STOCK DEPOSITES, AND DEBTS DUE TO THE DEFENDANT.

SECTION 32. The proceedings to levy an execution upon stock debts, and deposites of money belonging or due to the defendant, shall be as follows, to wit:

In the case of stock, if it shall be held in another name than that of the real owner thereof, the plaintiff shall file in the office of the prothonotary of the court, an affidavit, stating that he verily believes such stock to be really the property of the defendant, and shall enter into recognizance, with two sufficient sureties, conditioned for the payment of such damages as the court may adjudge, to the party to whom such stock shall really belong, in case such stock should not be the property of the defendant.

SECTION 33. Upon the filing of such affidavit and recognizance, it shall be lawful for the prothonotary to issue process, in the nature of an attachment, against such stock, with a clause of summons to the person in whose name the same may be held, in the nature of a writ of scire facias, against garnishees in a foreign attachment, and thereupon, the plaintiff may proceed to judgment, execution and sale of the said stock, in the manner allowed in cases of foreign attachment against personal estate.

SECTION 34. The like proceedings may be had against stock owned by a defendant, and held in his own name, without the affidavit and recognizance aforesaid; and if any person shall claim to be the owner of such stock, he may, upon filing an affidavit that the stock is really his property, and entering into a recognizance, with two sufficient sureties, conditioned for the payment of such damages as the court may adjudge to the plaintiff, if such stock should really belong to the defendant, the court shall admit him to become a party upon the record, and take defence, in like manner as if he were made garnishee in the writ.

SECTION 35. In the case of a debt due to the defendant, or of a deposite of money made by him, or of goods or chattels pawned, pledged, or demised, as aforesaid, the same may be attached and levied in satisfaction of the judgment, in the manner allowed in the case of a foreign attachment, but in such case, a clause, in the nature of a scire facias against a garnishee in foreign attachment, shall be inserted in such writ of attachment, requiring such debtor, depository, bailee, pawnee, or person holding by demise as aforesaid, to appear at the next term of the court, or at such other time as the court from which such process may issue shall appoint,

and show cause why such judgment shall not be levied of the effects of the defendant in his hands.

SECTION 36. It shall be the duty of the officer charged with the execution of such writ, to serve a copy thereof upon the defendant in such judgment, and upon every person and corporation within his proper county, named in the said writ of attachment, in the manner provided for the service of a writ of summons in a personal action.

SECTION 37. From and after the service of such writ, all stock belonging to the defendant in the corporation, upon which service shall be so made, and all debts and all deposits of money, and all other effects belonging or due to defendant, by the person or corporation upon which service shall be so made, shall remain attached in the hands of such corporation or person, in the manner heretofore practised and allowed in the case of foreign attachment.

SECTION 38. If judgment shall be given for the plaintiff in such attachment, it shall be lawful for him to have execution thereof as follows, to wit:

- I. If the property attached be stock in a corporation, as aforesaid, the execution shall be by a writ of fieri facias against the original defendant, by virtue of which, such stock, or so much thereof as shall be necessary to satisfy the judgment, and costs, may be sold by the sheriff, as in other cases.
- II. If the property attached be a deposite in money, or a debt due, as aforesaid, execution shall be had in the manner allowed in the case of effects in the hands of a garnishee in a foreign attachment.

VI. OF WRITS OF FIERI FACIAS.

1. *Of the Lien of the writ of Fieri Facias, and the Levy of it on Personal Estate.*

SECTION 39. No writ of fieri facias, or other writ of execution, shall bind the property or the goods of the person against whom such writ of execution is sued forth, but from the time such writ shall be delivered to the sheriff, under sheriff, or coroner, to be executed.

SECTION 40. Every sheriff and coroner, their deputies and agents, upon receiving any writ of fieri facias, or other writ of execution, shall, without fee for doing the same, endorse thereon the day of the month, the year, and the hour of the day whereon he or they received the same.

SECTION 41. The officer to whom any such writ may be directed, shall, if the defendant therein refuse or neglect to pay the debt, and costs, proceed to levy and sell so much of the defendant's personal estate as shall be sufficient for that purpose, and make return of his proceedings to the court, according to the command of such writ.

SECTION 42. But before making sale as aforesaid, notice thereof shall be given by such officer, during at least six days, by not fewer than six handbills, to be put up at such places as he shall deem best calculated to give information to the public of such sale.

2. *Of proceedings upon a writ of Fieri Facias levied upon Real Estate.*

SECTION 43. If sufficient personal estate cannot be found by such officer, he shall proceed to levy upon the defendant's real estate, or such part thereof as he may deem sufficient to pay the sum to be levied, as aforesaid, but not less than a whole tract shall be levied on.

SECTION 44. Whenever real estate shall be taken in execution, as aforesaid, by any sheriff, it shall be his duty to summon an inquest, for the purpose of ascertaining whether the rents and profits of such estate, beyond all re-prizes, will be sufficient to satisfy, within seven years, the judgment upon which such execution was issued, with the interest and costs of suit, and he shall make a return, in due form of law, of the inquisition so taken, to the court, with the writ.

SECTION 45. *Provided*, That the defendant in any execution, being at the time of issuing thereof the owner of such real estate, or the person owning such estate by title from him, may, by writing, filed in the proper court, dispense with and waive an inquisition, as aforesaid, and in such case, the sheriff may, after giving notice in the manner hereinafter provided, proceed to sell such real estate, upon the writ of fieri facias, before the return day thereof, without any other writ.

SECTION 46. The sheriff shall give at least five days notice of the time and place of the holding of such inquisition, to the defendant in the execution, or, if he be not found within the county, to his attorney or agent; and if the attorney or agent be not known to him, he shall give such notice by a handbill, to be fixed upon the premises.

SECTION 47. Every such inquisition shall be held on the premises taken in execution, as aforesaid, if required by the defendant, or his agent, and notice of such requisition be given to the sheriff, or other officer executing such writ.

VII. OF THE LIBERARI FACIAS, AFTER A WRIT OF FIERI FACIAS.

SECTION 48. If the clear profits of the real estate of any such defendant will, in the opinion of the inquest, be sufficient to pay the debt or damages to be levied as aforesaid, together with the costs, the sheriff, or other officer, shall

proceed, by the inquest as aforesaid, to assess the value of the yearly rents or profits of such lands beyond all reprises, and make return thereof to the court, with his writ, as aforesaid.

SECTION 49. Upon the return of such writ, with the inquisition assessing the value of the yearly rents or profits, as aforesaid, the plaintiff may have a writ of liberari facias, to deliver the said real estate, with the appurtenances, to him, at the valuation and appraisement aforesaid, to be holden by him, his executors, administrators and assigns, until such debt or damages, with lawful interest thereon, from the day of the judgment rendered, be fully levied thereout, and make return thereof, under his hand and seal, to the court.

SECTION 50. On the execution of a writ of liberari facias as aforesaid, where the defendant, or any person claiming under him by demise or title, subsequent to the judgment, is in possession of premises to be extended, the sheriff shall deliver the actual possession thereof to the plaintiff, or his agent.

SECTION 51. Lands or tenements shall be extended as foresaid, upon execution, according to the priority of the judgments, in all cases where two or more writs of liberari facias issued thereon, shall be in the hands of the sheriff, or other officer, at the same time, for execution, but whenever any real estate shall be extended in satisfaction of any judgment, as aforesaid, such extent shall not be disturbed or discharged by virtue of any writ of liberari facias, issued upon any other judgment, whether previously or subsequently obtained.

SECTION 52. It shall be lawful for the defendant, at the expiration of the time or term for which his real estate shall be delivered, as aforesaid, to require the plaintiff, by a writ of scire facias, to settle an account of the rents, issues, and profits of such real estate, during his possession, as aforesaid, and show cause why the defendant should not have his land again.

SECTION 53. It shall also be lawful for the defendant, to have a writ of scire facias, for the purpose aforesaid, at any time during the said term, on making affidavit, to be filed of record, that he verily believes that the plaintiff has been fully satisfied for his judgment, interest, and costs.

SECTION 54. If it shall appear upon the accounting as aforesaid, that the plaintiff has been fully satisfied for the amount of his judgment, with interest and costs, after deducting for his reasonable expenses and labours, the court shall give judgment of restitution to the defendant, and shall award thereupon, a writ to deliver the premises to him.

SECTION 55. If it shall appear upon the accounting aforesaid, that the plaintiff has received more than the amount of

his judgment, interest and costs, after deducting for his reasonable labours and expenses, as aforesaid, the court shall adjudge him to pay the surplus to the defendant, and enforce the payment, by execution.

SECTION 56. If it shall appear upon the accounting as aforesaid, or in any other proceeding instituted by the defendant in the execution, to obtain possession, that the plaintiff has not received the amount of his judgment, interest and costs, as aforesaid, and that he has used reasonable skill and diligence in the management of such real estate, during the time of his occupancy, as aforesaid, it shall be lawful for him to retain the possession of such real estate, until he be fully paid and satisfied out of the same, as aforesaid, unless the defendant, his heirs or assigns, shall forthwith pay him the residue of the sum to be levied as aforesaid.

SECTION 57. It shall also be lawful for the plaintiff, whenever he shall be fully paid and satisfied for his judgment, and before the expiration of the time or term aforesaid, to settle his account in court, after notice given the defendant, and surrender to him his estate.

SECTION 58. If before the expiration of an extent made as aforesaid, any other debt or damages shall be recovered against the same defendant, his heirs, executors or administrators, which, with what remains due upon such extent, cannot all be satisfied out of the yearly profits of the real estate so extended, within seven years from such recovery, and execution be issued therefor, the sheriff, or other officer, shall certify the same, by inquisition, as aforesaid, upon the return of such writ, and thereupon, the court may award a writ of venditioni exponas, to sell such real estate.

SECTION 59. If before the expiration of an extent as aforesaid, the estate extended should be sold by virtue of any other execution, the plaintiff to whom such real estate shall be delivered, shall justly and equitably account for the rents, issues and profits actually received by him during his occupancy, and the residue of his judgment, with the interest and costs, shall be paid out of the proceeds of the sale as in other cases.

SECTION 60. If any real estate delivered to any person by virtue of any liberari facias, as aforesaid, shall, upon any lawful title or cause, and without any fraud, collusion, or other default, be recovered or lawfully taken from the possession of such person, his executors, administrators or assigns, before he, or they, shall have levied and recovered the whole debt or damages for which real estate was delivered in execution, as aforesaid, it shall be lawful for him, his executors or administrators, to have a writ of scire facias upon such judgment, against the defendant therein,

his executors or administrators, to show cause why the plaintiff should not have execution for the residue of the judgment and costs.

VIII. OF THE WRIT OF VENDITIONI EXPONAS.

SECTION 61. If the inquest shall find that the clear profits of any real estate levied as aforesaid, will not be sufficient to satisfy, within seven years, the debt or damages in such execution, and the same shall be approved of by the court, the plaintiff in such writ, may have a writ of venditioni exponas, to sell such real estate, for and towards the satisfaction of his judgment.

SECTION 62. But before any sale of real estate shall be made as aforesaid, the officer shall cause so many written or printed handbills to be made, upon parchment or good paper, as the debtor or defendant shall reasonably request, or so many without such request, as may be sufficient to give notice of such sale, and of the day and hour when, and the place where the same will be, and what lands or tenements are to be sold, and the place where they lie, which notice shall be given to the defendant, and one of the said papers or parchments, shall be fixed by the sheriff, or other officer, upon the premises, and the others of them in the most public places of the county or city, at least ten days before such sale.

SECTION 63. The officer shall also give notice of every such sale, by advertisement, describing the real estate to be sold, and the time and place of sale, as aforesaid, in at least two newspapers, one in the English, and the other (except in the city and county of Philadelphia,) in the German language, if such there are printed in the county where such real estate may be, or if there be no newspaper printed in such county, then in the newspaper printed nearest thereto, once a week, during three successive weeks, previous to such sale, under penalty of fifty dollars to the party aggrieved by any such neglect, to be recovered as debts of like amount are recovered: *Provided*, That nothing herein shall debar any party aggrieved, from recovering the damages which he may actually sustain by reason of such neglect.

SECTION 64. In case the said real estate so to be exposed, cannot be sold, then the officer shall make return upon his writ, that he exposed such real estate to sale, and the same remained in his hands unsold, for want of buyers, and such return shall not make the officer liable to answer the debt or damages mentioned in such writ,

IX. OF THE WRIT OF LIBERARI FACIAS, AFTER A WRIT OF VENDITIONI EXPONAS.

SECTION 65. It shall be lawful for the plaintiff in such writ, whenever the officer shall return upon the same, that such

real estate remains in his hands unsold, as aforesaid, to have the same valued as aforesaid, or so much thereof as shall satisfy his judgment, with the interest from the day on which it was rendered, and costs thereupon, he may have a writ of liberari facias awarded and directed to such officer, commanding him to deliver to the plaintiff such part or parts of such real estate, as shall satisfy his debt of damages and interest, from the time of the judgment given, with costs of suit, according to the valuation aforesaid, to hold to him and his heirs, forever, as his free tenement, in satisfaction of his debt, damages and costs, or of so much thereof as such real estate, by the valuation aforesaid, shall amount to, or at his election, such plaintiff may have another writ, or writs of venditioni exponas, awarded as aforesaid, for the sale of the same real estate.

SECTION 66. All real estate which shall be sold or delivered as aforesaid, by any sheriff, or other officer, with the appurtenances, shall be quietly and peaceably held and enjoyed, by the person to whom the same shall be sold or delivered, and by the heirs, successors, or assigns of such person, as fully and amply, and for such estate and estates, and under the same rents and services, as he or they for whose debt or duty the same shall be sold or delivered, might, could, or ought to do, at or before the taking thereof in execution.

SECTION 67. In case the plaintiff to whom land shall be delivered in satisfaction of his debt, as aforesaid, shall be evicted, upon any lawful title, without any fraud, collusion, or other default, he may, upon settling an account of such sums and profits as he has received from such estate, and may be entitled to retain, deducting for his reasonable expenses and labors, have a writ of scire facias upon such judgment, against the defendant, his executors or administrators, to shew cause why he should not have execution for the residue of his judgment, with costs, and if no sufficient cause be shown, execution may issue, notwithstanding the delivery of such real estate to him, in satisfaction of his judgment, as aforesaid.

X. OF EXECUTIONS AGAINST LIFE ESTATES IN LANDS OR TENEMENTS.

SECTION 68. Whenever an estate for life, in any improved lands or tenements, yielding rents, issues, or profits, shall be seized in execution, it shall be the duty of the sheriff to ascertain, by an inquest, in the manner usually practised, the clear profits yearly, of such real estate, making reasonable allowances for taxes, necessary repairs, and all reprises, and he shall make return of such inquisition to the court, with his writ.

SECTION 69. Upon the return of such writ, it shall be lawful for the plaintiff to have such estate extended, and

deliver to him, by a writ of liberari facias, according to the valuation of the inquest aforesaid, in the manner, and according to the rules herein before provided in the case of other real estate, or at his election, the court shall award a writ to sequester the rents, issues, and profits of such estate, and appoint a sequestrator, to carry the same into effect.

SECTION 70. The sequestrator appointed as aforesaid, shall have power, according to the direction of the court, to rent or sell such lands or tenements, for such term, during the life of the person upon whom such estate therein shall depend, as shall be sufficient to satisfy all the liens against the same, together with all charges for taxes, repairs and expenses, which shall be incurred during the said term, and he shall apply the proceeds thereof, under the direction of the court, in the payment of such liens, according to their priority.

SECTION 71. The court shall have power, to require from such sequestrator a bond, with sufficient surety, for the faithful execution of his trust, and to compel him to account, from time to time, as they shall think necessary; and they may make all such orders, allowances and decrees, in the premises, and enforce the same, in like manner, and as fully and effectually as a court of Chancery might do in the like case.

XI. OF EXECUTIONS AGAINST CORPORATIONS.

SECTION 72. All executions which shall be issued from any court of record, against any corporation, not being a county, township, or other public corporate body, shall command the sheriff, or other officer, to levy the sum recovered, together with the costs of suit, of the goods and chattels, lands and tenements of such corporation, and such execution shall be executed in the manner following, to wit:

- I. The officer charged with the execution of such writ, shall go to the banking houses, or other principal office of such corporation, during the usual office hours, and demand of the president, or other chief officer, cashier, treasurer, secretary, chief clerk, or other officer, having charge of such office, the amount of such execution, with legal costs.
- II. If no person can be found, on whom demand can be made, as aforesaid, or if the amount of such execution be not forthwith paid, in lawful money, after demand, as aforesaid, such officer shall seize personal property of said corporation, sufficient to satisfy the debt, interest and cost, as aforesaid.
- III. If the corporation against which such execution shall be issued, be a banking company, and other sufficient personal property cannot be found, such officer shall take so much of any current coin, of gold, silver, or copper,

which he may find, as shall be sufficient to satisfy the debt, interest and cost, as aforesaid.

IV. If no sufficient personal property be found, as aforesaid, such officer shall levy such execution upon the real estate of such corporation, and thereupon, proceed in the manner provided in other cases, for the sale of land upon execution.

SECTION 73. In every case in which judgment shall have been obtained against such corporation, except, as aforesaid, and an execution issued thereon, shall have been returned, unsatisfied, in part or in the whole, it shall be lawful for the court in which such judgment shall have been obtained, upon the bill or petition of the plaintiff in such judgment, to award a writ to sequester the goods, chattels, and credits, rents, issues, and profits, tolls, and receipts, from any road, canal, bridge, or other work, property, or estate of such corporation.

SECTION 74. The court shall, upon the awarding any such writ, appoint a sequestrator to execute the same, and to take charge of the property and funds, taken or received by virtue of such writ, and to distribute the nett proceeds thereof, among all the creditors of such corporation, according to the rules established in the case of the insolvency of individuals, and such sequestrator shall have all the powers, and be subject to all the duties of trustees appointed under the law relating to insolvent debtors: *Provided*; That in the case of any work in the maintenance or repair of which the public may be interested, and which may from time to time require a portion of the revenue thereof, as aforesaid, to be expended thereon, the court which awards such writ, shall make such allowances for such purpose, and otherwise take such order thereon, as the public good shall require.

SECTION 75. The said court shall have power, at the time of awarding any such writ, or afterwards, to make such orders and decrees as may be necessary to carry the same into full and complete effect, and they may also make all such other orders and decrees in the premises, for the purpose of giving full and effectual relief to all the creditors of such corporation, as shall be agreeable to equity, and they may enforce all such orders against all persons neglecting or refusing to comply therewith, or obstructing the execution thereof, or of such writ by attachment; or by a writ or writs to the sheriff or coroner, in aid of the sequestrator, or otherwise, as fully as a court of Chancery might do.

XII. OF TESTATUM WRITS OF EXECUTION.

SECTION 76. If the defendant in any judgment for the recovery of money, shall have no real or personal estate in the county where such judgment may be obtained, it shall be lawful for the plaintiff, upon his own suggestion of that

fact, verified by affidavit, without any previous writ, to have a testatum writ of fieri facias, directed to the sheriff or coroner of any other county, where the defendant may have real or personal estate, which shall be made returnable into the court from which it shall issue.

SECTION 77. If the estate of the defendant in the county in which a testatum writ of fieri facias shall first be issued, be insufficient to satisfy the judgment, it shall be lawful for the plaintiff to have in like manner, an alias or pluries writs of fieri facias, in succession, into any other county in which the defendant may also have real or personal estate, until such judgment shall be fully satisfied.

SECTION 78. It shall be the duty of every sheriff and coroner, on receiving a testatum writ of fieri facias, immediately to deliver the same to the prothonotary of the court of Common Pleas of his proper county.

SECTION 79. It shall be the duty of every prothonotary to whom any testatum writ of fieri facias shall be delivered, as aforesaid, forthwith to enter the same of record, in a docket, to be provided for that purpose, and as of the preceding term, stating particularly the amount of the debt, or damages, and costs, endorsed upon such writ, and thereupon, he shall re-deliver the said writ to the sheriff or coroner, to be by him executed.

SECTION 80. Every testatum writ of fieri facias, shall be a lien upon the real estate of the defendants named in such writ, within the county where it shall be so entered of record, during five years from the date of such entry, unless the debt, or damages and costs, be sooner paid.

SECTION 81. If the defendant in any judgment, as aforesaid, shall have no real or personal estate within the commonwealth, and if the defendant cannot be found within the county where such judgment may be, it shall be lawful for the plaintiff, if he shall make affidavit of the fact, to the best of his knowledge and belief, to have, upon his own suggestion, and without any previous writ, a testatum writ, or at the same time, several testatum writs of *capias ad satisfaciendum*, into any other county or counties, which writs shall be made returnable to the court from which they shall issue: *Provided*, That the plaintiff shall not be allowed the costs of more than one of several such writs, unless the court shall be satisfied that the plaintiff had sufficient cause for issuing the same.

SECTION 82. If any sheriff or coroner to whom any testatum writ of execution shall be directed and delivered, as aforesaid, shall neglect or refuse to execute and return the same, according to the exigency thereof, he shall be amerced in the court where he ought to return it, and also, be liable to the action of the party aggrieved.

XIII. OF A LANDLORDS LIEN ON GOODS TAKEN IN EXECUTION.

SECTION 83. The goods and chattels being in or upon any messuage, lands or tenements, which are or shall be demised for life or years, or otherwise taken by virtue of an execution, and liable to the distress of the landlord, shall be liable for the payment of any sums of money due for rent at the time of taking such goods in execution: *Provided*, That such rent shall not exceed one years rent.

SECTION 84. After the sale by the officer, of any goods or chattels as aforesaid, he shall first pay out of the proceeds of such sale, the rent so due, and the surplus thereof, if any, he shall apply towards satisfying the judgment mentioned in such execution: *Provided*, That if the proceeds of the sale shall not be sufficient to pay the landlord, and the costs of the execution, the landlord shall be entitled to receive the proceeds, after deducting so much for costs as he would be liable to pay in case of a sale under a distress.

SECTION 85. Whenever any goods or chattels liable to the payment of rent as aforesaid, shall be seized in execution, the proceedings upon such execution shall not be stayed by the plaintiff therein, without the consent of the person entitled to such rent, in writing, first had and obtained.

XIV. OF THE DISTRIBUTION OF THE PROCEEDS OF SHERIFF'S SALES.

SECTION 86. In all cases of sale upon execution, as aforesaid, where there shall be disputes concerning the distribution of the money arising therefrom, the court from which the execution shall have issued, shall have power, after reasonable notice given, either personally, or by advertisement, to hear and determine the same, according to law and equity.

SECTION 87. If any fact connected with such distribution shall be in dispute, the court shall, at the request, in writing, of any person interested, direct an issue to try the same, and the judgment upon such issue, shall be subject to a writ of error, in like manner as other cases wherein writs of error now lie.

SECTION 88. Upon a writ of error issued as aforesaid, the whole record shall be returned, and it shall be competent for any person aggrieved by the decree of distribution, to take exceptions thereto, if the judgment upon such issue should be affirmed.

SECTION 89. Any person aggrieved by the decree of the court in any case of distribution made, without the intervention of a jury, may, at any time within twenty days thereafter, appeal from the same to the Supreme court.

SECTION 90. *Provided*, That if a writ of error or an appeal, shall not be taken within twenty days from the decree of dis-

tribution, the court may order the money to be paid, according to such decree.

SECTION 91. Every person who shall sue out a writ of error, or shall appeal to the Supreme court, upon any proceeding, as aforesaid, shall make oath or affirmation, that his writ of error or appeal is not intended for delay, and he shall, to make it a supercedeas, also give security, by recognizance, with sufficient surety, in the court in which the proceeding was had, or before one of the judges thereof, to prosecute his appeal, or writ of error, with effect, and to pay all costs that shall be adjudged against him.

SECTION 92. It shall be lawful for the court into which any money arising from a sheriff's sale shall be paid, in case of a writ of error, or appeal from any decree, as aforesaid, to order the investment of the fund, in the debt of this commonwealth, or of the United States, or upon real security, or it shall be lawful for such court to order the payment of the money according to the decree of distribution, if the distributees shall give sufficient real security, to refund the same, with the interest thereon, or so much thereof as shall be required by the court, if such decree shall be reversed, or altered, and in such case, the order of restitution may be enforced by a writ of fieri facias, or otherwise.

SECTION 93. Whenever the proceeds of a sale upon execution as aforesaid, shall be more than sufficient to satisfy the liens upon the property sold, the officer making such sale, or receiving such proceeds, shall pay the surplus to the debtor unless the fund shall have been paid into court, and then, and not before, such officer shall be discharged thereof, upon record in the court to which he shall make return of his proceedings concerning such execution.

XV. OF SHERIFF'S DEEDS.

SECTION 94. The officer making sale of any real estate under execution, as aforesaid, shall make return thereof, endorsed or annexed to such writ, and give the buyer a deed, duly executed and acknowledged in court, for what is sold, in the manner hitherto practised in case of the sale of lands by sheriffs, upon execution.

SECTION 95. It shall be lawful for the purchaser of any real estate at a sheriff's sale, to cause the judgment, and all and singular, the process issued thereon, under which such estate may have been seized and sold, together with all and singular, the returns of such process, made by the officer executing the same, to be recited and set forth fully and at large, in the deed to be executed by him therefor, by the sheriff, as aforesaid; and if the prothonotary or clerk of the said court shall, by order thereof, certify and attest, under the seal of the said court, that such judgment and process are recited and contained in the said deed, truly, fully, and

entire, as the same remain in his office, such deed shall be good evidence of such judgment and process upon any trial at law, wherein the said real estate may be in controversy, in the same manner as the original records would be, if produced and offered in evidence.

SECTION 96. The acknowledgment of deeds of real estate, sold upon execution, shall be made as follows:

- I. In the case of executions from the Supreme court, the acknowledgment shall be made by the officer who executed the deed before the said court, in bank, sitting within the respective district, or before one of the judges of the said court, sitting at nisi prius, within the county in which such real estate may be, or before the court of Common Pleas of the county, or the District court of the city and county in which such real estate may be.
- II. In case of testatum writs of execution, the acknowledgment may be made as aforesaid, in the court of Common Pleas of the county, or District court of the city and county, in which such real estate may be.
- III. In all other cases, the acknowledgment, as aforesaid, shall be made in the court from which the execution issued.

SECTION 97. But no such acknowledgment shall be allowed, unless the same shall be made upon public proclamation, in open court, at a time appointed by the court for the purpose, or notice shall have been previously affixed in the office of the prothonotary, specifying the names of the parties to the execution, and the names of the purchaser of such real estate, and the time at which the acknowledgment is intended to be made, at least one week after the return day of the writ of execution, nor in case of acknowledgment made in any court, except that from which the execution issued, unless notice shall appear to have been given to the parties to the execution, in the manner provided for the service of a writ of summons in a personal action.

SECTION 98. Whenever the acknowledgment shall be made as aforesaid, in any other court than that from which the process shall have issued, the same shall be good, notwithstanding the same may have been made before the return day of the execution.

SECTION 99. It shall be the duty of the sheriff acknowledging any deed as aforesaid, in any other court than that from which the process issued, upon which the sale shall have been made, immediately thereafter, to return the same into the office of the prothonotary or clerk of the court from which the same shall have been issued.

SECTION 100. When application shall have been made to any court, to take the acknowledgment of a deed for real estate, sold upon the process issued by any other court, the court to which such application shall be made, shall have

power to examine the regularity and validity of such sale, and set the same aside, if there be cause; and if the proceeds of such sale shall be paid into the said court, they may order the distribution thereof, in like manner as if such sale had been made by virtue of process issued from such court.

SECTION 101. If the officer by whom any real estate shall have been taken in execution, shall die, resign, be removed from office, or if his term of office shall expire before sale thereof, the proceedings upon such execution shall be continued and completed by his successor in office, and all other necessary and proper writs and process in such case, shall be directed to such successor, and be executed by him, and a deed be made and acknowledged by him, in like manner, and with like effect as such acts might have been done by the former officer, if he had continued in office.

SECTION 102. Whenever any real estate shall be sold under any execution, as aforesaid, and the officer who shall make the sale shall die, resign, or be removed from office, or if the term of his office shall expire before any deed shall be executed and acknowledged by him, in due form of law, the Supreme court, or the court in which the judgment was obtained, shall have power, upon the petition of the plaintiff in such judgment, or the purchaser of such real estate, setting forth specially the facts of the case, by an order, to be entered upon their records, to direct the sheriff for the time being, to execute a deed of such real estate to the purchaser thereof.

SECTION 103. It shall be the duty of the sheriff, or other officer to whom any such order shall be directed in pursuance thereof, and after the payment of the purchase money of such real estate, with such costs and charges, if any, as may remain unpaid, to the former sheriff, or officer, to execute, deliver and acknowledge such deed or deeds, and perform and do such other matters and things as the sheriff or officer who made such sale, might, could, or ought have done, in and about the premises, which deed so executed, shall be as effectual in law, as if the title had been completed by the former officer.

SECTION 104. The several courts aforesaid, shall have the like power to compel the sheriff or coroner making sale as aforesaid, to perfect the title of purchasers, in cases of defective or informal execution of sheriff's or coroner's deeds, and they may grant relief in the manner, and upon the terms and conditions aforesaid, and with like effect.

XVI. PROCEEDINGS TO OBTAIN POSSESSION AFTER SALE OF LANDS, &c.

SECTION 105. Whenever any lands or tenements shall be sold by virtue of any execution as aforesaid, the purchaser of such estate may, after the acknowledgment of a deed

therefor to him, by the sheriff, give notice to the defendant, as whose property the same shall have been sold, or to the persons in possession of such estate under him, by title, derived from him subsequently to the judgment under which the same were sold, and require him, or them, to surrender the possession thereof to him, within three months from the date of such notice.

SECTION 106. If the defendant, or any person in possession under him, as aforesaid, shall refuse, or neglect to comply with the notice and requisition of the purchaser, as aforesaid, such purchaser, or his heirs or assigns, may apply by petition, to any two justices of the peace, or aldermen of the city, town or county where such real estate may be, setting forth:

I. That he purchased the premises at a sheriff's or coroner's sale.

II. That the person in possession at the time of such application, is the defendant, as whose property such real estate was sold, or that he came into possession thereof under him.

III. That such person in possession had notice, as aforesaid, of such sale, and was required to give up such estate, three months previously to such application.

SECTION 107. If the applications as aforesaid, shall be verified by the oath or affirmation of the petitioner, or if probable cause to believe the facts therein set forth be otherwise shown, the said justices are hereby enjoined and required, forthwith to issue their warrant, in the nature of a summons, directed to the sheriff of the county, commanding him to summon a jury of twelve men of his bailiwick, to appear before the said justices, at a time and place to be specified, within four days next after the issuing thereof, and also, to summon the defendant, or person in possession, as aforesaid, at the same time to appear before them and the said jury, to show cause, if any he has, why delivery of the possession of such lands or tenements, should not be forthwith given to the petitioner.

SECTION 108. If at the time and place appointed for the hearing of the parties, the defendant, or person in possession, as aforesaid, shall fail to appear, the said justices shall require proof, by oath or affirmation, of the due service of such warrant upon him, and of the manner of such service: *Provided*, That such service shall have been made three days before the return.

SECTION 109. If the defendant, or other person in possession under him, as aforesaid, shall be duly summoned as aforesaid, or if he shall appear, the said justices and jury shall proceed to inquire—

I. Whether the petitioner, or those under whom he claims, has, or have, become the purchaser of such real estate, at

a sheriff's or coroner's sale, as aforesaid, and a sheriff's or coroner's deed for the same, duly acknowledged and certified, shall be full and conclusive evidence of that fact, before such justices and jury.

II. Whether the person in possession of such real estate was the defendant in the execution under which such real estate was sold, or came into the possession thereof under him, as aforesaid.

III. Whether the person so in possession, has had three months notice of such sale, previous to such application.

SECTION 110. Upon the finding of the facts as aforesaid, the justices shall make a record thereof, and thereupon, they shall award the possession of such real estate to the petitioner.

SECTION 111. In case of a finding for the petitioner as aforesaid, the jury shall assess such damages as they shall think right, against such defendant, or person in possession, for the unjust detention of the premises, and thereupon, the said justices shall enter judgment for the damages assessed, and reasonable costs, and such judgment shall be final and conclusive to the parties.

SECTION 112. The said justices shall thereupon, issue their warrant, directed to the sheriff, commanding him forthwith to deliver to the petitioner, his heirs or assigns, full possession of such lands or tenements, and to levy the costs taxed by the said justices, and the damages assessed by the jury, as aforesaid.

SECTION 113. No certiorari, which may be issued to remove such proceedings, shall be a supersedeas, or have any effect to prevent or delay the execution aforesaid, or the delivery of the possession, agreeably thereto.

SECTION 114. If the person in possession of the premises shall make oath or affirmation before the justices—

I. That he has not come into possession, and does not claim to hold the same under the defendant in the execution, but in his own right, or

II. That he has not come into possession under title derived to him from the said defendant, before the judgment under which the execution and sale took place, and shall become bound in a recognizance, with one or more sufficient sureties, in the manner hereinafter provided, the said justices shall forbear to give the judgment aforesaid.

SECTION 115. If the person in possession of the premises shall make oath or affirmation, before the justices, that he does not hold the same under said defendant, but under some other person, whom he shall name, the said justices shall forthwith issue a summons to such person, requiring him to appear before them, at a certain time therein named, not exceeding thirty days thence following, and if at such time, the said person shall appear, and make oath or affirmation,

that he verily believes that he is legally entitled to the premises in dispute, and that he does not claim under the said defendant, but by a different title, or that the claims under the said defendant by title derived before the judgment aforesaid, and shall enter into a recognizance, with sureties, as aforesaid, in such case also, the justices shall forbear to give judgment.

SECTION 116. The oath or affirmation which shall be administered to such claimant, shall be in the following form, to wit :

I do (swear or affirm) that I verily believe that I am legally entitled to hold the premises in dispute, against the petitioner—that I do not claim the same by, from, or under the defendant, as whose property the same were sold (as the case may be)—that I do not claim the same by, from, or under the defendant, as whose property the same were sold, by title derived to me subsequently to the rendition of the judgment under which the same were sold, but by a different title, &c.

SECTION 117. The recognizance aforesaid, shall be taken in a sum fully sufficient to cover and secure, as well the value of the rents and mesne profits of such lands or tenements, which may have accrued, and which may be expected to accrue, before the final decision of the said claim, as all costs and damages, with condition that he shall appear at the next court of Common Pleas, or District court, having jurisdiction, and then and there plead to any declaration in ejectment, which may be filed against him, and thereupon, proceed to trial, in due course of practice, and in case he shall fail therein, that he will deliver up the said premises to the purchaser, and to pay him the full value of the rents or mesne profits of the premises, accrued from the time of the purchase.

SECTION 118. If such recognizance shall be forfeited, the justices aforesaid, shall proceed to give judgment, and cause such real estate to be delivered up to the petitioner, in the manner hereinbefore enjoined and directed.

XVII. OF THE RIGHTS OF PURCHASERS AT SHERIFF'S SALES AS LANDLORDS.

SECTION 119. If any lands or tenements shall be sold upon execution, as aforesaid, which at the time of such sale, or afterwards, shall be held or possessed by a tenant, or lessee, or person holding, or claiming to hold the same under the defendant in such execution, the purchaser of such lands or tenements shall, upon receiving a deed for the same, as aforesaid, be deemed the landlord of such tenant, lessee, or other person, and shall have the like remedies to recover any rents or sums accruing subsequently to the acknowledgment of a deed to him, as aforesaid, whether such accruing rent may

have been paid in advance or not, if paid after the rendition of the judgment on which sale was made, as such defendant might have had, if no such sale had been made.

SECTION 120. If after notice shall be given of such sale, as aforesaid, such tenant, lessee, or other person, shall pay any rent or sum accruing subsequently to the acknowledgment of such deed, notice given him as aforesaid, to such defendant, such tenant, lessee, or other person, to paying, shall nevertheless, be liable to pay the same to the purchaser.

NER MIDDLESWARTH,
Speaker of the House of Representatives.

THOMAS S. CUNNINGHAM,
Speaker of the Senate.

APPROVED—The sixteenth day of June, A. D. eighteen hundred and thirty-six.

JOS: RITNER..

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No. 192.

An Act

Relating to the jurisdictions and powers of courts.

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