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of the plaintiff's trade is proved; and also the knowledge of the defendant. It appears, therefore, to be a part of their contract, that interest should commence, at the expiration of six months credit. *Knox* v. *Jones*. 2 Dallas, 193.

And in the case of *Pawling* v. *Pawling*, before cited, one of the Judges, in delivering his opinion, says, "it is now the law, founded on reason and justice, and conducive to fair dealing, and punctual payment, that where money is made payable by an agreement between the parties, and a time given for the payment of it, this is a contract to pay interest from the day, in case of failure of payment at the day. 2 Burr. 1088. 3 Wils. 127. Or in case of a long delay, under vexatious or oppressive circumstances.

And it is now a settled rule, that interest is recoverable for money lent and advanced; and this rule applies to loans made when the rule of law was held to be otherwise. 1 Binney, 488.

Where the condition of a bond is for the payment of interest annually, and the principal at a distant day, the interest may be recovered before the principal is due, in an action of debt, on the bond. But no interest can be recovered on such interest. 1 Binney, 165.

Interest must be paid according to the *lex loci* where the debt was contracted. MSS. Reports, Supreme Court.

It is by no means a matter of course that rent in arrear should pay interest; and unless unreasonable and vexatious delay has occurred in withholding rents, interest is not properly chargeable thereon. *Smith's executor* v. *Montgomery*. Cumberland, April, *Nisi Prius*, 1796, before *Shippen* and *Yeates*, Justices. MSS. Reports.

So, in *Albright* v *Pickle*, Northumberland, Circuit Court, October, 1805. It was held by the Court, "That it is not the usage in this State to allow interest on rent; but from the time the landlord distreins, or sues for it, it is customary for the jury to make such allowance. The practice is right and proper in itself. Where one unreasonably and vexatiously delays another from the recovery of his just debt, the least compensation he can make is to pay interest for the delay he has thus given.

The jury may give interest beyond the penalty of a bond for the performance of a contract. *Perit* v. *Wallis*. 2 Dallas, 252.

Interest on judgments—see the note to chap, 48, ante. pa. 7.

Judgment given merely as a security. Interest ought not to be calculated on the amount of the judgment, (which included principal and interest,) but only on the sum originally due. 3 Dallas, 506.

CHAPTER * CCLXIII.

An ACT *to rectify proceedings upon attachments.* (t)

WHEREAS, in the execution of a law of this province, entitled *An act about attachments*, divers irregularities and fraudulent practices have happened, to the injury of such creditors as were willing to accept of an equal share of their debtors effects, in proportion to their demands, and not have them wasted in needless prosecutions, contrary to the true design of the said act: Therefore, to prevent such practice for the future, *Be it enacted*, That from henceforth no writ or writs of attachment shall issue forth or be granted, before the person or persons requesting the same, or some other credible person or persons for him or them, shall, upon oath or affirmation, declare, that the defendant in such attachment is indebted to the plaintiff therein named in the sum of forty shillings,

Writs of attachment, when to be issued.

(t) For a general reference to the laws and adjudications respecting foreign and domestic attachments, see ante. chap. 142, and the note there subjoined. See, particularly, Dallas's Reports, pages 152, 450.

* *The original roll containing this act was not to be found; it is therefore, collated with the recorded copy.* (Note to former edition.)

or more; and that the defendant is and has been absconded from the place of his usual abode for the space of six days, with design to defraud his creditors, as is believed; and that the defendant has not left a clear real estate in fee-simple within this province, sufficient to pay his debts, so far as such plaintiff or deponent knows or believes. Which oath or affirmation the officer that grants such writs is hereby empowered and required to administer, and to file the same in the court to which the said attachment is returnable: And if any attachments be granted or issued out otherwise, or contrary to the true intent and meaning hereof, the officer or person so granting the same shall, for every such offence, forfeit the sum of five pounds; the one half for the use of him or her that will sue for the same, the other half to the Governor, for the support of government. (u)

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See the act of April 4th, 1809.

III. And if any of the defendant's money, or other effects, happen to be garnished in other hands, the same shall also be attached, and the garnishees obliged to appear and answer at the return of such writs, and be proceeded against in such manner, as by the above cited act is directed.

Defendant's effects garnished, shall also be attached.

VIII. *Provided always*, That the persons nominated as Auditors shall give public notice, thirty days before the sale or disposition of such goods or effects as aforesaid, by a public advertisement in the Weekly Mercury, or affixed on the doors of the respective Court-houses of this province.

To give thirty days notice before sale of effects.

Passed 2d March, 1723.—Recorded A. vol. II. page 256. (x)

(u) Jurisdiction is given to a Justice of the Peace to grant attachments in cases of debts not exceeding five pounds, (post. chap. 399.)

(x) This act is almost wholly repealed and supplied by an act passed December 4th, 1807, (post chap. 2873) entitled "An act to alter and amend the several laws of this commonwealth relative to Domestic Attachments."

The repealing clause, in the 20th section of this latter act, is in these words: "And be it further enacted, &c. that *so much* of any act of Assembly, as is hereby *altered* or *supplied*, be, and the same is hereby repealed." A mode of repeal which considerably obscures the laws; leaves much to doubtful construction; and throws great difficulty in the way of an editor. The *third* and *eighth* sections of the original act are therefore retained, as not being embraced within any of the provisions of the new act. The 14th section of the new act, in some measure bears on the *third* section of the act in the text, and gives the clause of *capias* against the garnishee, as in case of *foreign* attachment. The first section is partially supplied.

By the act of 1807, the law respecting *Domestic* attachments, stands as follows:

1. The Courts of Common Pleas, respectively, on the oath or affirmation of the creditor, or other credible person for him, of the truth of the debt, and that the debtor has absconded or *departed* from the place of his usual abode in this state, or remained absent from the state, or has confined himself to his own house, or concealed himself elsewhere, with design as is believed, to defraud his creditors; and has not left a clear real estate in fee-simple, within this state, sufficient to pay his debts, so far as deponent knows or believes, may issue writs of attachment against all the lands, tenements, goods and chattels of such person so *absconding, absenting, confining,* or *concealing himself.*—"*Provided always, that the said departure, absence or concealment, shall be proved* by *the oath* or *affirmation of a disinterested witness.*"

[By an act passed April 4th, 1809, this *proviso* is repealed and made void, and the oath, above required may be administered either by the Prothonotary of the court, or before a Justice of the Peace, as the case may require.]

2. The officer to whom the writ is directed, shall attach all the lands, goods, chattels, and effects of the defendant, in whose hands soever the same can be found, which chattels and

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effects, shall be appraised, inventoried, and secured, by such officer; and perishable goods attached, may be sold, by the discretionary order of any Judge of the court from which the process issued, and the monies shall be received by the officer, and be paid over by him to the trustees, &c.

[By the third section of the act in the text, the expressions are, "If the defendant's money, or other effects happen to be garnished in other hands, the same shall also be attached, *and the Garnishees obliged to appear and answer at the return of such writs, and be proceeded against in such manner as by* (chap. 142, ante. page 45) *is directed.*]

3. The court on the return of the writ, shall appoint three trustees for all the creditors of such debtor, with power to audit the accounts, adjust the demands of the creditors, and settle their shares of the estate, and they shall report their proceedings therein to the said court; which trustees, before they proceed, shall take an oath or affirmation, *to be administered by the Court appointing them,* well and truly to execute the trust reposed in them, &c. and the court shall allow them a reasonable compensation for their trouble out of the property attached.

[By the act of April 4th, 1809 before mentioned, it is declared to be competent to any Judge, Alderman or Justice of the Peace to administer the oath to the trustees.]

4. The trustees shall take into their possession all the estate of the debtor, whether attached, as aforesaid, or afterwards discovered by them, and all books, papers and vouchers relating to the same; and shall be deemed vested with all the estate of such debtor, at the time of issuing the said attachment; and shall be capable to sue for and recover the same, and all debts or things in action, due or belonging to such debtor, at that time, or at any time thereafter, and all the estate attached as aforesaid, shall be by the Sheriff who took the same, delivered over to the said trustees. *Provided,* that in case of a *bona fide* purchase made, or assignment taken from or under such debtor, for a valuable consideration, by any person having no notice of the attachment, such purchase or assignment shall not be invalidated or impeached; and *provided also,* that if any person indebted to the party, against whom an attachment has been issued as aforesaid, or having the possession of any of his property, shall *bona fide,* pay the said debt, or deliver the said property to the said party, without notice of the attachment, he shall not be liable to pay, or deliver the same to the trustees.

5. All prior conveyances of lands or goods, to children, or others, or any transfer of debts or demands, into other persons names, with intent to defraud creditors are rendered ineffectual, and the trustees shall have power to recover and dispose of the same, as if the defendant had been actually seized or possessed thereof.

6. The trustees may make public sale and assurance of the estate belonging to such debtor, which shall be good and effectual in law, against him, his heirs, executors and assigns; and may grant and assign, or otherwise order or dispose of all or any of the debts, due, or to be due, to or for the benefit of the defendant, to the use of his creditors; and the same grant, assignment or disposition of the said debts, shall vest the right and interest thereof, in the person or persons to whom it shall be so granted, assigned or ordered, so that such assignees may sue for and recover the said debts in their own names, and detain the same to their own use: And after such grant, assignment or disposition made of the said debts, neither the said defendant, nor any other, to whom such debts shall be due, shall have power to recover the same, nor to make any release or discharge thereof.

[The 8th section of the act in the text, requires thirty days notice.]

7. If lands, goods or estate, are conveyed and assured by defendant, upon condition or power of redemption, by payment of money, or otherwise, the trustees or any person by them appointed by writing under hand and seal, may make tender of money, or other performance, according to the nature of such condition, as fully as defendant might have done, and the said trustees, after such performance or tender, shall have power to sell and dispose of such lands, goods and estate, for the benefit of the creditors.

8. The trustees, immediately on their appointment, shall give notice in two newspapers in the city of Philadelphia, and in one newspaper in the county in which the attachment issued, or if none be printed in such county, by setting up four advertisements in four of the most public places of such county, and require all persons indebted to defendant, to pay and deliver to them all money and property due and belonging to the debtor, and also to desire all creditors to deliver to them their respective accounts and demands; and if any controversy shall arise, concerning any claim by any creditor, or concerning any debt

or demand, claimed by the trustees, they may agree with the opposite party to refer the same to arbitrators, mutually chosen, and if the parties will not agree to a reference, an issue shall be made up between them, and a jury shall be impannelled, as in other cases, to try the same.

9. The trustees may summon before them, and examine all persons supposed to be indebted to defendant, and such other persons as they shall think fit, upon interrogatories, or otherwise, on oath or affirmation, which they are empowered to administer, touching the lands, tenements, goods, chattels or effects of defendant, and such other things as may tend to disclose their estates, or their secret grants or alienation of their effects; and if such person shall refuse to attend, or to be sworn or affirmed, and to make answer to such questions or interrogatories, as shall be administered, he, or they may be committed to prison, to be detained till he or they shall submit to be examined as aforesaid. And the trustees, by warrants under their hands and seals, may cause to be broke open, any houses, chambers, shops, warehouses, door, trunks or chests of defendants, where their goods or effects shall be, or reputed to be, and seize the same for the use of their creditors.

10. *Bona fide* creditors, on securities payable at a future day, and not due at the time of issuing the attachment, shall be admitted to prove their debts and contracts, as if they were payable presently; and shall have a dividend in proportion to the other creditors, discounting, where no interest is payable, at the rate of so much *per cent. per annum*, as is equal to lawful interest; and where mutual credit has been given by such debtor and any other person, or mutual debts between them at any time before the issuing the attachment, the trustees shall state the account, and one debt may be set off against the other; and the balance, and no more, shall be claimed, or paid, on either side respectively.

11. At the expiration of six, and within nine months after the first notice, the trustees shall make distribution, first deducting legal charges and commissions: And no preference shall be allowed to debts on specialties. And if the whole estate shall not then be distributed, a second dividend shall be made three months after, and so on every three months, till the whole estate shall be distributed.

12. A majority of the trustees shall form a quorum to do business, and the court shall supply vacancies by a new appointment.

13. The court shall dissolve the attachment, on the facts of absconding, absence, or concealment, being disproved by the debtor, or any person on his or her behalf, at any time during the term to which the process is returnable.

14. A clause of capias against the garnishee may be inserted in the body of the writ, under the same rules and regulations as are prescribed by law in cases of foreign attachment.

[See the notes to chap. 142, ante. pa. 45, and the act passed September 28th, 1789, sect. 4, (chap. 1434.)]

17. (15 and 16 infra.) No second or other attachment shall be issued against the same defendant, unless the first be not executed, or be dissolved by the court; and the overplus of debtor's estate shall be returned to him, his executors, or administrators.

18. The death of the debtor after issuing the attachment, shall not abate or affect the proceedings therein, but the same shall go on to a final conclusion, and with equal validity, as if such debtor had lived.

19. The laws of the commonwealth, relative to foreign attachments, not altered, or to be affected by this act.

By an act passed August 22d, 1752, (post. chap. 399,) entitled, "An act for regulating attachments, not exceeding five pounds," Jurisdiction is given to Justices of the Peace to that amount: and the particular form of proceeding is prescribed; and a penalty of five pounds is inflicted on the Justice, for issuing any attachment, contrary to the true intent and meaning thereof.

The 15th section of the act of December 4th, 1807, extends the jurisdiction of Justices and Aldermen, to *all cases of attachment* authorized by the said act of 1807, where the debt or demand of the plaintiff does not exceed one hundred dollars, subject, otherwise, to the same rules, regulations and restrictions prescribed in the act of 1752—but the above mentioned penalty on the Justice is extended to one hundred dollars.

And by sect. 16, of the act of 1807, the Justices and Aldermen shall have the like power with the Courts of Common Pleas, to dissolve writs of attachment, in cases within their jurisdiction, and upon the same proofs, provided application be made for that purpose, within twenty days after the return of the writ.

By the second section of the act of 1752, if after a full and careful examination it shall appear that there is a just

1723. debt due to any one person from defendant, exceeding the sum of *five pounds*, (*now one hundred dollars,*) then and in every such case, the Justice shall no further proceed, but shall deliver and certify to the Prothonotary of the County Court of Common Pleas for the same County, the said attachment, and all proceedings thereon had before him; and the Justices of said Court may grant and issue one writ of attachment only to the person who obtained the attachment from the Justice, if he demands the same, or if not, to any other creditor, to the Sheriff, &c.

No second attachment to issue, either from the Justice or the court, pending any prior attachment, issued either by the Justice, or court.

On the subject of *domestic* attachments, the following cases have occurred:

Hollingsworth v. *Hamelin.*

The defendant having absconded, a domestic attachment issued against him at the suit of the plaintiff, and the auditors, under that process, having advertised that all persons who had demands, should send in their accounts in a reasonable time afterwards, made a dividend among the creditors who filed their claims.

Previously to issuing the domestic attachment, the defendant was indebted to the commonwealth for duties upon a cargo imported, and having given bond to *Sharp Delany*, (who was the Collector, but not so named in the bond,) a writ was thereupon issued against him, but was returned *non est inventus*. Of this, however, the auditors had no notice, till the dividend above mentioned was paid. *Delany* now claimed full payment.

The matter was referred to the opinion of the court, upon a case stated; and, after argument, the court unanimously decided, that on these facts, the commonwealth was entitled to no preference. In the Common Pleas, Dec'r, 1785. 1 Dallas, 151.

And in *Lazarus Barnet's* case, the foreign and domestic attachment laws received a full consideration, and decisive construction; especially as to what constitutes an *inhabitant*, so as to render the party an object of the one or the other of these laws. To this case, the reader is generally referred, as it would swell this note to an unreasonable length, to insert it entire. The latter part of the judgment of the court, as pronounced by *Shippen, President*, is in these words: "The word "inhabitant" has a plain meaning. A person coming hither occasionally, as a captain of a ship, in the course of trade, cannot be called an inhabitant; nor does a person going from his settled habitation here, on occasional business to *Boston*, or any other place, cease to be an inhabitant. But a man who comes from another place to reside among us, introduces his family here, takes a house, engages in trade, contracts debts, and, after some time, runs away with design to defraud his creditors, he ought surely to be considered such an inhabitant, as not to be an object of the *foreign* attachment, but of the *domestic* one, and as a person whose effects should be seized for the benefit of all his creditors, and not of the first creditor who shall take out a *foreign* attachment, otherwise there would be few objects for this equitable law to operate upon."

Such has been the uniform construction of the law of attachments in *Pennsylvania*, from the year 1724, to the passing of the act of 14 Geo. 3. c. 5. which last act gives a legislative sanction to the preceding practice. 1 Dallas, 152.

[The act of 14 Geo. 3. c. 5. sect. 4, passed January 22d, 1774, referred to above, is chap. 691 of this edition. But the 4th section is repealed and supplied by the act of 1807.]

See *Taylor* v. *Knox*, 1 Dallas, 153. And *Lyle* v. *Forman*, ibid. 480.—*Foreign attachment.* It was proved, that on the 5th of December, defendant was at Lancaster, on his way to Fort Pitt, where he intended to proceed to the Spanish settlement, below the Natchez, on the Mississippi; but was actually at Fort Pitt on the 2d January, 1790. The process was returnable Dec'r, 1789.

Shippen, President, observed, that while a man remained in the State, though avowing an intention to withdraw from it, he must be considered as an *inhabitant*, and therefore not an object of the foreign attachment. If an inhabitant clandestinely withdraws, or secretes himself, to avoid his creditors, he becomes liable to the domestic attachment. The having once been an inhabitant will not, however, protect a man, for ever, from a foreign attachment, where he has notoriously emigrated from the State, and settled elsewhere. But the case before the court, is that of a foreign attachment issued at the very time the defendant was an inhabitant of the State, which cannot be maintained. Attachment quashed.

An unmarried man, who took lodgings in the city, rented a store, and traded there, declaring his intention of taking up a permanent residence, and residing there six months, who afterwards absconded, was declared *an inhabitant*, under the domestic attachment law. MSS. Reports, Supreme Court

The *affidavit* on which a domestic attachment is grounded, is not conclusive, and the attachment may be dissolved on proper proof, without previous notice to the creditors. MSS. Reports, Supreme Court.

Domestic attachment issued against an absconding debtor under the act in the text. On the application of the defendant afterwards to enter special bail, the court will not dissolve the attachment, provided it issued on due grounds. *Benner* v. *Cotgreave*, Circuit Court, Allegheny county, before *Yeates* & *Smith*, Justices, November, 1804. After advisement, The Court said they could find no instance of such a motion; though in a plain case, they would have no difficulty in protecting a debtor from the malevolence or mistake of his creditors, who had issued a domestic attachment against him, provided he applied in due and convenient time.

The facts were these: The attachment had issued in the Court of Common Pleas of Allegheny county, on the 11th May, 1804—on filing the *affidavit* required by law, returnable to the following June term; the attachment was returned, and auditors appointed.

At an adjourned court, on the 4th August, 1804, the defendant appeared in his proper person, and moved by his counsel for leave to enter special bail, and that thereupon the attachment should be dissolved. The motion was overruled, as not admissible in law.

The cause was then removed, under a special *allocatur*, to the Circuit Court, and the motion to enter special bail was there renewed.

It was admitted, that since the attachment was taken out, the defendant had been arrested on two writs of *capias*, one issued August 23d, 1804, and the other October 4th, following, and had given special bail. And it was further admitted, that the defendant, when the attachment issued, was an absconding debtor within the meaning of the act in the text.

Under these circumstances, the court said, they found themselves constrained to over-rule the motion.

A judgment has relation to the first day of the term, so as to exclude a domestic attachment, in favour of the judgment creditor.

For cases on foreign attachments, see the notes to chap. 142, ante. pa. 45.