or charge of any such cart, waggon, or other carriage of burthen, shall refuse to drive the same into any such scales, for the purpose aforesaid, the person or persons so refusing shall forfeit and pay to the said President, Managers and Company, any sum not less than five nor more than ten dollars, to be recovered in the manner herein before mentioned. 1798. Penalty on refusing to suffer the same to be weighed.

SECT. IV. *And be it further enacted by the authority aforesaid,* That if any action or suit shall be brought or prosecuted by any person or persons, for any thing done in pursuance of this or the said recited act, or former supplement thereto, in relation to the premises, every such suit or action shall be commenced within six months next after the fact committed, and not afterwards; and the defendant or defendants in such action or suit may plead the general issue, and give this and the said recited act, and former supplement, and the special matter in evidence, and that the same was done in pursuance and by the authority of this and the said recited act, and former supplement; and this act shall be and continue in force during the term of two years, and no longer. *(g)* Limitation of suits under the turnpike acts. Pleadings in suits.

Passed 4th April, 1798.—Recorded in Law Book No. VI. page 277.

*(g)* Extended for seven years, by act of 11th April, 1799, (chap. 2081.) made perpetual, by act of 11th April, 1807, (chap. 2853.)

## CHAPTER MDCCCCXCVIII.

*An* ACT *limiting the time, during which judgment shall be a lien on real estate, and suits may be brought against the sureties of public officers.* [See the act for prevention of frauds and perjuries, vol. 1, pg. 389.]

**WHEREAS** the provision heretofore made by law for preventing the risque and inconvenience to purchasers of real estate, by suffering judgments to remain a lien for an indefinite length of time, without any process to continue or revive the same, hath not been effectual: Therefore,

SECT. I. *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 no judgment now on record in any court within this commonwealth shall continue a lien on the real estate of the person, against whom the same has been entered, during a longer term than five years, from and after the passing of this act, unless the person who has obtained such judgment, or his legal representatives, or other persons interested, shall, within the said term of five years, sue out of the court, wherein the same has been entered, a writ of *scire facias*, to revive the same. Lien of judgments now on record.

SECT. II. *And be it further enacted by the authority aforesaid,* That no judgment hereafter entered in any court of record, within this commonwealth, shall continue a lien on the real estate of the person against whom such judgment may be entered, during a longer term than five years from the first return day of the term of which such judgment may be so entered, unless the person who Lien of judgments hereafter entered.

1798. may obtain such judgment, or his legal representatives, or other persons interested, shall, within the said term of five years, sue out a writ of *scire facias*, to revive the same.

Proceedings on a *scire facias*, to revive a judgment.

SECT. III. *And be it further enacted by the authority aforesaid*, That all such writs of *scire facias* shall be served on the terre tenants, or persons occupying the real estates bound by the judgment, and also, where he or they can be found, on the defendant or defendants, his or their feoffee or feoffees, or on the heirs, executors or administrators of such defendant or defendants, his or their feoffee or feoffees; and where the land or estate is not in the immediate occupation of any person, and the defendant or defendants, his or their feoffee or feoffees, or their heirs, executors or administrators, cannot be found, proclamation shall be made in open court, at two succeeding terms, by the cryer of the court in which such proceedings may be instituted, calling on all persons interested to shew cause why such judgment should not be revived; and on proof of due service thereof, or on proclamation having been made in the manner herein before set forth, the court from which the said writ may have issued shall, unless sufficient cause to prevent the same is shewn at or before the second term subsequent to the issuing of such writ, direct and order the revival of any such judgment, during another period of five years, against the real estate of such defendant or defendants, and proceedings may in like manner be had again to revive any such judgment at the end of the said period of five years, and so from period to period, as often as the same may be found necessary.

Limitation of suits against sureties in official bonds.

SECT. IV. And whereas it is reasonable that persons entering into bonds or recognizances, as sureties for any public officers, should be exonerated from their responsibility within a reasonable term after such officers respectively shall die, resign, or be removed from office; Therefore, *Be it enacted by the authority aforesaid*, That it shall not be lawful for any person or persons whomsoever to commence and maintain any suit or suits on any bonds or recognizances, which shall hereafter be given and entered into by any person or persons, as sureties for any public officer, from and after the expiration of the term of seven years, to be computed from the time at which the cause of action shall have accrued; and if any such suit or suits shall be commenced, contrary to the intent and meaning of this act, the defendant or defendants respectively shall and may plead the general issue, and give this act and the special matter in evidence; and if the plaintiff or plaintiffs be non-suit, or if a verdict or judgment pass against him or them respectively, the defendant or defendants shall respectively recover double costs. *(h)*

Passed 4th April, 1798.—Recorded in Law Book No. VI. page 279.

*(h)* The editor has been favoured, by the reporter, with the following interesting case on the construction of this act, in the Circuit Court of the *United States*.

*Hurst* v. *Hurst*.

This was a rule obtained by the executors of *Brownjohn*, and other creditors of *Charles Hurst* upon the Marshal, to bring into court the money levied upon an execution of *Timothy Hurst* against *Charles Hurst*, to be disposed of among the applicants, according to the priority of their judgments.

The judgment of *Brownjohn* was obtained in the State Court of *Pennsylvania*, in 1787, upon which an execution issued in the same year, and sundry subsequent executions, of *venditioni ex-*

*ponas*, issued down to July, 1799, on which part of the debt was levied. The execution of *Timothy Hurst* issued upon a judgment recently obtained in this court.

The claim of *Brownjohn's* executors to the money brought into court, was opposed by *Wilson*, who obtained a judgment in this court against *Charles Hurst*, in April, 1791. The ground upon which a preference was claimed for this judgment, which was subsequent to that of *Brownjohn*, was, that the latter had lost his lien on the lands of *Hurst*, by his having omitted to sue out a *scire facias* in pursuance of the act of Assembly passed 4th April, 1798, declaring that no judgment now on record shall continue a lien beyond five years from that time, or from the time it is rendered, unless within that period a *sci. fa.* be sued out and prosecuted in the manner prescribed by law.

*Washington*, J. This is a case of the first impression, and rising out of a state law. I have only to regret that it has fallen to the lot of this court, to give a construction to it, before it had been considered and decided upon by the Supreme Court of this state.

A number of cases have been quoted at the bar, which I do not think intirely applicable to this case; but as they seem to have a bearing upon it, it may be proper to notice them, and in so doing, I shall, to save time, arrange them in classes. They were read in order to prove that the enacting clause of a statute may be construed narrower than the words of it import.

The statute of inrollments 27 *Hen.* 8, gives rise to the first class. The cases under it prove, that though the statute declared, that no estate should pass by bargain and sale, unless inrolled in six months, yet that the deed is valid, except as to subsequent purchasers without notice. The reason of these decisions is obvious. The plain intention of the law was to remedy certain mischiefs which had resulted from the statute of uses, which, by tolerating secret conveyances unknown to the common law, was productive of inconveniences to those who might afterwards become purchasers of the estate, without knowing of such former conveyances. But if the subsequent purchaser had notice of the prior conveyance, the reason for passing the statute did not apply.

It would require great ingenuity to give to these cases a shape which would throw light upon that now under consideration. They decide nothing as to creditors, and they depend upon the peculiar circumstances which produced the law upon which they were founded. 1798.

Cases upon the statute of *Elizabeth*, to prevent fraudulent conveyances form the second class.

But it is to be remarked, that this statute extends by express words to creditors as well as purchasers, who are not bound, though they purchase with notice; and the reason is plain. The conveyance is fraudulent, and fraud, at common law, avoids every act.

These cases are therefore still more inapplicable than the former.

The third class relates to leases by ecclesiastical persons for a longer term than three lives, or 21 years. Such leases were considered as void only against the successors, because they alone were intended to be protected by the clear intention of the Legislature.

These cases only prove, that where the intention of the Legislature is plain, that intention will control the positive words of a statute; a position which is not denied, but which as applied to the present case is a begging of the question in dispute.

The registry act of *Anne* gives rise to the fourth class. That statute avoids all secret conveyances, not registered within a limited time, as to subsequent purchasers and mortgagees for valuable consideration.

The cases decide, that such deeds though not registered according to the requisitions of the act, are nevertheless good against purchasers with notice. The reason is, that if they have notice, the conveyance is not a secret one, and therefore not within the statute.

Next come a class of cases more apposite to the present, which will deserve more particular notice. I mean those determined upon the statute 4 and 5 *William and Mary* c. 20, for docketing judgments. It declares that judgments not docketed shall not affect lands as to purchasers or mortgagees, or have a preference against heirs and executors, so as to affect them, so likewise the statute of frauds, 29 ch. 2, declares that judgments shall be docketed when signed, and that the enrollment of recognizances shall be set down in the margin of the roll within a fixed time, and that as to *bona fide* purchasers for valuable consideration they shall be considered in law, as judgments only from the time they are so signed and set down, and shall not relate.

At common law we know that recognizances when enrolled related to the caption, and judgments to the first day of the term.

Let us now examine the decisions

1798. which have been made upon this statute.

In *Saunders'* Reports 2d vol. part 1, pa. 9, note 6, it is stated that that part of this statute which respects the lien of judgments on lands is applicable only to purchasers, and not to judgment creditors, for that purchasers only are protected by the words of the law. That this is the case even as to that part of the statute which respects goods, which is general, and does not particularly mention purchasers. That the law is the same as to judgments under the statute of *William and Mary*, except that as to heirs and executors in the administration of the estate, judgments not docketed are considered as simple contract debts.

In the case of *Robinson* v. *Tonge*, 3 P. Wms. 399, it is said, that the statute of frauds concerns *purchasers* only and not *creditors*, who remain as at common law.

The case from Prec. Chan. 478, declares in effect the same principle; for a creditor advancing money on the credit of a judgment may well stand in a different situation from a general judgment creditor, since he may (in equity) be considered as a *quasi* purchaser or mortgagee.

I come now to consider the statute of frauds of this state, and the state decisions upon it. This statute passed in 1772, and as to judgments is an exact copy of the English statute of frauds. It enacts, &c. (see vol. 1, pa. 389.)

In *Hooton* v. *Will*, 1 Dallas 450. The court were unanimous, that a judgment related back so as to cut out a domestic attachment, which, it seems agreed, lays as firm hold of the land as any lien possibly can. In the case decided in the Common Pleas no regular judgment was pronounced.

In the case of *Welsh* v. *Murray*, 4 Dallas, 320, it was decided, that the judgment first entered must be first paid; which seems to shew, that the court considered that the statute of frauds of this state respecting the relation of a judgment, applied to judgment creditors as well as to purchasers.

Unless the latter case was decided upon the practice, of which some evidence was given, (and if it were, it will prove nothing as to construction, and will therefore be unimportant in the view which I shall take of this case,) it will be difficult, nor shall I attempt to reconcile it with that of *Hooton* v. *Will*. If the cases are in opposition to each other, I must resort to the English decisions on a statute precisely similar to that of this state, which it appears confine the statute to the case of purchasers and do not extend to judgment creditors.

This principle being approved and adopted by this court, we come more immediately to the statute under consideration, when the importance of the principle in assisting the construction of the statute will be pointed out.

Let it be premised, that a literal and strict construction of the enacting clause cannot be insisted on. It would be too much to insist that a purchaser with notice of *Brownjohn's* judgment, or that *Hurst*, the defendant, could take advantage of the judgments not having been revived in the mode pointed out by the statute. This would be repugnant to the obvious intention of the law. We must then depart in some measure from the letter of the enacting clause.

I admit the soundness of the rule laid down by the opponents of *Brownjohn's* judgment, that the preamble is only to be resorted to, in order to explain an ambiguity appearing in the enacting clause. But this preamble is worthy of notice, as it refers to a former law which it is intended to render more effectual. The latter law has indeed been termed by the counsel for *Wilson*, a supplement to the former. The preamble requires us to consider it as such, though being in *pari materia*, they might, and ought to have been, considered together, were the preamble out of the question.

The law to which we are thus referred, is the act of frauds passed in 1772. Taking it in conjunction with the law under consideration, we at once discover the mischief and the remedy; not from the preamble alone, but from that and the enacting clause taken together.

What was the old law? That judgments should not relate back, or be a lien on lands, as against *bona fide purchasers*, or mortgagees, but from the time they were signed and enrolled.

The mischief which, notwithstanding this law, still existed was; that after a great length of time, purchasers might find it difficult to discover what judgments were outstanding so as to affect the land they wished to purchase. The lien extending to all the lands of the debtor, no person could safely know, what part he might safely purchase.

To remedy this evil, the last law requires the judgment creditor, within five years to sue out a *sci. fa.* and to give public notice of its existence that all the world may know what and where the judgment is.

But who are the persons for whose benefit this additional remedy is provi-

ded? Surely those in favour of whom the former law had been made, but which was not found to be effectual. To extend the law to other persons would be repugnant not only to the preamble, but to the enacting clause also, if we are to consider the two laws together, which is certainly proper. It would provide a remedy where none was intended.

How then do the two laws read together? Judgments shall be enrolled at the time they were signed, or they shall not by relation affect a *bona fide* purchaser or mortgagee, and as to *such persons* the lien of the judgment creditor shall cease, unless the judgment be revived in five years by a *sci. fa.* This reading produces a perfect harmony between the old and the new law.

That this was the intention of the law is further manifested from the third section of it, which, noticing those who may be interested, directs the *sci. fa.* to be served on the debtor or his representatives, his alienees and terretenants. If the judgment creditor had been an object of the law, and intended to be protected by it, why not have directed the writ to have been served on him who might as easily have been found as the alienee?

I think it not improper to make some general observations on the cases which I before noticed under classes.

In not one of them are creditors noticed, except in the following instances.

1. Those under the Statute of *Elizabeth*, against fraudulent conveyances, and in that creditors are specially mentioned. 1798.

2. Where the creditor is considered *quasi* purchaser, as where he advances money on the credit of the judgment, trusting to that as his security without notice of the prior judgment. Prec. Chan. 478. And that this distinction is closely observed appears from those decisions in equity, which establish even an *agreement to sell lands*, against a judgment creditor, and which prevent a prior judgment creditor from tacking it to a subsequent mortgage, though in the first case the agreement would not prevail against a mortgage, and in the latter, a prior mortgage obtaining a subsequent judgment may tack the latter to the former against an intermediate incumbrance, *Finch* v. *Wynchelsea*, 1 P. Wms. 278. 2 Vez. 662-3. The reason is plain. The judgment, though a lien, is not a *specific* lien on the land, that is, the creditor did not go on the security of the land, but trusted to the general credit of the debtor and of his estate.

I am therefore of opinion, that the judgment of *Brownjohn* must prevail against the other judgment creditors. *(W. MSS. Reports.)*

An execution within a year and a day, continues the lien of a judgmeut, without resorting to a *scire facias*, under the act in the text. *Young* v. *Taylor*, 2 Binney, 218.

## CHAPTER MDCCCCXCIX.

*A* **SUPPLEMENT** *to the act, entitled "An Act for establishing and building a bridge across Conestogoe creek, in the county of Lancaster."* [Original act vol. 2, pa. 421.]

SECT. 1. [**ABRAHAM WITMER** empowered to build a bridge across Conestogoe creek. *Provided*, That the said Abraham Witmer, his heirs and assigns, shall and will, as soon as the new bridge is completed, remove the old bridge, and leave a passage of twenty feet on the said road, on the south side of the said new bridge, and at both ends thereof, for the use of all those who may think proper to pass and repass the said creek, without going over the said bridge: and that nothing herein contained shall be construed to enable the said Abraham Witmer, his heirs or assigns, to prevent, by the said erection, any person or persons, with or without horses, carriages, or cattle of any kind, from passing the said creek free from toll, according to the provisions of the act to which this is a supplement, unless the said Abraham Witmer, his heirs or assigns, shall cause a passage to be opened on the south side of the said old bridge, where- Condition of the grant.