

CHAPTER CCCXCIX.

AN ACT FOR REGULATING ATTACHMENTS NOT EXCEEDING FIVE POUNDS.

Whereas in the execution of a law of this province passed in the twelfth year of the reign of King William the Third, entitled "An act about attachments under forty shillings,"¹ many fraudulent practices have happened, not only to the injury of such creditors whose demands have exceeded the sums in the said act limited, but of such other creditors also 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. And whereas the legal proceedings now used for the recovery of debts above forty shillings and not exceeding five pounds by attachments are generally attended with so much expense as to consume a large part of the debtor's estate, to the great loss and injury of both debtors and creditors:

For remedying these evils:

[Section I.] Be it enacted by the Honorable James Hamilton, Esquire, Lieutenant-Governor under the Honorable Thomas Penn and Richard Penn, Esquires, true and absolute Proprietaries of the Province of Pennsylvania and of the counties of Newcastle, Kent and Sussex upon Delaware, by and with the advice and consent of the representatives of the freemen of the said Province in General Assembly met, and by the authority of the same, That if any person shall absent him or herself out of this government or abscond from his or her usual place of abode, not taking care to satisfy his or her just debts, it shall and may be lawful for any justice of the peace of the county where such person's estate may be found to grant a writ of attachment for any debt not exceeding five pounds, directed to any constable of the same county, to attach the goods and chattels or other

¹Passed October 28, 1701, Chapter 108.

effects of such person to answer the creditor; but before the granting any such attachment 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 a sum not exceeding five pounds, 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 fee-simple estate in lands or tenements within this province sufficient to pay his debts, so far as the plaintiff or deponent knows or believes, which oath or affirmation the justice of the peace that grants such writ is hereby empowered and required to administer. And if any attachment be granted out otherwise or contrary to the true intent and meaning hereof, the justice of the peace so granting the same shall for every such offense forfeit the sum of five pounds for the use of him or her that will sue for the same.

[Section II.] And be it further enacted by the authority aforesaid, That as soon as the justice of the peace before whom the writ of attachment is returnable accepts the constable's return thereof, the said justice shall immediately appoint two substantial freeholders to take into their custody all the goods and chattels attached, for which they shall be accountable, until they shall dispose of the same as hereinafter is directed, and shall also forthwith publish his said proceedings by advertisements in the most public places near the late dwelling-place of the person so as aforesaid absenting, and likewise in one or more of the public newspapers within this province, appointing the time and place for all the creditors of the person against whose effects and estate the attachment is granted to appear, then and there to discover and make proof of their demands; and if after a full and careful examination it shall appear that there is a just debt due to any one person from the said defendant exceeding the sum of five pounds, that then and in every such case the said justice of the peace 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; whereupon it shall

and may be lawful for the justices of the said court to grant and issue one writ of attachment only to the person or persons who obtained the said attachment from the said justice of the peace if he demands the same, or if not, then to any other creditor of the defendant, to the sheriff of the same county directed, requiring him to attach all the goods, chattels, rights and credits, lands, tenements and hereditaments of the said defendant within his bailiwick; by virtue of which writ the said sheriff shall, together with the residue of the said defendant's real and personal estate in the same county, attach and take into his custody all the goods and chattels of the said defendant, or the product of such part of them as may be sold according to the direction of this act, then in the hands and possession of the said freeholders; and that upon the return of the said writ of attachment by the said sheriff, the justices of the said court of common pleas and all other persons acting under their authority shall proceed thereon in like manner as, and shall have the same jurisdiction and powers for the discovering, selling, collecting, compelling payment of, receiving and distributing the estate, real and personal, of the defendant amongst his creditors as they might or could have had if the said writ of attachment had, according to the laws of this province heretofore made issued out of the same court.

[Section III.] And be it further enacted by the authority aforesaid, That when any attachment shall be granted by any justice of the peace or any writ of attachment shall issue out of any county court according to the directions of this act, no second or other attachment or writ of attachment granted or issued by the said justice or any other justice within the same county, or by the justices of the same county court, against the real or personal estate of the same defendant, or the execution of them or any of them, shall bind or affect the right, title, interest or property of or in the real or personal estate of the same defendant within the same county or any part thereof while the proceedings on the said first attachment or writ of attachment remain undetermined, any law, usage or custom of this province to the contrary notwithstanding.

[Section IV.] And be it further enacted by the authority aforesaid, That when the said justice of the peace shall accept

of the return of an attachment from the constable as above directed, if it shall appear to the same justice that any cattle or other chattels necessary to be maintained at expense or any perishable goods have been attached by virtue of the same attachment, it shall and may be lawful for the same justice to order sale of them to be made by the said freeholders within ten days, of which public notice shall be given at least six days before the sale thereof by advertisements to be set up at the most public places near the place of sale; and that the money arising therefrom shall be lodged in the hands of the freeholders aforesaid, to be attached or distributed among the creditors in the manner hereinbefore or hereafter directed and appointed.

[Section V.] And be it further enacted by the authority aforesaid, That if no such debt exceeding five pounds shall to the said justice of the peace appear to be due from the said defendant, then the said goods, chattels and other effects in the hands of the said freeholders shall be brought to an appraisement, but not sold, except as is hereinbefore excepted, until the expiration of three months next after the granting the attachment, to the end that the debtor may have time to redeem them if he see cause, any law of this government to the contrary in anywise notwithstanding. And if after the expiration of three months as aforesaid, the debtor shall not appear and redeem them, on notice thereof given to the justice of the peace he shall forthwith order and direct the said freeholders to make sale thereof, and out of the money arising therefrom and all other money then in their hands from any part of the defendant's estate arising, reasonable charges first deducted, to make payment to the creditors, who shall appear and make proof of their debts within the said three months, in proportion of their respective debts; and the overplus if any to be returned to the owner. But before any such sale is made the freeholders aforesaid shall give at least ten days' notice thereof by advertising in the most public places the time and place of such sale. And that the constable shall receive two shillings for serving an attachment and three shillings for serving an execution and no more.

[Section VI.] And be it further enacted by the authority aforesaid, That the freeholders aforesaid within six days next after making sale and distribution as is hereinbefore-directed,

shall render a true account of their proceedings to the justice of the peace who granted the attachment, to be by him kept as a record of their proceedings therein.

[Section VII.] And be it further enacted by the authority aforesaid, That the act of general assembly of this province aforesaid, entitled "An act about attachments under forty shillings," passed in the twelfth year of the late King William the Third, be and it is hereby repealed and made void.

Passed August 22, 1752. Confirmed by the King in Council May 10, 1753. See Appendix XIX, Section I, and note to the Act of Assembly passed October 28, 1701, Chapter 108; and the Acts of Assembly passed April 8, 1779, Chapter 837; December 4, 1807, P. L. (1808) 1; July 12, 1842, P. L. 339; May 8, 1874, P. L. 123.