

Section I. (Section I, P. L.) 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 it shall be lawful for William Flintham, father of John Flintham, a minor, to sell and convey all the right, title and interest of the aforesaid minor, in and to the aforesaid real estate, with the appurtenances, situate on the west side of Fourth street, between High and Chestnut streets, in the city of Philadelphia, and make to the purchaser or purchasers thereof, and their heirs and assigns, such deed or deeds, as will assure and convey to the said purchaser or purchasers, all the right, title and interest, which the aforesaid minor hath in the premises aforesaid; Provided, the said William Flintham, before he proceeds to sell and convey the same, shall give bond with sufficient surety, to be approved of by the judges of the orphans' court, for the performance of his duty in this particular towards the minor; which bond shall be filed in the office of the clerk of the orphans' court in the county of Philadelphia.

Approved March 21, 1806. Recorded in L. B. No. 10, p. 341.

---

## CHAPTER MMDCLXCVIII.

---

### AN ACT TO REGULATE ARBITRATIONS AND PROCEEDINGS IN COURTS OF JUSTICE.

Section I. (Section I, P. L.) 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 it shall be lawful for any person or persons, desirous of settling any dispute or controversy, by themselves, their agents or attornies, to enter into an agreement in writing to refer such dispute or controversy to certain persons to be by them mutually chosen; and it shall be the duty of the referees, to make out an award and deliver it to the party in whose favor it shall be made agreeably to the directions of this act, together with the written agree-

ment entered into by the parties; and it shall be the duty of the prothonotary, on the affidavit of a subscribing witness to the agreement, that it was duly executed by the parties, to file the same in his office; and on the agreement being filed as aforesaid, he shall enter the award on record which shall be as available in law as an award; made under a rule of reference, issued by the court, or entered on the docket by the parties, and the same proceedings shall be had thereon, as are prescribed in the third section of this act.

Section II. (Section II, P. L.) And be it further enacted by the authority aforesaid, That in all cases where an action has been or hereafter may be depending in court, or an amicable suit is or may be entered in the prothonotary's office, the plaintiff and defendant may either in vacation or term time, by themselves, their agents or attorneys, consent to a rule of court, for referring their cause to certain persons to be by them mutually chosen.

Section III. (Section III, P. L.) And be it further enacted by the authority aforesaid, That the referees chosen in pursuance of the directions of this act, shall be sworn or affirmed, (unless the same shall be dispensed with by the consent of the parties), to try and determine the cause referred to them, and a just award make out under the hands and seals of a majority of them, agreeably to the terms of the submission; which award shall be sealed up by the referees and delivered to the person in whose favor it shall be made, who shall deliver the same without breaking the seal, to the prothonotary of the proper county, who shall enter the same of record in his office; and if the said award be entered by the prothonotary in vacation, it shall be the duty of the party in favor of whom it is made, to serve a copy thereof on the adverse party, his agent or attorney, at least ten days preceding the first day of the next term; and if no exceptions be filed against the same, during the said term, it shall have the same effect and be recovered in the same manner as a judgment entered by the court, on the verdict of a jury; and if the award be entered by the prothonotary in term time, it shall in such case, be the

duty of the party in favor of whom it is made, to serve a copy thereof on the adverse party within ten days after the expiration of such term; and if no exceptions be filed with the prothonotary within twenty days after receiving such notice, it shall become a judgment and be recovered as aforesaid; but in case either party file exceptions to the award entered as aforesaid, and the same being finally set aside by the court, if it be the plaintiff filing such exceptions, and he shall again prosecute his action either in a court of justice or before other referees, and shall not recover a sum equal or greater than was first awarded, he shall not have judgment for costs, and shall pay the defendant seventy-five cents per day, while attending on the same; and if the defendant file such exceptions, and the award be set aside by the court, and the plaintiff by a new action, shall recover a sum equal or greater than the original award, then, and in that case, the plaintiff shall have judgment for all the costs accrued on such suit; together with seventy-five cents per day, whilst attending the same; and in all cases, when a verdict of a jury shall be set aside, a new trial shall be had on the same conditions, as to cost and daily pay as are above prescribed in cases of a new trial on the report of referees being set aside.

Section IV. (Section IV, P. L.) And be it further enacted by the authority aforesaid, That the referees chosen under the direction of this act, shall each be allowed one dollar per day for his services, which shall be taxed with other costs of suit; but if either of the parties do not appear on the day appointed for the referees to meet, the party neglecting to appear, either by himself, his agent or attorney, shall be liable for all costs which may have accrued on that day in said action, unless it be made appear to the satisfaction of the referees that the absent party could not attend, in which case, or for any other sufficient reason, the referees may postpone the trial to some other day certain; and if any referee so chosen and notified, shall neglect or refuse to attend at the time and place appointed to hear the parties, he shall for every such neglect or refusal, (unless prevented by sickness or other unavoidable accident), forfeit and pay the sum of two dollars, for the use

of the poor, and where there are no poor, to be paid to the supervisors of the highways of the city, town, district or township, in which such persons neglecting or refusing shall reside, which fine shall be recoverable before any justice of the peace in the proper county, as other fines are by law recoverable: Provided, an action be brought therefor within thirty days after such neglect or refusal.

Section V. (Section V, P. L.) And be it further enacted by the authority aforesaid, That in all cases where a suit is or may be brought in any court of record within this commonwealth, for the recovery of any debt founded on a verbal promise, book account, note, bond, penal, or single bill, or all, or any of them; and which from the amount thereof may not be cognizable before a justice of the peace; it shall be the duty of the plaintiff, either by himself, his agent or attorney, to file in the office of the prothonotary, a statement of his, her or their demand, on or before the third day of the term to which the process issued is returnable, particularly, specifying, the date of the promise, book account, note, bond, penal, or single bill, or all, or any of them, on which the demand is founded; and the whole amount what he, she or they believe is justly due to him, her or them from the defendant; and it shall be the duty of the defendant, at least twenty days before the next succeeding term to which the process issued is returnable, to file in the office aforesaid, either by himself, his agent or attorney, a statement of his, her or their account, if any he or she hath against the plaintiff's demand; and particularly specifying what he, she or they believe is justly due from him, her or them to the plaintiff; and it shall be the duty of the prothonotary to file, without the agency of an attorney, such statements; and it shall be the duty of the parties to appear in their proper persons, by their agents or attorneys, on the third day of the next succeeding term to which the process issued is returnable, when the term is for one week, and on the second Monday of the term when the same is to continue two weeks, before the court which shall have issued the same; but if the plaintiff or plaintiffs shall neglect to appear as aforesaid, the court shall order a nonsuit to be entered;

and if the plaintiff shall appear, but the defendant or defendants shall neglect to appear as aforesaid, and make defence against the demand of the plaintiff or plaintiffs, it shall be the duty of the court to give judgment by default against the defendant for the sum which shall appear to be due; but if the parties appear as aforesaid, and the defendant refuse to confess judgment, the cause shall be tried by a jury, or on the agreement of the parties, it may be referred agreeably to the provisions of this act; and the plaintiff's attorney shall not be entitled to a judgment fee, in any action of debt, whether the judgment be confessed by the defendant or rendered on the report of referees, or on the verdict of a jury; and if the plaintiff on trial being had as aforesaid, does not recover more than the amount for which the defendant was willing to confess judgment, he shall not recover any costs that accrued on the cause subsequent to the offer of confessing judgment, excepting the costs of issuing and serving a writ of execution when the same may be necessary.

Section VI. (Section VI, P. L.) And be it further enacted by the authority aforesaid, That in all cases where any suit has been brought in any court of record within this commonwealth, the same shall not be set aside for informality, if it appear that the process has issued in the name of the commonwealth against the defendant for monies owing or due; or for damages by trespass, or otherwise, as the case may be; that said process was served on the defendant by the proper officer, and in due time; nor any plaintiff nonsuited for informality in any statement or declaration filed, or by reason of any informality in entering a plea; but when in the opinion of the court such informality will affect the merits of the cause in controversy, the plaintiff shall be permitted to amend his declaration or statement, and the defendant may alter his plea or defence on or before the trial of the cause; and if by such alteration or amendment, the adverse party is taken by surprise, the trial shall be postponed until the next court; and the oath or affirmation to be administered to jurors, shall be in the form following, viz. "I A. B. do swear, (or affirm as the case may be) that I will well and truly try the issue joined

between C. D. plaintiff and E. F. defendant, and a true verdict give according to the evidence, unless dismissed by the court, or the cause withdrawn by the parties.”

Section VII. (Section VII, P. L.) And be it further enacted by the authority aforesaid, That in all suits instituted either by *capias* or summons, in any court of record within this commonwealth, the writ of execution shall be stayed on the judgment, whether it is obtained by the confession of the defendant, by the report of referees, or by the verdict of a jury, if the judgment shall not exceed two hundred dollars, six months; if not exceeding four hundred dollars, nine months; and if exceeding four hundred dollars, twelve months; counting from the first day of the term to which the original process issued is returnable; if the defendant in the opinion of the court, is possessed of a freehold estate, worth the amount of such judgment, clear of all incumbrances; but if the defendant is not a freeholder as aforesaid, then, execution may immediately issue; unless the defendant shall enter surety in the nature of special bail, in which case, there shall be stay of execution for thirty days; and if at or before the expiration of that term, the defendant shall give security for the amount of debt, interest and costs, such defendant shall be entitled to the same stay of execution, as if he was a freeholder; and the like stay of execution shall be had upon judgments obtained in amicable actions, unless when it is differently provided by the parties in the terms of their agreement, counting from the date of their agreement.

Section VIII. (Section VIII, P. L.) And be it further enacted by the authority aforesaid, That it shall be the duty of the prothonotaries, respectively, on the application of any persons willing to become parties in an amicable suit, to enter the same without the agency of an attorney; and when thereunto required, and on confession in writing, executed in presence of two or more witnesses, expressing the amount due to the plaintiff, (which confession shall be filed in his office), he shall enter judgment against the defendant, for the amount expressed as aforesaid, with stay of execution as may be

agreed upon by the parties; and the prothonotary shall receive fifty cents, for every such entry, to be paid by the defendant in the suit; and when any suit is ended, the clerk of the court before which it was pending, shall on the request of the plaintiff expressed in writing, enter satisfaction thereon.

Section IX. (Section IX, P. L.) And be it further enacted by the authority aforesaid, That in all civil suits or proceedings in any court within this commonwealth, every suitor and party concerned, shall have a right to be heard, by himself and counsel, or either of them; and when it shall be made appear to the satisfaction of the court, that any attorney of such court has retained money belonging to his client, after demand made by the client for the payment thereof, it shall be the duty of the court to prevent such attorney from prosecuting longer in the said court, and to have his name stricken off the record of attorneys.

Section X. (Section X, P. L.) And be it further enacted by the authority aforesaid, That it shall be the duty of the prothonotary of any court of record within this commonwealth, on the application in writing of any person, either by himself or his agent, who may be desirous to recover by legal process, any debt due to him, her or them by or from another, either by bond, note, book account, rent, damages or assumption, if from the amount it is not cognizable before a justice of the peace, to grant and issue against the party, defendant, if he, she or they be a freeholder, a precept in the following form, viz.

COUNTY ss.

L. S. THE COMMONWEALTH OF PENNSYLVANIA.  
 To the sheriff of \_\_\_\_\_ county Greeting.  
 You are hereby commanded that you summon \_\_\_\_\_ to  
 be \_\_\_\_\_ and  
 appear before our judges of the court of common pleas, to be  
 holden for said county, on the \_\_\_\_\_ day of \_\_\_\_\_ next,  
 to answer \_\_\_\_\_ of a plea of debt, (by bond, note, or  
 otherwise, as the case may be), not exceeding \_\_\_\_\_ dol-  
 lars, hereof fail not. Witness A. B. president (or judge, as  
 the case may be), of our court, the day of \_\_\_\_\_

And if the party defendant shall not be a freeholder, then such prothonotary may issue a precept in the form following, to wit:

COUNTY ss.

L. S. THE COMMONWEALTH OF PENNSYLVANIA.  
 To the sheriff of \_\_\_\_\_ county \_\_\_\_\_ Greeting.  
 You are hereby commanded that you take the body of \_\_\_\_\_ so that you have him before our judges of the court of common pleas, to be holden for the said county, at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ next, there to answer \_\_\_\_\_ a plea of debt (by bond, note, or otherwise, as the case may be), hereof, fail not. Witness A. B. president (or judge, as the case may be) of our said court, the \_\_\_\_\_ day of \_\_\_\_\_ .

Provided always nevertheless, that it shall be lawful for the complainant to demand a precept in either of the forms above prescribed against a defendant, who may not be a freeholder.

Section XI. (Section XI, P. L.) And be it further enacted by the authority aforesaid, That the sheriff or coroner as the case may be, to whom may be directed any process of execution for the recovery of money, shall proceed to collect the same and if the defendant shall refuse or neglect to pay the debt and costs, the said sheriff shall levy on his personal estate if sufficient he hath, and thereafter make sale thereof; first having given at least six days notice by not less than six handbills, to be put up at such places as he shall deem best calculated to give information; and with the money arising from such sale, he shall pay the debt and all the costs accrued; but for want of personal estate sufficient to pay the debt and costs, the sheriff shall levy the real estate of the defendant, or such part thereof (but not less than one whole tract or lot of land with the appurtenances), as he may deem sufficient to pay the same; whereupon such proceedings shall be had as the existing laws direct; and of his proceedings, the said sheriff shall make return to the next court; and all inquisitions for the



condemnation of real estates, shall be held on the premises in execution if required by the defendant or his agent, of which notice shall be given, and the form of all executions to be issued, shall be as follows, and not otherwise, viz.

THE COMMONWEALTH OF PENNSYLVANIA.

L. S.

COUNTY ss.

To the sheriff of

county:

Whereas                                    hath recovered judgment in our court  
of    for said county against                                    for  
a debt of                                    and also                                    costs                                    and  
the said                                    having hitherto neglected to pay  
the debt and costs aforesaid, as of right he ought to have done.  
These are therefore to command you that you levy the debt  
and costs aforesaid, of the goods and chattels of the  
said    if sufficient he hath; and of the  
same make sale according to law; and that with the money  
arising from such sale, you pay the debt and costs aforesaid,  
and the costs of sale; but if the said                                    shall  
not have personal estate sufficient, that then you levy his  
real estate according to law; and that for want of estate real  
or personal, you take the body of the said                                    and  
him commit to the jail of said county, there to be detained  
until discharged by due course of law. Witness                                    presi-  
dent (or judge as the case may be), of our said court,  
the                                    day of                                    one thousand eight  
hundred and                                    Attested A. B. Prothonotary.

Section XII. (Section XII, P. L.) And be it further enacted by the authority aforesaid, That all writs of ejection shall be in the form following, and not otherwise, viz.

THE COMMONWEALTH OF PENNSYLVANIA.

L. S.

COUNTY ss.

To the Sheriff of said county

Greeting.

You are hereby commanded that you summon A. B. to appear before the judges of the court of common pleas in and for said county, to be holden at                                    on the                                    day  
of                                    next, then and there to answer to a cer-

tain complaint made by C. D. that he the said A. B. now hath in his actual possession a tract of land, situate in                    township, in the said county, containing                    acres or thereabouts, bounded by lands of E. F. G. H., the right of possession or title to which he the said C. D. saith is in him, which he the said C. D. averreth he is prepared to prove before our said court, hereof fail not. Witness J. B. president, (or judge as the case may be), of our said court, at                    the day of                    Anno Domini one thousand eight hundred and

Attested L. M. Prothonotary.

And it shall be the duty of the plaintiff, either by himself, his agent or attorney, to file in the office of the prothonotary of the proper county, on or before the first day of the term to which the process issued is returnable, a description of the land, together with the number of acres, which he claims and declares that the title is in him; and the defendant shall enter his defence (if any he hath) for the whole or any part thereof, before the next term, and thereupon issue shall be joined.

Section XIII. (Section XIII, P. L.) And be it further enacted by the authority aforesaid, That in all cases where a remedy is provided or duty enjoined, or any thing directed to be done by any act or acts of assembly of this commonwealth, the directions of the said acts shall be strictly pursued, and no penalty shall be inflicted; or any thing done agreeably to the provisions of the common law, in such cases, further than shall be necessary for carrying such act or acts into effect.

Section XIV. (Section XIV, P. L.) And be it further enacted by the authority aforesaid, That this act shall take effect and be in complete operation, from and after the first day of September next, and not before; at and after which time, so much of any law or laws now in force, as are hereby altered or supplied, shall become void and be of no further effect, and this act shall continue in force, until the first day of January, one thousand eight hundred and nine, and from thence until the end of the then existing session of the legislature.