

CHAPTER CXLII.

1705.

An ACT about attachments. (z)

WHEREAS the laws of this government have hitherto been deficient in respect of attachments, so that the effects of persons absenting are not equally liable with those of persons, dwelling upon the spot, to make restitution for debts contracted or owing within this province, to the great injury of the inhabitants thereof, and encouragement of such unworthy persons, as frequently, by absconding, make an advantage of the defect aforesaid: To prevent which inconvenience, *Be it enacted*, That the Justices of the respective county Courts within this province shall, and are hereby impowered to grant writs of attachment; which attachments so granted shall be duly served, by the respective Sheriffs or Coroners, as the case may require, upon the goods and chattels of such person or persons against whom the same shall be awarded, in whose hands or possession the same shall be found, returnable to the next succeeding Court respectively, where the party may proceed to trial, and shall have judgment granted the third court after the effects are seized.

Justices to grant writs of attachment.

(z) By an act of the 2d of March, 1722-3, (post. chap. 263,) the proceedings in cases of *domestic attachments* against absconding debtors are regulated; but it is provided by the 12th section, that the goods or effects of any person, *not an inhabitant of this province*, may still be attached according to the directions of the act in the text. By an act of the 22d August, 1752, (post. chap. 399,) Justices of the Peace are empowered under certain regulations, to issue writs of *domestic attachment* for any debt not exceeding £ 5. By an act of the 22d of January, 1774, (chap. 691,) the power of issuing *domestic attachments* is extended to the case of debtors, who confine themselves to their houses, or conceal themselves elsewhere for six days, with the design to defraud their creditors. By an act of the 28th September, 1789, (chap. 1434,) provision is made for compelling the garnishee in *foreign attachment* to answer interrogatories, as to the effects of the defendant in his hands; and for introducing a *ca-pias* clause into the writ against the garnishee, in case he is not an inhabitant of the proper county, or is about to depart.

The consignee of goods has a lien upon them, for any debt due to him from the consignor, in exclusion of the plaintiff in a *foreign attachment*. 1 Dallas, 3.

Property of a sister state is not liable to an attachment in Pennsylvania, for a debt due from such state to an individual. 1 Dallas, 77, *in note*.

What constitutes an *inhabitant*, so as

to render the party an object of the *domestic attachment*, and not of the *foreign attachment*. 1 Dallas, 152, 158.

The Court will enquire into the plaintiff's cause of action on a *foreign attachment* as in the case of a *ca-pias*. 1 Dallas, 154, 158, 218, 294. But the application must be made to the Court; and at the first term. *Miltenberger v. Lloyd*, in the Common Pleas, September term, 1790. [2 Dallas, 79, and motion to dissolve a *foreign attachment* must be made at the first term. *Ibid.*]

Judgment in a *foreign attachment*, obtained in *Massachusetts*, adjudged not to be conclusive. 1 Dallas, 261.

A *foreign attachment* does not lie to attach money paid into the hands of the Prothonotary, in satisfaction of a previous judgment in another suit. 1 Dallas, 354.

Refusing to admit the defendant in a *foreign attachment* to produce his evidence before the Jury of Inquiry, is not a sufficient reason for setting aside the inquisition. 1 Dallas, 375.

In a *foreign attachment*, a shallop being attached, it was ordered to be sold, as a chargeable commodity. 1 Dallas, 379.

If the plaintiff does not prove more in the hands of a garnishee, than he admits by his plea to the *scire facias*, or his answer upon interrogatories, the plaintiff must pay the costs; but if more is proved, then the costs must be paid by the garnishee. *Walker et al. v. Wallace et al.* in the Supreme Court, September term, 1790. 2 Dallas, 113. (*Note to former edition.*)

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Proceedings
on attach-
ment.

II. *And be it further enacted*, That the person or persons, whose goods or effects are so attached, shall be defendant in the attachment; and the person, in whose hands or possession the same goods or effects are attached, shall be called the garnishee, and shall be obliged to appear in court at the return of the attachment, and answer what shall be objected against him, and abide the judgment of court, and shall be allowed, out of the effects attached, reasonable satisfaction for his attendance. And that the manner of executing writs shall be by the officer's going to the house, or to the person in whose hands or possession the defendant's goods or effects are supposed to be, and then and there declare, in the presence of one or more credible persons of the neighbourhood, that he attacheth the same goods or other effects: From and after which declaration the goods, money or effects, so attached, shall remain in the officer's power, and be by him secured, in order to answer and abide the judgment of court in that case, unless the garnishee will give security therefor. And if the plaintiff in the attachment obtain a verdict, judgment and execution, for the money and goods in the garnishee's possession, yet the defendant in the attachment may, at any time before the money be paid, put in bail to the plaintiff's action, upon which the attachment is grounded; whereby the garnishee will and shall be immediately discharged. And if an attachment shall be made for goods or effects, and the garnishee plead he had no goods or effects in his hands at the time of the attachment, or at any time after, and the plaintiff prove the contrary, the jury in such case, being satisfied that the proof is plain and full, shall find for the plaintiff, and say what goods or effects they find in the garnishee's hands, whereupon judgment shall be entered, that appraisement may be made of the said goods or effects so found by the jury, and a precept shall be granted, requiring the Sheriff to get the same appraised; and if the garnishee will not produce them, then execution shall be forthwith awarded for the value thereof, according to appraisement; to be levied upon the lands, tenements, goods and chattels of the garnishee.

Attachments
against resi-
dents, when
to be granted.

III. *Provided always*, That no writ of attachment shall hereafter be granted against any person or person's effects, but such only as at the time of granting such writs are not resident or residing within this province, or are about to remove or make their escape out of the same, and shall refuse to give sufficient security to the complainant for his debt or other demand, before he depart the said province.

Plaintiff to
find surety to
restore the
goods or ef-
fects, or va-
lue thereof.

IV. *Provided also*, That after judgment obtained by the plaintiff, upon any attachments against non-residents, the plaintiff shall, before sale, and after execution is awarded, find security, who shall undertake for the plaintiff, that if the defendant in the attachment shall, within a year and a day next following, by himself or attorney, come into court, and disprove or avoid the debt recovered by the plaintiff against him, or shall discharge the same, with costs, that then the plaintiff shall restore to the defendant the goods or effects, or value thereof, by the plaintiff attached and condemned, or so much thereof as shall be disproved or discharged, or else that they shall and will do it for him.

Passed in 1705.—Recorded A. vol. I. page 191. (a)

(a) Almost the whole of the act of the act of 22d January, 1774, (mention-
2d March, 1722-3, and the section of ed in the beginning of the note to the

former edition, are repealed, and supplied by the act of Dec'r 4th, 1807, (post. chap. 2873,) and by the same act, the act of 22d August, 1752, is recognized and confirmed, and the jurisdiction of Justices, in cases of attachments, extended to one hundred dollars.

A foreign attachment will not lie against an inhabitant of the State, though avowing an intention to emigrate, and actually on his journey for that purpose. He must still be considered as an inhabitant. If he clandestinely withdraws, or secretes himself, he becomes liable to the domestic attachment. But having once been an inhabitant will not protect him forever from a foreign attachment, where he has notoriously emigrated from the State, and settled elsewhere. *Lyle v. Forman*, 1 Dallas, 480.

As, where one has lived and traded here for some years, and then sails as a supercargo to the West-Indies, carrying with him four fifths of his property, and making a partial assignment of one fifth for the benefit of his creditors here; and there engages in new business, and is wholly silent in his letters, about his return, for nine months, his property is subject to foreign attachment, though he expressed an intention, when he sailed, of returning in 12 or 18 months at furthest. MSS. Reports, Sup. Court.

A foreign attachment will not lie against executors. 2 Dallas, 73, 97.

Debts may be attached, though only payable at a future day. It has been the uniform construction of the act of Assembly, that such debts were affected by the attachment. *Walker v. Gibbs*. 2 Dallas, 211. But the garnishee is not compellable to pay the money before it is due. S. C. MSS. Reports.

The answer of the garnishee to the interrogatories, form a part of the record, and the Court will judge from the whole, (MSS. Reports,) and the fact of a debt due to defendant, being admitted in the answers of the garnishee, the Court may give judgment on motion. S. C. 2 Dallas, 212.

A judgment in a foreign attachment is not removeable by *certiorari*; otherwise of the *scire facias* issued upon it. MSS. reports, and 2 Dallas, 211, and a *scire facias* upon a judgment obtained in the Supreme Court against a Garnishee, is to be brought there, though judgment had been obtained in the common pleas against the original debtor. 2 Dallas, 212.

The defendant advertised a ship for freight to *Madeira*. The plaintiff shipped flour on board; after which, and before the ship sailed, a third person attached her for a debt due to him from

Pintard, the owner of the vessel, for whom the defendant acted as agent. The voyage was, by this means, broken up, and the plaintiff's flour, being re-landed, was sold to a loss.

It was ruled by the Court, that the defendant, (the agent,) was not answerable for the damages sustained by the plaintiff. *Joyce v. Sims*, 2 Dallas, 223.

Foreign attachments, since the act of 1705, have been governed by the same rules as in *London*, as nearly as convenience, and the words of the act would admit. MSS. Reports, Sup. Court. See 2 Dallas, 279.

A debt in suit may be attached; and a debt due to partners may be attached by a separate creditor of one of the partners, who shall recover a moiety of the amount. *McCarty v. Emlen*. 2 Dallas, 277.

A share of bank stock attached, cannot be transferred upon a judgment in foreign attachment. MSS. Reports, Sup. Court.

On a contract for lands in *New York*, between *D.* and *B.* promissory notes, dated at *Philadelphia*, are given by *B.* payable to the order of *H. K.* at the bank of the United States, and delivered to *D.* indorsed in blank, by *H. K.* at *New York*, (where the custom of merchants prevails as to notes), a foreign attachment taken out, by a creditor of *D.* in *Pennsylvania*, while he held the notes, shall not prevent a subsequent *bona fide* holder of the notes, without notice, from recovering against *B.* *Ludlow v. Bingham*, 4 Dallas, 47.

A fund, remitted to pay particular creditors, cannot be attached. 4 Dallas, 279.

The general rule is, that a Garnishee is not liable for interest, while he is restrained from the payment of his debt, by the legal operation of a foreign attachment. But, if there is any fraud or collusion; or any unreasonable delay occasioned by the conduct of the Garnishee himself, such cases will form exceptions to the general rule. *Fitzgerald v. Caldwell*, 2 Dallas, 215.

A rule to take depositions, granted before the return of a *scire facias* in a foreign attachment on notice to the Garnishee. 2 Dallas, 78.

If the original debtor sues the Garnishee, after an attachment executed in his hands, he may plead the attachment in abatement; and plaintiff may reply that it is kept on foot by fraud, and put that matter in issue to be tried.

If such money has been paid by the Garnishee, on a judgment, or execution has been executed, he may plead the condemnation in foreign attachment,

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and this will be an effectual bar for the amount.

MSS. Reports, Supreme Court.

But if the Garnishee in a foreign attachment, pay over to the plaintiff the debt attached, without being compelled by due process of law, and without requiring the stipulation ordered by act of assembly, it will not discharge him from the original debt. 1 Binney, 25.

The security given by the plaintiff as to disproving the debt within a year and day, must be in the court where judgment was entered in the original action. *MSS. Reports, Supreme Court.*

A plea in abatement by Garnishees, on a *scire facias*, on a foreign attachment, that one of the partners was not named, is not a good plea. *MSS. Reports, Supreme Court.*

Where one tract of land is attached under a foreign attachment, and so returned, the Court cannot even by rule, substitute a different tract. *Lessee of Steinmetz and Bell v. Nixon. Circuit*

Court at Bedford, November 1801. MSS. Reports.

In a foreign attachment, the plaintiff may be called upon to shew his cause of action, though after the third Court. Fictions of law shall work no wrong. *MSS. Reports, Supreme Court.*

A foreign attachment was set aside, a judgment having been obtained for the demand in another state, and an execution levied thereupon. *MSS. Reports, Supreme Court.*

Upon the plea of *nulla bona* to a *scire facias* against a Garnishee, the jury must find the *specific* goods in the Garnishee's hands; a verdict, finding goods of a certain value in the defendants' hands is bad. But if they find the goods, they may also find their value, to save the necessity of a special inquest. 1 Binney, 481. See sect. 2, of the act in the text.

For cases of domestic attachment, see the notes under the particular acts respecting attachments against absconding creditors.

CHAPTER CXLV.

The LAW about seven years quiet possession. (b)

Quiet possession where to give right.

BE it enacted, That seven years quiet possession of lands within this province, which were first entered on upon an equitable right, shall forever give an unquestionable title to the same against all, during the estate whereof they are or shall be possessed, except in cases of infants, married women, lunatics, and persons not residing within this province or territories.

Passed in 1705.—Recorded A. vol. I. page 195.

(b) For an act limiting the period for commencing certain actions, see *post. chap. 196*, which is extended to actions on promissory notes by a subsequent law, *post. chap. 207*. On the 20th of March, 1785, (chap. 1134,) an act

was passed for the limitation of actions to be brought for the inheritance or possession of real property, or upon penal acts of assembly. (*Note to former edition.*)

CHAPTER CXLVII.

An ACT against mixing and adulterating strong liquors.

Penalty on selling adulterated strong liquors.

FOR the preventing of fraud in mixing and adulterating rum, brandy, or such like spirits, *Be it enacted*, That if any person within this province shall presume to sell rum, brandy, or such like spirits, that is adulterated or mixed with water, or any other liquor, knowing the same to be so adulterated or mixed, being convict thereof, by one or more credible witnesses, he or she shall, for every such offence, forfeit the said rum, brandy or spirits to be exposed to