

sum not exceeding fifty pounds, for their orderly and faithful acting in the business, more especially their safe conveying and delivering such goods as shall be committed to them; and that upon complaint made to the selectmen, that any whom they may have admitted as aforesaid, do not behave and conduct themselves orderly, peaceably and quietly towards their employers, it being made to appear, the party accused being seasonably notified thereof, such person may be removed, and other meet and orderly persons admitted in his room.

Provided,

[SECT. 5.] This act [to] be in force and so continue for the space of five years from the publication thereof, and no longer. [Passed February 4; published February 6, 1736-37.]

—to be discharged in case.

Term of the act's continuance.

CHAPTER 12.

AN ACT FOR MAKING MORE EFFECTUAL PROVISION FOR THE SERVICE OF ORIGINAL SUMMONS UPON MEAN PROCESS.

WHEREAS in and by an act made and pass[e]d in the thirteenth year * of the reign of his majesty, King William the Third, it is provided, that original process may be by summons, *capias* or attachment, and some disputes have arisen with respect to the manner of serving such summons, which hath been attended with many inconveniencies; for remedy whereof,—

Be it enacted by His Excellency the Governour, Council and Representatives in General Court assembled, and by the authority of the same,

That the service of an original summons upon any person, either in his private capacity, or in the capacity of executor or administrator, or any other qualification whatsoever, shall be as good and valid in law, to all intents and purposes whatsoever, by an attested copy of such summons being left by the officer at the house or usual place of abode of the defendant, at least fourteen days before the sitting of the court, as if he had been served therewith in his own person: *provided*, that if the defendant against whom such suit is brought, be out of the province at the time of such service, he shall have the same benefit as to a continuance of the action, as is by law provided in suits where goods [and] [or] other estate is attached. [Passed February 4; published February 6, 1736-37.]

Preamble.

1699-1700, chap. 2, § 3.
1701-2, chap. 2, § 1.

Copy of an original summons left at the defendant's house to be a sufficient service.

Proviso.

CHAPTER 13.

AN ACT FOR THE RELIEF OF POOR PRISONERS FOR DEBT.

Be it enacted by His Excellency the Governour, Council and Representatives in General Court assembled, and by the authority of the same,

[SECT. 1.] That when any person, during the continuance of this act, shall stand committed for debt or damages, upon execution, and shall complain that he or she hath not estate sufficient to support him-

Proceedings upon the prisoner's desire of a release.

1732-33, chap. 7.

* Neither of the acts referred to in the margin contains, *verbatim*, the above provision, which is included in quotation points in former editions. The act of 1701-2 (13 W. III.) is not so explicit as the act of 1699-1700 (11 W. III.); but as the latter applies only to the common pleas the former is probably the act intended.

or herself in prison, the goaler or keeper of such prison shall thereupon, at the request of the prisoner, be obliged to apply to two of his majesty's justices of the peace for the county, *quorum unus*, who shall thereupon make out a notification, under their hands and seals, to be served on the creditor or creditors, if he, she or they live within this province, his or her executor, administrator, agent or attorney, by reading the same to them, or by leaving an attested cop[y] thereof at the place of his, her or their usual abode, or, if out of the province, then to be left at the place of the usual abode of such creditor, or creditor's agent or attorney, if any such they have, at whose suit such prisoner is in custody, thereby signifying to him, her or them such prisoner's desire of tak[ing] the priviledge and benefit allowed in and by this act, of the time and place appointed for the intended caption of his or her oath; which notification shall be served at least forty days before the caption, and so certif[ied] to said justices, that so he, she or they may be present if they see cause; and said justices are hereby impowered to administer to such debtor, if they shall think proper so to do, after they have fully examined and heard the part[ies], the following oath; vizt.,—

Prisoner's oath. I, A. B., do upon my oath solemnly profess and declare before Almighty God, that I have not, nor had at the time of the commencing the suit upon me, any estate, real or personal, in possession, reversion or remainder, sufficient to support myself in prison, or to pay prison charges; and that I have not, directly or indirectly, sold, leased or otherwise conveyed or disposed of to, or intrusted, any person or persons whomsoever, with all or any part of the estate, real or personal, whereof I have been the lawful owner or possessor, with any intent or design to secure the same, or to receive or expect any profit or advantage therefrom, or done, caused, or suffered to be done, anything else, whatsoever, whereby any of my creditors may be defrauded.

Prisoner to be discharged or maintained by the creditor, in case.

—which oath being taken by such prisoner, and certificate thereof made, under the hands and seals of the justices administering the same, to the goaler or keeper, he shall thereupon set such prisoner at liberty, unless such creditor or creditors, his or her executors or administrators, agent or attorney, shall give security to the goaler or keeper for the payment of five shillings per week, to be appl[ied] for and towards the support of such prisoner while he, she or they are detained in prison. And it shall and may be lawful for such goaler or keeper to detain and keep in close custody such prisoner so long as said sum of five shillings per week, for and towards his or her support, shall be paid; but upon failure thereof, such prisoner shall be set at liberty as aforesaid.

And be it further enacted by the authority aforesaid,

Poor prisoner taking the oath, from what execution to be discharged.

[SECT. 2.] That when any person standing committed upon execution for any debt or damage, and hath attended the directions of this act, he shall only be discharged from such execution or executions wherein the creditor or creditors, his or their agent or attorney, were duly notified, in such manner as this act directs, and not from any other execution for any debt or damage upon which also he may or shall then stand committed, unless he take the oath again, and attend the direction of this act.

And be it further enacted by the authority aforesaid,

Persons committed on a new execution to receive no further benefit of a former discharge.

[SECT. 3.] That if any person, after having received the benefit of this act with respect to his discharge as aforesaid, shall be again committed to prison on any new execution that shall or may be served upon him, he shall receive no further benefit hereby but be excluded therefrom; anything in this act to the contrary notwithstanding.

And be it further enacted by the authority aforesaid,

Penalty for a false oath.

[SECT. 4.] That in case any such prisoner shall be convicted of having sold, leased or otherwise conveyed or disposed of, or intrusted his or her estate or any part thereof, directly or indirectly, contrary to

the foregoing oath, such prisoner shall not only be liable to the pains and penalties mentioned in the law for punishing of wilful[1] perjury, but shall receive no benefit from the said oath; anything in this act notwithstanding.

And be it further enacted by the authority aforesaid,

[SECT. 5.] That if such prisoner at the time of the intended caption shall not take the oath aforesaid, or be not admitted thereto by said justices, then he or she shall be remanded back to goal, and shall not be intitled to the benefit in and by this act provided.

Prisoner not taking the oath to be remanded back to jail.

And be it further enacted by the authority aforesaid,

[SECT. 6.] That notwithstanding the discharge of the person of such prisoner upon tak[e]ing the oath as aforesaid, all and every judgment had and given against him or her shall be and remain good and effectual in law to all intents and purposes, against the lauds, tenements, goods and chattels that may then, or at any time afterwards, belong to such prisoner discharged as aforesaid.

The prisoner's estate liable to execution notwithstanding his discharge upon oath.

[SECT. 7.] And it shall and may be lawful[1] to and for such creditor of such prisoner discharged as aforesaid, his executors, administrators, agent or attorney, to take out any new execution, to which shall be added by the clerk of the court from whence the execution issues, the charge, if any there be, that the creditors have been at for the prisoner's support, at five shillings as aforesaid, such creditor or creditors first mak[e]ing oath before the clerk (who is impowered to administer the same) of the truth of what he, she or they shall charge to said prisoner for his or her support, against the lands, tenements, hereditaments, goods and chattels of such prisoner, his or her wearing apparel, bedding for him and and his or her family, and tools necessary for his or her trade and occupation, only excepted, for the satisfaction of his or their debt in such sort and manner as he might have done if the person of such prisoner had never been taken in execution.

Charges for supporting the prisoner, to be added.

Apparel, bedding and tools excepted.

And be it further enacted by the authority aforesaid,

[SECT. 8.] That if the debtor shall be aggrieved with the charge added by the clerk to said new execution, such debtor shall and may sue for and recover of the creditor or creditors, before any court proper to try the same, fourfold the sum which hath been levied upon him or her, the said prisoner, and shall be made to appear to such court to be unjustly or falsely charged by the creditor or creditors for his or her support as aforesaid.

Remedy against a false charge for support.

Provided,

[SECT. 9.] That if the goaler or keeper of any prison shall refuse or delay to discharge and set at liberty any prisoner, contrary to the true intent and meaning of this act, every such goaler or keeper shall forfeit and pay to such prisoner detained contrary to this act, the sum for which he or she stands committed; to be recovered by action of debt in any court of record proper to try the same.

Remedy against the jailer's refusing to discharge the prisoner.

Provided, also,

[SECT. 10.] That this act shall not extend to any person or persons in execution for any fine on him, her or them imposed.

Proviso.

[SECT. 11.] This act to continue and be in force for the space of one year from the publication thereof, and no longer. [*Passed February 4; published February 6, 1736-37.*]

Limitation.