

CHAPTER 15.

AN ACT TO ENABLE CREDITORS TO RECEIVE THEIR JUST DEBTS OUT OF THE EFFECTS OF THEIR ABSENT OR ABSCONDING DEBTORS.

Preamble.
1728-29, chap. 3.

FOR the better preventing of frauds and deceit[s] too often designed and practised by ill-minded debtors, in betrusting and depositing their goods and effects in the hands of others, with intent to reserve and secure them to their own use and defeat their creditors of their just dues, withdrawing themselves out of the government, [and] [or] not being inhabitants within this province, and their goods and effects concealed so as they cannot be attached or made liable to the payment of their creditors by the ordinary process of law,—

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

Goods and effects of absent and absconding debtors to be attached;

[SECT. 1.] That it shall and may be lawful[1] to and for any creditor to cause the goods or effects of his absent or absconding debtor, not residing within this province, to be attach[e]d, in whose hands or possession soever the same are or may be found; and the attaching of any part thereof shall secure and make the whole that is in such person's hands, liable in the law to respond the judgment to be recovered upon such process, if so much there be, and no further; and shall be subjected to be taken in execution for satisfaction thereof, or so far as the value thereof will extend; and the person in whose hands they are shall expose them accordingly.

—and subject to execution.

And be it further enacted by the authority aforesaid,

Agent, &c., of an absent debtor to be summoned to court, in case no effects appear.

[SECT. 2.] That where no goods, effects or credits of an absent or absconding debtor, in the hands of his attorney, factor, agent or trustee, shall be exposed to view, or can be come at so as to be attach[e]d, it shall and may be lawful[1] to and for any creditor to file a declaration against his absent or absconding debtor in the clerk's office of the inferior court of common pleas in the same county where such creditor lives, therein particularly setting forth his debt and damage, how and for what cause it arises; and to cause the attorney, factor, agent or trustee of such absent or absconding debtor to be served with a summon[s] out of the office, annexed to the said declaration, fourteen days before the s[e]t[ti]ng of the court, for his appearance at such court; which being duly served, and return thereof made under the officer's hand, shall be sufficient in the law to bring forward a tryal without other or further summons, unless the debtor be an inhabitant or hath for some time had his residence within this province, in which case a like summons, with an attested copy of the declaration annexed, shall also be left at his dwelling-house, lodging or place of his last and usual abode; and such attorney, factor, agent or trustee, upon his desire shall be admitted to defend the suit, on behalf of his principal, throughout the course of the law; and an imparlance shall be granted, of course, at three courts successively, that he may have opportunity to notify his principal thereof; and at the fourth term, without special matter alledged and allowed in bar, abatement or further continuance, the cause shall peremptorily come to tryal; and if judgment be rendered for the plaintiff, all the goods, effects or credits of the debtor's which are in the hands of such attorney, factor, agent or trustee, to the value of such judgment (if so much there be) shall be liable and subjected to the execution granted upon such judgment for or towards satisfying the same, and, from the time of serving the summons as aforesaid, shall be liable and secured in the law in his hands to answer the same, and may not be otherwise disposed of or converted.

Trial thereupon to be had.

Three imparlances to be granted.

Goods in such agent's hands subject to execution on a judgment.

[SECT. 3.] And in case any attorney, factor, agent or trustee, from and after the time of his being served with summons and declaration as aforesaid, against his principal (being an absent or absconding debtor), shall transfer[r], remit, dispose of or convert any of the goods, effects or credits of such debtor, in his hands at the time of such service, so that there shall not be sufficient to satisfy the judgment, the debt being afterwards ascertained by judgment of court, or that shall not discover, expose and subject the goods or credits of the debtor, in his hands, to be taken in execution for or towards the satisfaction of the judgment, so far as what is in his hands will extend, shall be liable to satisfy the same of his own proper goods and estate, and as of his own debt; and a writ of *seire facias* may be taken out of the same court and served upon him, as the law directs, to appear and shew cause, if any he have, to the contrary; where, upon default of appearance or refusal to disclose upon his oath (which oath the justices of such court are empowered to administer) what goods, effects or credits of the debtor are in his hands, and to what value, and to expose and subject the same to the execution granted upon the principal judgment, if any goods, effects or credits be in his hands, then judgment shall be entred up against him of his own proper goods and estate, and execution be awarded accordingly.

Execution to be levied on agent's proper goods and estate, in case.

Agent to be put on oath.

Provided, nevertheless,

[SECT. 4.] That if the person so summoned as aforesaid, had or have not any goods, effects or credits of the debtor in his hands, nor anyways remitted, disposed of or converted the same, from and after the serving of the first summons, the party who commenced the suit shall pay and satisfy the reasonable cost and charges occasioned to such person, to be taxed in common form by the justices of the court.

Proviso.

And be it further enacted by the authority aforesaid,

[SECT. 5.] That the goods, effects or credits of any absent debtor so taken, as aforesaid, by process and judgment of law, out of the hands of his attorney, factor, agent or trustee, by any of his creditors, shall fully acquit and forever discharge such attorney, factor, agent or trustee, his executors or administrators, of, from and against all actions and suits, damages, payments and demands whatsoever, to be asked, commenced, had, claimed or brought by his principal, his executors or administrators, of and for the same; and if any attorney, factor, agent or trustee shall be molested, troubled or sued by his principal, for anything by him done in pursuance of this act, he may plead the general issue and give this act in evidence.

Agent to be acquitted and discharged.

Provided,

[SECT. 6.] This act shall continue in force for the space of ten years from the publication thereof, and no longer. [*Passed January 10; published January 27, 1738—39.*]

Limitation.

CHAPTER 16.

AN ACT TO PREVENT NEAT CATTLE AND HORSES RUNNING AT LARGE AND FEEDING UPON THE BEACH ADJOINING TO THE EASTERN-HARBOUR MEADOWS IN THE TOWNSHIP OF TRURO IN THE COUNTY OF BARNSTABLE.

WHEREAS there is a certain tract or parcel[1] of meadows, called Eastern-Harbour Meadows, in the town of Truro, on which many of the inhabitants of said town yearly depend for their hay; and the said meadow l[t][y]es adjoining to a long, sandy beach, on which no fence

Preamble.