

THE JOURNAL.

"ONE COUNTRY, ONE CONSTITUTION, ONE DESTINY."

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The New Insolvent Law.

An Act

To Abolish Imprisonment for Debt, and to Punish Fraudulent Debtors.

Section 1. 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 from and after the passage of this act, no person shall be arrested or imprisoned on any civil process, issuing out of any court of this Commonwealth, in any suit or proceeding instituted for the recovery of any money due upon any contract, express or implied, or for the recovery of any damages for the non performance of any contract, excepting in proceedings as for contempt to enforce civil remedies, actions for fines or penalties, or on promises to marry, on moneys collected by any public officer, or for any misconduct or neglect in office, or in any professional employment, in which cases the remedies shall remain as heretofore. Provided, That this section shall not extend to any person who shall not have resided in this State for 20 days previous to the commencement of a suit against him.

Sec. 2. In all cases where, by the preceding provisions of this act, a party to a suit cannot be arrested or imprisoned: it shall be lawful for the party who shall have commenced a suit, or obtained a judgment in any court of record, to apply to any judge of the court in which the suit shall have been brought for a warrant to arrest the party against whom the suit shall have been commenced, or the judgment shall have been obtained, whereupon the said judge shall require of the said party satisfactory evidence either by the affidavit of the party making such application, or some other persons, that there is a debt or demand due to the party making such application from the other party in the suit, or judgment, in which affidavit the nature and amount of the indebtedness shall be set forth as near as may be.

Sec. 3. If the demand set forth in the affidavit, be such that the party could not be arrested, and if the affidavit shall establish to the satisfaction of the judge, one or more of the following particulars, to wit: That the party is about to remove any of his property out of the jurisdiction of the court, in which suit is brought, with intent to defraud his creditors;

Or, that he has property or rights, in action, which he fraudulently conceals;

Or, that he has rights in action, or some interest in any public or corporate stock, money, or evidence of debt, which he unjustly refuses to apply to the payment of any judgments, which shall have been rendered against him, belonging to the complainant;

Or, that he has assigned, removed, or disposed of, or is about to dispose of, any of his property with the intent to defraud his creditors;

Or, that he fraudulently contracted the debt, or incurred the obligation, respecting which suit is brought;

It shall be the duty of the said judge, to issue a warrant of arrest in the form following to wit:

Sec. 4. County ss.
The Commonwealth of Pennsylvania, to the Sheriff, or any Constable of county, Greeting:

Whereas, complaint has this day been made, before me, on the oath (or affirmation, as the case may be,) of (here insert the name of the party making the affidavit) setting forth (here briefly set forth the complaint.)

These are therefore to command you to arrest the said _____, and bring him (or them, as the case may be,) before me, at my office, in (here insert the residence of the judge) without delay, to be dealt with according to law. And have you there also this receipt.

Witness my hand, at _____, this _____ day of _____, 1842.

Which warrant shall be accompanied by a copy of all affidavits presented to the judge, upon which the warrant is issued, which shall be certified by such judge, and shall be delivered to the party at the time of serving the warrant, by the officer serving the same.

Sec. 5. The officer to whom such warrant shall be delivered shall execute the

same, by arresting the person therein named, and bringing him or them before the judge issuing the warrant, and shall keep him in custody until he shall be duly discharged, or committed, as hereinafter provided.

Sec. 6. On the appearance of the person so arrested before the Judge, he may controvert any of the facts and circumstances on which such warrant is issued, and may, at his option, verify his obligations by his affidavit, and in case of his so verifying the same, the complainant may examine him on oath, touching any fact or circumstance material to the inquiry, and the answers on such examination, shall be reduced to writing, and subscribed by him, and the officer conducting such inquiry shall also receive such other proof as the parties may offer, either at the time of such first appearance, or at such other times as such hearing be adjourned to, and in case of adjournment, the Judge may take a bond, with or without surety for the appearance of the party arrested at the adjourned hearing.

Sec. 7. The judges conducting such inquiry shall have the same powers to issue subpoenas to enforce the attendance of witnesses, and to punish witnesses refusing to testify as is vested in the court of which he is a judge.

Sec. 8. If such judge is satisfied that the allegations of the complainant are substantiated and that the party arrested has done, or is about to do any one of the acts specified in the third section of this act, he shall issue a commitment under his hand, reciting the facts of the case and directing that such party be committed to the jail of the county in which such hearing is had, to be there detained until he shall be discharged by law, and such party shall be committed and detained accordingly.

Sec. 9. Such commitment shall not be granted if the defendant shall pay the debt or demand claimed, with the cost of suit and of the proceedings against him, or give security to the satisfaction of the judge before whom the hearing shall be had, that the debt or demand, with the costs of the suit and proceedings against him, shall be paid with interest within sixty days, if the demand be in judgment and the length of time for stay of execution given by law on debts of like amount has expired, and if the said length of time has not elapsed, then that the same shall be paid at the expiration of that time, if that shall be sixty days distant from the time of giving said surety, and if not, then that the same shall be paid within thirty days from the time of giving the same.— If the demand be not in judgment at the time of giving said surety, the day of payment shall be regulated by the same rule, but in no case shall the party be required to give surety for the payment of the debt before the receiving of judgment.

Sec. 10. Such commitment shall not be granted if the party arrested shall give bond to the complainant in a penalty of not less than twice the amount of the debt or demand claimed, with such securities as shall be approved by such judge, conditioned, that he will not remove any property which he then has, out of the jurisdiction of the court in which suit is brought with the intent to defraud any of his creditors, and that he will not assign, sell, convey, or dispose of any of his property with such intent, or with a view to give a preference to any creditor for any debt antecedent to such assignment, sale, conveyance, or disposition, until the demand of the complainant, with costs, shall be satisfied, or until thirty days after a first judgment shall be rendered in the suit brought for the recovery of such demand: *Provided, however,* That this section shall apply only to cases where the only fraudulent design established against the party arrested is, that he is about to remove any of his property out of the jurisdiction of the court in which such suit is brought, with intent to defraud his creditors.

Sec. 11. Such commitment shall not be granted if the person arrested shall enter into bond to the complainant in the penalty, and with the securities prescribed in the preceding section, conditioned, that he will within thirty days apply by petition to the Court of Common Pleas of the county, or to a judge thereof, if the court shall not within that time be in session, for the benefit of the insolvent laws of this Commonwealth, and that he will comply with all the requisitions of said law, and abide all orders of the said court in that behalf, or in default thereof, and if he fail in obtaining his discharge as an insolvent debtor, that he shall on the day of his so failing surrender himself to the jail of said county.

Sec. 12. Any defendant, committed agreeably to the eighth section of this act, shall remain in custody in the same manner as other prisoners on criminal process, until a final judgment shall have been rendered in his person, in a suit prosecuted by the creditor at whose instance he shall have been committed, or until he shall have assigned his property and obtained his discharge, as provided in the subse-

quent section of this act; but such person may at any time be discharged by any judge of the county, on his paying the debt or demand claimed, and costs, or by giving the security for the payment thereof, as provided in the ninth section of this act, or on his executing either of the Bonds mentioned in the tenth and eleventh sections of this act.

Sec. 13. Any person committed as above provided, or who shall have given the bond specified in the eleventh section of this act, or against whom any suit shall have been commenced in a court of record, in which such person by the provisions of this act cannot be arrested or imprisoned, may present a petition to the Court of Common Pleas of the county in which he shall be imprisoned, or in which the said suit is pending, or to the judge thereof, praying that he may assign his property and have the benefit of the provisions of this act.

Sec. 14. The petition aforesaid shall set forth all the matters required to be set forth by the ninth section of the act of the sixteenth day of June, one thousand eight hundred and thirty-six, entitled "an act relating to insolvent debtors," and shall be verified in like manner. Upon the presentation of the said petition the court or judge shall fix a time for the hearing of the same, which shall be during the next session of the Court of Common Pleas: *Provided,* Thirty days shall intervene between the presentation of the petition and the time for hearing the same, and the petitioner and his creditors shall be heard before the judges of the Court of Common Pleas, unless the said court shall make an order that a single judge shall hear the case and decide it, in which case the judge shall have all the powers herein conferred upon the court.

Sec. 15. The court or judge shall proceed agreeably to the provisions of the aforesaid act of the sixteenth day of June, one thousand eight hundred and thirty-six, in causing notice to be given to the creditors of the petitioner, in deciding upon his case, in making orders, in permitting assignments to be made, by the petitioner, in the oath to be administered to him, and in all proceedings thereafter touching his property, and shall have the same power over the trustees to whom an assignment shall be made, as is therein specified.

Sec. 16. The trustees of any debtor, to whom an assignment shall be made under this act, shall have the same powers, shall be liable to the same duties, and shall proceed in the same manner, in all respects to discharge the same, as is given, imposed upon, and required of the trustees under the aforesaid act, and the rights of creditors and their remedies shall be the same as under the said act, and the effect of a discharge of the petitioner by the said court shall be the same as under the said act, so far as regards both his person and property, and all rights and remedies given by said act, and all proceedings, both civil and criminal, thereby authorized, may be had the same as if they were here-in fully enacted at length, so far as the same can be applied to the case of a debtor or upon a contract only.

Sec. 17. Any person who shall be imprisoned on civil process at the time of this act taking effect as a law, in a case where, by the preceding provisions of this act, such person could not be arrested or imprisoned, may give ten days notice, in writing, to the plaintiff, his agent, or attorney, of his intention to apply to a judge of the court of common pleas of the county in which he is imprisoned, for a discharge from confinement. Upon proof of such notice having been given, it shall be the duty of any judge of said court to issue a writ of habeas corpus to the officer having such person in custody, to bring him before the said judge, at a time and place to be named, not less than two nor more than six days thereafter. If the plaintiff, or his agent or attorney, shall not have filed with said judge an affidavit setting forth such facts as are required by section third of this act, in order to obtain a warrant of arrest, and the case be such an one that the party by the preceding provisions of this act could not be imprisoned, it shall be the duty of the said judge to make an order discharging the party from imprisonment, but if such affidavit shall have been filed, and the judge, on hearing the case, shall be satisfied that the imprisoned party, if at liberty, would be liable to an arrest under the provisions of this act, then, and in that case, the judge shall proceed in the same manner as if the party had been brought before him upon such warrant of arrest as hereinafter provided.

Sec. 18. When a complaint shall be made, and a warrant of arrest issued, or upon a hearing under the seventeenth section of this act, and the complaint shall be dismissed, the party making the same shall be liable for all fees to officers, and for all costs which the party arrested shall have incurred, and the fees of the officers shall be the same as for similar services in other cases. Witnesses shall receive

the same fees as are allowed before justices of the peace, but if the complaint shall be sustained, the party making the same shall recover the costs of the party arrested, upon the same being taxed or allowed by the proper officer, and shall be recovered with the other costs in the suit.

Sec. 19. Whenever any bond given under the preceding sections of this act shall become forfeited by the non-performance of the condition thereof, the obligee shall be entitled to recover thereon the amount due to him on the judgment obtained in the original suit.

Sec. 20. Any person who shall remove any of his property out of any county, with intent to prevent the same from being levied upon by an execution, or who shall secrete, assign, convey, or otherwise dispose of any of his property, with intent to defraud any creditor, or to prevent such property from being made liable for the payment of his debts, and any person who shall receive such property, with such intent, or who shall, collude with the debtor for the concealment of any part of his estate or effects, or for having a false color thereto, or shall conceal any grant, sale, lease, bond, or other instrument or proceeding, either in writing or by parole, or shall become a grantee, purchaser, lessee, or other like party in any such instrument or proceeding, with the like fraudulent intent, or shall act as broker, scrivener, agent, or witness, in regard to such instrument or proceeding, with the like intent, such person or persons, on conviction thereof, in the court of quarter sessions of the proper county, shall be deemed guilty of misdemeanor, and shall forfeit and pay a sum not exceeding the value of the property or effects so secreted, assigned, conveyed, or otherwise disposed of or concealed, or in respect to which such collusion shall have taken place, and shall suffer imprisonment not exceeding one year.

Sec. 21. Every person, who with intent to cheat or defraud another, shall design, either by color of any false pretence, or by any false promise, whatsoever, to obtain from any person any money, or personal property, or other valuable thing, upon conviction thereof, shall be imprisoned in the penitentiary or in the county jail, at the discretion of the court before whom he shall be tried, not exceeding one year, or by fine not exceeding three times the value of the money or property or other thing so obtained, or by both such fine and imprisonment.

Sec. 22. No person shall be excused from answering any bill seeking a discovery in relation to any fraud prohibited by this act, or from answering as a witness in relation to any such fraud, but no answer shall be used in evidence in any other suit or prosecution.

Sec. 23. No execution issued on any judgment rendered by any alderman or justice of the peace, upon any demand arising upon contract, express or implied, shall contain a clause authorizing an arrest or imprisonment of the person against whom the same shall issue, unless it shall be proved by the affidavit of the person in whose favor such execution shall issue, or that of some other person, to the satisfaction of the alderman or justice of the peace, either that such judgment was for the recovery of money collected by any public officer, or for official misconduct or neglect of duty, or that the person against whom the same shall issue had not resided in this State for the space of thirty days immediately preceding the commencement of the suit upon which judgment was rendered, or immediately preceding the rendition of judgment, if the same was rendered upon confession without process.

Sec. 24. No capias or warrant of arrest shall issue against any defendant, in any case in which by the provisions of the preceding section an execution on the judgment recovered could not be issued against the body, and whenever a capias or warrant of arrest in such case shall issue the like affidavit shall be required as for the issuing of an execution by the provisions of said section.

Sec. 25. Whenever a plaintiff shall reside out of the county, he may, upon giving bond with sufficient surety for the payment of all costs which he may become liable to pay in the event of his failing to recover judgment against the defendant, have a capias or warrant of arrest, if he shall be entitled to such a writ on making the affidavit required in the twenty-second section of this act, or a summons which may be made returnable, not less than two or more than four days from the date thereof, which shall be served at least two days before the time of appearance mentioned therein, and if the same shall be returned, personally served, the justice or alderman issuing the same may proceed to hear and determine the case in the manner heretofore allowed by law.

Sec. 26. Whenever, by the provisions of the twenty-third section of this act, no capias can issue, and the defendant shall reside out of the county, he shall be proceeded against by summons of attachment, returnable not less than two, nor more

than four days from the date thereof, which shall be served at least two days before the time of appearance mentioned therein.

Sec. 27. It shall be the duty of any alderman or justice of the peace, to issue an attachment against any defendant, on the application of the plaintiff in any case, where by the provisions of this act no capias can issue, upon proof by the affidavit of the plaintiff, or some other person or persons, to the satisfaction of the alderman or justice, that the defendant is about to remove from the county any of his property, with intent to defraud his creditors, or has assigned, disposed of, or secreted, or is about to assign, dispose of, or secrete any of his property, with the like fraudulent intent, which affidavit shall also specify the amount of the plaintiff's claim on the balance thereof over and above all discounts which the defendant may have against him; Provided that before such attachment shall issue, the plaintiff, or some one in his behalf, shall execute a bond, in the penalty of at least two hundred dollars, with good and sufficient securities, conditioned that in case the plaintiff shall fail to recover a judgment of at least one half the amount of his claim, he shall pay to the defendant his damages for the wrongful taking of any property over and above the amount sufficient to satisfy the judgment and costs, and that if the plaintiff shall fail in his action, he shall pay to the defendant his legal costs, and all damages which he may sustain by reason of said attachment.

Sec. 28. Every such attachment shall be made returnable over not less than two nor more than four days from the date thereof, and shall be served by the constable to whom the same shall be directed, by attaching so much of the defendant's property, not exempt by law from sale upon execution, as will be sufficient to pay the debt demanded, and by delivering to him a copy of said attachment, and an inventory of the property attached, if he can be found in the county, and it not so to be found, then, by leaving a copy of the same at his place of residence, with some adult member of his family, or the family where he shall reside, or if he be a non-resident of the county and cannot be found, then by leaving a copy of said attachment and inventory with the person in whose possession the said property may be.

Sec. 29. The constable shall state specifically in his return the manner in which he shall have served such attachment, and it shall be his duty to take the property attached into his possession, unless the defendant, or some other person for him, shall enter into a bond with sufficient surety in the penalty of not less than two hundred dollars, conditioned that in the event of the plaintiff recovering judgment against him he will pay the debt and costs, at the expiration of the stay of execution given by law to frecholders, or that he will surrender up the property attached, to any officer having an execution against him on any judgment recorded in such attachment.

Sec. 30. If such attachment shall be returned personally served upon the defendant at least three days before the return day thereof, the alderman or justice shall, on the return day, proceed to hear and determine the same, in the same manner as upon a summons returned personally served. But if the same shall not have been so served, the alderman or justice shall issue a summons against the defendant, returnable as summons issued by justices of the peace are now returnable, and if the said summons shall be returned personally served, or by leaving a copy at the residence of the defendant, after diligent inquiry, cannot be found in the county, then, in either case, the alderman or justice of the peace shall proceed to hear and determine the cause, in the same manner as upon a summons personally served.

Sec. 31. Any defendant against whom a judgment shall have been rendered in any case where the attachment or summons shall not have been personally served, may, within thirty days after the rendition of the same, apply to the alderman or justice rendering the same for a hearing of the matter, and if he, or some other person, knowing the facts, shall for him make an affidavit setting forth that he has a just defence to the whole or part of the plaintiff's demand, it shall be the duty of the alderman or justice to open judgment, and give notice to the plaintiff of the time when he will hear the parties, which time shall be not less than four, nor more than eight days distant. On the said hearing the justice shall proceed in the manner directed in the 50th section of this act.

Sec. 32. A judgment obtained before any alderman or justice, in any suit commenced by attachment, when the defendant shall not be personally sued with the attachment or summons, and shall not appear, shall be only presumptive evidence of indebtedness in any scire facias that may be brought thereon, and may be disproved by the defendant, and no execution

issued upon such judgment shall be levied upon any other property than such as was seized under the attachment, nor shall any defendant in such case be barred of any set off which he may have against the plaintiff.

Sec. 33. A defendant, against whose body by the provisions of this act, an execution cannot be issued by an alderman or justice of the peace, shall not be required in order to obtain an appeal, stay of execution, or adjournment, to give a bond or recognizance in the nature of special bail, but the bond or recognizance in the case of an appeal, shall be conditioned for the payment of the debt and costs, which the plaintiff shall recover against the defendant. In case of bail for stay of execution, it shall be conditioned for the payment of the debt and costs at the expiration of the stay, and in case of an adjournment, it shall be conditioned that no part of the property of the defendant which is liable to be taken in execution shall be removed, secreted, assigned, or in any way disposed of, except the necessary support of himself and family, until the plaintiff's demand shall be satisfied, or until after the expiration of ten days after such plaintiff shall be entitled to have an execution issued on the judgment obtained in such case, if he shall obtain such judgment; and if the condition of such bond and recognizance be broken, and an execution on such judgment be returned unsatisfied, in whole or in part, the plaintiff, in an action on such bond or recognizance, shall be entitled to recover the amount due on such judgment.

Sec. 34. This act shall not be construed to extend the jurisdiction of justices of the peace and alderman to demands on one hundred dollars, and the same right which is given to the parties respectively to appeal from the decision of an alderman or justices of the peace by the act of the twentieth day of March, one thousand eight hundred and ten, relating to the proceedings of justices of the peace, is hereby given to the parties respectively in proceedings upon summons or attachments issued by aldermen or justices of the peace under this act. And all singular provisions of the said act, and its several supplements, which are expressly repealed and not inconsistent with the provisions of this act, are hereby declared to be in full force, and to apply to the provisions of this act so far as the same relates to proceedings before aldermen or justices of the peace, and to the powers of the courts of record over the proceedings of justices of the peace.

Sec. 35. After the defendant, in any case, shall have executed the bond required by the eleventh section of this act, he shall not sell, assign or dispose of any part of his property which is not exempt by law from execution, except so far as may be necessary for the support of himself and family, until he shall be discharged. And if proof shall be made, on the hearing before the judge or the court, that the applicant had so sold, assigned or disposed of his property, it shall be the duty of said judge or of the court to refuse to make the order directed by the aforesaid act of the sixteenth day of June, one thousand eight hundred and thirty-six.

Sec. 36. After the passage of this act, the secretary of the commonwealth shall immediately cause a sufficient number of copies of this act to be printed by the printers of the bills of the House of Representatives, to supply every judge, sheriff, prothonotary, alderman and justice of the peace in the State with a copy, which shall be by him transmitted to the prothonotaries of the different counties, and by them distributed to the officers entitled thereto—the expense of which printing and transmission shall be paid in the manner provided by law for the printing of the laws.

Sec. 37. So much of any act as is hereby altered or supplied is hereby repealed.

"\$2 a Day and Roast Beef."

Our Locooco friends are worried a good deal that any Whig should propose any such wages for the workingmen.— We don't know who it was that set this "\$2 a day in motion"—but it strikes us as being a good deal better motto than "Low wages and no meat," under which Mr. Williams a Locooco member of Congress from Massachusetts, essayed to rally the "democratic party" in 1840—and a motto, by the way, under which the Locooco leaders are, in effect now endeavoring to drill their forces. If it is to be "\$2 a day and roast beef" against "low wages and no meat," there will not be much difficulty in determining which side to take. It is surprising to us that high wages and good living for the workingmen, should be zealously opposed even by Anti-Bank, hard money Locoocos.—*Dayton Journal.*

The General Council of the City of New Orleans have passed an ordinance levying a tax of \$4000 per annum on every person doing business as money broker in that city.