

TITLE IX.
DEBTORS.

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CHAPTER 1.

ASSIGNMENT BY DEBTORS.

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REV. 674. An Act to secure to creditors an equal and just division of the estates of
 HAR. 211. debtors, who convey to assignees for the benefit of creditors.
 1842-3.
 PAMPH. 90. Revision....Approved April 16, 1846.

Of assign-
ments by
debtors.

1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That every conveyance or assignment, made by a debtor or debtors, of his, her or their estates, real or personal, or both, in trust to the assignee or assignees, for the creditors of such debtor or debtors, shall be made for their equal benefit, in proportion to their several demands, to the net amount that shall come to the hands of said assignee or assignees for distribution; and all preferences of one creditor over the other, or whereby any one or more shall be first paid, or have a greater proportion in respect of his, her or their claim, than another, shall be deemed fraudulent and void, excepting mortgage and judgment creditors, when the judgment has not been by confession for the purpose of preferring creditors.

What prefer-
ences void.

Debtor's in-
ventory and
list of credit-
ors.

2. *And be it enacted*, That the debtor or debtors making such assignment, shall annex to such assignment or conveyance, an inventory, under oath or affirmation, of his, her or their estate, real and personal, according to the best of their knowledge, together

with a list of his, her or their creditors, and the amount of their respective claims, but that such inventory shall in no wise be conclusive as to the quantum of the debtor's estate, real and personal, but the assignee or assignees shall be entitled to any other property which may belong to the debtor or debtors, at the time of making the assignment, and comprehended within the general terms of the same.

3. *And be it enacted*, That the said assignee or assignees shall forthwith give three weeks public notice, by advertising in two of the newspapers printed in this state, circulating in the neighbourhood where such creditors reside, and in one or more newspapers in any other state, where it shall be known any creditor of the said assignor resides, making known thereby that such assignment has been made, and that the creditors present their claims under oath or affirmation. And the said assignee or assignees shall also forthwith exhibit to the surrogate of the county wherein such debtor or debtors reside, under oath or affirmation, a true inventory and valuation of said estate, so far as has come to his or their knowledge, and then and there enter into bond, to the ordinary of this state, in double the amount of the inventory and valuation, with sufficient security for the faithful performance of said trust, which bond, inventory and valuation, being first filed in the surrogate's office, the said assignee or assignees may then proceed to sell said estate, and perform every other duty necessary to carry into effect the intention of said assignment, so far as respects the collection of debts, and the sale of real or personal estate.

4. *And be it enacted*, That after the said assignee or assignees shall have given bond as aforesaid, for the faithful performance of said trust, the surrogate shall endorse the receipt of said bond on the deed of assignment, after which endorsement, the clerk of the county shall record the same, having been first acknowledged or proved according to law.

5. *And be it enacted*, That at the expiration of three months from the date of said assignment, the said assignee or assignees shall file with the clerk of the court of common pleas of the county wherein such debtor or debtors resided, at the time of making such assignment, a true list, under oath or affirmation, of all such creditors of said debtors, as shall claim to be such, with a true statement of their respective claims, having first advertised for six weeks next preceding the end of said term, in two of the newspapers printed in this state, and by putting up advertisements in five of the most public places in the neighbourhood wherein such creditors or a majority of them reside, making known thereby that all claims against said estate must be made as hereinafter prescribed, or be

TITLE IX. for ever barred from coming in for a dividend of said estate, other-
 CHAP. 1. wise than hereinafter provided.

Exceptions,²
 notice of, and
 hearing.

6. *And be it enacted*, That it shall be lawful for the assignee or assignees, or any creditor, or other person interested, by himself or attorney, to appear at the next term of the said court of common pleas, and file exceptions to the claim or demand of any creditor, exhibited as aforesaid, and said court shall cause a notice to be served on said creditor, at least four weeks preceding the next term, and shall then proceed to hear the proofs and allegations in the premises, in the same or any subsequent term, as may be expedient, allowing the parties a right to have the said controversy settled by jury.

Dividends to
 be made.

7. *And be it enacted*, That at the first term of said court, succeeding the expiration of three months, as aforesaid, should there be no exceptions made to the claim of any creditor, or if exceptions have been made and adjudicated or settled by said court, the said assignee or assignees shall then proceed to make, from time to time, fair and equal dividends, among said creditors, of the assets which shall come to hand, in proportion to their claims, and as soon as may be, and not exceeding one year thereafter, shall render, on oath or affirmation, a final account to the orphans' court of said county, in like manner and upon the same notice to creditors and others interested, as is now or may hereafter be directed in regard to executors and administrators, and exceptions may, in like manner, be filed to such accounts and proceeded in as prescribed in regard to executors and administrators, and the settlement and decree of said court shall be conclusive on all parties, except for assets which may afterwards come to hand, or for frauds or apparent error.

Final ac-
 count.

Exceptions
 thereto.

Commis-
 sions and al-
 lowance.

8. *And be it enacted*, That such commissions and allowance shall be made to said assignee or assignees in the final settlement aforesaid, as the said court shall consider just and right.

Assignees,
 how compel-
 led to pro-
 ceed.

9. *And be it enacted*, That the said court may, from time to time if necessary, by citation and attachment, compel said assignee or assignees to proceed to the execution of the duties required by this act, until a final settlement and distribution as aforesaid.

Debts not
 due allowed.

10. *And be it enacted*, That any creditor may not only exhibit any debt due, but those to grow due, making in such case, a reasonable rebate, when interest is not accruing on the same.

Claims, when
 barred.

11. *And be it enacted*, That if any creditor shall not exhibit his, her or their claims within the term of three months as aforesaid, such claim shall be barred of a dividend, unless the estate shall prove sufficient after the debts exhibited and allowed are fully satisfied, or such creditor shall find some other estate not accounted for by the assignee or assignees before distribution, in which case

such barred creditor shall be entitled to a ratable proportion there-
from.

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12. *And be it enacted*, That whenever any assignee or assignees as aforesaid, shall sell any real estate of such debtor or debtors, as is conveyed in trust as aforesaid, he or they shall proceed to advertise and sell the same, in manner as is now, or may hereafter be prescribed in the case of an executor or administrator, directed to sell lands by an order of the orphans' court for the payment of the debts of a testator or intestate.

Lands of
debtor, how
sold.

13. *And be it enacted*, That every assignee as aforesaid, shall have as full power and authority to dispose of all estate, real and personal, assigned, as the said debtor or debtors had at the time of the assignment, and to sue for and recover in the proper name of such assignee or assignees, every thing belonging or appertaining to said estate, real or personal, of said debtor or debtors, and shall have full power and authority to refer to arbitration, settle and compound, and to agree with any person concerning the same, and to redeem all mortgages and conditional contracts, and generally to act and do whatsoever the said debtor or debtors might have lawfully done in the premises.

Powers of
assignees.

14. *And be it enacted*, That nothing in this act shall be taken or understood as discharging said debtor or debtors from liability to their creditors, who may not choose to exhibit their claims, either in regard to the persons of such debtors, or to any estate, real or personal, not assigned as aforesaid, but with respect to the creditors who shall come in under said assignment, and exhibit their demands as aforesaid, for a dividend, they shall be wholly barred from having afterwards any action or suit at law or equity against such debtors or their representatives; unless on the trial of such action, or hearing in equity, the said creditor shall prove fraud in the said debtor or debtors, with respect to the said assignment or concealing his estate, real or personal, whether in possession, held in trust or otherwise.

Debtor, how
far protect-
ed.

15. *And be it enacted*, That the same fees shall be allowed in all proceedings under this act, to the judges and officers of the orphans' court, as are allowed for like services performed in the settlement of accounts of executors or administrators, under the laws of this state.

Fees.

16. *And be it enacted*, That if the assignee or assignees who have been appointed, and have given surety according to the provisions of this act, should die before the final settlement of said estate, it shall be lawful for said surety to proceed to the final settlement of said estate, and perform every duty the said assignee or assignees could rightfully have performed, the said surety having

Assignee dy-
ing, surety
may pro-
ceed.

TITLE IX. first given additional surety for their faithful performance as aforesaid.
 CHAP. 1. said.

or court appoint a suitable person.

17. *And be it enacted*, That in case the said surety should die, or reasonable objections be made by the creditors against his acting as aforesaid, or refuse to act, the said orphans' court shall proceed to appoint some suitable person or persons to settle the same.

Remedy against assignee in certain cases.

18. *And be it enacted*, That whenever the security given by any assignee under and by virtue of the third section of this act, shall be insufficient at the time of giving the same, or shall afterwards become insufficient, then it shall be the duty of the orphans' court of the county in which the assignor resided at the time of making the assignment, to order and direct such assignee to give such further or other security to the ordinary, by bond in the usual form, as to the said court, after hearing the objection of creditors or persons concerned, shall seem proper; and if it should appear upon examination, that any assignee hath embezzled, wasted or misapplied all or any part of the estate assigned to him, or shall neglect or refuse to give such additional security as may be ordered, then, and in every such case, the said court shall proceed to remove said assignee, and appoint some suitable person or persons in his stead to fulfil the trusts contained in the deed of assignment, who shall give bond with security in manner aforesaid, and shall thereupon have all the power and authority of the said assignee under the deed of assignment, and be subject to the same duties and liabilities; and the assignee so appointed by the orphans' court shall have actions of trover, detinue or on the case for such goods, chattels, or moneys as came to the possession of the assignee so removed as aforesaid, and shall be retained, wasted, embezzled, withheld or misapplied, and no satisfaction made for the same.

Rent to be first paid.

19. *And be it enacted*, That in all cases where any debtor, being a tenant, shall make an assignment under this act, all the goods and chattels of such tenant on the premises, in the possession of such tenant, shall be first bound for the payment of rent due to his landlord; and the said claim for rent in favour of the landlord, not exceeding one year's rent, shall be first paid and satisfied by the assignee out of the goods and chattels of the said tenant, which were on the demised premises at the time of the assignment.

Landlord may seize goods removed.

20. *And be it enacted*, That if the tenant, his assignee, or any other person or persons shall remove any goods and chattels off or from the said demised premises, after the said assignment, it shall and may be lawful for the said landlord, at any time within forty days after such removal, to seize the said goods and chattels, in whose hands soever the same may be found, as a distress for his said rent, and proceed with the same in the manner directed by the

act concerning distresses, whether the rent by the terms of the lease be due or not, making a rebate on the sum not due, as is now, or may hereafter be required where a party suing out execution pays rent not due to the landlord.

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CHAPTER 2.

OF PROCESS AGAINST FRAUDULENT DEBTORS.

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| 1. Of the <i>capias ad respondendum</i> . | 5. Execution against the body. |
| 2, 3. Of the <i>capias ad satisfaciendum</i> . | 6. Oath of non-resident. |
| 4. Warrant from justice's court. | 7. Limitation of the act. |

An Act respecting imprisonment for debt in cases of fraud.

1841-2.
PAMPH. 130.

Revision.....Approved April 15, 1846.

1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That the writ of *capias ad respondendum* shall not henceforth be awarded, issued or served in any action founded upon contract, express or implied, except upon proof made on oath or affirmation, before a justice of the supreme court, or before one of the commissioners to take bail and affidavits in said court, that there is a debt or demand founded upon contract, express or implied, due to the plaintiff from the defendant, specifying the nature and particulars of said debt or demand, and establishing, by the oath or affirmation of the plaintiff or some other person or persons, to the satisfaction of such justice or commissioner, one or more of the following particulars:

When *capias ad respondendum* may issue.

First. That the defendant is about to remove any of his property out of the jurisdiction of the court in which an action is about to be commenced, with intent to defraud his creditors; or,

Second. That the defendant has property or rights in action which he fraudulently conceals; or,

Third. That he has assigned, removed or disposed of, or is about to assign, remove or dispose of, any of his property with the intent to defraud his creditors; or,

Fourth. That the defendant fraudulently contracted the debt or incurred the obligation respecting which such suit is brought.

And upon such proof being made, it shall be the duty of the justice or commissioner, before whom such proof of all or any of the said particulars shall have been made, to make an order to hold the defendant to bail in such sum as shall be sworn to by the plaintiff or his agent, to be due to the plaintiff from the defendant; and upon such order being made, and upon filing such affidavits in

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the office of the clerk of the court wherein the action is about to be commenced, a *capias ad respondendum* may be issued according to law as heretofore.

When *capias* ad satisfaciendum may issue.

2. *And be it enacted*, That the writ of *capias ad satisfaciendum* shall not henceforth be awarded or issued upon any judgment founded upon contract, express or implied, except—

First. Upon satisfactory proof being made before a justice of the supreme court, or a commissioner to take bail and affidavits in said court, to be certified by such justice or commissioner, and filed as aforesaid, establishing the particulars specified in either of the subdivisions of the first section of this act; or,

Second. That the defendant has rights or credits, moneys or effects, either in his own possession or in the possession of any other person or persons to his use, of the value of fifty dollars or over, which he unlawfully and fraudulently refuses to apply in payment of such judgment.

When no further proof necessary.

3. *And be it enacted*, That where an order to hold the defendant to bail has been duly made according to the provisions of the first section of this act, and remains in force, it shall be lawful for the plaintiff, upon the recovery of a judgment in such action against the defendant, to issue a *capias ad satisfaciendum* without any other or further proof, notwithstanding any thing in the preceding section contained.

When warrant may issue.

4. *And be it enacted*, That no warrant to arrest the body of any defendant shall henceforth be issued out of any court for the trial of small causes in this state, in any action of debt, or other action founded upon contract, express or implied, except upon due proof, on oath or affirmation, made before a justice of the peace of any county in this state, establishing, to the satisfaction of such justice, the particulars named in either of the subdivisions of the first section of this act; and upon making such proof, it shall be the duty of such justice to make an order for the issuing of a warrant against the defendant, and upon filing such order with any justice of the peace, a warrant may be issued as heretofore.

When execution against the body may issue.

5. *And be it enacted*, That no execution to arrest the body of any defendant, shall henceforth be issued out of any court for the trial of small causes in this state, in any action of debt, or other action founded upon contract, express or implied, unless the plaintiff or plaintiffs in such action shall, before the same be issued, make satisfactory proof of the particulars named in either of the subdivisions of the first section of this act, or that the defendant has rights or credits, moneys or effects, either in his own possession or in the possession of any other person or persons to his use, of the value of ten dollars or over, which he unlawfully and fraud-

ulently refuses to apply in payment of such judgment; and upon making such proof to the justice of the peace by whom such judgment may have been rendered, execution against the body of such defendant may be issued as heretofore; and when the action was commenced by warrant, it shall be lawful for the justice to issue such execution against the body, upon the same proof on which the order for a warrant was founded.

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6. *And be it enacted*, That the oath or affirmation required by the first, second, fourth and fifth sections of this act, may, if the person by whom the same is to be made be out of the state, be made before a judge of any court of record or notary public of the state, kingdom or nation in which such person resides or happens to be.

Oath by person out of the state.

7. *And be it enacted*, That the provisions of this act shall not extend to proceedings as for contempts to enforce civil remedies, nor to actions on promises to marry, or for the recovery of moneys collected by any public officer, or for any misconduct or neglect in office.

Limitation of provisions of the act.

CHAPTER 3.

IMPRISONMENT ABOLISHED IN CERTAIN CASES.

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| 1. Females exempt from arrest, etc. | 4. Officer's return. |
| 2. Defendant discharged on giving bond, etc. | 5. His fee. |
| 3. Application to the court. | 6. Conveyance, etc., after arrest, void. |

An Act abolishing imprisonment on civil process in certain cases.

HAR. 299.

1836-7.

PAMPH. 472.

Revision....Approved April 15, 1846.

" 1839-40.

PAMPH. 103.

1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That it shall not be lawful to arrest or imprison the person of any female by virtue of any mesne process or process of execution in any civil action.

Females exempt from arrest, etc.

2. *And be it enacted*, That any person or persons who may be arrested or held in custody by any sheriff, constable or other officer in any civil action upon mesne process or process of execution, or upon an attachment for not performing an award, or who may be surrendered in discharge of his or their bail, shall be discharged from arrest or custody by such officer; provided, such person or persons shall make out and deliver to the officer making the arrest, or in whose custody such person or persons may be, a true and perfect inventory, under oath or affirmation, of all his or their goods and chattels, rights, credits, lands, tenements, hereditaments and real estate, and shall give bond to the plaintiff at whose suit he

Defendant discharged on giving bond, etc.

Inventory.

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Condition of
bond.

Action may
be brought
thereon.

Application
to the court.

Officer's re-
turn.

Officer's fee.

Conveyance,
etc., after ar-
rest, void.

or they are arrested, with sufficient security, being a freeholder or freeholders and resident in the county, in double the sum for which he or they are arrested or taken in execution, with a condition that he or they will appear before the next court of common pleas to be holden in the county wherein such arrest is made, and petition said court for the benefit of the insolvent laws of this state; and that the said defendant will in all things comply with the requirements of the said insolvent laws, and will appear in person at every subsequent court, until he or they shall be duly discharged as an insolvent debtor; and if refused a discharge, surrender himself or themselves immediately thereafter, to the sheriff or keeper of the jail of said county, there to remain until discharged by due course of law; and in case of the forfeiture of the said bond by breach of any condition therein, the plaintiff, his executors or administrators may bring an action thereon, and recover the debt, damages and costs due from the person or persons so arrested, and for which the arrest was made as aforesaid.

3. *And be it enacted*, That any person or persons, arrested as aforesaid, and having given such bond, shall be entitled to make application for his or their discharge under the insolvent laws of this state, at the next, or any subsequent court after such arrest, as fully and effectually as if he or they were actually confined in the common jail of said county.

4. *And be it enacted*, That when the sheriff, constable or other officer has discharged the defendant or defendants from arrest upon mesne process, upon giving bond as aforesaid, he shall so return on the process to the court or justice issuing the same, and shall also return therewith the inventory and bond taken by him in pursuance of the second section of this act; and the plaintiff may thereupon proceed to judgment, and have execution against the goods and chattels and real estate of such defendant or defendants, as in other cases allowed by law. And when the defendant or defendants shall be discharged upon execution, the sheriff or other officer shall so return the same with the said bond and inventory; and the delivery of the bond to the plaintiff shall exonerate the officer from any liability for escape.

5. *And be it enacted*, That the sheriff, constable or other officer shall be entitled to have the sum of fifty cents for taking such bond and inventory, to be paid by the defendant or defendants.

6. *And be it enacted*, That any conveyance, deed, mortgage, judgment, sale, transfer, assignment or other disposition made, given or executed, by the said debtor, of, for or upon any of his estate, real or personal, to any person after the said arrest, shall, as against his creditors, or any assignee or assignees, to be appointed

by the said court, under the sixth section of the act for the relief of persons imprisoned on civil process, be void and of no effect; and such assignee or assignees may recover said estate, real or personal, or the value thereof with costs of suit, in his or their own name or names, for the use of said creditors, in any proper action to be instituted therefor, against any person who may have purchased or in any manner come to the possession thereof, after the giving of the said bond.

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CHAPTER 4.

RELIEF OF INSOLVENT DEBTORS.

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| <ul style="list-style-type: none"> 1. Debtor's petition for discharge. 2. Time for hearing, and notice. 3. Proceedings at the hearing. 4. Debtor's examination touching his estate. 5. His confinement, etc. 6. Assignee's appointment, and assignment. 7. When new assignee appointed. 8. When debtor remanded, allowance, etc. 9. Proceedings thereupon. 10. Remanded, if fraud proved. 11. Title to property vested in assignee. 12. Powers of the assignee. | <ul style="list-style-type: none"> 13. General meeting of creditors. 14. Assignee's oath and compensation. 15. Examination for purpose of discovery. 16. Shall be by interrogatories. 17. Equity suit, proof of debts, dividends. 18. Proceedings when debtor is bail. 19. Debts not due allowed. 20. The debtor's discharge. 21. Penalty for fraudulent conduct. 22. Fees. 23. Prison bounds, and bond for. 24. Penalty for breach of. |
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An Act for the relief of persons imprisoned on civil process.

REV. 216, 426,
651, 762, 793.

Revision.....Approved April 16, 1846.

HAR. 31, 63,
109, 122, 299.

1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That any person, who now is or hereafter shall be in actual confinement for debt or damages in any of the jails in this state, and is willing to deliver up to his creditor or creditors all his estate both real and personal, towards the payment of his creditor or creditors, shall have leave to present a petition to the court of common pleas in and for the county, wherein he is so imprisoned, at any stated term thereof, setting forth the cause or causes of his imprisonment, containing also a just and true account of all his real and personal estate, a full and true inventory of all his deeds, bonds, notes, books of account, vouchers and securities whatsoever, together also with a list of all his creditors, with the moneys due and owing to each of them, to the best of his knowledge.

Petition for discharge.

What to contain.

2. *And be it enacted*, That the court, to whom such application is made, are required to name the time and place, at which they will attend to hear what can be alleged for or against the liberation of such debtor, which time shall not be less than forty days after

Time for hearing, and notice.

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making said application; of which time and place, so appointed by the court, the debtor shall cause notice in writing, at least thirty days previous thereto, to be served on, or left at the usual place of residence of, each of his creditors, if residing within this state, and have the same inserted in one of the newspapers of this state.

Proceeding
at the hear-
ing.

3. *And be it enacted*, That at the time and place so appointed, the debtor applying to the court as aforesaid, shall appear before the said court and exhibit a just and true account of all his estate, both real and personal, either in possession, reversion or remainder, together with a just and true inventory of all his deeds, bonds, notes, books of account, vouchers, specialties whatsoever, with the sums due thereon, as near as may be, and a list of all his creditors, with the amount of debts to them due and owing; and the court shall proceed to hear, consider and examine into the truth and justice of such application or petition, so as aforesaid made and presented, and to consider and examine the truth and fairness of the account and inventory so exhibited before the said court.

Examination
of the debtor.

4. *And be it enacted*, That such examination shall be had in open court and on interrogatories proposed by the court to such debtor, touching and concerning the disposition of his estate, the truth and fairness of the account and inventory, so as aforesaid exhibited; and the debtor shall, on his oath or solemn affirmation, make a true and direct answer, of and concerning the same, to all such questions as shall be asked him by the court; and if the debtor, to such interrogatories, shall knowingly, falsely swear or affirm, such debtor shall be adjudged guilty and liable to the pains and penalties of wilful and corrupt perjury.

Penalty for
false swear-
ing.

Further ex-
amination.

5. *And be it enacted*, That it shall also be the duty of the court, at the time of hearing, to examine the debtor touching his confinement, whether his imprisonment was compulsory or voluntary, and whether he has not, at any time between the day of his application to the court for his hearing, and the time of his examination, been without the prison limits; to all which, and such other questions as shall be asked by the creditor, under permission of the court, the debtor shall full answer make, subject to the requirements and liabilities in this act prescribed; and if it shall appear that the debtor has been without the prison limits, or that his confinement was not compulsory, or he will not a satisfactory answer make to the questions proposed, it shall be the duty of the court to stay all further proceeding in the case.

In what case
proceedings
stayed.

Assignee ap-
pointed, and
assignment
made.

6. *And be it enacted*, That if, after the hearing, consideration and examination of the proofs and allegations of such debtor, the court and the creditor or creditors, that may attend, shall be satisfied that the conduct of the debtor has been fair, upright and just,

the court shall proceed forthwith to appoint one or more respectable, judicious and responsible freeholder or freeholders of the county, where such debtor may be imprisoned, as assignee or assignees; to which said assignee or assignees the debtor shall forthwith execute an assignment of all his real and personal estate wheresoever or whatsoever, except such apparel for himself, his wife and children, and such tools and implements of his trade or occupation, as the court may judge proper, not exceeding the value of twenty-five dollars in the whole; and except also such property of the said debtor as is or may be by law exempted from execution; upon making which assignment and filing the same in the clerk's office of the said court, the court may, by writing, under their hands and seals, direct the sheriff to discharge said debtor from confinement on account of any debts by him previously contracted.

Debtor discharged.

7. *And be it enacted*, That upon the death, or removal from the state, of any assignee appointed under the sixth section of this act, it shall and may be lawful for the court in which such appointment was made, on application, and being satisfied that the same is just and reasonable, to appoint another in the place of such dead or removed assignee; and an entry of such order and appointment shall be made in the minutes of the court; upon which such newly appointed assignee, shall have and possess all the powers, rights and interests, in the estate of the insolvent debtor, that were vested in the deceased or removed assignee; and execute all such conveyances, and do all such lawful acts and things as the said dead or removed assignee might or ought to have done; and the same shall be as valid as if done by the deceased or removed assignee; and in case there be a co-assignee or assignees, not dead or removed, shall and may act, do and complete all things with him or them, as the said deceased or removed assignee might or ought to have done.

When new assignee appointed.

Powers.

May act with co-assignee.

8. *And be it enacted*, That if the creditor or creditors, at whose suit such debtor is imprisoned, or any other creditor, shall not be satisfied with the truth and honesty of the declaration and confession of such debtor, nor with the truth and fairness of the account and inventory so as aforesaid to be exhibited, and such creditor or creditors shall offer and undertake to the court to prove by the first day of the next term, that such debtor has concealed and secreted some part of his estate, and has not fairly, fully and honestly, delivered up to the use and benefit of his creditors the whole of his estate, real and personal, it shall and may be lawful for the court to remand such debtor to prison, and direct such debtor and the said creditor or creditors, so dissatisfied as aforesaid, to appear before the court on the first day of the next term; *provided*, that such

When debtor may be remanded.

Allowance to be made him.

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creditor or creditors, so dissatisfied, shall and do agree by writing, under his or their hands, to allow and pay any sum that the court may direct, not exceeding two dollars per week, to and for the support of such debtor, to be paid to the debtor, or left with the jailer, at such time and in such sum as the creditor or creditors may choose, provided the said allowance be not withheld for a space longer than one week at any one time; and on failure of payment of which weekly sum, such debtor shall, on application to the court, or any three judges thereof, be forthwith, by order as aforesaid, discharged; *provided also*, that if such creditor or creditors, so dissatisfied, shall prove that such debtor hath concealed and kept back any part of his estate, he or they shall be reimbursed the expense of supporting such debtor out of the estate of such debtor.

If not paid,
debtor dis-
charged.

Proceedings
when debtor
is remanded.

Declaration.

9. *And be it enacted*, That after such debtor shall be remanded to prison as aforesaid, he shall, within thirty days, file, in the clerk's office of said court, a declaration to the following effect, to wit: Hunterdon, (or other county, as the case may be,) to wit: A. (name of the debtor) cometh before the court and saith, that he ought against his creditors to be discharged out of custody for debt, because he saith, that he hath become, according to the force, form and effect of an act of the legislature entitled, "An act for the relief of persons imprisoned on civil process," and within the true intent and meaning of such act, an insolvent debtor; and that he hath well and truly complied with the said act in all things on his part, for the benefit and to the use of his creditors, to wit, on the first day of March, in the year of our Lord seventeen hundred and ninety-five, (or other time as the case may be,) at the township of Amwell, in the county of Hunterdon (or other place) whereby good right and full title, by virtue of the said act, hath accrued to him against his creditors to be discharged out of custody for debt, and this he is ready to verify; wherefore he prayeth judgment of discharge out of custody for debt, according to the force, form and effect of the said act; that within twenty days after filing the said declaration, but not afterwards, all the creditors of said debtor, or any one of them, may file in the clerk's office of said court, his, her or their plea, to the following effect, to wit; B., C., D., (the names of the creditors) come before the court and say, that the said A. is not an insolvent debtor, and that he hath not well and truly complied with the said act, in all things, on his part, for the benefit and to the use of his creditors, in manner and form as the said A. hath thereof declared against his creditors, and of this they put themselves upon the country; that the debtor may join issue with the creditor or creditors, by filing in the office of the said court the replication of the debtor to the following effect, to wit: and the said A. doth so

Plea.

Replication.

likewise; that for the trial of the issue joined as aforesaid between the debtor as plaintiff of the one part, and all the creditors or creditor as defendants or defendant of the other part, in one action, and not in two or more actions, the debtor do cause a venire facias to issue, directed to the sheriff, requiring him to summon twelve respectable freeholders of the county to make a jury between the said parties; the debtor filing in the office of the said court, lawful notice of trial to the creditor or creditors, named in his, her or their plea, do cause the issue joined as aforesaid to be tried in turn before the court by the said jury to be summoned by the sheriff of the county as aforesaid; that the trial on the said issue shall be had only between the debtor named in the declaration, and the creditor or creditors named in the plea, and not between the debtor and other creditors, that all proceedings had under this act, on the part of the debtor, may, on trial of the issue, if joined as aforesaid, be before the court and jury deemed competent, but not conclusive evidence on his part; and that the debtor do, on the trial of the issue before the court and jury, further than by the proceedings aforesaid, prove in evidence and maintain the truth and legality of his case, according to the issue on his part joined; and that if the jury do find a verdict for the debtor, the court do render judgment, that the debtor be discharged out of custody according to the force, form and effect of the said act; that if the jury do find a verdict for the creditor or creditors, the court do render judgment, that the debtor be continued in custody, until he be thence delivered by due course of law; that if within twenty days after filing the declaration of the debtor, no creditor do file a plea to the same, the clerk of the court, on the application of the debtor, is hereby required to enter in the minutes of the said court a certificate, that no plea has been filed by any creditor to the declaration of the debtor, and that the debtor may produce a copy of the said certificate, under the hand of the clerk, and seal of the court, to any two judges of the court, who, being together, are hereby empowered to make their joint order in writing, under their hands and seals, that the debtor, for default of a plea filed to his declaration by any creditor, be discharged out of custody, according to the force, form and effect of the said act; which order is to be delivered to the clerk of the court, and by him to be entered on the minutes of the said court, and to be filed; and if, on the trial before the court and jury, and the verdict and judgment thereupon, the debtor shall be convicted, he shall pay such costs as may be taxed by the court; and if the creditor or creditors shall not maintain the issue on his or their part, the said creditor or creditors shall in such case pay the costs by the court to be taxed.

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tried.

Jury.

Notice of
trial.Proceedings
had—evi-
dence.Verdict and
judgment.Debtor dis-
charged for
default of
plea.Who to pay
costs.

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If fraud
proved, debt-
or remand-
ed.

10. *And be it enacted,* That if it shall appear to the satisfaction of any court before which an application shall be made for the benefit of the insolvent laws, or by the verdict of a jury if demanded by the debtor, that the debtor or debtors so applying has or have concealed or kept back any part of his or their estate or property, or made any conveyance, deed, mortgage, judgment, sale, transfer, assignment or other disposition of his or their estate, real, personal or mixed, with intent to defraud his or their creditor or creditors, then, and in either of these cases, the said debtor or debtors shall be refused his or their discharge; and it shall be lawful for such court to remand him or them to prison, there to remain in close confinement until discharged by due course of law.

Assignee in-
vested with
title.

11. *And be it enacted,* That the assignee or assignees so to be appointed as aforesaid, are hereby declared to be invested with as ample title to all lands, goods, debts and effects whatsoever so assigned, as the assignor himself had; and no release of the assignor, his executor, administrator or any trustee for him subsequent to such assignment, shall bar the assignee or assignees from recovering any debts or other property mentioned in the assignment to them made; and the assignee or assignees, after paying the fees of the jail keeper, shall divide the proceeds of the property so assigned to them among all the creditors in proportion to their respective debts, reserving to themselves such compensation for their services as is hereinafter allowed them.

Divide pro-
ceeds.

Powers of
the assignee.

12. *And be it enacted,* That such assignee or assignees shall have full power and authority to dispose of all estates which shall be assigned to them, or which ought, by virtue of this act, to be assigned to them, to execute good and sufficient deeds for the same, to redeem all mortgages and conditional contracts, and to recover in their own names every thing belonging or appertaining to the estate, real and personal, of such debtor; and shall have full power and authority to refer to arbitration, settle, compound and agree with any person or persons indebted to such insolvent, in such manner as shall from time to time be agreed upon between them; and shall proceed to convert the estate of every such debtor into money as soon as conveniently may be, and upon such credit as the major part in value of the creditors shall direct; and shall, within the space of eighteen months, proceed to make a division of all the money which shall come to their hands of all the estate aforesaid, first giving three months notice of the time and place of making such dividend, by advertising the same in one or more of the public newspapers of this state nearest the place of the said debtor's confinement, and fixing advertisements in five of the most public places of the county; and if the whole be not then distributed, shall,

Division to
be made on
notice.

within the space of one year thereafter, make a second division of what moneys may come to their hands after the first division; and so from year to year till a final settlement thereof, and a just and equal distribution of the whole estate be made; and in case any creditor or creditors of any such debtor shall reside in any other of the United States, and the circumstances of the case require, in the opinion of the court, a more extended publication, then such assignees shall, before the making of such dividend, give such further notice of the time and place of making the same as the court shall direct.

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As to non-
resident
creditors.

13. *And be it enacted*, That the assignee or assignees shall, at least one month before a division is made, appoint the day, by public notice as herein before is directed, for a general meeting of all such creditors as shall choose to attend, to examine and ascertain the debts due to each creditor; and in case of any controversy relating to such debts, it shall be determined in the following manner: the assignee or assignees shall nominate two arbitrators, not being creditors of the insolvent, and the creditor, whose debt is in controversy, shall nominate two others, and their names shall be separately written on four pieces of paper as nearly of the same size as possible, which shall be rolled up in the same manner and put into a covered box, and from thence one of the assignees shall draw out three of the said pieces of paper, and the persons whose names are so drawn shall finally settle such controversy; and if any arbitrator so appointed shall refuse or be incapable of acting in a reasonable time, a new choice shall be made in the same manner; and in case any such creditor shall refuse to nominate arbitrators on his part, the assignees shall nominate them for him.

General
meeting of
creditors.

Controver-
sies deter-
mined by ar-
bitration.

14. *And be it enacted*, That the assignee or assignees shall, immediately after the assignment, take an oath or affirmation, as the case may require, to be administered by the judges aforesaid, to the following effect, viz: I, A. B., do solemnly swear that I will well and faithfully manage the insolvent's estate, and keep and render a true account of all that shall come to my hands of the same. So help me God. Which oath or affirmation shall be in writing, subscribed by the assignee or assignees, and filed with the clerk of the said court; and the said assignees shall keep regular books of account, to which every creditor shall, at all reasonable times, have recourse; and for the care and trouble incumbent on the assignees, they shall be allowed, out of the insolvent's estate, such sum as the court may deem adequate to their services and expenses.

Assignee's
oath.

To be filed.

Compensa-
tion.

15. *And be it enacted*, That for the more full discovery of the estate and effects of such debtor, the court or judges as aforesaid, Examination for purpose of discovery

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at the request of the assignee or assignees, shall have full power and are hereby required to summon and examine on oath or affirmation as aforesaid, the wife of such debtor and every other person whatsoever, known or supposed to detain any part of the said debtor's estate or effects, or to be indebted to it; and in case any person on such summons shall refuse to attend, having no reasonable excuse, or shall refuse to be sworn or affirmed, then it shall and may be lawful for the said court or judges to commit such person so refusing to jail, till he or she shall submit to be examined concerning what he or she knows relating to such insolvent's estate or effects.

By interrogatories.

16. *And be it enacted*, That the wife of such debtor, and every person whatsoever, summoned as aforesaid, shall be examined on interrogatories in writing, which interrogatories with the several answers thereto, shall be signed by the person so examined, and filed by the clerk of such court, as shall award the debtor's discharge.

Suit in equity, how authorized.

17. *And be it enacted*, That no suit in equity shall be commenced by any assignee or assignees without the consent of the major part of the creditors in value, at a meeting to be held for that purpose; and if any creditor shall neglect or refuse to give notice of and prove his or her debt within eighteen months after the assignment, and a division of the whole estate be made, such creditor shall not be entitled to a dividend; and all the money arising from the sale of the said debtor's estate, shall be divided among the other creditors; but in case the whole of such debtor's estate shall not be divided and settled by the time herein appointed for the first division, and such creditor shall prove his debt before the time appointed for a second division, then such creditor shall, before a second division be made among the other creditors, have his first dividend; but no creditor shall be admitted to prove his debt, in order to entitle himself to a share in the insolvent's estate after the second division, but shall by this act be debarred from any share thereof.

Creditor neglecting to prove debt, to lose dividend.

Proceedings where debtor has become bail.

18. *And be it enacted*, That every such debtor who shall, before the delivery of the petition before directed, have become bail in any case, on account of which he hath reason to think judgment may be had against him, and shall make oath or affirmation as aforesaid, that at the time he so became bail, he esteemed himself vested with an estate sufficient to answer any demand that could, with any probability, be made upon him as bail, may add to the account of the creditors, and the moneys owing by him, before directed to be given an account of, the manner of his becoming bail, and annex such a sum as he imagines he will be liable to pay

on that account, and then the assignee or assignees shall reserve in his or their hands, for the space of eighteen months, such a dividend as a creditor for a like sum would have a right to receive; and after judgment obtained against any such debtor, the person obtaining the same shall be considered in every respect as another creditor, whose debt was due before the delivery of the petition; but if, in the space of eighteen months after the petition is delivered, no judgment shall be obtained against the insolvent, the moneys so reserved shall be divided among the other creditors in the same manner as if the sum so annexed to the account of his creditors was paid; if judgment should be obtained against such debtor as bail for any sum within eighteen months after the petition is delivered, and after the division of his or her effects among his or her creditors, and the said debtor shall have omitted either wholly or in part to annex the said sum to the account delivered, the person obtaining such judgment shall recover against the said debtor, either for the whole or the part omitted, as the case may be, so much as the other creditors of the said debtor ought to have received for the like just debt, and no more.

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19. *And be it enacted*, That all other persons who have given credit to such insolvent debtor, on valuable consideration for any sum of money, or other matter or thing, which is or may not be due or payable at or before the time of the delivery of the petition, shall and may be admitted and considered as creditors, whose debts are then due, and shall receive a dividend in the same proportion as the other creditors, deducting thereout only a rebate of lawful interest for what shall be received on such debt, to be computed from the actual payment thereof to the time it would have become due. Debts not due allowed.

20. *And be it enacted*, That every such insolvent debtor, having given up all his or her estate, and conformed in all things to the directions of this act, shall for ever thereafter be discharged from all debts due at the time of the assignment, or contracted for before that time, though payable afterwards, so far as regards the imprisonment of his or her person. The debtor's discharge.

21. *And be it enacted*, That in case any such debtor shall, after the assignment of his or her estate, receive any debt or debts due to him or her before, or shall secrete any part of his or her estate or any book or writings relating thereto, with an intent to defraud his or her creditors, he shall on being thereof convicted on indictment, be adjudged guilty of wilful and corrupt perjury, and suffer accordingly, and shall be totally precluded from all benefit and advantage whatever, which he or she might otherwise be entitled to. Penalty for fraudulent conduct.

22. *And be it enacted*, That in proceedings under this act, the

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officers and persons in this section named, shall be entitled to demand and receive of each insolvent debtor, for the services herein-after mentioned, the following, and no other fees :

Fees.	Clerk, filing and reading petition and schedule,	\$18
	Administering every oath or affirmation,	8
	Drawing up assignment and discharge,	50
	Filing and recording the same,	48
	Certificate under seal of office,	25
	The court hearing the application,	1 30
	Crier, for fees,	10

Prison
bounds, and
bond for.

23. *And be it enacted*, That the courts of common pleas are hereby respectively empowered and required to mark and lay out the bounds and rules of the prisons in their several counties, adjoining to such prison, so as to embrace the whole of the city, town, village or borough in which the prison shall be, and shall cause the external or boundary lines of such limits to be marked on a map ; which marks and bounds shall be recorded by the clerk of the said court, and may be altered or renewed from time to time as occasion may require ; and every prisoner, in any civil action, giving bond to the sheriff, with sufficient sureties, being freeholders and residents in the county, in double the sum for which he is committed, that he will keep within the said bounds, shall have liberty to walk therein ; and if the said bond shall be forfeited, the sheriff, at the request of the plaintiff or his attorney, shall assign such bond to the said plaintiff, by endorsing the same, and attesting it under his hand and seal, in the presence of two or more witnesses, and the said plaintiff may bring an action thereon in his own name.

Penalty for
breach of.

24. *And be it enacted*, That if any person who may enter into bond to keep the prison limits, in pursuance of the preceding section of this act, shall voluntarily and intentionally walk, or go out of, and beyond the prison limits, that have been or shall be hereafter prescribed by virtue of this act, such voluntary and intentional walking or going out of or beyond the said prison limits, shall be deemed and taken to be an absolute forfeiture of such bond ; and the sheriff to whom such bond may have been given, or the plaintiff or plaintiffs, at whose suit the prisoner may be in custody, in case such bond shall have been assigned to him, shall and may maintain an action on the said bond, notwithstanding the prisoner may have returned to and within the said prison limits before the commencement of such action, any law, usage or custom to the contrary, notwithstanding.

CHAPTER 5.

REMEDY IN CASE OF ESCAPE OR DEATH.

1. Remedy in case of escape.

2. Remedy in case of death.

An Act giving relief to creditors, where prisoners for debt escape or die. Rev. 265.

Passed January 28, 1797.

1. BE IT ENACTED *by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same,* That if any person who is or shall be committed, in execution, to any prison, shall escape from thence, by any ways or means whatsoever, the creditor or creditors, at whose suit such prisoner was charged in execution at the time of his or her escape, may retake such prisoner by any new *capias*, or *capias ad satisfaciendum*, or sue forth any other kind of execution on the judgment, as if the body of such prisoner had never been taken in execution.

2. *And be it enacted by the authority aforesaid,* That the party or parties, at whose suit, or to whom any person doth or shall stand charged in execution for any debt or damages recovered, his, her or their executors or administrators, may, after the death of the said party so charged and dying in execution, lawfully sue forth and have new execution against the goods and chattels, lands and tenements, or any of them, of the person so deceased, in such manner and form, to all intents and purposes, as he, she or they, or any of them might have had by the laws of this state if such person so deceased had never been taken or charged in execution; *provided* always, that no person or persons, his, her or their executors or administrators, at whose suit or suits any such party shall be in execution, and die in execution, shall have or take any new execution against the lands, tenements or hereditaments of such party so dying in execution, which shall, at any time after the judgment or judgments against such party so dying, and by reason whereof such party was taken or charged in execution, be by him or her sold, *bona fide*, for the payment of any of his or her creditors; and the money, which shall be paid for the lands so sold, either paid or secured to be paid to any of his or her creditors, with their privity and consent, in discharge of his, her or their due debts, or of some part thereof; nor against any lands, tenements or hereditaments of such party so dying in execution, which shall have been sold by reason of any other judgment against him or her so dying in execution.

If a debtor escape from prison, plaintiff may have a new execution.

If debtor die in prison, upon a ca. sa., plaintiff may have execution against his estate;

but such execution not to affect any estate *bona fide* sold for payment of debts.