

Bonds and Warrants.

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An act directing the mode of entering judgments on bonds with warrants of attorney to confess judgments.

R. S. 931, 944.

P. L. 1849, p. 264.

Warrant to confess judgment in body of bond, &c., void.

R. S. 931.

Warrant by persons in custody. Ib.

Warrant not revocable. Ib.

Warrant to be produced. Ib.

Judgment, how entered. R. S. 944.

Revision—Approved March 27, 1874.

1. That every warrant of attorney for confessing judgment which shall be included in the body of any bond, bill, or other instrument, for the payment of money, shall be void and of none effect; and such bond, bill, or other instrument, shall have the same force, and no other, as if the said warrant of attorney had not been incorporated therein. (a)

2. That no warrant of attorney for confessing a judgment, executed by any person in custody upon mesne process in a civil action, to a plaintiff at whose suit he is in custody, shall be of any force, unless some attorney, on behalf of such person in custody, and expressly named by him, be present as a witness, and inform him of the nature of such warrant. (b)

3. That a warrant of attorney to confess judgment shall not be revocable by the party making the same.

4. That every attorney who shall confess judgment in any case, shall, at the time of making such confession, produce his warrant for making the same, to the court, judge, or commissioner, before whom he makes the confession; and a copy of the said warrant shall then be filed with the clerk of the court in which the judgment shall be entered.

5. That in all cases where a bond or other obligation is given for the payment of money only, (c) together with a warrant under hand and seal, directed to any attorney-at-law or other person, (d) to appear in any court of record in an action brought or to be brought on such bond or obligation, against the person or persons executing the same, and to confess a judgment against him, her, or them, for the sum mentioned in such bond and warrant of attorney, with costs of suit, or to the like effect; (e) it shall be lawful for the obligee or obligees, his, her, or their executors, administrators or assigns, at any time after the day of payment mentioned in said bond or obligation, (g) to apply to any of the justices of the supreme

(a) This provision is a mere regulation of the practice in our own courts, and does not prohibit the making in this state of such warrants of attorney for use in other states in the form that is legal in their courts. *Hendrickson v. Fries*, 16 Vr. 555. The president of a corporation has no power, in virtue of his office, to execute a bond and warrant of attorney for the entry of a judgment by confession against the corporation. *Stokes v. New Jersey Pottery Co.*, 17 Vr. 237. A partner cannot bind his copartner by warrant of attorney, under his hand and seal, in the name of the firm, where there has been no previous consent or authority given or subsequent ratification. *Ellis v. Ellis & McKaig*, 18 Vr. 69.

(b) A judgment confessed in the presence of a witness is bad; it must be in the presence of an attorney expressly named by the person in custody. *Westfall v. Donovan*, Pen. *68.

(c) If a condition is annexed "that it is subject to another agreement between the parties," judgment by confession cannot be entered thereon. *Harwood ads. Hildreth*, 4 Zab. 51.

(d) The bond may be given at one time and the warrant at another, and they may be given to different persons. *Burroughs v. Condit*, 1 Hal. 300. See *Camden Bank v. Hall*, 2 Gr. 582. It may be given by an administrator. *Little v. Brannin*, 1 South. *288. If given by an executor and testamentary guardian, for the money in his hands, to a new guardian, it is valid, whether such guardian was legally appointed or not. *Den. Vanderweere v. Gaston*, 1 Dutch. 815. If given by *feme sole*, and she marries, it cannot be entered against her and her husband. *Anonymous*, Pen. *973. If given to a married woman, a special application to the court to enter judgment is necessary. *Wims ads. French*, 2 Hal. 27.

(e) The judgment will not be set aside if, by mistake, it be entered for double the sum mentioned in the bond. *Den v. Zellers*,

2 Hal. 153. Or too large an amount, unless fraud be proved. *Caldwell v. Fifield*, 4 Zab. 150. The execution will be amended. *Fries v. Woodworth*, 2 Vr. 273. Judgment cannot be entered against two persons on the confession of one. *Westfall v. Donovan*, Pen. *68. *Little v. Moore*, 1 South. *75. *Mills v. Sleght*, 2 South. *567. *Wiggins v. Kleinhaus*, 4 Hal. 249. *Ballinger v. Sherron*, 2 Gr. 144. *Bodine v. Service*, 1 Har. 47. But if so entered, it is good against the one who confessed it. *Wood ads. Ogden*, 1 Har. 453. It cannot be entered against the payee of a bond after its assignment. *Keed v. Bainbridge*, 1 South. *351. The judgment must be entered during defendant's lifetime. *Wood v. Hopkins*, Pen. *689. *Minor v. Minor*, 4 Hal. 93. See *Stull v. Abbott*, 3 Gr. 339. Nor on a warrant given by two persons can judgment be entered against one, although the other be dead. *Hunt v. Chamberlin*, 3 Hal. 336. But if entered against two, it may, for cause shown, be set aside as to one of them. *Silvers ads. Reynolds*, 2 Har. 275, 3 Har. 238.

(g) A judgment confessed upon a bond, payable on demand, may be entered on the day of its date. *Eagle ads. Emly*, 2 Har. 348. On a bond conditioned for the payment of a certain sum of money in three years, with interest annually, judgment may be entered for the whole penalty of the bond on default in the payment of the first year's interest. *Warwick v. Maltack*, 2 Hal. 165. See *Bosenkranz v. Dyring*, 5 Dutch. 191. If the affidavit be made on November 6th, although the bond be not due until November 7th, it is good. *Scudder v. Coryell*, 5 Hal. 340. See *Parker v. Griggs*, 1 South. *163 (a). The court will control the execution in such cases. *Griffith v. Jones*, Pen. *332. *American Insurance Co. v. Ryerson*, 2 Hal. Ch. 9. Courts of law exercise an equitable jurisdiction over judgments entered on confession and will set them aside on cause shown on motion of the defendant. *Reading v. Reading*, 4 Zab. 359. *Oliver v. Applegate*, 2

court, or to any one of the judges of the circuit court, or court of common pleas, in any of the counties of this state, and on the production of such bond or obligation with the warrant of attorney, it shall be the duty of such justice or judge, at the end of a fair copy of such bond or obligation and warrant of attorney, to cause to be entered an appearance for the obligor or obligors to an action of debt, as of the last precedent term of the court of which the said justice or judge is a member, and a confession and judgment against him, her, or them, for the sum mentioned in the said bond or obligation and warrant of attorney, signed by the said justice or judge in the following form, to wit:

Supreme court (or circuit court, or court of common pleas, as the case may be), of the term of—

A B
 against } In debt on bond and warrant of attorney.
 C D. }

The defendant's appearance to this action is entered, and judgment confessed to the plaintiff for the sum mentioned in the above obligation, by virtue of the warrant of attorney thereunto annexed, and pursuant to the directions of an act entitled "An act directing the mode of entering judgments on bonds with warrants of attorney to confess judgments," whereupon it is considered that the said A B do recover against the said C D the sum of ——— debt, and four dollars costs of suit. Judgment signed this ——— day of ———. E F.

6. That it shall be lawful for any supreme court commissioner to sign and order entered judgments by confession upon special warrants of attorney, in any court wherein such judgments may be entered; and such judgments, so signed and ordered entered, shall have the same force and validity as the same would have if signed by a judge of such court.

May be signed by supreme court commissioner. P. L. 1849, p. 264.

7. That the copy of the bond and warrant of attorney to confess judgment, with the entry of the judgment thereon, signed by the justice, judge or commissioner, shall be delivered to the clerk of the court in which such judgment is to be entered; and the clerk shall immediately file the same in his office, mark thereon the time of filing the same, and enter the judgment in the minutes of the court, and shall also enter all the proceedings on which said judgment shall be founded as aforesaid, and the judgment itself at large in the judgment-book of said court, and index the same, as in other cases of judgment.

Proceedings recorded. R. S. 915.

8. That if judgment be not entered within ten years after the date of the warrant of attorney, it shall not be done without leave of the court; and a motion to enter such judgment shall be founded on an affidavit that the said warrant was duly executed, that the defendant is living, and that the debt, or part of it, is unsatisfied. (a)

Judgment after ten years, how entered. R. S. 931.

9. That all judgments entered as before directed shall be as good and effectual in law, to all intents and purposes whatsoever, as judgments entered by confession in the manner heretofore practised, and no such judgment shall be reversed for error or misprision of the clerk in entering the same, or defect of form in the entry thereof; and execution shall issue thereon as in cases of judgments entered by confession in the manner heretofore practised. (b)

Not reversed for lack of form. R. S. 944.

Execution.

South. *479. *Parker v. Griggs*, 1 South. *161. Or his personal representatives. *Young v. Stout*, 5 Hal. 302. *Wood v. Hopkins*, Pen. *689. Or securities on the judgment debtor's bond. *Alderman v. Diament*, 2 Hal. 197. Or his heirs. *Canan v. Coryell*, Coxe 3. Or on motion of a judgment creditor. *Minor v. Minor*, 4 Hal. 93. *Scudder v. Coryell*, 5 Hal. 340. *Latham v. Lawrence*, 6 Hal. 322. *Blackwell v. Rankin*, 3 Hal. Ch. 152. *Clapp v. Ely*, 3 Dutch. 555. Overruling *Evans v. Adams*, 3 Gr. 373, and *Hoyt v. Hoyt*, 1 Har. 133. See *Melville v. Brown*, 1 Har. 364. See *Garrison v. Kane*, 3 Dutch. 209. *Sherrer v. Collins*, 2 Har. 181. *Swackhamer v. Kline*, 10 C. E. Gr. 503. Or the judgment creditor may file a bill in chancery. *Jackson v. Darcy*, Sax. 194. *Edgar v. Clevenger*, 1 Gr. Ch. 258, 2 Gr. Ch. 258. *Midnight v. Smith*, 2 C. E. Gr. 259. Or on motion of a purchaser without notice. *Reed v. Bainbridge*, 1 South. *351 (b). *Warwick v. Matlack*, 2 Hal. 166. See *Day v. Lyon*, 3 Stock. 331. Or of a party interested who, although not a party to the record, may show fraud. *Den, Vanderveve v. Gaston*, 4 Zab. 818. So in an action of trespass against an officer for selling goods, he may show that the confessed judgment, under which the sale had been made, was void. *Skullman v. Applegate*, 2 Hal. 62. See *Hall v. Snowhill*, 2 Gr.

551. The judgment may be set aside and defendant allowed to plead to the merits. *Atterman v. Diament*, 2 Hal. 197. *Silvers ads. Reynolds*, 2 Har. 275, 3 Har. 238. Or a feigned issue ordered. *Reed v. Bainbridge*, 1 South. *352. *Scudder v. Coryell*, 5 Hal. 340. *Hoyt v. Hoyt*, 1 Har. 133. *Melville v. Brown*, 1 Har. 364. *Audenried v. Woodward*, 4 Dutch. 265. Proceedings thereon. *Reynolds v. Britton*, 3 Har. 304. No declaration need be filed. *Wilson v. Barnum*, 1 Wall. Jr. 342. But see *Reynolds v. Britton*, 3 Har. 306. Nor will a writ of error lie on the proceedings under such issue. *Brewer v. Ware*, 3 Har. 370. See *Phillips v. Phillips*, 3 Hal. 122. *Tradesmen's Bank v. Fairchild*, 3 Vr. 542. The court will not order title deeds to be delivered up, or a reconveyance of the premises sold under such confessed judgment, to be made. *Barrow v. Bispham*, 6 Hal. 110. (a) The statute must be complied with, although ten years have elapsed and leave of the court must be obtained. *Eakin v. Smith*, 1 Zab. 97. (b) A writ of error will lie on a confessed judgment. *Burroughs v. Condit*, 1 Hal. 300. *Hunt v. Chamberlin*, 3 Hal. 336. *Evans v. Adams*, 3 Gr. 373. *Reading v. Reading*, 4 Zab. 359. See *Phillips v. Phillips*, 3 Hal. 122.

Not to be otherwise entered. *Ib.*

Affidavit required. *Ib.*

Before whom taken. *Ib.*

Affidavit to be filed.

Fees. *Ib.*

Penalty for taking more fees.

10. That all judgments on bonds or obligations for the payment of money only, in virtue of a warrant of attorney to confess judgment thereon, shall be entered as in and by this act is directed, and not otherwise.

11. That no judgment shall be entered in any court of record (a) of this state, on a warrant of attorney to confess such judgment, or by the defendant appearing in person in open court and confessing the same, unless the plaintiff or his attorney shall produce, at the time of confessing such judgment, to the court, judge, justice, or commissioner before whom the judgment shall be confessed, an affidavit of the plaintiff, his attorney or agent, of the true consideration of the bill, bond, deed, note, or other instrument of writing or demand for which the said judgment shall be confessed; (b) which affidavit shall further set forth that the debt or demand for which the judgment is confessed is justly and honestly due and owing, (c) to the person or persons to whom the judgment is confessed, and that the said judgment is not confessed to answer any fraudulent intent or purpose or to protect the property of the defendant from his other creditors.

12. That the affidavit required by this act may be made before any justice of the supreme court, judge of any circuit court or court of common pleas, supreme court commissioner, master in chancery or justice of the peace of this state, or, if the plaintiff be out of this state, before any court of judicature or notary public of the state, kingdom or nation in which the said plaintiff resides or shall happen to be; which affidavit shall be filed with the other papers in the cause.

13. That the following, and no other, fees shall be allowed, viz.: to the plaintiff, for the copy of the bond or obligation and warrant of attorney, entering the proceedings thereon, attending before the justice, judge, or commissioner to obtain the judgment, and delivering the same, with the affidavit, to the clerk to be filed, two dollars; to the justice, judge, or commissioner, for inspecting the bond and warrant, examining the copies and entering and signing judgment, fifty cents; (1) to the clerk, for making and filing the proceedings and affidavit, and entering the judgment in the minutes of the court, fifty cents, and for entering the proceedings and judgment at large in the book of judgments, one dollar; and when execution shall issue on any judgment, the following additional fees shall be allowed, and no other, to the plaintiff, for drawing the execution twenty-five cents; to the clerk, for sealing and recording the execution, and entering and filing the execution and return of the sheriff, seventy-five cents; which costs shall be indorsed on the execution without taxation, and collected with the debt, but to be paid by the plaintiff as the duty is performed; and further, that the sheriff shall be entitled to execution fees, as in other cases. (d)

14. That in case any clerk shall take other or greater fees for services done under this act than are by this act allowed, or shall take such fees without performing the services for which such fees are allowed, he shall, for every such offense, forfeit and pay the sum of thirty dollars, to be sued for and recovered in an action of debt, with costs of suit, in any court having cognizance thereof, by any person who shall be aggrieved by the same.

(a) Applies to justices' courts so far as the filing of an affidavit is concerned. *English v. Sharpe*, 3 Gr. 457. *Wright v. Wood*, 5 Pen. 308; and cases cited under JUSTICE'S COURT.

(b) The consideration of the bond must be shown. *Latham v. Lawrence*, 6 Hal. 322. *Clapp v. Ely*, 3 Dutch. 555. *Scudder v. Coryell*, 5 Hal. 540. The consideration of the assignment is not sufficient. *Woodward v. Cook*, 1 Hal. 160. Although the affidavit comply with the statute, yet if the judgment be fraudulent, it is void. *Evans v. Adams*, 3 Gr. 373. A fieri process has been regularly issued and served, no affidavit is necessary upon a judgment confessed. *Budd v. Marvin*, 1 South. *248 (a). *Elliott v. Woodhull*, 7 Hal. 126. *Ferguson v. Earl*, 2 Gr. 124. *Hopuet v. Wallace*, 4 Dutch. 524. A confessed judgment entered without an affidavit cannot be impeached collaterally. *Den v. Zellers*, 2 Hal. 153. *Den, Vanderveere v. Gaston*, 4 Zab. 818. *Clapp v. Ely*, 3 Dutch. 555. *Dean v. Thatcher*, 3 Vr. 470. *Tradesmen's Bank v. Fairchild*, 3 Vr. 546. Whether a judgment by confession for an existing debt, then actually due and owing, will be set aside on the application of other judgment creditors for the sole reason that the affidavit did not truly state the condition, *quere*. *Warwick v. Petty*, 15 Vr. 542.

(c) It is sufficient if the affidavit state that the debt is justly due, without stating that it is justly owing. *Reading v. Reading*, 4 Zab. 358. *Parker v. Griggs*, 1 South. *163 (a). Although the money may be honestly due, yet if the judgment be confessed to protect the property from other creditors, it should be set aside. *Jones v. Naughtright*, 2 Stock. 298. See *Williamson v. Johnston*, 7 Hal. 86. A judgment cannot be confessed for future advances. *Blackwell v. Rankin*, 3 Hal. Ch. 152. *Clapp v. Ely*, 2 Stock. 178, 3 Dutch. 555. *Warwick v. Petty*, 15 Vr. 542. If regularly entered it is not affected by a subsequent assignment. *Moses v. Thomas*, 2 Dutch. 124, 571. The assumption of payment by the indorser of a note discounted in bank for the benefit of the maker, not yet due, without the assent of the bank and discharge of the maker, is not a debt due and owing for which judgment may be entered under the statute. *Sterling v. Fleming*, 24 Vr. 653.

(d) The statute is imperative as to costs. *Eakin v. Smith*, 1 Zab. 97.

(1) By a supplement to "An act to regulate fees," approved March 27th, 1874 (P. L. p. 121), supreme court commissioners shall be entitled to receive for "ordering the entry of every judgment on bond and warrant of attorney the sum of one dollar."