

**An act to secure the observance of the annual arbor day in schools.**

Approved April 14, 1884. P. L. 1884, p. 173.

**2. SEC. 1.** That in order to secure the co-operation of the schools in carrying into effect the provisions of the joint resolution relative to the annual arbor day, it shall be the duty of the state superintendent of public instruction to prepare and issue such circulars of information and instruction as may be necessary.

State superintendent to prepare circulars relative to annual arbor day.

**3. SEC. 2.** That on said annual arbor day appropriate exercises shall be introduced in all the schools of the state, and that it shall be the duty of the several county and city superintendents to prepare a programme of the exercises used on such day in all the schools under their respective jurisdiction.

Exercises to be introduced in schools.

**Assignment.**

**I. ASSIGNMENT—HOW TO BE MADE AND ITS EFFECT.**

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2. Debtors' inventory and list of creditors.

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38. Amended by sections 39 and 50.
39. Amended by section 50.
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61. Repealer.

**I. Assignment, how to be made, and its effect.**

**An act to secure to creditors an equal and just division of the estates of debtors who convey to assignees for the benefit of creditors.**

Revision—Approved March 27, 1874.

**1.** 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 dis-

Rev. 674.

Har. 211.

R. S. 318.

P. L. 1842, p. 90.

" 1855, p. 58, 250.

" 1856, p. 106.

" 1858, p. 35.

" 1863, p. 5.

" 1870, p. 54.

Of assignments by debtors.

77-1
RWS90-179
Rev90-146

What preferences void.

Debtor's inventory and list of creditors.

Inventory not conclusive.

78-2  
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tribution; (a) 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 (b) and judgment creditors, when the judgment has not been by confession for the purpose of preferring creditors. (c)

2. 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.

## II. Duties of, and proceedings by assignee, and exception to claims.

3. [This section amended by Secs. 37 and 49, *post.*]

Deed of assignment to be recorded.

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

5. [This section amended by Secs. 38, 39 and 50, *post.*]

Exceptions, notice and hearing.  
P. L. 1855, p. 59.

6. 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 orphans' court of the county wherein such proceedings have been had, and to file exceptions to the claim or demand of any creditor, (d) exhibited as aforesaid, and said court shall cause a notice to be served on said creditor, said notice to be served in such mode as the said court may direct, and said court shall then proceed to hear the proofs and allegations of the parties, at the same or any subsequent term, subject to an appeal by any party interested, as in other cases of appeal from any order of the orphans' court, if an appeal be demanded within thirty days after decree made; and in case of such hearing before the orphans' court, the

(a) If the debtor execute the assignment, annex the inventory and list of creditors and deliver it to the assignee, who receives it, the assignment is complete and the estate vested in the assignee, although the deed was not acknowledged. *Scull v. Reeves*, 2 Gr. Ch. 84. The assignment must be for the equal benefit of all the creditors, and create no preference. *Varnum v. Camp*, 1 Gr. 326. *Brown v. Holcomb*, 1 Stock. 297. *Fairchild v. Hunt*, 1 McCart. 367. But if the preferences are not made in and by the deed of assignment, they will not invalidate the assignment. *Garretson v. Brown*, 2 Dutch. 425. It conveys all the debtor's property, real and personal, whether embraced in the inventory or not. *Garretson v. Brown*, 2 Dutch. 425. *Hays v. Dotne*, 3 Stock. 84. Whatever rights the debtor may have in the property of his wife will pass. *Outcall v. Van Winkle*, 1 Gr. Ch. 513. The equity of redemption in mortgaged premises will vest. *Van Keuren v. McLaughlin*, 6 C. E. Gr. 163. The assignment will be void if the debtor retains any control over the property. *Pritchett v. Newbold*, Sax. 571. *Owen v. Arvis*, 2 Dutch. 23. *Stokes v. Middleton*, 4 Dutch. 32. *Fairchild v. Hunt*, 1 McCart. 367. *Emerick v. Hartan*, 1 Beas. 229. It may contain a stipulation that the claims of creditors against him shall be extinguished. *Owen v. Arvis*, 2 Dutch. 23. But the terms dictated must not be at variance with the statute. *Knight v. Pucker*, 1 Beas. 214. Property subsequently acquired will not vest in the assignee. *Vanderveer v. Conover*, 1 Har. 487. Nor property conveyed by the debtor to defraud his creditors. *Van Keuren v. McLaughlin*, 6 C. E. Gr. 163. A vendor's lien for purchase-money is not affected by the vendee's assignment. *Hilger v. Dunn*, 2 Gr. Ch. 397. A trust must be created, hence the act does not extend to a single transfer to a creditor in payment of a debt. *Tittou v. Britton*, 4 Hal. 121. A debtor may always prefer a creditor. *Hendricks v. Mount*, 2 South. \*743 (b). *Owen v. Arvis*, 2 Dutch. 43. *Chapman v. Hunt*, 1 McCart. 150. *Vreeland v. Jacobs*, 4 C. E. Gr. 235. *Sullivan v. Sullivan*, 6 C. E. Gr. 126. *Benedict v. Benedict*, 2 McCart. 150. An assignment made once made is irrevocable. *Scull v. Reeves*, 2 Gr. Ch. 84, 131. Proceedings when an assignment includes both partnership and individual debts. *Scull v. Alter*, 1 Har. 147. An assignment made by an incorporated company, although insolvent, is void. *American Ice Machine Co. v. Paterson Co.*, 7 C. E. Gr.

72. A voluntary assignment made by a non-resident debtor, which is valid by the law of the place where made, cannot be impeached in this state with regard to property situated here, by non-resident creditors, on the ground that such assignment is incompatible with the statute of this state. *Bentley v. Whittemore*, 4 C. E. Gr. 462. *Moore v. Bonnell*, 2 Vr. 90. See *Varnum v. Camp*, 1 Gr. 326. *Frazier v. Fredericks*, 4 Zab. 162. *Fairchild v. Hunt*, 1 McCart. 367. and *Chapman v. Hunt*, 3 C. E. Gr. 414. An involuntary assignment (under the laws of another state) including real estate situate in New Jersey, will not be carried over to the prejudice of creditors residing here. *Hutchinson v. Peshone*, 1 C. E. Gr. 167. *Winans v. Graves*, 16 Stew. 263. Destruction of deed does not divest the assignee of an estate thereby granted to him. *Alpaugh v. Roberson*, 12 C. E. Gr. 96. See *Woodside v. Adams*, 11 Vr. 417. *Evans v. Walsh*, 12 Vr. 281. See *v. Zabriskie*, 1 Stew. 422. Debtor has right to give one or more of his creditors preference over the others, but it must be exercised for honest ends and according to legal methods. *Livermore v. McNeil*, 7 Stew. 478. Creditor has right to have his debtor's property applied to the discharge of his debts by due course of law. *Livermore v. McNeil*, 7 Stew. 478. As to conveyance by an insolvent debtor of property to a trustee for the benefit of creditors when conveyance is not in the form contemplated by above act, see *Muchmore v. Burt*, 24 Vr. 369. *Sites v. Champion*, 4 Dick. 446. *North Ward National Bank v. Conklin*, 6 Dick. 7.

(b) Where the bona fides of a mortgage is not disputed, and the assignee sells the property, the mortgagee has an equitable lien on the proceeds of the sale for the payment of the amount due on the mortgage. *Doughton v. Gray*, 2 Stock. 323. See *Bell v. Fleming*, 1 Beas. 490. *Van Vliet v. Jones*, Spen. 340.

(c) The judgment must have been confessed in contemplation of an assignment, and with a view of giving a preference. *Moses v. Thomas*, 2 Dutch. 125, 570. *Garretson v. Brown*, 2 Dutch. 425. *Vanderveer v. Conover*, 1 Har. 490. *Fols v. New Jersey Arms and Ordnance Co.*, 2 C. E. Gr. 519. See *Mann v. Drost*, 3 Har. 336.

(d) An assignee must, within the time limited by statute, except to any duly-presented claim which he deems doubtful. *Müller v. Mulford*, 4 Stew. 661.

evidence and proceedings before the orphans' court, upon the application of either party, shall be reduced to writing by the register of the court.

7. That it shall and may be lawful for the assignee or assignees, or any creditor or other person interested in any account to which exceptions have been filed as aforesaid, who may desire a trial by jury, to ask for and demand such trial, whereupon the orphans' court, in which such exceptions shall be filed, shall certify said exceptions, and the account excepted to, into the circuit court of the county, to be tried in a summary way by a jury before said court, under such rules as the said court may from time to time prescribe; and the verdict, unless set aside by a new trial granted by said circuit court, shall be returned to the said orphans' court, with the certificate of said circuit court, to be there proceeded on according to law. (a)

May be tried by jury. *Ib.*

8. That at the first term of said court succeeding the expiration of the time fixed for filing the list of creditors, and of giving notice to creditors 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 (b) 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, (c) 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 errors, provided that the wages of clerks, minors, mechanics and laborers, due at the time of making such assignment, from the person or persons making the same, shall be preferred debts, and shall be first paid by said assignee before any other claim or debt shall be paid; and provided further, that no payment shall be made as a preferred debt to any one person to an amount exceeding three hundred dollars.

Dividends to be made.

Final account.

Exceptions thereto. P. L. 1855, p. 59.

9. That in all assignments by debtors for the benefit of creditors, hereafter to be made, under and by virtue of this act, there shall be reserved of the goods and chattels of any such debtor having a family, goods and chattels to the value of two hundred dollars, and all wearing apparel for the use of said debtor and his family, against all creditors, whether the same be reserved by the terms of the said deed of assignment or not; and it shall be the duty of the assignee or assignees, as soon after the assignment is executed as conveniently may be, to cause a just and true appraisal of the debtor's goods and chattels to be made, under oath or affirmation, to be taken before any person authorized to administer an oath, by three discreet and judicious persons to be selected by such assignee or assignees, at their actual value, and to set apart for the use of said debtor and his family, such of the goods and chattels as he may select from such appraisal, not exceeding in value the said sum of two hundred dollars; which said appraisers shall be allowed for their services fifty cents each, to be paid by the assignee or assignees, and allowed in his or their accounts.

Goods reserved to debtor. Act Feb. 6, 1858, P. L. p. 35.

10. 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 favor of the landlord, not exceeding one year's rent, shall be first paid and

Rent to be paid.

(a) On the trial before the jury of such disputed claim, founded on a promissory note upon which judgment was confessed and afterwards set aside on the ground of fraud, the same note and its consideration may be proved before the jury. *Mann v. Prost*, 3 Har. 338. See *Van Fleet v. Jones*, *Spen*, 340.

(b) No order of the court is necessary; the creditor must apply to the assignee. *Tomlinson v. Smallwood*, 2 *McCurt*, 236. Pre-

senting a claim as a creditor, is coming in for a dividend. *Van derveer v. Conover*, 1 Har. 487. *Lee v. Cole*, 17 *Stew. Eq*, 318.

(c) The orphans' court settle as to the manner in which the assignees have discharged their trust. *Eakin v. Cattell*, 1 Har. 103. Under what circumstances equity will interfere after such settlement. *Hays v. Doane*, 3 *Stock*, 34.

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. (a)

Landlord may  
distrain.

**11.** 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.

Lands of debtor,  
how sold.

**12.** That whenever any assignee or assignees, as aforesaid, shall sell any real estate of such debtor or debtors, which is conveyed in trust as aforesaid, he or they shall proceed to advertise and sell the same in such 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. (b)

Powers of  
assignees.

**13.** 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, everything 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. (c)

Proceedings in  
case of death of  
assignee.

**14.** 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 first given additional surety for their faithful performance as aforesaid.

In case of death  
of surety.

**15.** 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.

Court may order  
new security.

**16.** That whenever the security given by any assignee under and by virtue 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 deem proper; and if it should appear upon examination, that any assigned

(a) The goods of one of three joint lessees are bound. *Hoskins v. Paul*, 4 Hal. 110.

(b) A sale of valuable property by assignees, without notice, is an evidence of fraud. A reasonable notice and some description of the character of the property should be given. *Hays v. Doane*, 3 Stock. 84.

(c) A court of equity may declare an assignment fraudulent from the character of the assignee. *Hays v. Doane*, 3 Stock. 84. Where a receiver has been appointed upon the application of judgment creditors, and an assignment made by the judgment debtor, the proper way to determine the rights of the assignee would be by a suit brought by the receiver to recover the property. *Journey v. Brown*, 2 Dutch. 111. Money due at the time of the assignment to the assignor from a purchaser to whom he had assigned his property to defraud creditors, will belong to the assignee. *Van Keuren v. McLaughlin*, 6 C. E. Gr. 163. A purchaser under a conveyance by the assignee, takes the property subject to all legal incumbrances. *Van Doren v. Todd*, 2 Gr. Ch. 397. Where a testator directed his executors to deduct from any child's share the amount due him from such child, and one child had made an assignment during testator's life, the claim of the executors was held paramount to that of the assignee. *Smith v. Smith*, 2 Beas. 164. After a lapse of eleven years the trust will be presumed to

be executed. *Den v. Manning*, Spen. 612. See *Campbell v. Zabriskie*, 4 Hal. Ch. 356, 738. If the debtor has fraudulently conveyed away any part of his property, the assignee may sue for and recover it for the use of the applying creditors. *Garretson v. Brown*, 2 Dutch. 425. The assignees of a partnership can maintain a suit in equity to set aside a conveyance of real estate belonging to the firm, made by one of the partners to secure his individual debt. *Mattack v. James*, 2 Beas. 126. An assignee can maintain an action in his own name to recover the price of goods of the insolvent sold by him. *Rush v. Hance*, Pen. \*890. If assignee refuses to take proceedings to set aside conveyances by the assignor in fraud of his creditors, a judgment creditor may institute such proceedings. *Lee v. Cole*, 17 Stew. 313. Assignees may set aside conveyances by the assignor in fraud of creditors to the extent that such property is needed for the payment of debts. *Pillsbury v. Kingston*, 6 Stew. 287. One whose debtor has made an assignment for benefit of creditors, may, after neglect on part of the assignee to take proceedings to discover property belonging to the debtor, and having established his claim by judgment, institute such proceedings himself. *Hamlen's Administrator v. Bennett*, 7 Dick. 70. See *Arnell v. Trimmer*, 16 Stew. 489. *Graham Bolton Co. v. Spelman*, 5 Dick. 127. *Smith's Administrator v. Wood*, 15 Stew. 563.

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 fulfill 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.

17. That in all cases arising after the passage of this act, the inventory and list of creditors with the statement of claims required to be filed by the assignee or assignees as aforesaid, shall be proved before the surrogate of said county, and be recorded by him in a book to be provided for that purpose, and to be called "assignee's book," and for the taking proof of such inventory and list, and for the recording thereof, the surrogate shall be entitled to the same fees as are allowed by law for like services in relation to inventories of the property of deceased persons.

Inventory to be recorded.  
P. L. 1863, p. 5.

Surrogate's fees.

18. 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. (a)

Commissions, and allowance.

19. 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 of judges, &c.

### III. Effect of assignment upon creditors.

20. [This section amended by Sec. 29, *post*.]

21. 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. (b)

What debts discharged.

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

Debts not due allowed.

### IV. General provisions.

23. 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 final settlement and distribution as aforesaid. (c)

Assignees, how compelled to proceed.

(a) Commissions allowed shall be such in amount as the court shall consider just and right with reference to actual pains, trouble and risk in settling the estate rather than in respect to quantum of the estate. *Stiker v. Fisher*, 18 *Stew. Eq.* 132.

(b) If a creditor accepts a dividend in discharge of his debt he cannot recover the balance. *Roff v. Roff*, *Pen.* \*418 (c). So, although holding a judgment, such creditor cannot issue execution against property of the debtor acquired after the assignment. *Vanderweir v. Conover*, 1 *Har.* 487. But if the creditor have a lien by execution upon the property of the debtor, such lien is not lost by his applying. *Moses v. Thomas*, 2 *Dutch.* 125. Nor will a mortgage be considered as abandoned. *Bell v.*

*Fleming*, 1 *Beas.* 14, 490. *Van Vliet v. Jones*, *Spen.* 340. The design of this section is to relieve the debtor from all personal liability for debts upon which the creditor demands or accepts a dividend. *Id.* See *Owen v. Arvis*, 2 *Dutch.* 23. A widow, whose provision in lieu of dower by a marriage settlement had failed, elected to come in as a creditor under the covenant contained in the settlement, she is thereby barred from claiming dower. *Camden Ins. Co. v. Jones*, 8 *C. E. Gr.* 171. *Ordinary v. Dean*, 15 *Vt.* 64.

(c) The orphans' court cannot grant relief in case of a fraud by the assignee in the sale of the debtor's property. *Hays v. Doane*, 3 *Stock.* 84. *Hoagland v. See*, 13 *Stew. Eq.* 469.

## ASSIGNMENT.

## V. Supplements.

## Supplement.

Approved March 4, 1879.

P. L. 1879, p. 73.

Inventory may be verified before any officer qualified to administer oaths.

**24. SEC. 1.** That any inventory and valuation or list of creditors and statement of claims filed by an assignee, verified by oath taken before any foreign commissioner of deeds for New Jersey, or by any other officer qualified by the laws of this state to administer oaths and affirmations, shall be deemed to have been sufficiently proved, although such oath was not taken before the surrogate.

## Supplement.

Approved February 23, 1880.

P. L. 1880, p. 46.

Assignees may make re-assignments and reconveyances of property, &c., when compromise has been made with creditors.

**25. SEC. 1.** That whenever any debtor or debtors, who shall have made an assignment under the provisions of the act to which this is a supplement, shall make a compromise or composition with his or their creditors, it shall be lawful for the assignee or assignees in such case, to make a re-assignment and reconveyance to said debtor or debtors, of all the property, real and personal, which was assigned to him or them, and of the proceeds of any of said assigned property which he or they shall have disposed of, upon compliance with the provisions of this act. [See Sec. 47, *post.*]

On petition for relief, court shall make order for creditors to meet and show cause why compromise should not be confirmed.

**26. SEC. 2.** That in every such case the said debtor or debtors shall, within one year after the date of said assignment, file in the orphans' court of the proper county, a petition, duly verified by the oath of such debtor or debtors, setting forth the particular manner in which such compromise or composition shall have been made, and shall have annexed thereto a copy of the composition, agreement and the signatures thereto, and shall pray for such relief as may be granted under the provisions of this act; and the court shall thereupon make an order that all the creditors of the said debtor or debtors shall appear on a certain day therein named, and show cause, if any they have, why the said compromise agreement should not be confirmed and allowed, and the said assignee or assignees be directed to reconvey and re-assign the property so as aforesaid assigned to him or them.

Order to show cause to be published and mailed.

**27. SEC. 3.** That said order to show cause shall be published for three weeks, at least once in every week, in such newspaper or newspapers as the court may select, and that the said assignee or assignees shall cause copies thereof to be mailed, with the postage prepaid, to every known creditor, at least ten days before the return day of said order.

Court may order compromise confirmed and allowed and the assignee to reconvey and re-assign all property.

**28. SEC. 4.** That said court, on the return day of said order, or on such adjourned day as it may appoint, on being satisfied, by affidavit or otherwise, that the requirements of this act in relation to the publication of said order to show cause, and the mailing of copies thereof as is directed by the next preceding section hereof, have been complied with, and upon being further satisfied by due proof that the signatures to the said compromise agreement are genuine, and that the same has been executed and signed pursuant to the terms thereof by all the creditors of said assignor, may order that the said compromise and composition be confirmed and allowed, and that the said assignee or assignees do, within such time as said order shall specify, reconvey and re-assign to said debtor or debtors all the said assigned property and the proceeds thereof, and the said order may contain such directions regarding the said reconveyance and re-assignment as shall comport with the terms of said compromise agreement.

## Supplement.

Approved February 21, 1884.

P. L. 1884, p. 27.

When creditor barred.

**29. SEC. 1.** That the twentieth section of said act [see Rev. p. 40] be amended so as to read as follows:

[If any creditor shall not exhibit his, her or their claims within three months from the date of such assignment, or within such other time as may be fixed by the court in accordance with the fifth section of this act, such claims 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 estates not accounted for by the assignee or assignees before distribution, in which case such barred creditor shall be entitled to a ratable proportion therefrom.] (a)

**30. SEC. 2.** That this act shall not apply to the case of any assignment heretofore made, but that in any such case the court may by order limit the time for exhibiting claims to a period not less than three months from the date of the assignment nor more than three months from the date of the order. (b)

Act not to apply to assignment heretofore made.

Supplement.

Approved April 4, 1884. P. L. 1884, p. 128.

**31. SEC. 1.** That whenever, in the case of an assignment heretofore made or hereafter to be made, under the provisions of the act to which this is a supplement, any creditor or creditors shall have omitted to file his, her or their claim or claims within the time limited by law, and a final dividend shall not yet have been declared, it shall be lawful for such creditor or creditors, at any time prior to such final dividend being declared, to present his, her or their claim or claims to the assignee under such assignment, and in case of any such claims so being presented as aforesaid, it shall be entitled to share in any dividend which may be declared after it is presented.

Creditor may present claim to assignee any time before final dividend.

**32. SEC. 2.** That such filing shall not entitle such claim to any share in any dividend which may have been declared before it is presented to the assignee, although such dividend may not have been at that time paid.

Claim not to share in dividend declared before presentment.

**33. SEC. 3.** That such claim, when presented, shall be subject to all exceptions and objections by the assignee that a claim filed in time would be subject to at his hands, and shall be proceeded with and adjudicated upon in the same way as is provided for claims filed in time by the act to which this is a supplement.

When presented, subject to exceptions, &c.

**34. SEC. 4.** That such claims, so filed out of time, shall not be entitled to receive any adjustment by virtue of dividends declared prior to their presentation, nor to receive any share of such prior dividends, but shall only share in dividends subsequently declared.

Claims to share only in dividends subsequently declared.

**35. SEC. 5.** That this act shall include and cover claims of corporations as well as persons.

Claims of corporations included.

**36. SEC. 6.** That all creditors who shall present their claims under this act shall be wholly barred from having afterwards any action or suit at law or in equity against such debtor or debtors or their heirs or legal representatives upon or by virtue of the demands included within the claims so presented as aforesaid, as completely as if said claims had been exhibited under the act to which this is a supplement.

Creditors presenting claims under this act barred from any action or suit.

Supplement.

Approved April 15, 1884. P. L. 1884, p. 183.

**37. SEC. 1.** [This section, amending section 3, *ante*, is amended by section 49, *post*.]

**38. SEC. 2.** [This section, amending section 5, *ante*, is amended by sections 39 and 50, *post*.]

Supplement.

Approved February 15, 1886. P. L. 1886, p. 29.

**39. SEC. 1.** [This section amended by section 50, *post*.]

(a) The ratable proportion due such creditor is in the first place to be paid on his claim the same percentage as the other creditors have received, who duly presented their claims, and then to have the residue of such newly-found property distributed equally between him and such creditors. *Van Keuren v. McLaughlin*, 6 C. E. Gr. 164. Judgment creditor of a debtor who had assigned for benefit of creditors, although he may not have presented his claim to the assignee, may apply to the court of chancery to secure the due execution of the assignee's trust.

*White v. Davis*, 3 Dick. 22. *Smith's Administrator v. Wood*, 15 Stew. Eq. 563. *Hamden's Administrator v. Bennett*, 7 Dick. 70.  
(b) This act was passed in disregard of the constitutional provision prohibiting the reviving or amending of acts by reference to their titles only, and requiring that the act revived or the section or sections amended shall be inserted at length. It is evidence, however, of the intention of the legislature in passing the original act, and is a construction put by it upon that act. *Metropolitan Bank v. Morehead*, 11 Stew. Eq. 500.

## ASSIGNMENT.

## Supplement.

Approved February 13, 1888.

P. L. 1888, p. 26.

Conveyance or assignment by debtor, what to state.

**40. SEC. 1.** That in every conveyance or assignment, made by a debtor or debtors under the provisions of the act to which this is a supplement, the debtor or debtors shall state in said conveyance or assignment specifically the place at which and the kind of business carried on by him, her or them at the time of the making of the conveyance or assignment; and if the same be carried on in a city, the street and number thereof, and if in a town, borough or village, such apt description as shall identify the debtor or debtors so making the conveyance or assignment as aforesaid.

## Supplement.

Approved March 1, 1888.

P. L. 1888, p. 122.

Assignees may make sale of lands at private sale.

**41. SEC. 1.** That it shall and may be lawful for any assignee or assignees to whom any land shall be or shall have been conveyed, by any debtor or debtors for the benefit of creditors, to make sale of the whole or any portion of the lands so conveyed, at private sale, under the order and direction of the court of chancery.

Proceedings for such sale.

**42.** That in all cases where any assignee or assignees as aforesaid shall deem it to be for the best interest of the creditors of the assigned estate to make sale of the whole or any portion of the lands so assigned, at private sale, it shall and may be lawful for such assignee to apply by petition to the court of chancery, setting forth the date and place of record of the deed of assignment, a description of the lands proposed to be sold, the fair market value thereof, and the name of any proposed purchaser, if such there be, with the price which such purchaser proposes to pay for the same, and that in the judgment of the said assignee or assignees the interest of the creditors of the assignor will be benefited by a sale of such lands at private sale, and that such assignee or assignees hath or have no interest, directly or indirectly, in the sale or purchase of such lands except to benefit the creditors of such assignor or assignors; which petition shall be verified by the affidavit of such assignee or assignees, which affidavit shall, in addition to verifying the facts stated in such petition, generally, particularly set forth that in the judgment of such assignee or assignees, the interests of the creditors of such assignor or assignors will be benefited by a sale of such lands at private sale, and that such assignee or assignees hath or have no interest, directly or indirectly, in the sale or purchase of such lands, except to benefit the creditors of such assignor or assignors.

Notice of application for order to be published.

**43. SEC. 3.** That such assignee or assignees shall give public notice, by advertisement published for two weeks next preceding the day on which such order will be applied for, in two newspapers of the county or counties in which said lands may lie, setting forth briefly the location and description of said lands and the time and place when and where such order will be applied for; if it shall appear to the court of chancery that such notice has been given, and that the facts stated in said petition and affidavit are true, and no cause being shown to the contrary, it shall and may be lawful for said court forthwith to make an order directing such assignee or assignees to make sale at private sale of such lands, assigned as aforesaid, at a sum not less than a price or prices to be prescribed by said court, which sale, when so made, shall be reported by such assignee or assignees to said court, and upon being confirmed by said court, such assignee or assignees shall execute and deliver a deed or deeds to the purchaser or purchasers of such lands, and such deed or deeds when delivered as aforesaid shall vest in the purchaser or purchasers of such lands so sold the same and no other estate or interest in said lands as would have passed to such purchaser or purchasers had such land or lands been sold at public sale by such assignee or assignees after due advertisement thereof.

Court authorized to issue order.

Sale of lands heretofore made by assignees may be confirmed by court.

**44. SEC. 4.** That in all cases where any lands have been heretofore sold or conveyed by any assignee or assignees for the benefit of creditors at private sale, it shall and may be lawful for such assignee or assignees,

upon like notice of intention to apply to said court of chancery in the manner aforesaid, to apply by petition to said court, setting forth the several matters hereinbefore stated, which petition shall be verified as aforesaid, and upon the filing of such petition, and due proof of the publication of the notice hereinabove required, if no cause be shown or appear to the contrary, and if the said court shall be of the opinion that the sale or conveyance of said lands heretofore made at private sale by such assignee or assignees was made at the fair market value thereof at the time of such sale, that such sale was beneficial to the interests of the creditors of said assigned estate, and that such assignee or assignees had and hath no interest in the sale or purchase of the lands so sold at private sale, except to benefit the creditors of such assignor or assignors, it shall and may be lawful for said court to confirm said sale, and upon such confirmation, when made as aforesaid, the deed or deeds heretofore made by said assignee or assignees for such lands so sold shall have the same force and effect, and no other, as if said sale or sales and conveyance or conveyances had been made in accordance with the provisions of the preceding section of this act.

Supplement.

Approved April 12, 1888. P. L. 1888, p. 422.

45. SEC. 1. That at any time within two years from the making of any assignment heretofore made, it shall be lawful for the assignee or assignees, or any creditor or other person interested, by himself or attorney, to appear at any term of the orphans' court of the county wherein such proceedings shall have been had or hereafter to be had and to file exceptions to the claim or demand of any creditor, or to the final account of the assignee or assignees; and where fraud or any irregularity is shown, the said orphans' court shall cause a notice to be served on said creditor or assignee or assignees, said notice to be served in such manner and mode as the said court may direct, and thereupon the said orphans' court shall have full and complete jurisdiction to hear and determine the same. (a)

When assignee or creditor may file exceptions to claim of creditor or final account of assignee.

46. SEC. 2. That all acts and parts of acts inconsistent with the provisions of this act be and the same are hereby repealed, and this act be deemed a public act and take effect immediately.

Repealer.

Supplement.

Approved March 27, 1891. P. L. 1891, p. 247.

47. SEC. 1. That the term "creditors," used in said supplement, approved February twenty-third, one thousand eight hundred and eighty, shall be held to comprise only those creditors who were such at the time of the making of the assignment, and who filed their claims within the time limited by law.

Term "creditors" to comprise whom.

Supplement.

Approved March 10, 1893. P. L. 1893, p. 203.

48. SEC. 1. That it shall be lawful for the assignee or assignees of any debtor or debtors to make sale and conveyance of the real estate of such debtor or debtors at public or private sale in his or their discretion, but that such assignee or assignees shall not make any conveyance of such lands to any purchaser at a private sale thereof until such sale shall have been reported in writing to the orphans' court of the county in which such lands lie, and have been confirmed by the said court.

Sales of land by assignees shall be confirmed by court.

Supplement.

Approved April 12, 1894. P. L. 1894, p. 58.

49. SEC. 1. That section three of the act to which this act is a supplement, be and the same is hereby amended so as to read as follows:

Assignees shall publish notice of assignment.

(a) The fraud or irregularity necessary to authorize the court to direct the giving of notice may be shown *ex parte* by affidavit. *Lippincott v. Snowden*, 3 Dick. 257.

Claims must be presented within three months thereafter.

Copy of notice shall be mailed to each creditor.

Inventory and valuation shall be made.

Assignees shall give bond.

Inventory and valuation shall be filed in surrogate's office.

List of creditors who have proved claims with statements thereof, &c., shall be filed with surrogate.

Upon failure to file lists, &c., court may extend time.

P. L. 1894, p. 134.

What bond shall be given by assignee.

[That the said assignee or assignees shall forthwith give public notice by advertising at least once a week for four weeks successively in one of the newspapers printed in this state, circulating in the neighborhood where such creditors reside, making known thereby that such assignment has been made, and when made, and that all claims of creditors against said estate must be presented under oath or affirmation (a) to the said assignee or assignees within three months from the date of said assignment or be forever barred from coming in for a division of said estate otherwise than hereinafter provided; and the said assignee or assignees shall also, within thirty days after the recording of said deed of assignment, mail a copy of said notice, with postage prepaid, to every known creditor of said assignor or assignors, addressed to such creditor at his usual post-office address; and the said assignee or assignees shall 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.] (b) [See Sec. 52, post.]

50. SEC. 2. That section five of the act to which this act is a supplement, be and the same is hereby amended so as to read as follows:

[That at the expiration of three months from the date of said assignment the said assignee or assignees shall file with the surrogate of the county wherein such debtor or debtors reside at the time of making such assignment, a true list, under oath or affirmation, of all such creditors of said debtors as shall have proved their claims as such before him, (c) with a true statement of their respective claims and due proof of the publication of said assignment and the mailing of notice thereof as hereinbefore prescribed, which proof shall give in detail the names of the persons to whom, with the respective addresses to which, and time when such notices were mailed, and such other facts as show a full compliance with this law, and in case of failure to file said list, or give such notice, or mail the same, or to file proofs of the publication and mailing of said notice, the orphans' court of said county may extend and fix the time for that purpose.]

#### Amendatory act.

Approved April 24, 1894.

51. SEC. 1. That from and after the passage of this act the assignee or assignees shall, upon filing the inventory required by law, then and there enter into bond to the ordinary of this state, in such amount as the orphans' court of the proper county, or any judge thereof, may approve, with sufficient security for the faithful performance of the trust, which bonds shall be filed in the office of the surrogate of the proper county.

(a) An affidavit of indebtedness taken before a justice of the peace of Pennsylvania is insufficient. *Scully v. Allen*, 1 Har. 147. A legatee cannot come in as an applying creditor under an executor's assignment. *Crist v. Horis*, 1 Beas. 84. See *Neotus v. Disborough*, 1 Gr. 343. Proceedings where, after an assignment and payment of the creditors who applied within three months, and another assignment of the amount remaining in the assignee's hands, a creditor applies under the first assignment. *Wilson v. Brown*, 1 Beas. 246.

(b) A claim forwarded to an assignee by mail, which ought to have been delivered at five o'clock in the afternoon of the last day limited for filing claims, but was not, in fact, delivered until the next day—held, neither "presented" nor "exhibited" to the assignee within the terms of the statute, within the time limited. *Ellison v. Lindsey*, 6 Stew. Eq. 258. The orphans' court has no power to relieve such creditor, even though the omission to file the claim in due time arose from mistake. *Id.*

Assignees under the assignment act are representatives of creditors, and may file a bill to set aside a prior conveyance of lands made by the assignor for the purpose of defrauding his creditors. *Pillsbury v. Kingon*, 6 Stew. Eq. 287. See *Metropolitan Bank v. Morehead*, 11 Stew. Eq. 499. Filing an unverified bill in chancery for discovery of trust funds in the hands of an executrix, and to follow such funds into certain lands claimed to have been bought by her testator with such funds, is not such a presentation of the claim, under an order of limitation made by the orphans' court, as entitles complainants to participate with the creditors who have duly presented their claims in the division of the assets of the estate, which is insolvent, although filed before expiration of time limited. *Robins v. Arnold*, 15 Stew. Eq. 511.

(c) A creditor may maintain a bill in equity for fraud by the assignee, although such creditor may not have put in his claim. *Hays v. Doane*, 3 Stock. 84.

Supplement.

Approved March 22, 1895. P. L. 1895, p. 615.

**52. SEC. 1.** That it shall be lawful for the orphans' court of any county in this state in which the debtor who has made a conveyance to assignee or assignees under the provisions of the act to which this is a supplement resides, upon the application of such assignee or assignees to make an order fixing a time not less than four weeks from the date of said order, requiring creditors to present their claims against the said debtor, under oath or affirmation, to the said assignee or assignees, or else to be forever barred from coming in for a dividend of said estate, unless by special order of the said court on an application made to it for that purpose; *provided, however,* notice of said order shall be published in some newspaper, designated in and by said order of the court, for such time as may be therein designated, which shall not be less than three weeks before the expiration of the time limited in and by said order.

Time for presenting claims may be limited by order of court.

**53. SEC. 2.** That within thirty days after the time limited for the presentation of claims as aforesaid, the said assignee or assignees shall file in the office of the surrogate of the county a true list of all the claims which had been presented to him or them, as provided in the foregoing section, which said list of claims shall be verified under oath or affirmation.

When assignee shall file claims.

**54. SEC. 3.** That it shall and may be lawful for the said orphans' court, upon application being made to said court by said assignee or assignees, to order a sale and conveyance of any of the property of said debtor, either public or private, as may seem in the judgment of said court best for the interest of said estate, and the giving of good and sufficient conveyance in the law therefor, and authorizing and empowering the said assignee or assignees to take such steps as to the care, management and disposition of said assigned estate as a court of equity might do if the same had been in the custody and management of a receiver appointed by said court.

Court may order sale and conveyance of property.

**55. SEC. 4.** That all acts and parts of acts inconsistent with this act be repealed, and this act take effect immediately.

Repealer.

VI. Miscellaneous acts.

**An act limiting the time for commencing actions against assignee of any person or persons making an assignment for the benefit of his or their creditors.**

Approved March 12, 1880. P. L. 1880, p. 254.

**56. SEC. 1.** That all actions of trespass or replevin, or other action whatsoever, against the assignee, as such, of any person or persons making an assignment for the benefit of his or their creditors, under the laws of this state, in that behalf, shall be commenced and sued within nine months from and after the date of said assignment, and not afterwards.

Actions of trespass or replevin to be commenced and sued within nine months after assignment.

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**57. SEC. 2.** That all persons now having any right of action against the assignee, as such, of any person or persons who may have made an assignment for the benefit of his or their creditors, prior to the passage of this act, shall commence and prosecute such action within nine months from and after the passage of this act, and not afterwards.

Rights of action to be commenced and prosecuted within nine months.

**58. SEC. 3.** That nothing in this act contained shall be construed to affect or relate to the proceedings in the orphans' court on the filing of the final account of any such assignee, as now provided by law.

Act not to relate to final account.

**59. SEC. 4.** That all acts or parts of acts inconsistent with the provisions of this act be and the same are hereby repealed, and that this shall be a public act and take effect immediately.

Repealer.

**An act relative to assignments for the benefit of creditors.**

Passed June 1, 1886. P. L. 1886, p. 387.

**60. SEC. 1.** That in any assignment for the benefit of creditors heretofore made or hereafter to be made, the final account of the assignee shall be

Final account of assignee, when to be made.

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made within one year after the final dividend shall have been made of the assets of such estate, or within such further time as the orphans' court of the county wherein the proceedings have been had shall grant.

Repealer.

**61. SEC. 2.** That all acts and parts of acts inconsistent with this act be and the same hereby are, to the extent of such inconsistency, repealed.

## Athletic Associations and Clubs.

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| <ol style="list-style-type: none"> <li>1. Election of officers and powers of associations.</li> <li>2. Certificate of corporate name to be filed.</li> <li>3. Estate vested in corporation.</li> <li>4. Authority to make by-laws.</li> <li>5. Mode of appointing officers.</li> <li>6. Section amended by section 27.</li> <li>7. Admission fees, annual dues, &amp;c.</li> <li>8. What associations may incorporate under this act.</li> <li>9. Unincorporated organizations may incorporate.</li> <li>10. Act may be altered or repealed.</li> <li>11. Limit of number of members.</li> <li>12. Association may issue stock for property purchased.</li> <li>13. What certificate to be filed shall contain.</li> <li>14. Association may issue stock for property purchased.</li> <li>15. What certificate to be filed shall set forth.</li> <li>16. Associations may consolidate.</li> <li>17. Consolidation, how effected.</li> <li>18. Adoption of constitution and by-laws, &amp;c.</li> <li>19. Corporate certificates to be filed upon consolidation.</li> <li>20. Rights and privileges of consolidated association.</li> <li>21. Membership.</li> <li>22. Clubs authorized to consolidate.</li> <li>23. Name of association may be changed or mistake in certificate of incorporation corrected.</li> <li>24. Corporate rights and powers.</li> <li>25. Associations may issue shares for building purposes.</li> <li>26. Control of funds vested in board of trustees.</li> </ol> | <ol style="list-style-type: none"> <li>27. Objects of incorporation.</li> <li>28. Repealer.</li> <li>29. Consolidation of yacht clubs, &amp;c.</li> <li>30. Consolidation, how effected.</li> <li>31. Consolidated corporation may issue scrip and bonds.</li> <li>32. Election of directors.</li> <li>33. Powers of board of directors.</li> <li>34. May adopt constitution and by-laws.</li> <li>35. Act, how construed.</li> <li>36. Membership and quorum in consolidated club.</li> <li>37. May institute suits to recover fines, &amp;c.</li> <li>38. Repealer.</li> <li>39. Incorporation of state leagues, &amp;c.</li> <li>40. Property vested in trustees or representatives.</li> <li>41. Constitution and by-laws authorized.</li> <li>42. Election of trustees, &amp;c.</li> <li>43. Objects of incorporation of state leagues, &amp;c.</li> <li>44. Division of capital stock of schuetzen associations.</li> <li>45. Who may vote in such associations.</li> <li>46. Power of members as voters.</li> <li>47. Number necessary to constitute a quorum.</li> <li>48. One-half of directors to be resident of this state.</li> <li>49. Division of capital stock of schuetzen associations.</li> <li>50. Repealer.</li> <li>51. Purchase of lands by shooting societies validated.</li> <li>52. Acts of officers of shooting societies validated.</li> </ol> |
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### An act to incorporate boat clubs and other associations for the promotion of athletic exercises. (a)

P. L. 1876, p. 269.

Election of trustees and officers.

Approved April 24, 1876.

**1.** That every association of persons, not exceeding five hundred in number, associated for the encouragement and practice of boating, yachting, ball-playing, or other moral and healthful physical exercise, be and they hereby are authorized, at any regular meeting of such association, by a majority of votes to elect by ballot, or otherwise, according to the constitution or by-laws of such association, to appoint not less than three nor more than nine trustees, and one or as many officers of such association as shall be deemed necessary; which said association and such other persons as may be associated with them are hereby constituted a body politic and corporate in law, by whatever name they shall assume, and by such name shall have succession and continuance, and be capable in law of suing and being sued, defending and being defended, in all courts and places whatever, and may have and use a common seal, and alter and renew the same at pleasure, and by their name as aforesaid, and under their common seal, may make and enter into, execute and enforce any contracts or agreements relating to, touching or concerning the objects of said corporation.

**2.** That said trustees of such association, elected or appointed as aforesaid, shall immediately certify such corporate name, under their hands, and file such certificate in the office of the clerk of the court of common pleas of the county in which such association shall have holden the said meeting, whose duty it shall be to record the same, and for which he shall be entitled to receive twenty-five cents. [See Sec. 13, *post.*]

**3.** That the estate and property, of what kind soever the same may be, of such association, shall be vested in the trustees thereof as a corporation, and by their corporate name the trustees of such association shall be able

Corporate powers conferred.

Certificate of corporate name to be filed.

Estate and property vested in trustees as a corporation.

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(a) See *Athletic Association v. New Brunswick*, 26 Vr. 279.