

No. VII.

An Act for regulating Foreign Attachment in New South Wales. [15th February, 1832.]

FOREIGN
ATTACHMENTS.

WHEREAS Creditors in New South Wales frequently lose their just demands by reason of their debtors not being forthcoming and of their being no law to regulate the attachment of their goods and debts in the hands of other persons for remedy whereof Be it enacted by His Excellency the Governor with the advice of the Legislative Council That whenever an affidavit shall be made and filed in the Supreme Court in due form as by law required by or on behalf of any plaintiff in any action commenced in the said Court for the recovery of any debt or certain money-demand and such affidavit shall further set forth that such debt or demand was contracted or arose in New South Wales and that the plaintiff's debtor is absent from the said Colony or keeps out of the way to avoid being served with the process of the said Court and that the plaintiff hath reasonable grounds for apprehending that his debt or demand will thereby be endangered and that such plaintiff hath the like grounds for believing that the defendant hath goods or effects in the possession or power of or hath a debt or debts due from some person or persons in the said Colony who shall be particularly described in such affidavit it shall be lawful for the said Court to issue a writ commanding the Sheriff of New South Wales or his lawful deputy forthwith to attach all goods effects and debts in the hands of all and every such person or persons named in such affidavit of and belonging or due and owing to the said plaintiff's debtor and notwithstanding such debts be payable

Preamble.

Upon affidavit of
debt and absence of
debtor Supreme
Court may grant
attachment of goods
and debts.

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Persons in whose hands such attachment shall be made shall be summoned.

Service of attachment shall bind goods and debts.

Garnishee liable if he shall dispose of such goods &c. until debt be paid or attachment dissolved.

Proviso.

Court may authorize garnishee to dispose of goods pending attachment.

Plaintiff to be examined touching nature of such debt.

Court to enquire whether goods attached belong to plaintiff's debtor.

at a future time and further commanding such Sheriff or his deputy to summon all and every person or persons in whose hands any such goods debts or effects shall be attached to appear before the said Court at a certain future day to be appointed by such Court and named in such writ to shew cause why the goods debts and effects so attached or so much thereof as shall be sufficient to satisfy the plaintiff's debt or demand should not be delivered to such plaintiff in satisfaction thereof.

2. And be it further enacted That every such writ of attachment as aforesaid shall be served upon the person or persons in whose possession or power any such goods or effects shall be sworn as aforesaid to be or from whom such debt shall be sworn to be due or in case such person or persons cannot conveniently be served with such process then by leaving a copy thereof at his or their usual place of abode and immediately from and after such service all and every such goods debts and effects so attached shall be bound in law until the plaintiff's debtor or his attorney shall duly appear and put in bail to the said action or until the plaintiff's said debt or demand shall be satisfied or the said attachment dissolved and if any person or persons in whose possession or power any such goods or effects so attached shall be or from whom any such debt may be due shall dispose of or pay over the same or any part thereof before such appearance shall have been duly entered and bail to the action put in or the plaintiff's debt or demand shall have been satisfied or the said attachment dissolved then every such person for his said default shall be liable to make satisfaction to the plaintiff out of his proper estate to the value of such goods debts and effects or in default thereof to be taken in execution Provided however that nothing in this Law or Ordinance contained shall be deemed or taken to affect or alter any legal right or interest which any such person shall or may have to or in any such goods debts or effects so attached in his or their hands respectively.

3. Provided also and be it further enacted That if the person or persons in whose hands any such goods and effects shall be attached shall be desirous of disposing of the same or any part thereof pending such attachment and shall apply for such purpose to the said Court or during vacation to any Judge at Chambers and shall give due notice to plaintiff of such intended application it shall be lawful for the said Court or Judge to authorize such person or persons to sell and dispose of any such goods or effects and to hold the proceeds of such sale in his or their hands subject to such attachment as aforesaid according as to such Court or Judge shall seem fit.

4. And be it further enacted That if at the return of the said writ the said debtor shall fail to appear and put in bail to the action as aforesaid it shall be lawful for the said Court or presiding Judge to cause the plaintiff in such action or in case of his absence beyond seas his lawful agent to be sworn and examined in open Court touching the nature and origin of his said debt or demand and if such Court or Judge shall be satisfied that the same is justly due and is within the intention and benefit of this Law or Ordinance cause damages to be assessed for so much of the said debt or demand as shall be proved to be justly due to such plaintiff or if no such debt or demand shall be adjudged to be due then to dissolve the said attachment and upon the dissolution of any such attachment in any case the same and all proceedings founded thereupon shall become of no further effect.

5. And be it further enacted That on the day appointed for the return of such attachment and summons as aforesaid or as soon thereafter as shall be appointed by the Court the Court or Judge shall in case any such debt or demand shall be adjudged to be due as aforesaid

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said to the plaintiff proceed to enquire whether the goods debts or effects so attached do belong or are due to the plaintiff's debtor and for such purpose any person in whose hands any such debts or effects shall have been attached or who shall have been summoned to attend the Court as aforesaid and shall attend according to such summons shall be interrogated and answer upon oath all such questions as shall be put to him by the plaintiff and as shall be allowed by the Court or Judge touching any goods debts or effects in his hands which belonged or were due to such plaintiff's debtor at the time of such attachment so made as aforesaid and if any such person shall refuse or neglect to attend the said Court or Judge at the time appointed (due service of the summons being proved upon oath) or if any such person shall attend but shall refuse to be sworn or to answer any such question as aforesaid every such person shall be liable to be committed to custody and dealt with in like manner as witnesses who are guilty of contempt of the said Court and the said Court or Judge in any such case may proceed to enquire *ex parte* touching such goods debts and effects.

Garnishee to be examined.

6. And be it further enacted That if the person in whose hands any such goods debts or effects shall have been attached shall confess or if after due enquiry and examination it shall be determined by the Court or Judge that the goods debts or effects or any part thereof do belong or are due to such plaintiff's debtor the Court shall order the same to be held subject and liable to the plaintiff's debt or demand and to be taken in execution for the same and if it shall be determined by the said Court that such goods debts or effects so attached as aforesaid do not nor doth any part thereof belong nor are nor is due to such plaintiff's debtor then the said attachment shall be dissolved in respect of all such goods debts and effects as shall be determined not to belong or be due to such plaintiff's debtor Provided always that if it shall appear doubtful to the said Court or Judge upon the said enquiry whether any such goods debts or effects belong or are due to such plaintiff's debtor or in case the person in whose hands any such goods debts or effects shall be attached shall desire that the matter may be more fully investigated it shall be lawful for the said Court or Judge to order the matter to be tried by a jury and in the mean time all proceedings shall be suspended and shall continue in the state in which they then may be until the trial of such matter and in order that the same may be tried in due form it shall be lawful for the plaintiff to bring an action and finally to proceed therein in the name of his said debtor against the person in whose hands any such goods debts or effects shall have been attached as aforesaid and after the verdict of the jury shall be taken such and the like proceedings shall be further had upon such attachment as are hereinbefore directed to be had after the determination of the matter by the Court or Judge.

Goods attached to be liable to execution if determined to belong to debtor

or otherwise attachment shall be dissolved.

Proviso.

7. And be it further enacted That before execution shall be had upon any such judgment against the said goods debts and effects so attached as aforesaid the plaintiff in such action shall enter into a recognizance with two sufficient sureties to be examined as to their sufficiency and approved of by the Court or Judge in double the value of the goods debts and effects so attached to restore the full value thereof or so much as shall exceed the debt or demand which shall finally appear to be due together with lawful interest if at any time within three years after signing such judgment as aforesaid the defendant shall come into Court and disprove the whole or any part of such debt or demand And to the end that the value of the goods or effects so attached may be truly ascertained the said Court shall at the instance of the said plaintiff issue a precept to

Before execution against such goods plaintiff to enter into recognizance.

Appraisement of goods.

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to the Sheriff or his deputy commanding him with the assistance of two good and sufficient men to open and inspect such goods and effects and truly to appraise the same and such appraisement together with an inventory thereof forthwith to return into the said Court and such appraised value shall be deemed and taken to be the true value of such goods and effects for which such sureties shall be held to be liable by their said recognizance.

Judgment roll to be filed in the Supreme Court.

8. And be it further enacted That the plaintiff in every such action shall before execution file in the office of the said Court a roll of such judgment in like form and manner as other judgments are required by the rules and practice of the said Court to be enrolled.

Proceedings if debt be not due or overpaid.

9. And be it further enacted That it shall be lawful at any time within three years after such judgment as aforesaid for the defendant in any such action to appear before the said Court and to allege and prove that such debt or demand was not due or that more money hath been levied than was due and the said Court shall thereupon proceed in a summary manner to enquire into the same and to order any surplus which shall have been unjustly levied together with the levy fees thereon and lawful interest for the same to be restored to the defendant and in case such restitution shall not be made then the sum so ordered to be restored together with costs shall be levied by execution against the plaintiff in like manner as other executions in the said Court.

Attachment and execution may be pleaded in bar.

10. And be it further enacted That every such attachment upon which execution shall have been levied as aforesaid may be pleaded in bar by any such person or persons in whose hands such goods debts or effects shall be attached to any action or actions which shall be brought by or on behalf of any such debtor for the recovery of such goods debts and effects and if any such action shall be brought by any such debtor or debtors pending such attachment the same shall be stayed by the order of the said Court until the attachment shall be dissolved or the proceedings thereupon shall be determined.

Not to extend to actions where one or more joint defendants may be served with process.

11. Provided always and be it further enacted That nothing in this Law or Ordinance contained shall extend or be applied to actions commenced against two or more joint defendants for any such debt contracted within the said Colony as aforesaid where one or more of such joint defendants shall or may be served with process according to the course and practice of the said Court.

Commencement of Act.

12. And be it further enacted That this Law or Ordinance shall commence and take effect from and after the passing and publication thereof.