

Creditor, for a proportionable Part of the Debt or Damage paid by such Assignee; any Law, Usage, or Custom, to the contrary notwithstanding. **Provided** always, That no Defendant or Defendants, shall be precluded or debarred of his or their Remedy against the Plaintiff, by *Audita Querela*, or other equitable Course or Proceeding whatsoever, any thing in this Act to the contrary notwithstanding.

C H A P. XXIII.

Defendant may have *Audita Querela*.

IX. **And be it Enacted**, by the Authority aforesaid, That upon all Bonds, or other Obligations under Seal, that have, or shall be assigned under Hand and Seal, the Assignee shall and may, by virtue of such Assignment, maintain an Action or Actions, in his or her Name, against the Obligor or Obligors therein named, and if it shall happen that such Obligor or Obligors shall be unable to pay the Debt mentioned in such Obligation, or cannot be found in the Place or County of his usual Abode, or any other Thing or Casualty should happen, whereby the Assignee should not be able to receive or recover his Debt from such Obligor or Obligors, that then and in every such Case, the like Action shall and may be maintainable, by such Assignee, against the Obligees or Obligees in such Obligation mentioned; in case the said Assignee hath not been, nor shall be, a Surety in the Bond or Obligation assigned to him as aforesaid; any Law, Usage, or Custom, to the contrary notwithstanding. **Provided**, That where any Debt shall be lost by the Negligence, or Default of the Assignee or Assignees, that the Assignor or Assignors shall not be liable, any such Assignment notwithstanding.

Bonds, &c. being assigned under Hand and Seal, the Assignee (unless he be a Surety thereto) may maintain Action in his own Name against the Obligees.

Assignor, in what Case not liable.

X. **Provided** also, That no Action or Actions shall be maintained in the Name or Names of any Assignee or Assignees, upon any Assignment wherein the Obligees or Obligees may be liable under this Act, upon the Default of the Obligor or Obligors as aforesaid, unless the Assignor or Assignors have made, or shall make Oath (or Affirmation if a Quaker) before some Magistrate, "That he, she, or they, hath or have, received no Part of the Sum mentioned in such Obligation, or but such Part thereof as shall be mentioned in such Oath or Affirmation, at the Time of making any such Assignment," to be indorsed on such Bond or Obligation.

But the Assignor shall first make Oath, &c.

XI. **And be it likewise Enacted**, That any Person knowingly Swearing or Affirming falsely in the Premises, and being thereof convicted, by due Course of Law, shall suffer as in the Case of wilful and corrupt Perjury.

Punishment for false Swearing.

XII. **And be it further Enacted**, by the Authority aforesaid, That an Attorney being concerned for either Plaintiff or Defendant, in any Case of Equity to be heard before the County Courts as aforesaid, shall have and receive One Hundred Pounds of Tobacco, where the Debt doth not exceed Ten Pounds Sterling, or Two Thousand Five Hundred Pounds of Tobacco; and where the Debt doth exceed Ten Pounds Sterling, or Two Thousand Five Hundred Pounds of Tobacco, in any such Case the Quantity of Two Hundred Pounds of Tobacco, and no more.

Attorney's Fee in Cases of Equity.

C H A P. XXIV.

An ACT for the more effectual securing of Orphans Estates. *Lib. H.S. fol. 516.*

Passed 21<sup>st</sup> Nov. 1763.

**W**HEREAS it frequently happens, that Executors and Administrators, and Others, that Intermarry with Widows, do obtain the Possession of Real Estates of Orphans within this Province, and commit Waste and Destruction thereupon, before any Balance is transmitted from the Commissary's Office, in which Case no Guardian can be appointed by the several County Courts under any Law now in Force: For Remedy whereof for the future;

Preamble.