

C H A P.  
XXXIX.Execution shall be awarded against such Executors *de bonis propriis*, in Defect of Assets.

same, the Court, before whom such Action shall be brought, shall give Judgment, and award Execution, against such Executors or Administrators, *de bonis propriis*, to such Creditor or Creditors as aforesaid, as the Law in that Case directs; any thing in this present Act to the contrary thereof in any wise notwithstanding.

*Examined and Compared with the Original Act,* REVERDY GHISELIN,  
THOMAS BACON.

\* By 1729, *ch. 24, §. 15*, no Preference shall be given in Payment of Debts by any Executor, &c. to Debts due to the Crown, or the Lord Proprietor, other than such as are to the proper Use of his Majesty, or his Lordship.

C H A P. XL.

Passed 3d  
June 1715.

An ACT directing the Manner of suing out Attachments in this Province, and limiting the Extent of them. *Lib. LL. N<sup>o</sup> 4. fol. 229.*

See the Act of 1729, *ch. 8.*

Preamble.

**W**HEREAS it is highly expedient to settle the Manner of Proceedings on Attachments, and limiting the Extent of them, and to provide what shall be levied on such Attachments and Executions.

Two successive Writs shall be returned *Non est* before Attachment shall issue against the Effects of any Inhabitants.

II. **Be it Enacted**, by the King's most excellent Majesty, by and with the Advice and Consent of his Majesty's Governor, Council, and Assembly of this Province, and the Authority of the same, That from henceforth, no Attachment shall issue out of any Court of this Province, before a Writ or Summons be first made out; upon which Writ, if the Party Defendant be an Inhabitant, or Resident within this Province, and the Sheriff shall return a *Non est inventus*, one other Writ or Summons shall thereupon, in Manner aforesaid, issue forth against the said Defendant: And if the Sheriff shall, upon the second Writ or Summons, return a *Non est inventus* likewise, an Attachment shall and may, in Manner and Form hereafter set down, be awarded.

One Writ returned *Non Est*, and a short Note left with the Defendant's Attorney, or at his last Place of Residence, and Proof of the Debt, shall entitle the Plaintiff to an Attachment, if the Defendant be out of the Province.

III. **And** in case any Writ or Summons shall issue forth of any his Majesty's Courts within this Province, against any Person or Persons absent out of this Province, in such Case, upon the Return of a *Non est inventus* by the Sheriff on such Writ or Summons, and the Party Plaintiff his leaving with the Attorney of such absent Defendant (if he hath left any Attorney) a Copy of his Declaration, or short Note, expressing the Cause of Action; or if he hath left no Attorney, then the Plaintiff leaving a Copy of the said Declaration, or short Note, expressing the true Cause of Action, at the House where the said Defendant absent, did last reside or dwell; and making such \* Proof of his Action, as the said respective Courts shall think fit, it shall and may be lawful for the Justices of the said Courts, to award an Attachment against the Goods, Chattels, and Credits of the said absent Defendant, so as aforesaid prosecuted, and not appearing to the said Action, which are or shall be in the Hands and Possessions of any Person or Persons whatsoever; yea, even in the Plaintiff's own Hands, for the Defendant's Use, in this Province: In which said Attachment there shall be a Clause, commanding the Sheriff of the respective Counties, at the Time of the executing the said Attachments, to make known to each Person or Persons in whose Hands or Possessions the said Goods, Chattels, and Credits so attached are, if to him or them it shall seem meet, to be and appear, on the Return of such Attachments, before the Justices of the respective Courts, out of which such Attachments are issued, to shew Cause why such Goods, Chattels, or Credits, so attached as aforesaid, should not be condemned, and Execution thereof had and made, as in other Cases of Recoveries and Judgments given in Courts of Record: At which Day of Return of the said Attachment, if the said Defendant shall not then appear, nor the Garnishee, in whose Hands the aforesaid Goods, Chattels, and Credits of the Defendant were attached, to shew Cause to the contrary; the respective Courts shall and may condemn the said Goods, Chattels, and Credits,

In default of Appearance of the Defendant or Garnishee, the Effects to be condemned, &amp;c.