

1715. APRIL.

GEORGE I.

C H A P. XXXIX.

Passed 3d of
June, 1715.

An ACT for the better administration of justice in testamentary affairs, granting administrations, recovery of legacies, securing filial portions, and distribution of intestates estates. Lib. LL. No. 4. fol. 214.

The 10th section of this act is repealed by 1798, ch. 66, and the whole of the act is, on a careful examination and comparison, deemed to be inconsistent with, and repugnant to, the act of 1798, ch. 101, and therefore, by the 2d section thereof, repealed.

C H A P. XL.

An ACT directing the manner of suing out attachments in this province, and limiting the extent of them. Lib. LL. No. 4. fol. 229.

A Supplement 1795, ch. 56.

Preamble.

WHEREAS 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;

No attachment
to issue, &c.

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.

In case of suit,
&c. justices to
award attach-
ment, &c.

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 so as aforesaid attached, and award execution thereof to be had and made by *capias ad satisfaciendum, fieri facias*, or otherwise, as in other judgments, he, the said plaintiff, so prosecuting as aforesaid, giving good and sufficient security before the justices of each respective court, to and for the use of the said defendant, so as aforesaid being not found within this province, to make restitution of the said goods, chattels or credits, so as aforesaid condemned, or the value thereof, if the defendant so as aforesaid prosecuted shall, at any time within one year and a day, to be accounted from the said attachment awarded, come in, and either in person or by attorney appear to the said original action, and make it appear that the said plaintiff hath been and is satisfied and paid the debt or demand in the said action, or shall otherwise in court discount or bar the said plaintiff of the same, or any part thereof; which said condemnation and execution of the said goods, chattels or credits, of the said defendant, in the hands of garnishee or garnishees as aforesaid had and made, shall be sufficient and pleadable in bar, by the said garnishee or garnishees, in any action brought against him or them by the said defendant for the same.

Proviso.

IV. PROVIDED ALWAYS, That no sheriff shall levy, by way of execution as aforesaid, against the said garnishee or garnishees, any more than the plaintiff's debt and cost, nor against any garnishee or garnishees