

or any justice of the peace^(a) of this state is hereby authorized and required to administer.^(b)

Process for witnesses.

5. In every cause referred by rule of court, process of subpoena may issue out of such court to convene witnesses before the referees, and the said witnesses shall be examined on oath or affirmation; which oath or affirmation the referees in the said cause are hereby authorized to administer; and there shall be allowed to every such referee, one dollar for every day necessarily spent in the business of the reference, besides a reasonable allowance for his expenses, which, in the first instance, shall be paid by the prevailing party, and shall afterwards be allowed to such party in the taxation of costs where costs are recoverable.

Referees' fees.

Arbitrators sworn.

6. In cases of arbitration, every arbitrator shall, before he proceeds to the business submitted to him, take an oath or affirmation of the like nature with that hereinbefore prescribed to be taken by referees, and to be administered in like manner.^(c)

Process for witnesses before arbitrators.

7. In all cases of arbitration, it shall be lawful for any justice of the peace within the county wherein such arbitration may be, to issue subpoenas for witnesses to appear before the arbitrator or arbitrators, and for him or such arbitrator or arbitrators to swear or affirm such or any other witnesses before the same; and if any such witness shall not appear when so subpoenaed, or if appearing, shall refuse to be sworn or affirmed and give evidence, he shall be liable to the same fines and penalties as he would be by law for such default or refusal, if committed in any court of record in this state.

(a) An arbitrator may be sworn before a master in chancery, *Ruckman v. Ransom*, 6 Vr. 565.
(b) Referees must be sworn, *Brown v. Lanning*, Pen. *139. *Reeves v. Goff*, Pen. *143. *Parker v. Crammer*, Pen. *271. *Crammer v. Mathis*, Pen. *550. *Swayze v. Riddle*, Pen. *660. *Little v. Silverthorne*, Pen. *680.

(c) Arbitrators must be sworn, *Thompson v. Harvey*, Pen. *894. *Inslee v. Flagg*, 2 Dutch. 368. *Combs v. Little*, 3 Gr. Ch. 310. But not before fixing the time and place of sitting, *Ruckman v. Ransom*, 6 Vr. 565. See *Ford v. Potts*, 1 Hal. 388. *Johnson v. Ketchum*, 3 Gr. Ch. 364.

Assignment.

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

1. Of assignments and preferences.
2. Debtors inventory and list of creditors.

II. DUTIES OF, AND PROCEEDINGS BY, ASSIGNEE AND EXCEPTION TO CLAIMS.

3. Assignees' notice, inventory and bond.
4. Deed of assignment to be recorded.
5. List of creditors to be filed, and notice given.
6. Exceptions, notice and hearing.
7. May be tried by jury.
8. Dividends to be made. Final account.
9. Goods reserved to debtor.
10. Rent to be paid.
11. Landlord may distrain.

12. Lands of debtor, how sold.
13. Powers of assignees.
14. Proceedings in case of death of assignee.
15. In case of death of surety.
16. Court may order new security.
17. Inventory to be recorded.
18. Commissions and allowance.
19. Fees of judges, &c.

III. EFFECT OF ASSIGNMENT UPON CREDITORS.

20. When creditor barred.
21. What debts discharged.
22. Debts not due allowed.

IV. GENERAL PROVISIONS.

23. Assignees, how compelled to proceed.

Rev. 674.

Harr. 211.

R. S. 316.

P. L. 1842, p. 90.

" 1855, p. 58, 250

" 1856, p. 166.

" 1858, p. 35.

" 1863, p. 5.

" 1870, p. 54.

Of assignments by debtors.

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.

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

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 distribution; ^(a) and all preferences of one creditor over the other, or

(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. Doane*, 3 Stock. 84. Whatever rights the debtor may have in the property of his wife, will pass, *Ontcall v. Van Winkle*, 1 Gr. Ch. 513. The equity of redemption in mortgaged premises will vest, *Van*

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^(a) and judgment creditors, when the judgment has not been by confession for the purpose of preferring creditors.^(b)

What preferences void.

2. 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.

Debtor's inventory and list of creditors.

Inventory not conclusive.

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

3. The said assignee or assignees shall forthwith give three weeks public notice, by advertising in two of the newspapers printed in this state, circulating in the neighborhood where such creditors reside, and in one or more newspapers in any other state, where it shall be known any creditor of the said assignor resides, making known thereby that such assignment has been made, and that the creditors present their claims under oath or affirmation;^(c) and the said assignee or assignees shall also 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.

Assignee's notice, inventory and bond.

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

Deed of assignment to be recorded.

5. 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 claim to be such,^(d) with a true statement of their

List of creditors to be filed, and notice given.

Keuren v. McLaughlin, 6 C. E. Gr. 163. The assignment will be void if the debtor retains any control over the property, *Pritchett v. Neubold*, Sax. 571. *Owen v. Arvis*, 2 Dutch. 23. *Stokes v. Middleton*, 4 Dutch. 32. *Fairchild v. Hunt*, 1 McCart. 367. *Emerick v. Harlan*, 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. Packer*, 1 Beas. 214. Property subsequently acquired will not vest in the assignee, *Vanderveer v. Conover*, 1 Harr. 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, *Hillyer v. Dumm*, 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, *Tillou 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. Jacobus*, 4 C. E. Gr. 235. *Stillman v. Stillman*, 6 C. E. Gr. 126. *Benedict v. Benedict*, 2 McCart. 150. An assignment 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 Harr. 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, can not 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 *Var-*

num 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 out to the prejudice of creditors residing here, *Hutcheson v. Peshine*, 1 C. E. Gr. 167.

(a) 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, *Doughten v. Gray*, 2 Stock. 323. See *Bell v. Fleming*, 1 Beas. 490. *Van Vliet v. Jones*, 3 Harr. 340.

(b) 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 Harr. 490. *Potts v. New Jersey Arms and Ordnance Co.*, 2 C. E. Gr. 519. See *Mann v. Drost*, 3 Harr. 336.

(c) An affidavit of indebtedness taken before a justice of the peace of Pennsylvania, is insufficient, *Scull v. Alter*, 1 Harr. 147. A legatee can not come in, as an applying creditor under an executor's assignment, *Crist v. Horis*, 1 Beas. 84. See *Nevius 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.

(d) 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.

Altered.
Act Feb. 12, 1855,
P. L. p. 58.
Act Mar. 7, 1856,
P. L. p. 166.
Act Mar. 17, 1870,
P. L. p. 54.

respective claims, having first advertised for six weeks next preceding the end of said term in two of the newspapers printed in this state, and by putting up advertisements in five of the most public places in the neighborhood wherein such creditors or a majority of them reside, making known thereby that all claims against said estate must be made as herein-after prescribed or be forever barred from coming in for a dividend of said estate, otherwise than hereinafter provided; and in case of failure to file such list or give such notice, the orphans' court of said county may extend and fix the time for that purpose, not exceeding six months from the date of said assignment.

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

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

May be tried by jury.
Ib.

7. 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)

Dividends to be made.

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.

Final account.

Exceptions thereto.
P. L. 1855, 59.

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

9. 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,

(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. Drost*, 3 *Harr.* 335. See *Van Vliet v. Jones*, *Spen.* 340.

(b) No order of the court is necessary; the creditor must

apply to the assignee. *Tomlinson v. Smallwood*, 2 *McCart.* 286. Presenting a claim as a creditor, is coming in for a dividend. *Vanderveer v. Conover*, 1 *Harr.* 487.

(c) The orphans' court settle as to the manner in which the assignees have discharged their trust. *Eakin v. Cattell*, 1 *Harr.* 103. Under what circumstances equity will interfere after such settlement, *Hays v. Doane*, 3 *Stock.* 84.

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 appraisement 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 appraisement, 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.

10. 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 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)

Rent to be paid.

11. 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.

Landlord may
distrain.

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)

Lands of debtor,
how sold.

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)

Powers of
assignees.

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.

Proceedings in
case of death of
assignee.

^(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 encumbrances, *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.* *860.

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 assignee 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 fulfil 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.

Inventory to be recorded. Act Feb. 4, 1863. P. L. p. 5. 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.

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.

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.

When creditor barred. 20. If any creditor shall not exhibit his, her or their claims within the time allowed by this act, such claim 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)

What debts discharged. 21. 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)

(a) The ratable proportion due such creditor is in the first place to be paid on his claim the same per centage 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.

(b) If a creditor accepts a dividend in discharge of his debt he can not recover the balance, *Roff v. Roff*, Fen. *4180. So, although holding a judgment, such creditor can not issue execution against property of the debtor acquired after the assignment, *Vanderveer v. Conover*, 1 Harv. 487. But if the creditor have a lien by execution upon the property

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

IV. General provisions.

23. That the said court may, from time to time if necessary, by citation Assignees, how and attachment, compel said assignee or assignees to proceed to the compelled to execution of the duties required by this act, until a final settlement and proceed. distribution as aforesaid. (a)

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, *Ibid.* 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.*

(a) The orphans' court can not grant relief in case of a fraud by the assignee in the sale of the debtor's property, *Hays v. Doane, 3 Stock. 84.*

Attachment.

I. WHEN AND AGAINST WHOM ISSUED.

1. Attachment against absconding debtors.
2. Agent may make oath.
3. Attachment against non-resident debtors.
4. Penalty if writ issue without affidavit.
5. Clerk's entry.
6. Joint debtors and partners.
7. Females and corporations.
8. Heirs and devisees.
9. Legacies, etc.
10. Where property is situate or found in two counties.
11. Non-resident creditors entitled to privilege of act.
12. When personal property of non-resident exempt.
13. Writs returnable in vacation and within thirty days.
14. Creditors admitted by rule.

II. THE EFFECT OF THE WRIT AND THE MODE OF ITS EXECUTION.

15. How writ executed.
16. Inventory and appraisalment.
17. Writ a lien on goods, &c., when executed
18. Writ when issued a lien on lands.
19. Writ a lien on lands although not levied.
20. Meaning of word lands.
21. Goods to remain in safe keeping of officers.
22. Officer may break open houses, &c., to execute writ.
23. Right and property, how tried.
24. Claim of property must be in writing. Sheriff if indemnified may refuse to try right.
25. Proceedings on such claim.
26. Power to adjourn.
27. Process for witnesses.
28. Jury and verdict.
29. When claimant to pay costs.
30. When plaintiff to pay costs.
31. Fees allowed.

III. APPEARANCE BY DEFENDANT.

32. Defendant may appear before final judgment.
33. Defendant appearing to give bond.
34. On appearance by defendant writ may be set aside in vacation.
35. Creditors must consent to discontinuance.
36. After attachment set aside as to plaintiff, goods released and no creditor admitted.
37. Upon filing bond in clerk's office to plaintiff and creditors attachment may be set aside.
38. Appearance of defendant without bond.
39. In case of appearance of defendant without bond lien continues. Property may be sold as perishable. Judge may discharge lien.
40. Plaintiff may discontinue in vacation with consent of creditors. In case no rule entered by creditors plaintiff shall discontinue on settlement of debt.

41. Property to be left with person in possession if bond given.

IV. PROCEEDINGS ON RETURN OF WRIT.—AUDITOR AND HIS DUTIES.

42. Court or judge to order advertisement.
43. Copy of which to be set up in clerk's office.
44. Auditor to be appointed. Duty of auditor.
45. Final judgment to be entered after six months.
46. Powers of auditor. To examine persons.
47. To authorize search.
48. To administer oaths.
49. To institute suits for sums not exceeding \$100.
50. Proceeds of suits to be paid to auditor and applied according to law.
51. Sale of defendant's property. In what time. When goods and chattels may be sold.
52. Meeting of creditors. Distribution of moneys and choses. Report.
53. Purchaser's title valid.
54. Debts not due admitted.
55. Applying creditors only, paid.
56. Creditor before receiving dividend must give bond.
57. Death of defendant not to abate suit.

V. PROCEEDINGS AGAINST GARNISHEE.

58. Suit by plaintiff against the garnishee.
59. Suit to be continued until judgment in attachment suit.
60. Garnishee to have costs on discontinuance or non-suit.
61. Scire facias may issue against garnishee. Moneys recovered to go to auditor.

VI. PROCEEDINGS BEFORE JUSTICE OF THE PEACE.

62. Proceedings before justice.
63. Advertisement required.
64. Proceedings against garnishee.
65. Defendant's appearance and bond.
66. Plea, trial and appeal.
67. Appeal in garnishee's case.
68. Justice's attachment superseded.
69. Motion to quash without filing bond.
70. Costs of superseded attachment to be first paid.
71. Death of justice after judgment.

VII. FEES.

72. Fees of auditor.
73. Fee of freeholder making appraisalment.
74. Of the justice and constable.

VIII. GENERAL PROVISIONS.

75. Construction of act to be liberal.
76. All orders not expressly required to be made in court, may be made at chambers.
77. Proceedings if not pursued for twenty years to cease to have effect.