

American Legal History – Russell

Execution Sales Act, no. 1293, S.C. Statutes at Large (1785).

WHEREAS, on account of disappointments arising from the failure of crops, and from the exportation of specie, lately circulating within this State, which is the cause of the want of a sufficient circulating medium, many citizens of this State are threatened with total ruin, by having their property seized for debt, and sold very considerably below its real value; in order, therefore, to afford relief to such debtors, without injuring their creditors,

I. *Be it enacted*, by the honorable the Senate and House of Representatives, now met and sitting in general Assembly, and it is hereby enacted by the authority of the same, That before any lands, tenements, goods, chattels, or other estates, or property whatsoever, which now are, or hereafter shall be, seized or levied upon by virtue of any decree, execution, or process, issuing from any court or magistrate within this State, shall be exposed to sale, the defendant, either in person or by his attorney, shall, and he is hereby authorized and empowered to, appoint some one freeholder, who shall be a citizen of this State, and residing in the county or parish where the property lies, as his appraiser, and the plaintiff, in like manner, is directed to appoint a freeholder, who shall also be a citizen of this State, and residing in the county or parish where the property lies, as appraiser in his behalf; and in case either party, or both, shall neglect or refuse to make such appointment, then any neighboring magistrate, on application of the levying officer, is hereby authorized and required to appoint such appraiser or appraisers, as the case may be; which two appraisers shall choose a third, who shall also be a citizen of this State, and residing in the county or parish where the property lies; and in case of their neglect or disagreement in choosing such third person; then any neighboring magistrate on the application of the levying officer, shall appoint such third person, qualified as aforesaid; and the levying officer shall show the appraisers so chosen the property by him seized, and shall administer to them the following oath or affirmation: "I, A B, do solemnly swear (or affirm, as the case may be) in the presence of Almighty God, that I will justly appraise the property now produced or shown [sic] to me, and fix such valuation thereon as I shall think fair and equitable, if the same were sold

on a credit of six months, according to the best of my skill and understanding. So help me God." And the appraisers so sworn shall proceed to value and appraise the said property, estimating the same as if sold on a credit of six months, and shall give, under their hands and seals, two copies of their appraisement, one copy to be delivered to the plaintiff, and the other to the defendant; and in case no appraiser shall appear in behalf of the defendant, or, having appeared, shall neglect or refuse to make the appraisement as by this Act is directed, within thirty days after the property shall have been taken by the levying officer, (provided the defendant lives in the district where such property has been seized, and within ninety days, if the defendant shall not reside in the district,) such levying officer shall be authorized to proceed to the sale of the property in like manner as if this Act had not passed: provided, nevertheless, that in order to prevent, as much as may be, law suits, at this time of public distress, no creditor shall bring any action for debt in any court or before any magistrate in this State, before he makes application in writing from himself to his debtor for payment, and if the debtor, on such application, shall tender property as payment of the said debt so demanded, agreeable to the terms and conditions above prescribed in this Act, and which tender the creditor should refuse to accept, and afterwards brings his action for the recovery of the same, then, and in such case, on judgment being obtained by the creditor, the plaintiff in the action shall be obliged to accept the property, to be appraised as before prescribed, at its full valuation.

II. *And be it further enacted* by the authority aforesaid, That every such levying officer shall, after such appraisement, and giving the usual notice, expose to sale the property so levied on, but shall not sell or dispose of the same for less than three-fourths of the appraised value thereof; and if such property will not sell for so much as three-fourths of such appraised value, then the plaintiff shall have it in his option to take the said property, except as before excepted, at three-fourths of the said appraised value thereof, or to refuse the same: which property, if accepted by the plaintiff, shall be a discharge of the debt or demand, or so much thereof as the said three-fourths of the value shall amount to; but in case the said three-fourths of the value shall exceed the demand of the plaintiff, he shall, on taking possession of the property, give bond with good and sufficient security to the defendant, to pay the difference within six months thereafter.

III. *And be it further enacted* by the authority aforesaid, That all and every person against whom any suit or action for debt is or shall be commenced, he,

she, or they is and are hereby authorized and empowered, at any period or stage of such suit or action, to tender to the plaintiff such part of his property, real or personal, as he shall think proper: provided, that three-fourths of the value thereof shall, on appraisement to be made as above directed in case of execution, be sufficient to discharge the debt and costs in such action; and the plaintiff shall thereupon order the property to be delivered to the sheriff of the district or county where the property shall be, and the defendant shall cause the same to be delivered to the plaintiff who shall proceed to have the same appraised and sold in the same manner as is above directed in case of goods seized under execution; but in case any debtor shall neglect or refuse to deliver such property as shall, at three-fourths of its value, to be appraised as above, be sufficient to discharge the debt and costs, then the suit or action shall be continued.

IV. *And be it further enacted* by the authority aforesaid, That all and every sale, by virtue of any decree or execution, which shall not be made and conducted according to the directions in this Act contained, shall be null and void to all intents and purposes: provided, that nothing herein contained shall extend to prevent the collectors of taxes or duties from proceeding to collect the same as they are by law directed.

V. *And be it further enacted* by the authority aforesaid, That the operation of this law shall not extend to prevent the recovery of any money that one person may or shall have received for the use of another, or for property sold at vendue, or otherwise for ready money.

VI. *And be it further enacted* by the authority aforesaid, That no person whatsoever shall be thrown into gaol on mesne process, or writ of capias ad satisfaciendum, nor shall any debtor, now confined in gaol under either of the aforesaid processes, be detained therein: provided such debtor shall be willing to subject his property to the regulations in this Act contained, or upon a deficiency of such property to satisfy such executions, shall assign over, upon oath, the specialties and book debts due to him, or a sufficiency thereof to discharge such executions.

VII. *And be it further enacted* by the authority aforesaid, That this Act shall continue and be in force until the end of the next session of the General Assembly, and no longer.

In the Senate House, the twelfth day of October, in the year of our Lord one thousand seven hundred and eighty-five, and in the tenth year of the Independence of the United States of America.

JOHN LLOYD, *Pres. of the Senate*. JOHN FAUCHEREAUD GRIMKE, *Speaker of the House*

EOD