

be duly convicted thereof, before any court having jurisdiction of the same shall be fined for every such offence in any sum not exceeding twenty dollars, at the discretion of the court, one half to the township, and the other half to the person prosecuting, and shall moreover be liable at the suit of the party injured for damages.

Acts repealed. Sec. 4. That the act entitled "an act, fixing the rate of toll for grinding," passed January twelfth, one thousand eight hundred and five, be and the same is hereby repealed.

Effect. This act shall take effect and be in force from and after the first day of June next.

JOSEPH RICHARDSON,
Speaker of the house of representatives.
ALLEN TRIMBLE,
Speaker of the Senate.

February 14, 1824.

AN ACT, to regulate judicial proceedings where banks and bankers are parties, and to prohibit issuing bank bills of certain descriptions.

In actions against banks plff. may declare for money had and received.
Sec. 1. Be it enacted by the General Assembly of the state of Ohio, That in all actions brought against any bank or banker, whether of a public or private character, to recover money due from such bank or banker, upon notes or bills by him or them issued, the plaintiff may file his declaration for money had and received, generally, and upon trial, may give in evidence to support the action, any notes or bills of such bank or banker, which such plaintiff may hold at the time of trial, and may recover the amount thereof with interest from the time the same shall have been presented for payment, and payment thereof refused, or from the time that such bank or banker shall have ceased and refused to redeem his notes with good and lawful money of the United States.

Stockholders may be made party.
Sec. 2. That when any of the partners or stockholders of any bank or banking company shall live without the county where the said bank or banking company is or was established, it shall be lawful for the plaintiff in any action brought in pursuance of this act, to issue summons into any other county in this state for the purpose of making such partner or stockholder a party to said action, and after judgment in said action in favor of said plaintiff, he may sue out a scire facias against any such partner or stockholder, who may not have been made a party to the suit aforesaid directed to any county in this state, to make such partner or stockholder a party to said judgment, and on return thereof duly served, the court shall make such partner or stockholder

Scire facias first process on judgment,

der a party defendant to said judgment unless good cause be shewn to the contrary.

Sec. 3. That a writ of fieri facias shall be the first process upon a judgment obtained against any bank or banker, upon which the sheriff or other officer shall enter the banking house of the judgment debtor, and demand payment of the amount of such judgment, interest and costs, and if payment be not immediately made, the officer shall levy on the bank notes, money or other chattels which he may find in the banking house or elsewhere, the property of the judgment debtor and shall proceed thereon as in other cases.

Writs of attachment when & how issued.

Sec. 4. That if the bank or banker, against whom judgment is had, shall have no banking house at which such bank or banker transacts banking business, or if no chattel property can be found whereon to make a levy, or if the property taken shall not be sufficient to satisfy the judgment, interest and costs; the officer shall make return thereof upon the writ; and upon such return being filed in the clerk's office of the court of common pleas of the county, the plaintiff may thereupon demand a writ of attachment against the rights and credits of such bank or banker, and the clerk shall thereupon issue such writ, directed to any proper officer in the county from which such writ may have issued, which writ shall recite the judgment, execution and the return upon which it is founded, and the officer receiving such writ shall summon as a garnishee, any debtor to such bank or banker, who may be within his county, to appear before the court of common pleas at the return of such writ, and answer such matter, touching any debt he may owe such bank or banker, as may be put to him: *Provided always*, That those persons who have been, or are at the time of such service, directors of the bank against which judgment shall have been entered, and remains unsatisfied, shall in all cases be first summoned as garnishees; and from the time of making such service, all monies due and owing to the bank or banker, in the writ mentioned, shall be held and considered as due to the judgment creditor until his judgment be satisfied, and no payments made thereafter, to the bank or banker with whom the debt was contracted, shall be credited to the person making the same, against the plaintiff in attachment, nor shall the stock owned by any debtor to the bank or banker, against whom proceedings are had under this act, be allowed as a set off or liquidation of all or any part of the debts, as against the judgment creditor: *And provided also*, That no person who may be summoned as garnishee, under the provisions of this section, shall be obliged to pay the debt due by him to any bank or banker, and which may be attached in his hands, in any different or other way than he would have been obliged to pay the same to the original creditor or creditors, and he shall be allowed the same dis-

Proviso.

Proviso.

counts, credits and off sets which he would have been allowed in the claim against him, had been settled in a due course of law in favor of the original creditor or creditors.

Cashiers &c.
may be sum-
moned on at-
tachment.

Sec. 5. That the cashier, clerk or other officer having charge of the funds of such bank or banker, may in like manner be summoned upon such attachment, and from the time of the service of such summons, all the funds of such bank or banker shall be bound in law for the payment of the judgment and costs in the writ mentioned.

Debt's may be
examined on
oath.

Sec. 6. That if the persons summoned or any of them, shall appear on the return of the writ of attachment, the court shall proceed to examine each one separately, upon oath or affirmation, touching the amount he was indebted to the bank or banker upon the day the service was made, and shall render judgment against each separately, without de-

No pleadings.

claration or other pleading, for the amount confessed to be due on that day, except in cases when the persons summoned, or any number of them are responsible as principals, securities or endorsers for the same debt, in which case there shall be a joint judgment against them for the amount; but in case of any cashier, clerk or other officer holding the funds of such bank or banker, if such cashier, clerk or other officer shall deliver into court all the funds of such bank or banker, which he states on oath or affirmation, to have been in his possession on the day of service of the process upon him, he shall be discharged from all further process or proceedings; and the funds so delivered up shall be disposed of in such manner as the court may direct, to be applied to the payment of the judgment, interest and costs upon which the attachment issued, as well as the costs that may have accrued upon the attachment.

No judgment
for costs a-
gainst def't.

Sec. 7. That no judgment upon attachment shall be rendered for costs against the person summoned; and when the debt from the person summoned, to the bank or banker is not due until a future day, the time of payment shall be specified in the judgment, and no execution shall issue until after that day; in every other respect execution shall be had upon such judgment as in other cases.

Debtor to have
credit with
banks for mon-
ey paid.

Sec. 8. That for all monies paid on an attachment under this act, the debtor or debtors paying the same, shall have credit against the bank or banker, to whom the same was due, for the amount, and if any overplus shall remain in the hands of the officer, after the payment of the original debt, interest and costs, and all the costs of the attachment, it shall be paid over to such bank or banker or their order; and if a sufficient sum to satisfy the whole debt and costs as aforesaid, shall not be made on a writ of attachment an alias writ of attachment may issue, upon which the proceedings shall be the same as on the first writ.

Endorsed note
may be jointly

Sec. 9. That when any sum of money due and owing to

any bank or banker, shall be secured by endorsement on the bill, note or obligation for the same; it shall be lawful for such bank or banker to bring a joint action against all the drawers or endorsers, in which action the plaintiff or plaintiffs may declare against the defendants for money lent and advanced; and may obtain a joint judgment and execution for the amount found to be due; and each defendant may make the same separate defence against such action, either by plea or upon trial, that he could have made against a separate action; and if in the case herein provided for, the bank or banker shall institute separate actions against the drawers and endorsers, such bank or bankers shall recover no costs: *Provided alw. ys.* That in all suits or actions prosecuted by a bank or banker, or persons claiming as their assignees, or under them in any way for their benefit the sheriff upon any execution in his hands, in favor of such bank or banker, their or his assignee as aforesaid, shall receive the note or notes of such bank or banker, from the defendant in discharge of the judgment; and if such bank or banker, their or his assignee, or other person suing in trust for the use of such bank or banker, shall refuse to receive such notes from the sheriff, the sheriff shall not be liable to any proceedings whatever, at the suit or upon the complaint of the bank or banker, their or his assignee as aforesaid. sued &c.
Provided:

Sec. 10. That it shall not be lawful for any bank or banker within this state, to issue notes or bills payable at a future day, and all notes or bills issued by any bank or banker within this state, shall be taken and held to be payable on demand, notwithstanding any day of payment be expressed in the body of the same. Banks not to
issue bills pay-
able at a future
day.

Sec. 11. That when any bank or banker shall commence and continue to redeem their notes or bills with lawful money, the interest on their notes or bills shall cease from the commencement of such redemption, by their giving six weeks previous notice, in some newspaper having a general circulation in the county where such bank or banker transacts banking business, of the time they intend to redeem their notes or bills with lawful money. When interest
on notes shall
cease.

Sec. 12. That any plaintiff who shall have recovered judgment against any bank or banker as aforesaid may at his election, sue out on such judgment, while the whole or any part thereof remains unpaid, a writ or writs of fieri facias, et levavi facias by virtue of which it is hereby made the duty of the officer to whom the same is directed, to levy on the goods and chattels of such bank or banker, body politic or corporate, and to sell the same as in other cases, on execution, and if goods and chattels cannot be found sufficient to satisfy such judgment or judgments, after disposing of what may be found in the manner aforesaid, it shall be the further duty of the said officer to levy on the lands, tenements or hereditaments, which such bank or banker, body politic or corporate, may hold by deed in fee simple, deed of trust,

or mortgage deed of conveyance, or by title bond or any other assurance whatever; and to sell the same under the restrictions and limitations hereinafter mentioned; and upon the receipt of the purchase money, to make to the purchaser or purchasers a deed, assignment, or transfer in writing therefor, therein and thereby conveying to him, her or them, all the right, title, interest and estate which such bank or banker, body politic or corporate, had in, or to the property sold, at the time the same was levied upon in manner aforesaid; and such purchaser or purchasers, after such sale, may pursue the usual legal means to foreclose the mortgage, or collect the amount due on such deed of trust, or mortgage deed of conveyance, or to reduce to possession such other estate whether legal or equitable as such bank or banker, body politic or corporate, might or could do, had such property not been sold.

Lands in trust
for banks may
be levied upon

Sec. 13. That when any person shall hold any lands, tenements or hereditaments by deed, in fee simple, deed of trust, or mortgage deed of conveyance; or by lease or title-bond or any other title or assurance whatever, in trust and for the use of such bank or banker, body politic or corporate, whether such trust be expressed in the deed or not, it is hereby made the duty of the officer holding a writ of fieri facias et levare facias against such bank or banker, body politic or corporate, after disposing of what goods and chattels may be found, in manner aforesaid, to levy on the lands, tenements and hereditaments so held by such person or persons in manner aforesaid, in trust and for the use of such bank or banker, body politic or corporate, and to sell the same under the restrictions and limitations hereinafter mentioned, and upon the receipt of the purchase money, to make to the purchaser a deed, therein and thereby conveying to him all the right, title, interest and estate which such bank or banker had in, or to the property sold, at the time the same was levied upon in manner and form aforesaid, and it is hereby made the duty of the person holding such lands, tenements and hereditaments in trust and for the use of such bank or banker, body politic or corporate, to make to the purchaser a deed upon demand, for the property sold, therein and thereby conveying to him all the estate such person had in the property at the time the same was levied upon, in manner aforesaid, and the equitable interest of such bank or banker, body politic or corporate to the property so sold, shall forever after be extinguished.

Officer to sell
lands after re-
port.

Sec. 14. That when any lands, tenements or hereditaments held by such bank or banker, body politic or corporate, by deed of trust, or mortgage deed of conveyance, lease, title bond or any other assurance whatever, are levied upon in the manner pointed out in the eleventh section of this act, or when any lands, tenements or hereditaments, held by any person by deed of trust, or mortgage deed of conveyance, ti-

the bond or any other assurance whatever in trust, and for the use of such bank or banks, body politic or corporate, whether the trust be expressed in the deed or not, and levied upon in the manner pointed out in the twelfth section of this act, the officer who made the levy shall immediately thereafter, appoint three judicious and disinterested men of his county, whose duty it shall be, under oath, to ascertain as nearly as practicable, the amount due on such deed of trust, or mortgage deed of conveyance, and for that purpose, they may examine any books or papers that they may think necessary, and may also examine the mortgagor, or grantor, and such other witness or witnesses as they may think necessary under oath, which oath any one of them are hereby authorised to administer, touching the amount due on such deed of trust, or mortgage deed of conveyance, and to report in writing to said officer, under their hands and seals within six days after their appointment, the amount they found due and owing on such deed of trust, or mortgage deed of conveyance; and upon such report being made to said officer, he shall advertise and sell said property, as nearly as may be, in the same manner pointed out for the sale of real estate, under the provisions of the act, entitled "an act regulating judgments and executions."

Sec. 15. That when any lands, tenements or hereditaments shall be taken in execution as aforesaid, which are or shall be mortgaged or conveyed by deed of trust or be held by any other title or assurance whatever, to secure a sum greater than the value thereof, the interest of the mortgagee or trustee in such lands, tenements or hereditaments shall not be sold for less than two thirds of the appraised value thereof; and when such lands, tenements or hereditaments are or shall be mortgaged or conveyed by deed of trust or any other title or assurance whatever to secure a sum not exceeding the value thereof, the same shall not be sold for less than two thirds of the sum which shall be due on such mortgage deed, or deed of trust, on the day of sale.

Must sell for two thirds appraised value.

Sec. 16. That where more than one tract of land is included in the deed of trust, or mortgage deed of conveyance or held by title bond or any other assurance whatever it is hereby made the duty of the officer to whom any writ or writs of execution may be directed, after having ascertained the amount due on such deed of trust, or mortgage deed of conveyance or any other title or assurance whatever in the manner hereinbefore directed, or when the amount due has been heretofore ascertained, to summon an inquest of five judicious and disinterested men of his county, whose duty it shall be to appraise, under oath, each tract of land contained in said deed of trust, or mortgage deed of conveyance, or any other title or assurance separately, and to report the same in writing to the said officer by whom they were summoned, whose duty it shall be the

Tracts of land to be appraised separately and be so sold.

appraised value of such lands shall exceed the sum due on such mortgage deed, or deed of trust (or any other title or assurance) to apportion the amount found due on such deed of trust, or mortgage deed of conveyance, or other title or assurance among the several tracts of land specified in such deed of trust, or mortgage deed of conveyance or other title or assurance in just proportion to their appraised value, and after having advertised and made known the time and place of sale in manner aforesaid, to proceed and sell each tract of land contained in such deed of trust, or mortgage deed of conveyance or other title or assurance separately, for no less than two thirds of the amount apportioned to the same in manner aforesaid, and each of the tracts of land so sold as aforesaid, shall be liable to be redeemed by the grantor in the deed of trust, or mortgage deed of conveyance, or other title or assurance, by the payment of the amount apportioned to the same, in manner aforesaid, to the purchaser, in the same manner as if the tract had been separately mortgaged or conveyed by deed of trust, or other title or assurance and the purchaser in like manner shall hold the same in the same manner as if separately granted in manner aforesaid.

Grantor in deed of trust may redeem.

Shall be sold as by act "regulating judgments &c"

Sec. 17. That when lands, tenements or hereditaments, are held by any bank or banker, body politic or corporate, in fee simple in the manner pointed out in the eleventh section of this act, or when lands, tenements, or hereditaments, are held by any person by deed in fee simple in trust and for the use of such bank or banker, body politic or corporate, in the manner pointed out in the twelfth section of this act, whether such trust be expressed in the deed or not, and are levied upon in the manner aforesaid, the officer levying shall cause the property so levied upon, to be appraised, advertised and sold, in the same manner as real estate is appraised and sold under the provisions of the "act regulating judgment and execution."

Purchaser may file a bill in equity

Sec. 18. That if the person holding lands, tenements, or hereditaments, in trust and for the use of such bank or banker, body politic or corporate, shall refuse or neglect, upon demand, to make to the purchaser, his heirs, or legal representatives, a deed in the manner pointed out in the twelfth section of this act, such purchaser, his heirs, or legal representatives may file a bill in equity, to compel a conveyance of the property sold, and if a decree shall be rendered in favor of the purchaser, his heirs or legal representatives, it is hereby made the duty of said court rendering such decree, further to decree, against the person so refusing, twenty five per centum damage on the whole amount for which such property was sold and to issue execution, therefor, as in other cases in chancery.

Damages decreed

Sec. 19. That the court from which the execution issued,

shall make such allowance to the inquest appointed by said act for their services as to them may seem right, and if any person, being summoned to appear before the inquest to ascertain the amount due on the deed of trust, or mortgage deed of conveyance, shall refuse to appear, or refuse to give testimony before said inquest, it shall be the duty of the inquest to report such person to the next court of common pleas, who are hereby required to punish such person or persons, refusing to appear or to give testimony, in the same manner that witnesses are punishable in court for like offences; and the clerk of the court of common pleas, when required, shall issue subpoenas for witnesses to appear before said inquest at the time and place of their meeting, and the sheriff shall serve the same without delay, and the said sheriff, clerk and witnesses shall be allowed the same fees as is provided by law for similar services to be taxed to, and paid by the defendant or defendants in execution.

Witnesses refusing to appear punished

Fees

Sec. 20. That the plaintiff, at any time before his judgment shall be fully satisfied, may proceed thereon in either of the modes pointed out by this act, and having proceeded in one, he shall not be debarred from proceeding in the other, but may at any time proceed in either mode until such judgment shall be fully satisfied.

Plaintiff may proceed in either or both modes in this act

Sec. 21. That when any suit shall be brought before any justice of the peace, against any bank or banker, to recover money due from such bank or banker, upon notes or bills by them issued, for any sum made cognizable before a justice of the peace, and judgment shall be rendered, and execution shall be issued against such bank or banker; if the money shall not be made on the first execution issued, it shall be the duty of the justice, on request, to deliver to the plaintiff or his agent, a certified transcript of his docket, and on filing said transcript in the office of the clerk of the court of common pleas, of the proper county, and on the plaintiff's filing with said clerk an affidavit stating that the amount of said judgment or any part thereof is then due and unpaid, it shall be the duty of such clerk to issue process of attachment or fieri facias thereon, at the option of such plaintiff in the same manner as on a judgment originally recovered in such court.

Justices to certify transcript to court, when process of fieri facias may issue.

Sec. 22. That nothing herein contained shall be so construed as to take away the jurisdiction which either of the courts of this state, sitting as a court of chancery, may or might have in any case which comes within the provisions of this act.

Chancery jurisdiction not taken away by this act

Sec. 23. That no action shall be brought upon any notes, or bills hereafter issued by any bank, banker or bankers, and intended for circulation, or upon any note, bill, bond or other security given, and made payable to any such bank, banker or bankers, unless such bank, banker, or bankers; shall be incorporated and authorized by the laws of this state to issue

notes issued by unincorporated banks void

such bills and notes, but that all such notes, and bills, bonds, and other securities shall be held and taken in all courts as absolutely void.

Suits &c under former to be governed by this act

Acts repealed:

Sec. 24. All suits heretofore commenced, under the provisions of an act entitled, "an act to provide for a more speedy and equitable collection of debts, where banks and bankers are parties," passed February second, 1821, or an act amendatory thereto passed February 2d, 1822, whether judgment has been obtained or not, or whether execution has been levied or not, shall in all respects be proceeded in the same manner as though such suit had been originally commenced under the provisions of this act; and the above recited acts, passed February 2d, 1821, and February 2d, 1822, be and the same are hereby repealed.

JOSEPH RICHARDSON,
Speaker of the House of Representatives.
ALLEN TRIMBLE.

Speaker of the Senate.

January 23, 1824.

AN ACT, Supplementary to the act entitled "an act to incorporate certain banks therein named, and to extend the charters of existing incorporated banks."

Dividends of Banks appropriated to expense of government.

Proviso

Sec. 1. *Be it enacted by the General Assembly of the state of Ohio.* That the dividends accruing on all shares of bank stock set off to, and vested in the state, and on all shares purchased with dividends which have accrued under the act, to which this is a supplement, shall be and the same are hereby appropriated to the ordinary expenses of government, and the auditor of state shall annually on or before the first day of January draw an order upon the cashier or chief clerk of such bank or banking company in favor of the treasurer of state for the amount of dividends annually, or semi-annually, accruing to the state on shares so as aforesaid set off, to, and invested in the state, and on all shares so as aforesaid purchased by the state, and charge the same to the treasurer with the amount thereof, and the treasurer shall receive and account for the same, as for other monies paid into the treasury, *Provided*, that so much of the dividends or shares, owned by the state in any bank, as may be necessary to pay any instalment, or instalments, which may at any time become due, on shares which have been purchased by the state, in such bank, shall be appropriated for that purpose.

JOSEPH RICHARDSON,
Speaker of the House of Representatives.
ALLEN TRIMBLE.

Speaker of the Senate.

February 24, 1824.