



PennState
Dickinson Law

DICKINSON LAW REVIEW
PUBLISHED SINCE 1897

Volume 47
Issue 2 *Dickinson Law Review* - Volume 47,
1942-1943

1-1-1943

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Recommended Citation

Ella Graubert, *Black Letter Writs*, 47 DICK. L. REV. 95 (1943).

Available at: <https://ideas.dickinsonlaw.psu.edu/dlra/vol47/iss2/2>

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BLACK LETTER WRITS

ELLA GRAUBART*

At a dinner given by the Allegheny County Bar Association for the judges of Allegheny County, President Judge Harry H. Rowand of the Court of Common Pleas was asked if something could not be done to revise the outmoded language of the subpoena, and to change the penalty which,—*mirabile dictu*,—is still expressed in "pounds." The subpoena now in use is:

"Greeting: We command you that, laying aside all business and excuses whatsoever, you and each of you be and appear in your proper person before our Judges at Pittsburgh, at our Common Pleas Court, there to be held for the County aforesaid, forthwith to testify all and singular those things which you shall know in a certain case in our said Court depending and then there to be tried between the above named parties. And herein fail not under the penalty of one hundred pounds."

A committee was immediately appointed by Judge Rowand and Mr. James Milholland, then President of the Association and now Judge of the Orphans Court, consisting of three judges and three lawyers: Judge Joseph A. Richardson, Judge A. Marshall Thompson, Judge Sara M. Soffel, Louis Caplan, John A. Metz and the writer to study the forms of writs and to suggest simpler and more modern phraseology.

Six writs were chosen: the subpoena, the summons, scire facias to revive a judgment, scire facias sur mortgage, attachment execution and foreign attachment.

The first thing the Committee did was to send letters to the prothonotaries of all the counties of the Commonwealth asking for copies of the writs in current use, and a great mass of material was received, which the committee plans to give to the Allegheny County Bar Library to be preserved as a memorial to the conservatism of the courts of Pennsylvania.

The writs which prothonotaries are sending every day to sheriffs and litigants are couched in the idiom of the 18th century. The language is archaic and confusing, indeed ridiculous. The continued reference in the subpoena to pounds as a medium for the payment of penalties is not only ludicrous, but illegal.

The colonies had their own coinage until the Constitution of the United States gave to Congress the power to coin money and regulate its value, and that power was then taken away from the states. The money of the United States by Act of 1792, was expressed in dollars and tenths and hundredths,

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and the Act specifically provided that "all accounts in the public offices and all proceedings in the courts shall be kept and had in conformity to this regulation."

In spite of this we have continued for exactly 150 years to express the penalty in our subpoena in pounds.

If the subpoena is archaic, the summons is downright misleading. It reads: "To the Sheriff of Said County, Greeting:

We command you.....that you summon

be and appear before our Court of
 Common Pleas No..... to be holden at the City of
 Pittsburgh, in and for said County, on the first Monday of
 next, there to answer
 of a Plea of Assumpsit.....
 And have you then and there this writ."

Waiving aside such repetitions as "be and appear" and "in and for said County" and such an archaic verbal form as "holden," let us consider the notice contained in the summons. It is "to appear" on the first Monday of the month before the Court.

When the defendant appears on the day fixed he is told by a clerk that he isn't required to be there. When he persists that the paper served upon him says that he *should* be there, the clerk patiently tells the bewildered defendant that the paper doesn't mean what it says. To be sure, it says "be and appear" but it doesn't mean either—it means something else.

What would stockholders do with the directors of a corporation who sent out notices that meant the opposite of what they said?

The enormity of this sort of thing strikes a layman more acutely than it does us, who have become inured to the abracadabra of legal phraseology.

Recently a young woman chemist came to my office to get a divorce. I gave her the printed form of libel which we use in Allegheny County to sign. She read it carefully and then she said:

"What is this at the end—'and your libellant will ever pray'—
 "What," she asked, "am I praying for?"

"Why," said I, "the health of the King of England." And then laughingly I added, "we haven't changed it yet."

She didn't quite share my amusement.

I don't suppose a chemist could get along in the twentieth century with the techniques of the eighteenth.

The writ of execution attachment now in use in Allegheny County has the following phraseology:

"Whereas John Doe lately before our Judges of our Court of Common Pleas of Pittsburgh, to-wit: On the first day of January, 1942, by the judgment of said Court recovered against Rob-

ert Roe a judgment for the sum of \$10.00 lawful money of the United States, for debt, as also the sum of \$50.00, costs and charges, by.....about..... suit in that behalf expended, whereof the said defendant duly convict, as appears to us of record."

I have left the blanks empty because I can't figure out what goes in them. The language is not only hopelessly antiquated, but the grammar is so complicated that no ordinary citizen, nor indeed even a sheriff or a lawyer, can possibly understand what it means.

In reading the writ of scire facias to revive a judgment, I seem to see the prothonotary doffing a plumed hat, bowing low and flourishing a perfumed handkerchief as he gives this quaint bit of sermonizing to the Sheriff:

"And whereas by the insinuation of the said John Doe we have in our said Court understood, that although the judgment in form aforesaid to be given, yet execution thereof still remains to be made, whereof the plaintiff besought us to grant unto him in this behalf a proper remedy, and we being willing that what is right and just should be done herein, do command you..... that by good and lawful men of your baliwick, you give notice to the said Robert Roe."

These words are used every day by the prothonotary in addressing the Sheriff in our County in the year 1942!

"Baliwick" is a lovely word but it hardly fits into any political sub-division of our Commonwealth in which either the Prothonotary or Sheriff ever gave a political speech. The Prothonotary's willingness to "do what is right and just" may have some effect on his chance for re-election but none on the right of the plaintiff to revive his judgment. Furthermore, if all that the plaintiff can do is to insinuate, is he entitled to any relief? There is a little sentence at the end of the writ of scire facias which challenges grammatical diagnosis—"and further to do and receive whatsoever our said Court shall then and thereof and concerning them in his behalf consider."

Our writ of foreign attachment has its own bit of ancient verbiage. It speaks of tenements, with a connotation foreign to New York's lower east side and it ends up with these brave words, "to answer what shall be objected against them, and abide the judgment of the said Court therein."

Our form of scire facias sur mortgage is two pages long and has such terms in it as "before the ensealing and delivery of the said Indenture." And again

"anything hereinbefore contained to the contrary thereof in any-wise notwithstanding."

That seems to cover it!

My first thought was to go back and study the derivation and use of these old forms. But I have decided that whatever antiquarian interest there might

be in these ancient phrases, my purpose is not to encourage it!

The committee has submitted for the examination of the Bench and Bar six new writs. Since the Act of 1937 and its amendments, the Supreme Court of Pennsylvania is the only body that can promulgate writs, and so to it ultimately must go all suggestions for modernizing writs. As the Supreme Court may suspend statutes, we have not felt it necessary to comply with the statutes.

What we have tried to do in each case is to find out what the writ is intended to do, and to whom it is in reality addressed, whether to the Sheriff or the person served. We have then stated as simply as we could what notice or information the writ should convey.

We have asked the indulgence of the editor to print first the form of writ in present use, and immediately thereafter the proposed form of writ. We ask the comments and criticism of the Pennsylvania Bar on what we have proposed.

As this goes to press, there has just come into my hands a release from a large firm of lawyers in the East containing this language:

"I do hereby remise, release and forever discharge.....
of and from all debts, demands, actions, causes of action, suits,
dues, sum and sums of money, accounts, reckonings, bonds, spe-
cialties, covenants, contracts, controversies, agreements, promises,
doings, omissions, variances, damages, extents, executions, and lia-
bilities whatsoever, both in law and equity, or which may result
from the existing state of things, which against.....
I now have, or ever had, from the beginning of the world to the
day of the date of these presents."

The black letter virus persists not only in writs, but permeates the entire body of the law.

Pittsburgh, Pa.
January 4, 1943

ELLA GRAUBART

PRESENT SUBPOENA

COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PA.

Commonwealth of Pennsylvania }
County of Allegheny } ss.

..... } To
vs. }
..... }

Greetings: We command you that, laying aside all business and excuses whatsoever, you and each of you be and appear in your proper person before

our Judges at Pittsburgh, at our COMMON PLEAS COURT, there to be held for the Court aforesaid forthwith

to testify all and singular those things which you shall know in a certain case in our said Court depending and then there to be tried between the above named parties. And herein fail not under the penalty of one hundred pounds.

Witness the Hon. HARRY H. ROWAND, President Judge of our said Court at Pittsburgh, the.....day of in the year of our Lord one thousand nine hundred and

Wm. H. FRASHER
Prothonotary

Attest:

PROPOSED SUBPOENA

COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PA.

.....
Plaintiff

vs.

.....
Defendant

To
(Witness)

You are ordered to come to the Court of Common Pleas of this County at
(Address)

on the.....day of.....194..... at 9:30 A. M., E.W.T. to testify in the above case.

Failure to do so may subject you to fine or arrest.

.....
President Judge

.....
(Date)

PRESENT SUMMONS

The Commonwealth of Pennsylvania, }
Allegheny County } ss.

To the Sheriff of Said County, Greeting:

We command you.....that you summon

.....so that..... be
 and appear before our Court of Common Pleas No. , to
 be holden at the City of Pittsburgh, in and for said County, on the first Mon-
 day of.....next, there to answer
of a Plea of Assumpsit.....
 And have you then and there this Writ.
 WITNESS the HON....., President Judge
 of our said Court, the.....day of.....
 A.D. one thousand nine hundred and.....

.....
 Prothonotary

PROPOSED SUMMONS

.....
 Plaintiff
 vs. Assumpsit

 Defendant

To the Defendant:

You are handed a copy of the Statement of Claim filed by the plaintiff in this action. You are required to file an answer within fifteen days. If you fail to do so judgment may be taken against you for the relief sought in the Statement of Claim.

.....
 Prothonotary
 Trespass

To the Defendant:

You are handed a copy of the Statement of Claim filed by the plaintiff in this action. You may file an answer within fifteen days.

.....
 Prothonotary

Note: These forms assume that an action cannot be commenced except by the the filing of a Statement of Claim. A similar rule has been adopted in the Federal Civil Procedural Rules.

PRESENT WRIT OF EXECUTION ATTACHMENT

ALLEGHENY COUNTY, ss:

The Commonwealth of Pennsylvania

To the Sheriff of Allegheny County, Greeting:

Whereas,
 lately before our Judges of our Court of Common Pleas at Pitts-
 burgh, to wit: On the.....day of
A. D. 19 by the Judgment
 of said Court recovered against.....
 a Judgment for the sum of.....Dollars, lawful
 money of the United States, for debt, as also the sum of Fifty Dollars, costs
 and charges, by.....about.....
 suit in that behalf expended, whereof the said Defendant duly convict, as
 appears to us of record. And

Whereas, It is alleged that the same judgment remains due and unpaid to
 the said Plaintiff and that certain goods, chattels, moneys, and effects of the
 said Defendant are in the hands or possession of.....
 and liable to be Attached and Levied in satisfaction of the Judgment aforesaid;
 Now we command you That you Attach all and singular the debts due to said
 Defendant and deposits of money made by.....and goods or chattels,
 pawned, pledged or demised by.....in whose hands or possession
 soever the same may be found; and that you make known to the said.....
 and all other persons from whom such debts may be due, or in whose hands
 or possession such moneys, goods, or chattels, etc., may be found, that they
 may be and appear before our said Court, to be holden at Pittsburgh in and for
 said County, on the first Monday of.....next, there to show cause why
 the Judgment aforesaid should not be levied of the effects of said Defendant
 in their hands agreeably to the Thirty-fifth section of the Act of Assembly,
 passed the 16th day of June, 1836, relative to executions; and have you then
 and there this Writ.

Witness, the Hon....., President of our said
 Court, at Pittsburgh, the.....day of.....A. D. one
 thousand nine hundred and.....

.....Prothonotary

PROPOSED WRIT OF EXECUTION ATTACHMENT

Plaintiff

vs.

Defendant

To the Sheriff of.....County:

On the.....day of.....19..... the plaintiff recovered a judgment in the amount of \$..... against

defendant in the Court of Common Pleas of..... County. This judgment and costs are unpaid.

Attach all debts due the defendant and all money and personal property belonging to the defendant wherever you find them, and give the following notice to the defendant and to the garnishee :

To the defendant:

You are required to file an answer, if you have any defense, within fifteen days from the service of this writ upon you.

To the garnishee:

You may file an answer within fifteen days from the service of this writ upon you and answer such interrogatories as may be served upon you.

Prothonotary

PRESENT WRIT OF SCIRE FACIAS TO REVIVE A JUDGMENT

The Commonwealth of Pennsylvania.

ALLEGHENY COUNTY ss:

To the Sheriff of Allegheny County, Greeting:

Whereas ately in our Court of Common Pleas, No..... before our Judges of our said Court at Pittsburgh, to-wit: on the..... day of..... A.D. 193..... by the consideration of our said Court recovered against..... a Judgment for the sum of..... Dollars

for..... debt, as well as fifty dollars for.....
 cost and charges by..... about.....
 suit in that behalf expended, whereof the said Defendant.....
 convict, as appears to us of Record. And whereas, by the insinuation of the
 said..... we have in our said Court understood, that
 although the judgment in form aforesaid to be given, yet execution thereof still
 remains to be made, whereof..... besought us
 to grant unto..... in this behalf a proper remedy, and
 we being willing that what is right and just should be done herein, do com-
 mand you..... that by good and lawful men
 of your baliwick, you give notice to the said.....
 that..... be and appear before our Judges at Pitts-
 burgh at our said Court, there to be held for the County aforesaid, the first
 Monday of..... next, to show if anything for.....
 can say why the said Judgment should not be revived, and the lien continued,
 and why the said Plaintiff ought not to have..... execution
 against..... for Debt, Interest and Costs aforesaid,
 according to the force, form and effect of the recovery aforesaid, if.....
 shall think fit. And further to do and receive whatso-
 ever our said Court shall then and thereof and concerning.....
 in his behalf consider. And have you then and there the names of those by
 whom you shall make known to..... and this writ.
Witness, the Hon..... President of our said
 Court, at Pittsburgh, the..... day of.....
 Anno Domini 194.....

..... Prothonotary

PROPOSED WRIT OF SCIRE FACIAS TO REVIVE A JUDGMENT

.....
Plaintiff

vs.

.....
Defendant

To the Defendant and terre tenant :

.....
plaintiff recovered a judgment against.....
.....

defendant in the amount of \$..... on the..... day of194.....

The amount due upon this judgment is \$..... with interest, attorney's commission and costs.

The plaintiff wishes to revive the judgment for an additional five years. If you have any objection you are required to answer within fifteen days; if you do not do so, the judgment will be revived for an additional five years.

.....
Prothonotary

PRESENT WRIT OF FOREIGN ATTACHMENT

ALLEGHENY COUNTY, ss.

The Commonwealth of Pennsylvania,

To the Sheriff of said County, Greeting:

WE COMMAND YOU, that you ATTACH

.....non residents of the State of Pennsylvania, and not now being within the County of Allegheny, late of your County, by all and singular,..... goods and chattels, lands and tenements, in whose hands or possession soever the same may be so that.....be and appear before our Court of Common Pleas, to be holden at Pittsburgh, in and for said County, on the first Monday of.....next, there to answer.....of a plea of Assumpsit.

AND you, the said Sheriff, are hereby commanded to summon.....and all other persons in whose hands or possession the said goods and chattels, lands and tenements, or any of them, may be attached, so that they be and appear before our said Court on the day and place mentioned in the above Writ, to answer what shall be objected against them, and abide the judgment of the said Court therein. And have you then and there this Writ.

WITNESS, the Hon....., Esquire, President Judge of our said Court, the.....day of.....Anno Domini, one thousand nine hundred and

.....Prothonotary.

PROPOSED WRIT OF FOREIGN ATTACHMENT

Plaintiff

vs.

Defendant

To the Sheriff of

Attach any property, real or personal, that you may find belonging to a non-resident and hand to

(Names and addresses of garnishees to be inserted)

garnishee a copy of the plaintiff claim, and give the garnishee the following notice:

To the Garnishee:

You are required to hold all property belonging to the defendant subject to the order of this court, and you may file an answer to the plaintiff's claim within fifteen days from service of this writ upon you and answer such interrogatories as may be served upon you.

Prothonotary

(Note) 1. A description of the real and personal property should be given to the Prothonotary by the plaintiff's lawyer and the Prothonotary should attach the descriptions to the writ.

PRESENT WRIT OF SCIRE FACIAS SUR MORTGAGE

ALLEGHENY COUNTY, ss.

The Commonwealth of Pennsylvania,

To the Sheriff of Allegheny County, Greeting:

Whereas, by a certain INDENTURE, made at the County afore-said, the day of Anno Domini one thousand nine hundred and recorded on the day of A. D. 19 in Mortgage Book, Vol. Page between

of the first part, and of the second part, reciting, that whereas, the said party of the first part, in and by certain obligation or writing obligatory, under hand and seal duly executed, bearing even date with said

Indenture, stand bound unto the said part of the second part, in the sum of Dollars, conditioned for the payment of Dollars in the following manner, to wit:

And the said part of the first part, as well for and in consideration of the aforesaid debt or sum of Dollars, and for the better securing the payment thereof with its interest and unto the said part of the second part heirs, executors, administrators and assigns, in discharge of said recited obligation, as for and in consideration of the further sum of One Dollar lawful money of the United States, unto said part of the first part, in hand well and truly paid by the said part of the second part at or before the ensembling and delivery of the said Indenture, did grant, bargain, sell, release and confirm unto the said part of the second part heirs and assigns, ALL

And Whereas, by the same Indenture, it is likewise provided and agreed, that if the said part of the first part heirs, executors, administrators or assigns, shall and do well and truly pay, or cause to be paid unto the said part of the second part executors, administrators or assigns, the aforesaid debt or sum of Dollars, with the interest, &c., on the day and time hereinbefore mentioned and appointed for the payment thereof, without any fraud or further delay, and without any deduction, defalcation or abatement to be made for or in respect of any taxes charges or assessments whatever;

then and from thenceforth, as well the said Indenture and the estate thereby granted, as the said recited obligation, shall become void and of no effect, anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

But Provided Further, Also, That in case default be made in payment of the said principal, or any installment of interest for the period of days after the same shall become due and payable as aforesaid, the whole of said principal and interest shall forthwith become due and payable, and a Writ of Scire Facias may at once be issued on this Mortgage, and prosecuted to Judgment and execution for the whole amount of the said principal and interest then unpaid, together with all the Fees, Costs and Expenses of such proceedings, including an Attorney's Commission of five per centum for the collection thereof, as by the same Indenture in our Court of Common Pleas, for the County of Allegheny aforesaid before our Judges, at the City of Pittsburgh, being shown, the date whereof is the day and year aforesaid, manifestly appears.

And Whereas, On the day of A. D. 19 , one

semi-annual installment of interest come due and was payable, according to the terms and conditions of said Mortgage, and the same still remains due and unpaid, although the said period of..... has long since elapsed, and by the insinuation of..... we have received; WHEREOF..... besought us to provide for..... a proper remedy in that behalf; and because we are willing what is right in that behalf should be done; THEREFORE, WE COMMAND YOU..... that by honest and lawful men in your bailiwick you make known to the said..... that be and appear before our Judges at the City of Pittsburgh, on the first Monday of..... next to show if anything for..... ha or know to say why..... the said mortgaged premises, with the appurtenances, should not be seized and taken in execution to satisfy the debt and interest aforesaid if to..... it shall seem expedient; and, further, to do and receive what our said Court in that behalf shall consider. And have you then and there the names of those by whom you shall make known to..... and this Writ.

Witness, The Honorable....., President of our said Court, at the City of Pittsburgh, this..... day of..... Anno Domini 19

..... Prothonotary

PROPOSED WRIT OF SCIRE FACIAS SUR MORTGAGE

.....
Plaintiff

vs.

.....
Defendant

To the Defendant:

By the terms of a mortgage dated the.....day of..... 19..... and recorded on the.....day of.....19..... in Mortgage Book Vol.....page....., upon default, the mortgagee is entitled to a writ of scire facias to foreclose the mortgage.

You are now notified that the plaintiff claim (s) a default under the terms of the mortgage and has filed a complaint in the Court of Common Pleas of..... County, a copy of which is handed to you.

You may file an answer within fifteen days. If you fail to do so the property covered by the mortgage may be seized and sold to satisfy the debt due on the mortgage.

.....
Prothonotary