

# L A W S

OF THE

# REPUBLIC OF TEXAS

PASSED AT THE

SESSION OF THE FOURTH CONGRESS

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PRINTED BY ORDER OF THE SECRETARY OF STATE.

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IN ONE VOLUME.

HOUSTON.

1840

Sec. 6. Be it further enacted, That all laws contrary to the provisions of this act, are hereby repealed.

DAVID S. KAUFMAN,

Speaker of the House of Representatives.

DAVID G. BURNET,

President of the Senate.

Approved February 5th, 1840.

MIRABEAU B. LAMAR.

#### AN ACT

To establish the method of trying the Right of Property levied on by Execution, when the property is claimed by any person not a party to such Execution.

Sec. 1. Be it enacted by the Senate and House of Representatives of the Republic of Texas, in Congress assembled, That if any Sheriff shall levy an execution on property, and a doubt shall arise whether the right of such property is in the debtor or not, such sheriff may apply to the plaintiff, his attorney or agent for his bond, with good security, for indemnification for the sale of the property seized; which, if the plaintiff, his attorney or agent refuses or fails to do, within ten days after such application, the Sheriff, or other officer shall be justified in delivering up such property to the party from whose possession it was taken.

Sec. 5. Be it further enacted, That in all cases where a Sheriff, Coroner, or Constable, or other legal officer may levy an execution on property, the title of which is disputed, and shall have taken, or may hereafter take a bond of indemnity, and shall have been, or may hereafter be sued for so doing, by the rightful owner of such property so levied on, and sold, and a recovery had against such Sheriff, Coroner, or Constable or other legal officer, it shall and may be lawful for such officer upon motion in any court having jurisdiction of the matter, to obtain judgment against the obligor or obligors, or either of them, on such bond of indemnity, for the amount of the damages and costs that may have been recovered against him in trying the right of property, if the property when levied on was not in the possession of the defendant in the execution, the burden of proof shall be upon the plaintiff, if it was in his possession, then the burden of proof shall be upon the claimant.

Sec. 3. Be it further enacted. That it shall be the duty of the Sheriff to return the property levied on to the person, out of whose possession the same was taken, upon such person entering into bond with good security to the plaintiff in execution, in double the amount of the debt and costs, conditioned for the delivery of the property to the Sheriff, whenever the claim of the property so taken shall be determined by the court not to belong to such party, and if any person to whom property is so returned, shall neglect, or refuse to deliver the property to the Sheriff, it shall be the duty of the Sheriff forthwith to return the bond to the clerk of the court in which the trial of the right of property is had, which bond shall have the force and effect of a judgment, and execution may be awarded by the court, or justice of the peace, as the case may be, against all or any of the obligors, and on such execution no delivery bond shall be taken; Provided, That a claim to property made in conformity to the provisions of this act, shall operate as a release by the claimant of all right to damages against the Sheriff, or other officer, which he might have had by reason of the taking of such property in execution.

Sec. 4. Be it further enacted, That if such claimant shall refuse, or fail to give such bond and security, it shall be at the option of the plaintiff in execution to indemnify and sell the property, just as if no such claim had been made to it, or await the judgment of the court, upon the issue made upon, to try the right of said property.

Sec. 5. Be it further enacted, That in all trials of the right of property aforesaid, when the claimant shall fail to establish his claim to such property, the court shall give ten per centum damages against him on the amount of the execution.

Sec. 6. Be it further enacted, That in case any execution or attachment issued from any other court, levied upon property which is claimed by any person or persons, not a party to the execution or attachment, the right to the same shall be tried in the same manner (as nearly as may be) as is prescribed in the foregoing act, in all such cases, conforming to the rules and proceedings established for the regulation of the court from which the execution issued.

DAVID S. KAUFMAN,  
Speaker of the House of Representatives.  
DAVID G. BURNET,  
President of the Senate.

Approved February 5th, 1840.

MIRABEAU B. LAMAR.