

[No. 161.]

A N A C T

Relating to Executions, and for other purposes.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania, in General Assembly met, and it is hereby enacted by the authority of the same,* That in addition to the remedies now provided by law, hereafter any judgments, in any district court, or court of common pleas in Pennsylvania, may be transferred from the court in which they are entered, to any other district court, or court of common pleas in this Commonwealth, by filing of record in said other court, a certified copy of the whole record in the case; and any prothonotary receiving such certified copy of record, in any case in which judgment has been entered by another court, or in another court, by transcript from justices of the peace, shall file the same, and forthwith transcribe the docket entry thereof, into his own docket, and the case may then be proceeded in, and the judgments and costs collected by executions, bill of discovery, or attachment, as prescribed by the act entitled "An act relating to executions," passed the sixteenth day of June, one thousand eight hundred and thirty-six;" and as to lien, revivals, executions, and so forth, it shall have the same force and effect, and no other, as if the judgment had been entered, or the transcript been originally filed in the same court to which it may thus be transferred.

Transfer of judgments from courts.

How effected.

Preamble.

2d. preamble.

WHEREAS, it has been the practice in many counties of this Commonwealth for sheriffs and coroners to sell real property after the return days of their writs; which sales, if made after a certain return day had expired, have been solemnly decided by the supreme court to be invalid.

AND WHEREAS, the postponement of sale of such property was, for the most part, induced for the benefit of the debtor, and often by his own procurement, and no objection taken to the regularity of the proceeding when the sale was returned to the respective courts; and the deed submitted for acknowledgment, and by reason of such acquiescence, bona fide purchasers, their heirs or assigns, have been induced to make extensive and valuable improvements; and it appears just, that such sales, bona fide made, should be held good and valid. Therefore,

SECTION 2. That all sales of real property within this Com-

monwealth, heretofore made by the sheriffs or coroners after return days of their several writs of *levari facias*, *fiera facias*, or *venditioni exponas*, shall not, on account of such irregularity in proceeding, be invalidated or set aside, but the same shall be held as good and valid, to all intents and purposes, as though the sale had been made on or before the return day of said writs. Sales of Sheriff. After return days valid.

WHEREAS, it has been the practice in many counties of this state, for the justice or other officer taking a deposition under rules of court, to write out the testimony from the statement of the witness, and cause the same to be sworn to after it has been so prepared: *And whereas*, it has been decided by the Supreme court, that depositions so taken are illegally taken and cannot be read in evidence: *And whereas*, the rejection of deposition so taken in many suits now pending would injuriously affect the rights of the parties, and render many titles to property insecure: Therefore to remedy the same, Preamble.

SECTION 3. That no deposition heretofore otherwise legally taken under authority of law shall be rejected, on account of the same having been sworn to by the witness, after it was reduced to writing, but every such deposition shall be read in evidence, in the same manner as if the witness had been duly sworn before his examination, and before his testimony was written down. Certain depositions legalized.

WHEREAS, difficulties have occurred relative to the construction of the thirteenth section of the act, passed the second day of July, 1839, entitled an act relating to the elections of this commonwealth: Therefore, Preamble.

SECTION 4. That the thirteenth section of the act, passed July 2nd, 1839, entitled an act relating to the elections of this commonwealth, shall not be so construed as to prevent any militia officer or borough officer from serving as judge, inspector or clerk, at any general or special election, in this commonwealth. Defining election law.

SECTION 5. That it shall be lawful for the president judges of the first and twelfth Judicial Districts, to hold alternately, or at such times as may be mutually agreed upon between them, all special courts required to be held in the county of Chester, in consequence of the president judge of the fifteenth judicial district having been, when at the bar, concerned as counsel in many causes pending in the courts of the said county of Chester; the said causes not already certified, to be as heretofore certified to the president judge of the first judicial district. President judges of 1st and 12th districts may exchange seats in certain cases.

SECTION 6. That no person shall be excluded from being a witness or juror in any suit, prosecution or proceeding, in which any county, city, incorporated district, borough or township is a party, or is interested by reason of such person being or having been an officer, rated citizen or inhabitant in Citizens of boroughs &c. competent witnesses, jurors, &c.

such county, city, district, borough or township, or owning assessed or taxable property, or being liable to the assessment or payment of any tax therein.

Recorders authorized to take acknowledgments of deeds, &c.

SECTION 7. That the recorders of deeds should have authority to take the acknowledgment and proof of the execution of any deed, mortgage, or other conveyance of any lands, tenements, or hereditaments lying or being in the county, for which they are respectively appointed as recorders of deeds, or within every city, district, or part thereof, or for any contract, letter of attorney, or any other writing, under seal, to be used or recorded within their respective counties; and such acknowledgment or proof, taken or made in the manner directed by the laws of this State, and certified by the said recorder, under his hand and seal of office; which certificate shall be endorsed or annexed to said deed or instrument aforesaid, shall have the same force and effect, and be as good and available in law, for all purposes, as if the same had been made or taken before any judge of the supreme court, or president or associate judge of any of the courts of common pleas within this Commonwealth.

Mechanics Lien law extended to Wayne and Fayette counties.

SECTION 8. That from and after the passage of this act, the act entitled "An act relating to the lien of mechanics, and others upon buildings," passed the sixteenth day of June, one thousand eight hundred and thirty-six," shall be, and the same is hereby extended and declared to be in full force and operation in the counties of Wayne and Fayette; and mechanics and others in said counties, shall have like remedy under the said act, as though it was herein enacted at full length.

Commissioners of incorporated districts Philadelphia county, authorized to file lien for pitching and improving streets, &c.

SECTION 9. That it shall and may be lawful for the commissioners and inhabitants of the district of Southwark, and also, for the commissioners and inhabitants of any of the other incorporated districts and townships within the county of Philadelphia, to file of record in the office of the Prothonotary of the court of Common Pleas for the county of Philadelphia, and also in the office of the Prothonotary of the district court, for the city and county of Philadelphia, all claims and demands due to the said commissioners and inhabitants of any of the said incorporated districts or townships, for pitching and paving streets and alleys, for digging down, filling up and for curbing, paving and repairing any footway within the same; and also for building culverts and laying down iron pipes, within the same, and also to file and enter in the offices aforesaid, all amounts for taxes, rates and levies imposed or assessed by the commissioners of any of the said incorporated districts or townships, now remaining due and unpaid, or which may hereafter be levied, assessed or imposed, and which may hereafter become due and unpaid: *Provided*, That whenever the amount of the claim filed shall not exceed the sum of one hundred dollars, it shall be filed in the office of the Prothonotary

of the court of Common Pleas, and whenever it exceeds that sum, in the office of the Prothonotary of the District court, for the city and county of Philadelphia.

SECTION 10. The said commissioners and inhabitants of the district of Southwark, and also, the commissioners and inhabitants of any of the other incorporated districts and townships, within the county of Philadelphia, shall in filing their claims for debts contracted as aforesaid, and remaining due and unpaid, set forth in the same, the name of the owner or reputed owner of the premises against which their claims are filed, and as nearly as may be an accurate description of the real estate against which the same is filed, and where the said estate is situate, which said claim shall be and remain a lien against the estate, from the time when the debt was contracted, and became due to the said commissioners and inhabitants of the incorporated districts and townships, and until the same be fully paid and satisfied; and the said commissioners and inhabitants shall be authorized and empowered, at any time after the filing of the claim, to proceed to recover the amount thereof by writ of *scire facias*, against the real estate upon which it is a lien, which said writ of *scire facias*, shall be served and proceeded upon to judgment and execution, in the same manner as is now provided for by law, for mechanics and material men, in the act of Assembly of this commonwealth, passed the 16th day of June, Anno Domini, one thousand eight hundred and thirty-six, entitled "an act relating to the lien of mechanics' and others upon buildings:" *Provided*, That no property owned by minors, shall be sold under the provisions of this act, until the expiration of two years from the time the said minor shall have become of age.

SECTION 11. That so much of the third section of the act of Assembly of first of April, 1834, entitled "an act to provide for the incorporation of boroughs, as requires applications for the incorporation of boroughs to be laid before the Grand Jury," be and the same is hereby repealed, as respects Philadelphia county. And the court of Quarter Sessions of the said county, is hereby authorized to appoint a Jury of six citizens of the said county, to perform all the duties, which are enjoined on the Grand Jury, by the act of Assembly aforesaid.

SECTION 12. That James Ronaldson, Thomas Fisher, Pierce Butler, Thomas Gilpin, Peter Wright, and James M. Broome be, and they and their successors are hereby made and created a body politic in law, under the name and title of the Fairmount Cemetery company of Philadelphia; and by that name shall have perpetual succession, and be able and capable in law to have and use a common seal, to sue and be sued, implead and be impleaded in all courts of law and equity, and to do all such other things as are incident to a corporation.

SECTION 13. That the said corporators shall at least once

Owner of premises to be named in claim.

Description of Premises.

Recoverable Scire Facias

Proviso.

Certain duties of Grand jury of Phila. co. transferred to special jury.

Corporators.

Fairmount Cemetery co. established.

- Vacancies how filled.** in every year hereafter fill by election, by ballot, all vacancies which may occur among them, and may at the same time or at other times increase and add to their number from those who may be lot holders in the cemetery, so that the said company shall never be reduced to less than ten nor exceed forty members, and they shall have full power to ordain, establish and put in execution all such by-laws, rules and regulations, not contrary to the constitution and laws of the United States or of this State, which may be necessary for the proper government of this corporation, its officers and affairs, and until the election of managers, shall exercise all the powers thereof.
- Members limited.**
- By-laws.**
- Managers.** SECTION 14. That the said corporators shall, at least once in every year, elect from their number seven managers, one of whom shall be designated as president, and a secretary and treasurer, who shall make a report of their proceedings and a statement of their finances at the annual meetings of the corporators, and as much oftener as may be required by a majority of them the said corporators.
- President, &c.**
- To purchase land.** SECTION 15. That the said corporators or managers shall have power to contract for and purchase from the owner or owners thereof forty acres of the ground in Penn township, in said county, known as the cliffs, or adjoining ground, not exceeding in the whole said space; and the same to lay out and ornament, and to divide and arrange into suitable plats and burial lots, remove or alter old and erect new buildings, and to do all other things proper and necessary to be done to adapt the said ground for the purpose of a cemetery; and to sell and dispose of said plats and burial lots in fee simple or otherwise, for the purpose of sepulture to individuals, societies or congregations, without distinction or regard as to sect, under such conditions, rules and regulations as the said corporators or managers may establish for the government of lot holders, visitors to the cemetery, and burial of the dead.
- Location.**
- Ornament &c.**
- How disposed of.**
- Officers and compensation.** SECTION 16. That the said managers shall have power to appoint all other officers, agents and workmen which may be needful, and fix their compensation or wages, and the same to discharge at pleasure, to take from the treasurer security for the faithful performance of his trusts, and to discharge him from his office upon occasion therefor, and they the said managers shall keep fair minutes of all their acts and doings.
- Personal property.** SECTION 17. That the said company shall be capable of holding so much personal property as may be necessary for the purpose of this incorporation, and it shall be the duty of the managers, out of the proceeds of sale of burial lots, to create a fund to be invested in groundrents or mortgages; the income whereof shall be of adequate amount, and applied as may be necessary for the improvement and perpetual maintenance of the cemetery in proper order and security; and at least ten per cent. of the purchase money of all burial lots
- Fund perpetual.**

sold shall be set aside for said improvements, and the creation of said perpetual fund; and any failure in the duties aforesaid shall subject said managers or corporation to the control of the competent judicial authority for correction.

WHEREAS, it appears, by deed of trust executed the second of November, Anno Domini, one thousand eight hundred and thirty-three, Jacob Mitchel, of the city of Philadelphia, conveyed certain grounds, therein specified, to Ezra Styles Ely and Joseph B. Mitchel, in trust, for certain uses therein specified, reserving the power to lease said real estate, and to receive the rents of the same, and to collect the dividends, income, and interest of the said personal estate, and to use the same for his own proper use during the life of the said Jacob: *And whereas*, a portion of the ground thus conveyed yields no income, the annual ground rents exceeding any rent that can be had for the same; Therefore,

SECTION 18. That the said Jacob Mitchel be, and is hereby authorized and empowered to grant and convey in fee, any ground contained in said deed of trust, reserving, as the entire consideration thereof, a ground rent or rents, payable semi-annually, and irredeemable during the natural life of the said Jacob Mitchel: *Provided*, That the rents and profits of the same be applied to the uses and trusts, as specified in said deed, and be subject to all the provisions contained therein.

SECTION 19. That Harriet Coleman, guardian of the persons and estates of Robert Dawson, Sarah Ann and Harriet Coleman, minor children of James Coleman, late of Elizabeth Furnace, Lancaster county, deceased, be and she is hereby authorized and empowered, (as such said guardian of said minor children,) to purchase and receive conveyance for any and all such lands and real estate, as shall and may be requisite, necessary, and beneficial for the carrying on of Elizabeth Furnace and Martick Forges, in the county of Lancaster, late the property of the said James Coleman, deceased, and now belonging to his said minor children; and at any time afterwards, when it may be deemed proper and beneficial to the interest of said minors, to sell and convey such said lands and real estate, or any part or parts thereof, so purchased, as aforesaid, by her, as guardian of said minors: *Provided*, That the said Harriet Coleman, as such said guardian of said minors, shall, before making any such said purchase or purchases, sale or sales, as is or are hereinbefore authorized to be made by her as such said guardian, give such security as the orphans' court of Lancaster county shall direct, for the faithful execution of the power committed to her by virtue of this act, as such said guardian, and for the due and proper application, according to law, of such said purchase or purchases, and the proceeds of such said sale or sales, so to be made.

Preamble.

Jacob Mitchel, to convey certain ground, &c.

Guardian of minor children of James Coleman, to purchase, &c.

May sell and convey, &c.

Proviso.

Commissioners of Indiana county to sell certain property.

SECTION 20. That William Smith, Philip Rice, and James Rhea, commissioners of Indiana county, or their successors, be and they are hereby authorized and empowered to sell and convey by deed, in fee simple, the lot of ground, on which the old goal of said county is erected, together with all the buildings and appurtenances thereto belonging, at public sale, to the highest and best bidder, after giving the usual notice of the time and place of such sale; and the said commissioners shall pay the nett proceeds of such sale into the county treasury, for the use of said county: *Provided*, That such sale shall not be made until the new goal now erecting for the said county of Indiana, shall be completed and ready to be occupied for the purposes for which it is intended.

Proviso.

State appropriations to House of Refuge.

SECTION 21. That the Governor be, and he is hereby authorized to draw his warrant on the State Treasurer, in favor Anno Domini, one thousand eight hundred and forty-one, of the treasurer of the house of refuge, on the first Monday of April, and on the same day every year thereafter for five years, for the sum of five thousand dollars, to be paid out of any moneys in the treasury not otherwise appropriated: and the commissioners of the county of Philadelphia, are hereby authorized and required to draw their warrant on the treasurer of the said county, in favor of the treasurer of the house of refuge, on the first Monday of April, Anno Domini, one thousand eight hundred and forty-one, and on the same day every year thereafter for five years, for the sum of nine thousand dollars, which said sum of fourteen thousand dollars per annum shall be applied by the managers of the said house of refuge, exclusively to the purposes of that institution: *Provided*, That the said annual payment shall cease and determine from and after the first Monday of April, next ensuing, the time when said house of refuge become seized and possessed of the property and estate, bequeathed to them by the late Frederick Kohne, should they so become seized and possessed of the same prior to the first Monday in April, one thousand eight hundred and forty-six.

Philada. co. appropriation to House of Refuge.

Proviso

Appropriation when to cease.

Commissioners of state road from Isaac Hall's to Maryland line to review and correct certain errors and omissions.

SECTION 22. That Joel Evans and James Ogden, two of the commissioners, residing in Delaware county, appointed by the act of assembly, passed the twenty fifth of May, one thousand eight hundred and thirty-six, to view, lay out and mark out a state road, beginning in the road leading from the city of Philadelphia to Chadd's Ford, or near Isaac Hall's, in Nether Providence township, Delaware county, thence by Chadd's Ford and New London Cross roads to the Maryland line, in Chester county, be hereby authorized and empowered, to review, lay out and mark that part of the said road which passes through the land of Cyrus Baker, and Mark Pennell, in the township of Aster, in Delaware county, and correct an error or omission of about ten chains in setting out

the true distance of the road at said point, and shall make report and a draft thereof, giving the true distance of said part of the road, and upon said report or draft being filed in the office of the clerk of the court of Quarter Sessions of Delaware county, by the said commissioners, the same shall be directed to be of record, and the road to be opened agreeably to the provisions of the said act of the twenty-fifth day of May, one thousand eight hundred and thirty-six. Draft.

SECTION 23. That that part of the enrolled militia of the sixth company of the nineteenth regiment, second brigade, fifth division, Pennsylvania militia, residing west and north-west of the York and Carlisle road, from the Conewago bridge to the Friend's road, at the Cross roads school house, and of the said Friend's road to its intersection with Lantz's mill road, and of said mill road to the Monaghan township line, in the county of York, together with the second, ninth and tenth companies of the regiment aforesaid, be and hereby are constituted a third battalion in said regiment, under the command of the regimental officers of said regiment, and shall be entitled to elect one major; and the brigade inspector shall hold an election in the borough of Dillsburg, on the third Saturday of April, one thousand eight hundred and forty, for the election of said major, agreeably to the provisions of the fourteenth section of the act, entitled an act for the regulation of the militia of this commonwealth, passed the second day of April, Anno Domini, one thousand eight hundred and twenty-two, and that the majors of the battalions in which the fractions of the sixth company aforesaid shall reside, shall hold an election on the fourth Saturday of April, one thousand eight hundred and forty, for company officers of said fractions, and that so much of the sixth company aforesaid, as is placed within the bounds of the third battalion, be styled the twelfth company of said regiment, and that the militia law so far as it limits said regiment to two battalions, is hereby repealed. Part of 90th regt. 2d brigade P. Militia, constituted a 3d battalion.

WM. HOPKINS,

Speaker of the House of Representatives,

W. T. ROGERS,

Speaker of the Senate.

APPROVED—The sixteenth day of April, eighteen hundred and forty,

DAVID R. PORTER.