

1700.

CHAPTER XLI.

An ACT against Barrators.

Barratry.

BE it enacted, That if any person within this province and territories, in any court within the same, be indicted, proved and adjudged a common barrator, vexing others with unjust and vexatious suits, he shall be adjudged a common barrator, and his suits and actions rejected, if the court see cause for the same, and he punished for his barratry.

Passed in 1700.—Recorded A. vol. 1. page 32. (*d*)

(*d*) The act in the text, although it declares that a barrator shall be punished for his barratry, leaves the punishment at the discretion of the court. It is an offence at common law, and is indictable in the sessions. It is mentioned in the statute 34 Edw. 3, c. 1, which directs the mode of punishment. Such parts of which statute, as are distinguished by the numbers 2, 3, 4, 5, 6, and 10, are reported to extend to Pennsylvania, and are in the following words: “(2) And they (the Justices) shall have power to restrain the offenders, rioters, and all other barrators, and to pursue, arrest, take and chastise them according to their trespass or offence; (3) and to cause them to be imprisoned and duly punished according to the law and customs of the realm, and according to that which to them shall seem best to do by their discretions and good advisement; (4) and also to inform them, and to inquire of all those that have been pillors and robbers in the parts beyond the sea, and be now come again, and go wandering, and will not labour as they were wont in times past; (5) and to take and arrest all those that they may find by indictment, or by suspicion, and to put them in prison; (6) and to take of all of them that be not of good fame, where they shall be found, sufficient surety and mainprise of their good behaviour towards the king and his people, and the other duly to punish, to the intent that the people be not by such rioters or rebels troubled nor endangered, nor the peace blemished, nor merchants nor other passing by the highways of the realm disturbed, nor put in the peril which may happen of such offenders; (10) and that fines, which are to be made before Justices for a trespass done by any person, be reasonable and just, having regard to the quan-

tity of the trespass, and the causes for which they be made.”

A barrator is defined to be a common mover, exciter, or maintainer of suits or quarrels in courts of record, or otherwise; or in the country, by taking and keeping possession of lands in controversy—by all kinds of disturbance of the peace—or by spreading false rumours and calumnies, whereby discord and disquiet may grow among neighbours. The offence is frequent, though too seldom punished; and we find no printed cases in Pennsylvania respecting it. It is, however, held, that it is essential to the validity of an indictment for this offence, that it should charge the defendant with being a *common barrator*, which is a term of art appropriated by law to this crime, and cannot be supplied by words which may impart as much; such as, common oppressor and disturber of the peace, or a stirrer up of strife among neighbours. And no one can be a barrator in respect of *one act*, for that would not make him a *common barrator*.

As the indictment is, therefore, general, it has become a settled principle, that, as no particular facts are stated, and as, from the nature of the crime, it consists of the repetition of several acts, which may have happened in several places, the prosecutor must give the defendant, before the trial, a note of the particular acts of barratry which he intends to prove against him; and if he do not, the court will not suffer the prosecutor to proceed in the trial of the indictment; for otherwise it would be impossible for the defendant to prepare for his defence. It follows, of course, that the prosecutor will not be permitted to give evidence of any other acts of barratry than those which are stated in the note of particulars.

CHAPTER XLIV.

An ACT to prevent the grievous sins of cursing and swearing, within this province and territories.

AND be it further enacted, That whosoever shall wilfully, premeditately and despitefully, blaspheme or speak loosely and profanely

Blasphemy and profanely

of Almighty GOD, CHRIST JESUS, the HOLY SPIRIT, or the SCRIPTURES of TRUTH, and is legally convicted thereof, shall forfeit and pay the sum of ten pounds, for the use of the poor of the county, where such offence shall be committed, or suffer three months imprisonment at hard labour as aforesaid, for the use of the said poor. 1700. ^{speaking, how to be punished.}

Passed in 1700.—Recorded A. vol. I. page 34. (e)

(e) So much of this act as related to profane cursing and swearing, is repealed: and supplied by the second section of the act entitled "An act for the prevention of vice and immorality, and of unlawful gaming, and to restrain disorderly sports and dissipation," passed April 22d, 1794 (chap. 1746) which enacts, that if any person of the age of sixteen years, or upwards, shall profanely curse or swear, by the name of GOD, CHRIST JESUS, or the HOLY GHOST, every person so offending, being thereof, convicted, shall forfeit and pay the sum of 67 cents for every such profane curse or oath; and in case he or she shall refuse or neglect to pay the said forfeiture, or goods and chattels cannot be found where-

of to levy the same by distress, he or she shall be committed to the house of correction of the proper county, not exceeding 24 hours for every such offence, of which such person shall be convicted: and whosoever of the age of sixteen years or upwards, shall curse or swear by any other name or thing than as aforesaid, and shall be convicted thereof, shall forfeit and pay the sum of 40 cents for every such curse or oath; and in case such offender shall neglect or refuse to satisfy such forfeiture, or no goods or chattels can be found whereof to levy the same by distress, he or she shall be committed to the house of correction of the proper county, not exceeding 12 hours, for every such offence.

CHAPTER XLVIII.

An ACT for taking lands in execution for the payment of debts, where the Sheriff cannot come at other effects to satisfy the same.

TO the end that no creditors may be defrauded of the just debts due to them by persons of this province or territories, who have sufficient real estates, if not personal, to satisfy the same, *Be it enacted*, That all lands and houses whatsoever, within this government, shall be liable to sale, upon judgment and execution obtained against the defendant, the owner, his heirs, executors or administrators, where no sufficient personal estate is to be found; with this due proviso, that the messuage and plantation, with its appurtenances, upon which the defendant is chiefly seated, shall not be exposed to sale before the expiration of one whole year after judgment is obtained; to the intent that the defendant, or any other on his behalf, may endeavour the redemption of the same: And before any such lands, messuages, or houses, or any other lands or houses whatsoever, taken in execution, shall be sold, they shall be duly appraised by twelve honest and discreet men of the neighbourhood; and that then it shall and may be lawful for the Sheriff to make sale of, and convey the same under his hand and seal, after which sale and appraisement made as aforesaid, such land and houses shall be and remain a free and clear estate to the purchaser or creditor, to whom they are so made over or sold, his heirs and assigns for ever, as fully and amply as ever they were to the debtor. ^{Real estates liable to be sold for payment of debts.} ^{But to be first appraised.}

II. *Provided always, and be it further enacted*, That lawful interest shall be allowed to the creditor for the sum or value he obtained judgment for, from the time the said judgment was obtained till the time of sale, or till satisfaction be made. ^{Interest on judgments.}