

A C T S

OF THE

General Assembly of Pennsylvania,

WILLIAM PENN, GOVERNOR.

1701.

Laws passed at Philadelphia, at a Session begun and held
Sept'r 15th, and ended Oct'r 28th, 1701.

CHAPTER CIX.

An ACT for the preventing of clandestine marriages.

FOR the preventing of clandestine, loose, and unseemly proceedings in marriage, within this province and counties annexed, *Be it enacted*, That all marriages not forbidden by the law of God shall be encouraged; but the parents or guardians shall, if conveniently they can, be first consulted with, and the parties' clearness of all engagements signified by a certificate from some credible person where they have lived, or do live, produced to such religious society to which they relate, or to some Justice of the Peace of the county in which they live, and by their affixing their intentions of marriage on the Court-house or Meeting-house doors in each respective county where the parties do reside or dwell, one month before solemnization thereof; the which said publication, before it be so affixed as aforesaid, shall be brought before one or more Justices of the Peace, in the respective counties to which they respectively belong; which Justice shall subscribe the said publication, witnessing the time of such declaration, and date of the said publication, so to be affixed as aforesaid. And that all marriages shall be solemnized by taking each other for husband and wife, before twelve sufficient witnesses; and the certificate of their marriage, under the hands of the parties and witnesses, at least twelve, and one of them a Justice of the Peace, shall be brought to the Register of the county where they are married, and registered in his office. And if any servant or servants shall procure themselves to be married, without consent of his or her master or mistress, such servant or servants shall, for such their offence, each of them serve their respective masters or mistresses one whole year, after the time of their servitude by indenture or engagement is expired. And if any person, being free, shall marry

Consent of parents or guardians to be obtained, and publication to be made before marriage.

Marriages before a Justice of the Peace.

Servants not to marry without their master's consent.

1701. with a servant as aforesaid, he or she so marrying shall pay to the master or mistress of the servant, if a man, twelve pounds, and if a woman, six pounds, or one year's service; and the servant so being married shall abide with his or her master or mistress, according to indenture or agreement, and one year after as aforesaid. And if any person shall presume to marry, or be witnesses to any marriage, contrary to this act, such person, so married, shall forfeit twenty pounds to the Proprietary and Governor; and the witnesses being present at such marriage shall forfeit and pay each of them five pounds, to the use of the Proprietary and Governor as aforesaid, and pay damages to the party grieved, to be recovered in any Court of Record within this government.

Penalty on persons marrying contrary to this act.

Marriages in religious societies, &c. excepted.

II. *Provided*, That this law shall not extend to any who shall marry or be married in the religious society to which they belong, so as notice shall be given by either of the parties to the parents, masters, mistresses or guardians, one full month, at least, before any such marriage be solemnized.

III. *And it is further enacted*, That no licence or dispensation shall hinder or obstruct the force or operation of this act, in respect of notice to be given to parents, masters, mistresses or guardians as aforesaid.

Passed in 1700.—Recorded A. vol. I. p. 123. (o)

(o) A supplement to the act entitled "An act for preventing clandestine marriages was passed February 14th, 1729-30, (post. chap. 311,) which imposes a penalty of £.50 on any justice, minister, or other person, who shall publish an intended marriage, solemnize any marriage, or subscribe as a witness thereto, contrary to the provisions of the act in the text; but an exception similar to that contained in the second section of this act, is, likewise there introduced.

Ann Norris v. Revd. Joseph Pilmore. Debt on the act of assembly for marrying *Robert Norris*, the son of the Plaintiff, one of the people called Friends, and under the age of twenty-one years, without the certificate, agreement or consent of the said *Ann*, who inhabited the county of *Philadelphia*, and without publication of Banns, to *Ann Armstrong*, contrary to the act of assembly, which gives £.50 penalty to the party grieved. At the time of the marriage, *R. Norris* was an apprentice. Verdict for plaintiff, with sixpence damages, and six-pence costs.

On the part of the plaintiff it was contended, that if a certain penalty be given to the party grieved, he shall also recover damages and costs. *Sayer*, Law of costs, 71-2, S. C. Cro. C. 559.—1 Roll. Abr. 574. *Hullock*, 17, 18, 19. S. C. 1 H. Black, 10.—The right of the party here does not commence with the ver-

dict, but by the offence, by which he is grieved.

On the part of the defendant it was argued, that as the master of the apprentice was the party grieved, or the mother, it was impossible for defendant to know which of them was entitled to the penalty, until the action was commenced, as in the case of a common informer.

By the court after consideration: this was an action of debt against a clergyman for marrying an apprentice, a lad of 18 years of age, without the consent of his parent or master. The act of assembly directs that a person so offending shall forfeit £.50 to be recovered in any court of record, by the person or persons grieved, if they will sue for the same. This action was brought by the mother of the lad, and the jury have found a verdict for the plaintiff, with sixpence damages, and sixpence costs. The counsel for defendant moved that judgment be entered for the debt without costs. The ground of the motion is, that the action was brought originally in the supreme court, and the act of assembly directing, that if plaintiff do not recover more than £.50 he shall not have costs. And the verdict here being for the precise sum of £.50 no costs will follow:—and although the jury have given sixpence damages, yet they contend that this was beyond the power of the jury to do in this action; damages

in an action of debt being given for the detention of the debt; but here no debt was due till the finding of the jury; so no detention. To this, it was answered, that there was a distinction between an action of debt brought by a *common informer*, and one brought by the *party grieved*. In the latter case, the debt incurs immediately upon the commission of the offence; so damages may be given for the detention. To which defendant's counsel replies, that by the words of the act of assembly, the master, as well as the parent may be the party grieved; that, therefore, there is the same uncertainty, as to the person entitled to the penalty, as in the case of a common informer. We have examined the several authorities in the books upon this point: In Roll. Abr. it is said, where a statute gives a certain penalty to a person grieved, the debt is due *upon the return of the summons*; and in Cro. C. it is said to be due *after demand*; but neither of these cases fully answers the objection, there being in these cases but one person who could be grieved; but we have looked into a case in 1 *H. Black.* 10, which has given us satisfaction upon the point. That was the case of an action of debt for the penalty of the *habeas corpus* act, by the party grieved against the gaol keeper, for refusing the plaintiff a copy of his warrant of commit-

ment. A verdict was given for the penalty, but without damages or costs. On motion that the prothonotary should tax the plaintiff's costs, and that one shilling nominal damages should be indorsed on the *postea*—The court said this was not a popular action, but that the right vests in the party grieved, as soon as the grievance was committed; but it is otherwise of a common informer, who has no interest till judgment. And, on turning to the *habeas corpus* act, on which the action was brought, we find that the penalty is given to the *prisoner or the party grieved*, in the disjunctive. So, we are of opinion the jury had a right to give the nominal damages, which carries the sum recovered beyond 50*l.* and plaintiff must have her costs.

Mc. Kean, C. J. not having been present at the argument of this case, said, after the delivery of this opinion by judge *Shippen*, that though he did not, for the above reason, deliver the opinion of the court, yet he heartily concurred in it. S. MSS. Reports, Supreme Court.

See the act against incest, containing a table of degrees of consanguinity and affinity, within which marriages are declared unlawful, passed in 1705, (post. chap. 121.)