

cases of conviction for adultery, a fine not exceeding fifty pounds shall be imposed, and in addition thereto the offender shall be imprisoned for any time not exceeding 12, nor less than 3 months.

By a supplement to this act, passed 21st March, 1772, (post. chap. 662) the moiety of all fines imposed on persons convicted of adultery, shall be to and for the use of the Governor, and the other moiety to the overseers of the poor of the city, district or township, where the offender shall reside at the time of committing the fact, for the use of the poor thereof. And by the act of January 28th, 1777, passed in consequence of the revolution, and change of government, all fines, &c. granted to the Governor, by any laws in force, and revived by that act, are declared to be for the use of the State, and to be paid into the State treasury.

With respect to incestuous adultery, see the preceding act against incest.

By the 4th section of the act concerning divorces and alimony, passed 19th Sept'r, 1785, (post. chap. 1176,) the proceedings to obtain a divorce are regulated, which supersedes the power in the act in the text. And by the same act, it is declared, that if either husband or wife marry again, on rumour of the death of the other party, who has been absent for two years, he or she shall not be liable to the pains of adultery, &c. and see the note to the next following act against bigamy.

The punishment of whipping is also taken away by the 4th section of the act to reform the penal laws of the State, passed April 5th, 1790, (post. chap. 1505.) See the note to the act against defacers of charters, ante. pa. 4, (chap. 16.)

By the 6th section of the act entitled "A supplement to the penal laws of the State," passed Sept'r 23d, 1791, (post. chap. 1572,) reciting, That whereas it sometimes happens that bastard children, begotten out of the State, are born within the State, and others begotten within one of the counties of the State are born in another county, and difficul-

ties had arisen about the place of trial; and it is reasonable and just that the reputed fathers of bastard children should be at the expense of their maintenance; it is enacted, that in the latter case, the prosecution of the reputed father shall be in the county where the bastard child shall be born, and the like sentence passed as if the bastard child had been begotten within the same county; and in the former case, to wit, of a bastard child begotten out of the State, and born within the State, the like sentence shall be passed, except in the imposition of a fine, or corporal punishment in lieu thereof, which part of the sentence shall be omitted.

By the second section of an act entitled "A supplement to sundry penal laws of this Commonwealth," passed March 21st, 1806, (post. chap. 2687,) in all cases where, by law, a fixed or specific fine is affixed to the commission of any crime, the court is authorized to sentence the offender to pay such fine as the Court in its discretion may judge right; *Provided*, the same shall not exceed the fine heretofore affixed by law.

*Respublica v. Roberts.*

Indictment for adultery. The woman was married; but the indictment did not state the defendant to be so; and in fact he was not. The Court, after consideration, delivered an unanimous opinion, that under the act of Assembly of 1705, and the uniform practice of 85 years (a practice, which, though it does not make the law, must be strong evidence of what the law is,) the indictment could not be supported on the charge of adultery: but that the judgment, for fornication only, must be pronounced against the defendant. April term, 1791, in Sup. Court. 2 Dallas, 124.

On a conviction of bastardy, the uniform practice has been, to make an allowance for lying-in expenses, and a gross sum for the support of the child from its birth to the time of judgment. And where the person who has borne these expenses is dead, the money may be well awarded to his representatives. MSS. Reports, Sup. Court.

1705.

## CHAPTER CXXIII.

### *An ACT against bigamy.*

*BE it enacted*, That whosoever shall be convicted of having two wives or two husbands, at one and the same time, shall be whipped on his or her bare back thirty-nine lashes, and be imprisoned during life at hard labour, and the second marriage shall be

Penalty on bigamy.

1705.

void. And if any man or woman, being unmarried, shall knowingly marry the husband or wife of another person, such man or woman shall be punished as aforesaid; and the first wife or husband of the person offending against this act shall have a bill of divorce from board and bed, granted by the Governor for the time being, against the husband or wife so offending, if desired within one year after conviction.

Passed in 1705.—Recorded A. vol. F. page 149. (t)

(t) The offence defined in this act is said to be, properly, polygamy, and not bigamy, which originally had a different meaning. Bigamy is, however, now understood in law to be, where a person marries a second wife, or husband, the first being living; and in *England*, by the stat. 1. Jas. 1. c. 11, (which does not extend to *Pennsylvania*,) is felony.

By the 4th section of the act to reform the penal laws of this state, passed April 5th, 1790, (chap. 1505,) The punishment for this offence is altered, and it is enacted, that every person convicted of bigamy, &c. or of any other offence not capital, for which by the laws in force before the act entitled "An act to amend the penal laws of this state," (passed September 15th, 1786, and repealed by the act of 1790,) burning in the hand, whipping, or imprisonment for life, is or may be inflicted, shall instead of such parts of the punishment, be fined, and sentenced to undergo a confinement at hard labour, be fed and clothed as is in that act directed, for any term not exceeding two years, in the discretion of the court.

By the second section of the act, entitled "A further supplement to the penal laws of this state," passed April 4th, 1807, (chap. 2305,) any person convicted of this offence, and sentenced to hard labour for the term of two years, may, at the discretion of the court,

within three months after conviction, be removed to the gaol and penitentiary house of the city of Philadelphia, &c.

The latter part of this act is virtually repealed by the "Act concerning divorces and alimony;" passed September 19th, 1785, (chap. 1176,) which declares the causes, and regulates the proceedings respecting divorce. By the 4th section of that act it is provided, "That if any husband or wife, upon any false rumour, in appearance well founded, of the death of the other (where such other has been absent for the space of two whole years) hath married, or shall marry again, he or she shall not be liable to the pains of adultery; but it shall be in the election of the party remaining unmarried, at his or her return, to insist to have his or her former wife, or husband restored, or to have his or her own marriage dissolved, and the other party to remain with the second husband or wife; and in any suit or action instituted for this purpose, within one year after such return, the court may and shall sentence and decree accordingly."

In prosecutions for bigamy, the second husband or wife, may be a witness to prove the fact of the second marriage, after the first marriage shall have been established; for the second marriage being void, they were, in fact, never husband and wife.

## CHAPTER CXXVIII.

### An ACT against riots and rioters.

*BE it enacted*, That if any persons, to the number of three or more, shall meet together with clubs, staves, or any other hurtful weapons, to the terror of any the peaceable people or inhabitants of this province, and shall commit, or design to commit, violence or injury upon the person or goods of any of the said inhabitants, and shall be convicted thereof, such persons shall be reputed and punished as rioters, according to the laws of England; and such act of terror or violence, or design of violence, shall be deemed and accounted a riot.

Passed in 1705.—Recorded A. vol. I. page 153. (u)

(u) The punishment in *England* for the offences provided against in this act, is Fine and Imprisonment.

The act in the text not only includes the actual violence, or injury, but the *design* to commit such violence or inju-

What to be deemed a riot.