

A C T S

OF THE

General Assembly of Pennsylvania.

Passed at a Session which commenced October 14th, 1717, and continued by adjournments to the 31st May, 1718.

WILLIAM KEITH, LIEUTENANT GOVERNOR.

1718.

CHAPTER CCXXVI.

An ACT concerning feme-sole traders. (p)

WHEREAS it often happens that mariners and others, whose circumstances as well as vocations oblige them to go to sea, leave their wives in a way of shop-keeping : and such of them as are industrious, and take due care to pay the merchants they gain so much credit with, as to be well supplied with shop-goods from time to time, whereby they get a competent maintenance for themselves and children, and have been enabled to discharge considerable debts, left unpaid by their husbands at their going away ; but some of those husbands, having so far lost sight of their duty to their wives and tender children, that their affections are turned to those, who, in all probability, will put them upon measures, not only to waste what they may get abroad, but misapply such effects as they leave in this province : For preventing whereof, and to the end that the estates belonging to such absent husbands may be secured for the maintenance of their wives and children, and that the goods and effects which such wives acquire, or are entrusted to sell in their husband's absence, may be preserved for satisfying of those who so entrust them, *Be it enacted*, That where any mariners or others are gone, or hereafter shall go, to sea, leaving their wives at shop-keeping, or to work for their livelihood at any other trade in this province, all such wives shall be deemed, adjudged and taken, and are hereby

Who shall be deemed feme-sole traders.

(p) For the proceedings respecting 1 Dallas, 409. For the punishment of, divorces and alimony, see chap. 1176 ; bigamy, see ante, chap. 123, pa. 29.

1718. declared to be, as feme-sole traders, and shall have ability and are by this act enabled, to sue and be sued, plead and be impleaded at law, in any court or courts of this province, during their husbands' natural lives, without naming their husbands in such suits, pleas or actions: And when judgments are given against such wives for any debts contracted, or sums of money due from them, since their husbands left them, executions shall be awarded against the goods and chattels in the possession of such wives, or in the hands or possession of others in trust for them, and not against the goods and chattels of their husbands; unless it may appear to the court where those executions are returnable, that such wives have, out of their separate stock or profit of their trade, paid debts which were contracted by their husbands, or laid out money for the necessary support and maintenance of themselves and children; then, and in such case, execution shall be levied upon the estate, real and personal, of such husbands, to the value so paid or laid out, and no more. (q)

Sales, &c. of lands made abroad by absent husbands are void, unless &c.

II. *And be it further enacted,* That if any of the said absent husbands, being owners of lands, tenements, or other estate in this province, have aliened, or hereafter shall give, grant, mortgage or alienate, from his wife and children, any of his said lands, tenements or estate, without making an equivalent provision for their maintenance, in lieu thereof, every such gift, grant, mortgage or alienation, shall be deemed, adjudged and taken to be null and void. (r)

The husband being shipwrecked, &c. may sell, &c.

III. *Provided nevertheless,* That if such absent husband shall happen to suffer shipwreck, or be by sickness or other casualty disabled to maintain himself, then, and in such case, and not otherwise, it shall be lawful for such distressed husband to sell or mortgage so much of his said estate, as shall be necessary to relieve him, and bring him home again to his family, any thing herein contained to the contrary notwithstanding.

The lands of the husband staying away or living in adultery, may be seized and taken in execution, &c. See the 20th section of the act of 9th March, 1771, (post. chap. 635,) for the method of proceeding where men desert their wives or children, &c.

IV. But if such absent husband, having his health and liberty, stays away so long from his wife and children, without making such provision for their maintenance before or after his going away, till they are like to become chargeable to the town or place where they inhabit; or in case such husband doth or shall live in adultery, or cohabit unlawfully with another woman, and refuses or neglects, within seven years next after his going to sea, or departing this province, to return to his wife, and cohabit with her again; then, and in every such case, the lands, tenements and estate, belonging to such husbands, shall be and are hereby made liable and subject to be seized and taken in execution, to satisfy any sum or sums of money, which the wives of such husbands, or guardians of their children, shall necessarily expend or lay out for their support and maintenance; which execution shall be founded upon process of attachment against

(q) By an act of the 19th September, 1785, (chap. 1176, sect. 4,) 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; but the unmarried party may have the wife or husband, (as the case may be) restored, within one year after his or her return.

(r) Mariners, or persons being at sea, or a soldier being in actual military service, may dispose of their moveables, wages, and personal estate, as they might have done, before the act concerning wills was passed. (Ante. chap. 133, sect. 7.) page 35.

such estate, wherein the absent husband shall be made defendant; any law or usage to the contrary in any wise notwithstanding.

Passed 22d February, 1718.—Recorded A. vol. II. page 166. (s)

(s) Where the lessor of the plaintiff claimed under a deed from husband and wife, the wife, in the absence of her husband, was offered as a witness. A release was executed and delivered to her at the bar, by her son, the lessor of the plaintiff, releasing all claims against her husband and herself, under the implied covenant of warranty in the deed. She was at first excepted to by the defendant's counsel, because her husband was not present to accept the release. But on the authority of *Fowler v. Welford*, Dougl. 134, the objection was waived, and the witness was sworn. *Bioren's Lessee v. Kup, Berks, Nisi Prius*, October 1795, MSS. Reports.

An action of *crim. con.* is not supportable by the husband after an agreement of separation made with his wife. MSS. Reports, Supreme Court.

A wife, living separate from her husband, executes a release to him of her right of dower, in consideration of a certain sum being secured to her annually, for life; and after his death, for eight years, receives the same. The jury may presume, from these circumstances, a redelivery of the deed by her. *Evans v. Evans, Lancaster*, April, 1803, *Nisi Prius*, MSS. Reports.

CHAPTER CCXXIX.

An ACT for erecting of houses of correction and work-houses, in the respective counties of this province.

WHEREAS the Proprietary, and first Adventurers, in their principal model of this government, proposed, that for crimes inferior to murder the punishments might be by way of restitution, fine, imprisonment, and such like; and where the offender proved not of ability to make such satisfaction, then he should be kept in prison or house of correction at hard labour; but no effectual care hath been yet taken to erect such houses, by reason whereof many evil-doers escape unpunished, and servants, who, for their neglect and abuses, should be kept to work in such houses, are become incorrigible: Therefore, *Be it enacted*, That from and after the first day of May, which will be in the year of our Lord one thousand seven hundred and eighteen, from time to time, it shall and may be lawful to and for the justices of the peace of the city of Philadelphia, in conjunction with the justices of the peace of the county of Philadelphia, and for the justices of the peace of the other respective counties of this province, assembled at any Quarter Sessions of the peace within the same respective counties, or the major part of them, to set down and make orders for building, erecting, or causing to be built and erected, or provided, one or more houses of correction and work-houses, with convenient back sides or yards thereunto adjoining, in some convenient places within their several counties or towns corporate: For the doing and performing whereof, and for the providing stocks of money, goods, and all other things necessary for the same, all such orders as the said justices, or the major part of them, shall from time to time take, reform or set down in any of the said Quarter Sessions, for erecting or providing such houses, raising the said stocks, and governing of the same, as also for the correcting and punishment of offenders to be

Justices at their Quarter Sessions may make orders for building houses of correction, &c