

# A C T S

OF THE

## General Assembly of Pennsylvania,

Passed at a Session which commenced October 14th, 1721,  
and ended May 21st, 1722.

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WILLIAM KEITH, LIEUTENANT-GOVERNOR.

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1722.

### CHAPTER CCLV.

*An ACT for establishing Courts of Judicature in this province (o)*

WHEREAS the late King Charles the second, by his royal charter and grant to William Penn, Esquire, of that tract of land, called Pennsylvania, and for erecting the same into a province, did, for himself, his heirs and successors, grant free, full and absolute power to the said William Penn, and his heirs, and to his and their Deputies and Lieutenants, for the good and happy government of

(o) The Courts of Justice have undergone a variety of alterations in constitution and jurisdiction, of which the following summary will present a general view, and the specific variations will be mentioned in the notes to the respective sections.

I. Of the state and alterations of the Judicial Department, preceding the revolution.—Several acts had been passed before the one in the text for establishing Courts of Justice; but these being chiefly repealed, it is only necessary to recapitulate the powers which were given by other laws, and which remain vested in the existing Courts. Thus, the Justices of the County Courts, were empowered to lay out cart-ways to the public road, (chap. 55) to appoint viewers of partition fences, (chap. 56) to superintend the erection of bridges, and the laying out of highways (chap. 57.) No member of a Court of Justice was allowed to sit while his

own cause was on trial, (chap. 102.) The County Courts were empowered to appoint persons to receive claims for the reward allowed for killing black-birds and crows, (chap. 112.) The office of Register-General of wills, &c. was instituted, (chap. 133, sect. 8, and chap. 187.) The Justices of each county were empowered to grant writs of replevin, (ante. chap. 139,) and to issue writs of foreign attachment, (ante. chap. 142.) County seals were established, (ante. chap. 149.) The defalcation of debts was allowed in actions depending in the several Courts, and the mode and effect of references regulated, (ante. chap. 150.) Regulations respecting bail were prescribed, (ante. chapters 151, 153.) Process for taking lands in execution was adopted and regulated, (ante. chap. 152.) The proceedings to recover on mortgages were detailed, (ante. chap. 152, sect. 6.) The authority to recommend for tavern li-

1722. the said country, by and with the advice, assent and approbation, of the freemen of the said country, or of the greater part of them, or

cences was vested in the County Courts, (ante. chap. 172.) The periods for commencing actions were limited, (ante chapters 196, 207, sect. 6.) The Orphans' Court was established, (ante. chap. 197.) Provision was made for the acknowledgment and recording of deeds, (ante. chap. 208.) The jurisdiction of the Justices of the Peace for the recovery of small debts was instituted, (ante chap. 211.) The respective Courts of Quarter Sessions were empowered to make orders for building houses of correction, (ante. chap. 229.) And also to set prices on liquors and provender for horses, (ante. chap. 235.) The penal laws were reduced into one act, (ante. chap. 236,) to which, and the notes there subjoined, particular reference must be had. Provision was made for regulating party-walls, building, and partition fences, (ante. chap. 242.) [Several of the above cited acts are repealed, and many of them afterwards supplied.]

Subsequent to the passing of the act in the text, the following amendments and variations occurred. The proceedings respecting attachments as well foreign as domestic were rectified, (ante. chap. 142, post. chap. 263, 399, 669.)

The practice on writs of summons and arrest was regulated, (post. chap. 285.) The mode of barring estates tail by fine and recovery was recognized, (post. chap. 384, see chap. 2003.) The process on taking lands in execution was improved, (ante chap. 48, 152, post. chap. 510.) The inconveniences arising from delays of causes after issue joined were obviated, by granting, on one term's notice, rules for trial or *non pros*, (post. chap. 556.) By an act of the 20th of May, 1767, (post. chap. 560) so much of the act in the text as relates to the appointment of the Justices of the Supreme Court, and the times of going the circuit, was repealed; four Justices (one of whom to be styled Chief Justice) were directed to be appointed; they were enjoined to go the circuit twice in every year, at such times as they should appoint; provision was made for defraying their expences on the circuit, and for their passing all ferries, with their attendants, free of toll. The removal of causes under £.50 value from the Courts of Common Pleas into the Supreme Court was prohibited, under the penalty of paying costs, if removed by the plaintiff, and double costs if removed by the defendant; but the prohibition did not extend to actions of

debt for rent, replevin, ejectment, trespass, or any other plaint or suit, wherein the title to lands, or any other real estate, might come in question. Appeals were not allowed from the Supreme Court, in any suit wherein there was a general verdict, or in any other case but where there was a demurrer to evidence, or bill of exceptions, or where a writ of error might legally be brought; and fines were imposed on non-attending jurors. Chapter 642, provides for the safety of Justices of the Peace and constables in executing their respective offices.—The proceedings on distress for rent are regulated, (chap. 645;) where likewise, provision is made for a landlord's obtaining speedy possession of the demised premises, after the expiration of the lease. A more easy mode of recovering legacies is provided, (chap. 654.) In order to prevent frauds and perjuries, it is declared, (chap. 669) that parol leases, &c. except leases for term of three years, shall only be construed to be leases or estates at will; that no leases, &c. shall be assigned, granted or surrendered, unless by deed, or note in writing, or by act and operation of law; that all judgments shall bear the date of signing the same on the record, and shall from that date, and not from the first day of the term, run against *bona fide* purchasers; and that no writ of *fi. facias* shall bind the goods of the defendant, till delivered to the sheriff, and the date of delivery shall be accordingly indorsed thereon. Chap. 691, provides a specific mode to oblige the assignees of insolvent debtors, under voluntary assignments, &c. to perform their trust; and gives a process of domestic attachment against a debtor, who hides or absconds, in the nature of a commission of bankruptcy.

II. Of the state and alterations of the Judicial Department under the constitution of 1776 By that instrument it was provided, that the Judges of the Supreme Court should have fixed salaries, be commissioned for seven years only, though capable of a re-appointment, and removable for misbehaviour at any time by the General Assembly. They were, also, disqualified from holding other offices, and receiving any fees or perquisites. It was declared, that the Supreme Court, and the several Courts of Common Pleas, should, besides the powers usually exercised by such Courts, have the powers of a Court of Chancery, so far as relates to

of their delegates or deputies, in Assembly, when and as often as need should require, to ordain, make and enact, any laws whatso-

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the perpetuating testimony, obtaining evidence from places not within this state, and the care of the persons and estates of those who are *non compotes mentis*, and such other powers as might be found necessary by future General Assemblies, not inconsistent with the constitution. Trials were directed to be by juries heretofore; and a general provision was made for the periodical meeting of the existing, and for the establishment of new, courts; for the appointment of Justices of the Peace; and for the institution of Registers and Recorders' Offices in each county.

In proceeding to organize the Judicial Department under the revolutionary change in our government, the Legislature declared generally, (chap. 726,) that the courts of justice should be held as heretofore. By chap. 743, the city court was established in lieu of the court held by the City Corporation. By chap. 766, soldiers were exempted from arrests for debts under 50 dollars. Provision was made for establishing a new seal for the Supreme Court, (chap. 765.) Proceedings on claims filed in the Supreme Court against forfeited estates were regulated, (chap. 773.) A speedy and effectual mode was established for the recovery of debts due to the United States, (chap. 778.) Replevins for goods taken in execution, or seized by an officer, under the authority of the state, are declared to be erroneous and void, (chap. 826.) A Court of Errors and Appeals was instituted, (chap. 868.) A Court of Admiralty was instituted, (chap. 876.) By chap. 924, provision is made for appointing Auditors to settle controverted accounts, for debts or demands due or payable or incurred on or before the 1st of March, 1781. By chap. 931, it is provided that claimants for city lots may, on request to the Executive, have a trial by jury in the Supreme Court only; and the proceedings thereupon are regulated. By an act of the 10th of April, 1782, (chap. 955,) special courts were to be allowed to plaintiffs, about to leave the state, as well as to defendants; and in cases depending in the Supreme Court, as well as in the Common Pleas; but the privilege allowed to plaintiffs was taken away by an act of the 27th of March, 1787, (chap. 1402.) An appeal allowed from the Regulators of party walls to the Common Pleas, (chap. 971.) Vexatious prosecutions and suits, against such as acted in this state for the de-

fence of the liberties of America, condemned and vacated, (chap. 1012.) The body, tackle, apparel and furniture of ships made liable for debts of the workmen employed in building and equipping them, (chap. 1077, 1641.) A power given to the Courts of Quarter Sessions, from time to time, to vacate certain roads, with an appeal from their decision to the Supreme Court, (chap. 1115.) The process on writs of *habeas corpus* regulated, for better securing personal liberty and preventing wrongful imprisonments, (chap. 1121.) An appeal allowed to the Supreme Court from the Comptroller-General's settlement of accounts, (chap. 1122.) The laws respecting juries revised and amended, (chap. 1127.) The limitation of real actions, and actions on penal acts, prescribed, (chap. 1134.) See, likewise, ante. chap. 196, and the limitation for claims to city lots and lands granted by the late proprietaries, &c. (chap. 931.) An appeal allowed from the Board of Wardens to the Supreme Court, (chap. 1150, 1687.) The jurisdiction concerning divorces and alimony vested in the Supreme Court, (chap. 1176.) The Supreme Court empowered to supply defects in titles to lands occasioned by lost or defaced deeds, (chap. 1210.) The act revived, and the jurisdiction extended to the Court of Common Pleas, (chap. 1639.) By an act of the 25th of September, 1786, (chap. 1235,) it was provided that four terms should be held in the Supreme Court; the Court was vested with original jurisdiction within the city and county of Philadelphia; but that no suit should be commenced there for any debt or cause which arose before passing the act, except suits of the Commonwealth, and such where the title of land, or other real estate, might come in question; or that if in any suit the plaintiff did not recover more than £. 50, he should not be allowed costs. The court was empowered, also, to make rules for regulating its practice, and it was declared, that no suit should be removed from the Common Pleas, by any writ of *certiorari* issued for the plaintiff, nor by any writ of *habeas corpus* or *certiorari*, after the same shall have been at issue two terms or more. [But doubts having arisen on the construction of this section, it was explained by an act of the 28th of March, 1787, (chap. 1252,) so as not to prevent a plaintiff from removing into the Supreme Court any action which could not be originally instituted

1722. ever, for the public state, peace, and safety, of the said country, or unto the private utility of particular persons, unto their best

there.] The Prothonotary of the Supreme Court, and such other persons as the Justices should from time to time appoint, were empowered to act as Commissioners of Bail, in their respective counties; an additional tax was imposed on original writs issuing from the court; and an additional tax on writs and rules of reference issuing from the Common Pleas of Philadelphia county, for compensating the services of the President. The Escheator's Court and proceedings respecting escheats are regulated, (chap. 1305.) By an act of the 11th of March, 1789, (chap. 1383,) the city of Philadelphia is incorporated; the Mayor's Court and the Alderman's Court are established; the City Court is abolished; and the jurisdiction of the Quarter Session excluded from the city. By an act of the 27th March, 1789, (chap. 1401,) the Justices of the Supreme Court in term time or a majority of them in vacation, are empowered to hold courts of *Nisi Prius* in the city of Philadelphia, for the city and county of Philadelphia. It is also declared, that no rule for a special jury shall be entered on the application of a defendant, unless an affidavit of a defence is previously filed; and so much of the act respecting juries, as provides that special juries shall be struck thirty days before the return of the *venire*, and that a copy of the rule and list for a special jury shall be served on the opposite party, is repealed. The process on foreign attachments is amended, (chap. 1434,) so as to compel the garnishee to answer interrogatories, and to authorize a *capias* against him, if he is about to depart from the State. Provision is made for confining persons committed under the process of the United States in the prisons of the State, (chap. 1461.)

III. The alterations and state of the Judicial Department under the existing constitution, established in 1790. In entering upon this part of our recapitulation, it is proper to premise, that the jurisdiction vested in the federal government has considerably circumscribed the judicial authority of the State, particularly in all matters of Admiralty cognizance. For the particulars, see the 3d article of the constitution of the United States, and the judicial act of Congress, passed the 24th day of September, 1789.

By the constitution of the State, it is provided, that the judicial power shall be vested in a Supreme Court, in Courts

of Oyer and Terminer, and General Gaol Delivery, in a Court of Common Pleas, Orphans' Court, Register's Court, and a Court of Quarter Sessions of the Peace for each county, in Justices of the Peace, and in such other Courts, as the Legislature may from time to time establish. All the Judges and Justices hold their commissions during good behaviour; removable, however, on impeachment, or the address of the Legislature. The compensations of the Judges of the Supreme Court are to be fixed, not to be diminished during their continuance in office; and they are prohibited from receiving any fees or perquisites, and from holding any other office of profit. The jurisdiction of the Supreme Court extends over the state, and the Judges are, *ex officio*, Justices of Oyer and Terminer and General Gaol Delivery, in the several counties. The Court of Common Pleas of each county shall consist of not fewer than three, nor more than four Judges; the state shall be divided into circuits of such courts, including not more than six, nor fewer than three counties; a President shall be appointed of the courts in each circuit; and the President and two Judges shall be a quorum. The Judges of the Common Pleas are, *ex officio*, Justices of Oyer and Terminer and General Gaol Delivery, for the trial of capital and other offenders, in their respective counties; any two of them, the President being one, shall be a quorum; but they shall not hold a Court of Oyer and Terminer or Gaol Delivery in any county, when the Judges of the Supreme Court, or any of them, shall be sitting in the same county; and their proceedings may be removed to the Supreme Court by either party. The Supreme Court and Courts of Common Pleas, beside the powers heretofore usually exercised, shall have Chancery jurisdiction to perpetuate testimony, to obtain evidence from places not within the State, and for the care of the persons and estates of those who are *non compos mentis*; and provision is made that the Legislature may vest in the said courts such other powers to grant relief in equity, as shall be found necessary, and may from time to time enlarge or diminish those powers, or vest them in such other courts as they shall judge proper for the due administration of justice. The judges of the Common Pleas of each county, any two of whom shall be a quorum, shall compose the Court of Quarter Sessions and

discretion; and likewise to do all and every thing and things, 1722. which unto the complete establishment of justice, unto courts

Orphans' Court; and the Register of Wills, together with the said Judges, or any two of them, shall compose the Register's Court of each county. The Judges of the Common Pleas are vested with the like powers as the Judges of the Supreme Court, to issue writs of *certiorari* to the Justices of the Peace; and the Presidents, within their respective circuits, and the Judges of the Common Pleas, within their respective counties, are made Justices of the Peace, as far as relates to criminal matters. A competent number of Justices of the Peace shall be appointed in such convenient districts, as are or shall be directed by law; a Register office, for the probate of Wills and granting letters of administration, shall be kept in each county; the style of all process shall be, "*The Commonwealth of Pennsylvania*;" and all process shall be carried on and conclude, "*against the peace and dignity of the same*." Trials by jury shall remain as heretofore. In prosecutions for the publication of papers, investigating the official conduct of officers, or men in a public capacity, or where the matter published is proper for public information, the truth whereof may be given in evidence; and in all indictments for libels, the jury shall have a right to determine the law and the facts, under the direction of the court, as in other cases. Excessive bail shall not be required. No commission of Oyer and Terminer and General Gaol Delivery shall issue. See the constitution, articles 5 and 9.

The proceedings for organizing the Judicial department, under the preceding constitutional arrangements, will be found in the following summary: The powers of the late Executive Council relative to claims for city lots, &c. are vested in the Supreme Court, (chap. 1544.) The Supreme Court established, to hold three terms, and Courts of *Nisi Prius* as heretofore; the State divided into circuits for holding Courts of Common Pleas; the time for holding the several Courts of Common Pleas and Quarter Sessions and Orphans' Court prescribed, (chapters 1564, 1590;) the constitution and powers of the Register's Court declared; and proceedings on the removal of indictments, &c. into the Supreme Court regulated, (chap. 1564.) Where either party dies pending a writ, and before final judgment, his executor or administrator, if the cause of action survives, shall be admitted to prosecute and defend the action; how notice shall be

given in such case, (sect. 8.) The President and Judges of the Common Pleas empowered to issue writs of *habeas corpus*, in vacation, and give relief thereon, (sect. 9.) Prothonotaries of the respective Courts of Common Pleas empowered to sign judgments, and writs, and process, and to take bail, the same as if they were Judges, (ibid. sect. 12;) the Prothonotary of the Supreme Court empowered to enter judgments confessed, and to take bail on original actions, as well as those removed from other courts, ibid. Prothonotaries and clerks of Courts of Record empowered to administer oaths, &c. in conducting the business of the respective Courts, in as full a manner as any Judge or Justice, and to take acknowledgments of satisfaction of judgments and decrees, ibid. and (chap. 1590, sect. 8;) and proceedings are regulated to compel an entry of satisfaction on judgments that are paid off, ibid. sect. 14. No Judge of the Supreme Court, Common Pleas, Orphans' Court, Register's Court, &c. shall practise as an Attorney or Counsellor in any court in this commonwealth, or elsewhere, (ibid. sect. 15.) On final judgments in the Supreme Court, a writ of error lies to the High Court of Errors and Appeals, as does an appeal from the final sentence of the Register's Court, (ibid. sect. 16;) which is allowed in cases exceeding £50 to the Supreme Court. (chap. 1740, sect. 24.) The constitution and jurisdiction of the High Court of Errors and Appeals instituted, and the proceedings on writs of error or appeals are regulated, (chap. 1564, sect. 16, 17, 18, 19, 20, 21, chap. 1590, 1620.) On a hearing in the Register's Courts, the depositions to be taken in writing; but on a dispute of facts, either party may be allowed to try the same on an issue in the Common Pleas; and no appeal from the Register's Court shall affect the proceedings of an executor or administrator, pending the same, if security is given, (chap. 1564, sect. 18.) The times for holding and continuing the Courts of General Quarter Sessions shall not exceed four days in every session, (chap. 1590, sect. 5.) Specific performance of contracts entered into by persons deceased, or persons afterwards becoming *non compos mentis*, for the sale and conveyance of lands, how to be enforced, (chap. 1607, 1730,) see also chap. 2268. A naked authority given to executors to sell lands, &c. they shall take and hold the same in trust, and have the same power as if the lands,

1722. and tribunals, forms of Judicature, and manner of proceedings, do belong, and, by Judges, by the said William Penn, his heirs, their deputies and Lieutenants, appointed, to award process, hold pleas, and determine in all the said courts and tribunals all actions, suits and causes whatsoever, as well criminal as civil, personal, real and mixed: *Provided* the said laws so made and published be consonant to reason, and not repugnant or contrary, but, as near as convenient may be, agreeable to the laws, statutes and rights of the kingdom of England; saving and reserving to the said King Charles, his heirs and successors, the receiving hearing and determining of the appeal and appeals of all or any person or persons touching any judgment to be there made or given.

Court of Quarter Sessions to be hold in each county four times a year.

II. And whereas, by virtue and in pursuance of the said grant, divers acts and ordinances have been made, from time to time, for the holding of courts, and the administration of justice within this province, which, by the increase of inhabitants, and change of circumstances of the country, seem necessary to be altered and amended, [*Be it therefore enacted*, That there shall be a court, styled the General Quarter Sessions of the Peace and Gaol Delivery, holden and kept four times in every year, in each county of this province, viz. At Philadelphia, for the county of Philadelphia, on the first Second Day of the Week, called Monday, in the months called March, June, September and December: At Bristol, for the county of Bucks, on the eleventh day following (inclusive) in every of the same months: And at Chester, for the county of Chester, on the last Third Day of the week, called Tuesday, in the months called May, August, November and February.] (*p*)

&c. were devised to them to be sold, saving to every testator the right to direct otherwise; (chap. 1607.) Proceedings on a suit at law, controverting the decision of the board of property, (chap. 1511, 1613, 1649.) Proceedings to supply defects in titles to land by the loss of deeds, &c. regulated, (chap. 1639.) Proceedings to attach vessels, &c. for payment of tradesmen employed in equipping them, regulated, (chap. 1641. The tax on writs issuing from the Common Pleas repealed, (chap. 1697.) Inhabitants of the city, &c. immediately concerned, shall be competent witnesses, in cases respecting the settlement of paupers, (chap. 1715.) A transcript of the judgment of a Justice of the Peace, filed in the Prothonotary's office, shall have like effect as a judgment in the Common Pleas, (chap. 1757.) The jurisdiction of Justices of the Peace extended to cases of usury under £.20; the times for holding the three terms of the Supreme Court altered to the first Monday in September, the second Monday in December, and the third Monday in March; September and March terms to continue two weeks, and December term three weeks, (chap. 1847.) The last, as well

as the first day of each term of the Supreme Court shall be a return day, provided the process is sued out under the same regulations of time, &c. as in the case of the first return day, *ibid*. But special days of return for process may be assigned by the court as usual. *ib*.

IV. For other matters connected with the Judicial Department, see the Penal Law, (ante. chap. 236;) the law respecting the Orphans' Court, (ante. chap. 197;) the laws regulating intestates estates, (chap. 1740;) the laws respecting insolvent debtors, (post. chap. 315;) the laws respecting the jurisdiction of Justices of the Peace, (ante. chap. 211.) now repealed; the laws respecting the office of Sheriffs and Coroners, Sheriffs' deeds, &c. (ante. chap. 161;) the laws respecting the probate, acknowledgment, and recording of deeds, (ante. chap. 208;) the law establishing a fee bill, (chap. 1852;) and the title *Judiciary Department*, in the index to this edition. (*Note to former Edition.*)

(*p*) This section has been repealed and supplied, (chap. 494,) [which is also repealed and supplied, and is not printed in this edition. See the acts founded on the existing constitution

**III.** And that there shall be a competent number of Justices in every of the said counties, nominated and authorized by the Governor or Lieutenant-Governor for the time being, by commission under the broad seal of this province; which said Justices, or any three of them, shall and may hold the said General Sessions of the Peace and Gaol Delivery according to law, and as fully and effectually, as any Justice of the Peace, Justices of the Assize, Justices of Oyer and Terminer, or of Gaol Delivery, may or can do. (q)

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The Governor to commission Justices who are to hold the said courts;

**IV.** And be it further enacted, That the said Justices of the Peace, or any three of them, may, pursuant to their said commissions, hold special and private sessions, when and as often as occasion shall require: and that the said Justices, and every of them, shall have full power and authority, in or out of sessions, to take all manner of recognizances and obligations, as any Justices of the Peace of Great-Britain may, can, or usually do; all which said recognizances and obligations shall be made to the King, and his successors. And all recognizances for the peace, behaviour, or for appearance, which shall be taken by any of the said Justices out of sessions, shall be certified into their said General Sessions of the Peace, to be holden next after the taking thereof: And every recognizance, taken before any of them, for suspicions of any manner of felony, or other crime, not triable in the said court of Quarter Sessions of the Peace and Gaol Delivery, shall be certified before the said Justices of the Supreme Court of Oyer and Terminer, at their next succeeding court to be holden next after the taking thereof, without concealment, detaining, or embezzling of the same. But in case any person or persons shall forfeit his or their recognizances of the peace, behaviour, or appearance, for any cause whatsoever, then the said recognizance so forfeited, with the record of the default, or cause of forfeiture, shall be sent and certified without delay, by the Justices of the Peace, into the said Supreme Court, as the case may require, that thence process may issue against the said parties, according to law. All which forfeitures shall be levied by the proper officers, and go to the Governor, for support of government. (r)

and private sessions, and have power to take recognizances out of sessions, which shall be certified into the next Quarter Sessions.

[See the act of January 28th, 1777, (post. chap. 726, sect. 8.)]

**V.** And be it further enacted, That all fines and amerciaments, which shall be laid before the Justices of the said Courts of General Quarter Sessions of the Peace and Gaol Delivery shall be taxed, affeared, and set, duly and truly, according to the quality of the offence, without partiality or affection, and shall be yearly estreated by the clerks of the said courts respectively into the said Supreme Court, to the intent that process may be awarded to the She-

All fines to be affeared in the sessions and yearly estreated by the Supreme Court.

referred to in the last note to the act in the text.]

(q) Repealed and supplied by the 7th section of the fifth article of the constitution.

(r) By the existing constitution, the Justices of the Peace do not sit in the Courts of Quarter Sessions; and the power of holding a special or private sessions, given in the first part of this section, is obsolete, or, rather, virtually

repealed by the present arrangements of the Judicial Department. For the jurisdiction of the Judges of the Supreme Court, and of the Courts of Common Pleas, to hold Courts of Oyer and Terminer and General Gaol Delivery, and the offences exclusively cognizable by them, see the fifth article of the constitution, and the notes subjoined to the penal act, (ante. chap. 236.)

1722. riff of every county, as the case may require, for levying such of their fines and americiaments as shall be unpaid, to the uses for which they are or shall be appropriated. (s)

Quarter Sessions how long to continue.

[VI. *Provided always*, That the said Courts of the General Quarter Sessions of the Peace may be kept and continued for the space of three days in the county of Philadelphia, at any of the times herein before appointed to hold and keep the same courts and sessions there; and for the space of two days in either of the said counties of Bucks and Chester respectively, at any of the said times herein before appointed to hold and keep the said courts and sessions there, in manner aforesaid. (t)]

This act not to abridge the powers of the corporation.

VII. *Provided also*, That nothing herein contained shall deprive or abridge the Mayor, Recorder and Aldermen of the city of Philadelphia, of any powers, privileges, jurisdictions or franchises, granted them by charter, or the laws of this province. (u)

Writs of capias, subpoena, &c. granted in one county, to operate in another.

VIII. And to the end that persons indicted or outlawed for felonies, or other offences, in one county or town corporate, who dwell, remove, or be received into another county or town corporate, may be brought to justice, *Be it further enacted*, That the said Justices, or any of them, shall and may direct their writs or precepts to all or any the Sheriffs or other officers of the said counties or towns corporate within this province, where need shall be, to take such persons indicted or outlawed. And that it shall and may be lawful to and for the said Justices, and every of them, to issue forth *subpanas*, and other warrants, under their respective hands and seal of the county, into any county or place of this province, for summoning or bringing any person or persons to give evidence in and upon any matter or cause whatsoever, now or hereafter examinable, or in any ways triable, by or before them, or any of them, under such pains and penalties as *subpanas*, or warrants of that kind, usually are or ought by law to be granted or awarded. (x)

Persons aggrieved, &c. may have their writs of error returnable to the Supreme Court.

IX. *And be it further enacted*, That if any person or persons shall find him or themselves aggrieved with the judgment of any of the said Courts of General Quarter Sessions of the Peace and Gaol Delivery, or any other Courts of Record, within this province, it shall and may be lawful to and for the party or parties, so

(s) This section is supplied, 2d vol. chap 971

(t) By an act of the 7th September, 1789, (chap. 1416.) the time of holding the Courts of Quarter Sessions were altered, and it was provided, that they might sit as many days as occasion should require. That act, however, has been repealed and supplied by subsequent arrangements on the subject, (chap. 1564, 1590, 1624, 1823, 1834, 1840,) and the continuance of the Courts of Quarter Sessions is limited to four days in every session.

(u) The revolution having dissolved the Corporation of Philadelphia, its jurisdiction in judicial matters was supplied by the institution of the City Court,

(chap. 743.) Since that period, however, the City has been again incorporated, the City Court is abolished, and a Mayor's Court and Alderman's Court are established, (chap. 1383.) By the incorporating act, it is declared, that the Justices of the Quarter Sessions shall have no more power in the city, than the Mayor, Recorder and Aldermen have in the county of Philadelphia, (ibid. sect. 29.)

(x) See ante. chap. 236, sect. 17. The process of outlawry has, however, been revised and regulated by the act of the 23d of September, 1791, (chap. 1572.) For decisions respecting writs of *subpana*, see 1 Dallas, 272, 340.

aggrieved, to have his or their writ or writs of error ; which shall be granted them of course, in manner as other writs of error are to be granted, and made returnable to the said Supreme Court of this province. (y) 1722.

X. *Provided always*, That when any writ of error shall be granted upon any judgment given or to be given for the said city of Philadelphia, the Mayor, Recorder and Aldermen of the said city of Philadelphia, and their successors, or any of them, shall not be compelled upon any of the said writs, or any other writ or writs directed to them, or any of them, to remove, send or certify into the said Supreme Court, or elsewhere, any of the indictments or presentments taken or to be taken before them, or the record of the judgments and proceedings upon any such indictments or presentments, but only the tenors or transcripts of the said records, under their common seal. And after such judgments are reversed or affirmed, or causes lawfully removed from the said city courts are tried in the said Supreme Courts, it shall and may be lawful for the Mayor, Recorder and Aldermen, and their successors, to proceed to execution, or otherwise as shall appertain according to law. (z)

Of proceedings at the City Sessions, only the tenor, &c. to be certified into the Supreme Court.

XI. *And be it further enacted*, That there shall be holden and kept at Philadelphia, a Court of Record twice in every year : *that is to say*, on the twenty-fourth day of September, and the tenth day of April, if the same days, or either, do not happen to be the first day of the week, and in such case the said court shall be held on the next day following ; which said court shall be called and styled, The Supreme Court of Pennsylvania. And that there shall be three persons of known integrity and ability, commissioned by the Governor, or his Lieutenant for the time being, by several distinct patents or commissions, under the great seal of this province, to be Judges of the said court, one of whom shall be distinguished in his commission by the name of Chief Justice. And every of the said Justices shall have full power and authority, by virtue of this act, when and as often as there may be occasion, to issue forth writs of *habeas corpus*, *certiorari*, and writs of error, and all remedial and other writs and process, returnable to the said court, and grantable by the said Judges by virtue of their office, in pursuance of the powers and authorities hereby given them. (a)

The Supreme Court of Pennsylvania to be held at Philadelphia.

Justices to be commissioned ;

who shall issue remedial writs, &c.

(y) For the constitution and jurisdiction of the High Court of Errors and Appeals, see chap. 1564, sect. 16, 17, &c. [This court is now abolished.]

(z) See the act incorporating the City of Philadelphia, (chap. 1383,) and the title *Judiciary Department*, in the index to this edition.

(a) So much of this section as respects the appointment of the Justices of the Supreme Court, was repealed and supplied, (post. chap. 560 ;) and the repealing act prescribed the appointment of four Justices instead of three ; and two circuits were directed to be performed in each year, at such times as the Judges should appoint.

The latter system was preserved after the revolution ; and under the existing constitution and laws, it is declared, that the Supreme Court shall be established in the same manner, and with the same power, as heretofore, consistently with the provisions of the constitution ; that it should have three terms ; and that courts of *Nisi Prius* might be held at such intermediate times, as the Justices should judge most convenient for the people, (chap. 1564.) The periods fixed by that act for the three terms were altered by a subsequent act, and the terms are now held on the first Monday in September, for two weeks, the second Monday in December, for

1722,

Issues joined  
in the said  
Court shall  
be tried in the  
27 other coun-  
ty.

[XII. *Provided always*, That upon any issue joined in the said Supreme Court, such issue shall be tried in the county from whence the cause was removed, before the Judges aforesaid, or any two of them, who are hereby empowered and required, if occasion require, to go the circuit twice in every year, into the respective counties of Chester and Bucks, to try such issues in fact as shall be depending in the said Supreme Court, and removed out of either of the counties, aforesaid; *that is to say*, in the county of Bucks on the fourteenth day of April, and the twenty-eighth day of September; and in the county of Chester, on the eighteenth day of April, and the second day of October, in every year; when and where they may try all issues joined, or to be joined, in the same Supreme Court, and to do generally all those things that shall be necessary for the trial of any issue, as fully as the Justices of Nisi Prius in England may or can do.] (b)

The power  
of the Jus-  
tices, &c.

XIII. And that the said Judges, or any two of them, shall have full power to hold the said court, and therein to hear and determine all causes, matters and things, cognizable in the said court, and also to hear and determine all and all manner of pleas, plaints and causes, which shall be removed or brought there from the respective General Quarter Sessions of the Peace, and Courts of Common Pleas, to be held for the respective counties of Philadelphia, Chester and Bucks, as also for the city of Philadelphia, or from any other court of this province, by virtue of any of the said writs; and to examine and correct all and all manner of errors of the Justices and Magistrates of this province, in their judgments, process and proceedings in the said courts, as well in all pleas of the crown, as in all pleas real, personal and mixed; and thereupon to reverse or affirm the said judgments, as the law doth or shall direct: And also to examine, correct and punish the contempts, omissions and neglects, favours, corruptions and defaults, of all or any of the Justices of the Peace, Sheriffs, Coroners, Clerks and other officers, within the said respective counties. And also shall award process for levying, as well of such fines, forfeitures and amerciaments, as shall be estreated into the said Supreme Court, as of the fines, forfeitures, and amerciaments, which shall be lost, taxed and set there, and not paid to the uses they are or shall be appropriated. And generally shall minister justice to all persons, and exercise the jurisdictions and powers hereby granted concerning all and singular the premises according to law, as fully and amply, to all intents and purposes whatsoever, as the Justices of the Court of King's Bench, Common Pleas, and Exchequer, at Westminster, or any of them, may or can do. [Saving to all and every person and persons, his, her or their heirs, executors and administrators, their right of appeal from the final sentence, judgment or decree of any court within this province, to his Majesty in Council, or to such court or courts, Judge or Judges, as by our sovereign lord the King, his heirs or

three weeks, and the third Monday in March, for two weeks, (chap. 1847.) [But see the closing note to the act in the text.]

(b) So much of this section as respects the Judges going the circuit, is repealed and supplied, (post. chap. 460, chap. 1564.)

successors, shall be appointed in Britain, to receive, hear and judge of appeals from his Majesty's Plantations.] (c) 1722.

[XIV. Provided the person appealing shall, upon entering his appeal in the court where the sentence, judgment or decree, shall be given in this province, pay all the costs before that time expended in the prosecution, or defending the said suit : And shall further enter into bond, with two good and sufficient securities, in the sum of three hundred pounds, to the defendant in the appeal, conditioned to prosecute the said appeal with effect, within the space of eighteen months after the entry of such appeal, and to satisfy the judgment of the court from which he appeals : And further, to pay all such costs and damages as shall be adjudged to him to pay, in case a sentence, judgment or decree, pass against the said appellant, or in case he, she, or they fail to prosecute their appeal with effect.] (d)

The appellant shall give bond in three hundred pounds, &c.

XV. And that there shall be a fit person, nominated by the Judges, and commissioned by the Governor, to be Prothonotary or Clerk of the said Supreme Court, who shall keep and duly attend his office at some convenient place in the city of Philadelphia, and may be suspended, punished or removed by the said court, for misdemeanors in his office. (e)

Governor to commissionate the Prothonotary of the Supreme Court.

XVI. And be it further enacted, That all the said writs shall be granted of course, and made in the name and style of the King, his heirs and successors, and shall bear test in the name of the Chief Justice, for the time being : But if he be plaintiff, or defendant, in the name of one of the other Justices, and shall be sealed with the judicial seal of the said court, and made returnable to the next court after the date of such writs. (f)

How the writs shall be granted and bear test.

XVII. Provided always, That none of the Judges of the said Supreme or Provincial Court shall sit judicially in any of the said Courts of Common Pleas, Quarter Sessions, or any other inferior court in this province.

No provincial Judge to sit in the inferior courts.

XVIII. And be it further enacted, That the said Judges of the Supreme Court shall have power, and are hereby authorized and empowered, from time to time, to deliver the gaols of all persons which now are or hereafter shall be committed for treasons, mur-

The said Judges to deliver the gaols of prisoners for treasons, murders, &c.

(c) For the jurisdiction of the Supreme Court, see the constitution ; the first note to the act in the text ; and the title *Judiciary Department*, in the index to this edition. For the law respecting fines, forfeitures, and amerciaments, see chap. 1051. The revolution of course destroyed the appeal to Great-Britain ; but for reviewing the final judgments of the Supreme Court, a writ of error lies to the High Court of Errors and Appeals, (chap. 1564.) [which court is now abolished, and no writ of error lies from the final decision of the Supreme Court, except, (in cases within its jurisdiction,) to the Supreme Court of the United States.]

likewise declared, that the plaintiff in error or appellant shall give security for prosecuting the writ or appeal, or on failure thereof, or in case of affirmation, to pay the condemnation money, with damages ; and that if the judgment or decree is reversed, each party shall pay his own costs.

(e) By the constitution, art. 2, the appointment of all the public officers, except in particular instances, is vested in the Governor ; and the Prothonotary of the Supreme Court has been, accordingly, appointed by him.

(f) The style of all process, (says the constitution,) shall be, " *The Commonwealth of Pennsylvania*," and shall be prosecuted and conclude, " *against the peace and dignity of the same.*"

(d) See the preceding note. For the proceedings on writs of error and appeals, see chap. 1564, where it is

1722. ders, and such other crimes, as, by the laws of this province, now are or hereafter shall be made capital, or felonies of death as aforesaid : And for that end from time to time to issue forth such necessary precepts and process, and force obedience thereto, as Justices of Assize, Justices of Oyer and Terminer, and of Gaol Delivery, may or can do in the realm of Great-Britain. (g)

Felonies committed in the out-parts of the province, to be tried in Philadelphia.

[XIX. And also, that all manner of offences already made or declared, or hereafter to be made or declared, to be capital or felonies of death, by any law or act of Assembly of this province, and done, perpetrated or committed, or hereafter to be done, perpetrated or committed, by any person or persons, within the bounds and limits of the same province, and without the certain and known bounds and limits of any of the counties now or hereafter erected in the said province, shall be from henceforth enquired of, heard and determined, before the said Judges, by good and lawful men of the city and county of Philadelphia, in like manner and form, to all intents and purposes, as if the said offences and felonies of death had been done, perpetrated and committed, within the said city or county of Philadelphia.] (h)

Fees in the Supreme Court.

[XX. *Provided always*, That the fees due to the Judges and officers of the said court, for hearing and determining any of the said capital offences, for any thing done there, shall be double the fees usually taken in the General Quarter Sessions held in any of the said counties in this province, any thing herein, or in any other law to the contrary notwithstanding.] (i)

County court to be held four times a year.

XXI. *And be it further enacted*, That a competent number of persons shall be commissioned by the Governor, or his Lieutenant, under the broad seal of this province, who shall hold and keep a Court of Record in every county, which shall be styled and called, The County Court of Common Pleas, and shall be holden four times in every year, at the places where the General Quarter Sessions shall be respectively kept, viz. At Philadelphia, for the county and city of Philadelphia, on the day called the first Wednesday after the day appointed for the Quarter Sessions to begin on there, in the months called March, June, September and December: At Bristol, for the county of Bucks, on the eleventh day following, inclusive: And at Chester, for the county of Chester, on the day called the last Tuesday in the months called May, August, November, and February. Which said Justices, or any three of them, according to the tenor and direction of their commissions, shall hold pleas of assizes, *scire facias*, replevins, and hear and determine all and

(g) By the constitution, the Judges of the Supreme Court, and of the Courts of Common Pleas, are, *ex officio*, Justices of Oyer and Terminer and General Gaol Delivery; but no commission of Oyer and Terminer or Gaol Delivery, shall be issued, nor shall the Judges of the Common Pleas hold a Court of Oyer and Terminer and Gaol Delivery in any county, when the Judges of the Supreme Court, or any of them, shall be sitting in the same county. Art. 5 and 9.

(h) The whole territory of the state being now divided into counties, this section is become obsolete; and, indeed, it seems to be incompatible with the principles of the existing government, agreeably to a legislative construction, (chap. 1157.)

(i) The Judges have fixed salaries; and are prohibited from taking fees or perquisites by the constitution. For the existing fee bill, providing for judicial and other officers, see (chap. 1852)

all manner of pleas, actions, suits and causes, civil, personal, real and mixed, according to the laws and constitutions of this province. (k) 1722.

XXII. *And be it further enacted,* That every of the said Justices shall and are hereby empowered to grant, under the seal of the respective counties, replevins, writs of partition, writs of view, and all other writs and process, upon the said pleas and actions, cognizable in the said respective courts, as occasion may require. (l)

Justices of the said court to grant replevins, &c.

XXIII. *And be it further enacted,* That the said Justices of the said respective courts shall and are hereby empowered to issue forth *subpanas*, under their respective hands and seal of the counties, into any county or place of this province, for summoning or bringing any person or persons to give evidence in or upon the trial of any matter or cause whatsoever, depending before them, or any of them, under such pains and penalties, as, by the rules of the common law, and course and practice of the King's courts at Westminster, are usually appointed.

And issue *subpanas* for evidence in to any county.

XXIV. *And be it further enacted,* That upon any judgment obtained in any of the said courts of this province, and execution returned by the sheriff or coroner of the proper county, where such judgment was obtained, that the party is not to be found, or hath no lands or tenements, goods or chattels, in that county, and thereupon it is testified, that the party sculks, or lies hid, or hath lands, tenements, goods or chattels, in another county of this province, it shall and may be lawful to and for the court that issued out such execution, to grant, and they are hereby required to grant an *alias* execution, with a *testatum*, directed to the sheriff or coroner of the county or place, where such person lies hid, or where his lands or effects are, commanding him to execute the same, according to the tenor of such writ or writs, and make return thereof to the Court of Common Pleas where such recovery is had or judgment given. And if the sheriff or coroner, to whom such writ or writs shall be directed, shall refuse or neglect to execute and return the same accordingly, he shall be amerced in the court where he ought to return it, and be liable to the action of the party grieved: And the said amerciements shall be truly and duly set, according to the quality of the offence, and estreated by the Prothonotaries of the respective Courts of Common Pleas of this province into the next succeeding Supreme or Provincial Court in course, that thence process may issue out against the offenders for levying of such fines and amerciements as shall be unpaid, to the uses for which they are or shall be appropriated. (m)

An *alias* execution to be granted, directed to the Sheriff of another county.

(k) The constitution has superseded the organization of the Court of Common Pleas, as prescribed in this section. For the particulars, see the introductory note; and for the jurisdiction of the respective courts, see the title *Judiciary Department*, in the index to the present edition.

(l) Respecting writs of replevin, (see ante. chap. 139;) writs of attachment, (ante. chap. 142;) and writs of partition, (chap. 1740, sect. 22.)

(m) In a cause depending in the

Supreme Court, the *venue* was laid in Philadelphia county, and judgment being entered an execution was thereupon issued, immediately into Bucks county, but, after argument, the writ was quashed, the Judges declaring that in every such case, a *fiery facias* must be filed in the Supreme Court, with a return of *nulla bona*, and then a term must intervene before the *testatum* issues, in order to support the fiction, 1 Dallas, 330.

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The defendant may have a special court, in case of sudden departure.

XXV. *And be it further enacted,* That if any defendant or defendants in any suit or action, by reason of his or their sudden departure out of this province, shall require a more speedy determination in such action or suit, than can be obtained by the common or ordinary rules of proceedings in any of the said Courts of Common Pleas in this province, the said Justices, upon application to them made, shall grant to such defendant or defendants special courts, and shall proceed to hear and determine the premises, according to the course and practice of the said Courts of Common pleas; and for the usual fees therein taken. (n)

But shall give bail to the plaintiff's action.

XXVI. *Provided always,* That before the said Justices shall grant such special court, or proceed to hear and determine the premises, the defendant shall give bail to the plaintiff's action by recognizance, according to the course and practice of the said Court of Common Pleas.

Process on writs of enquiry regulated.

XXVII. And to prevent the excessive charges that have of late arisen upon executing writs of enquiry of damages, *Be it enacted,* That the Justices who give any interlocutory judgment shall, at the motion of the plaintiff, or his Attorney in the action where such judgment is given, make an order, in the nature of a writ of enquiry, to charge the jury attending at the same or next court, after such judgment is given, to enquire of the damages and costs sustained by the plaintiff in such action; which enquiry shall be made, and evidence given, in open court; and after the inquest consider thereof, they shall forthwith return their inquisition, under their hands and seals; whereupon the court may proceed to judgment, as upon inquisitions of that kind returned by the Sheriff. (o)

(n) By an act of the 10th day of April, 1782, (chap. 955;) the privilege of having a special court was extended to plaintiffs, as well as defendants, and to cases depending in the Supreme Court, as well as the Common Pleas; but was again taken from the plaintiffs by an act of the 27th of March, 1789, (chap. 1402.)

The Judges refused to grant a special court on the application of a plaintiff, before the return day of the writ, the defendant not being in court, nor the action depending for this purpose, till bail entered, or an appearance filed. 1 Dallas, 77.

On the dissolution of a partnership, one partner assigned all the effects and credits of the company to the other, who moved, as plaintiff, for a special court, as he was about to depart, though the other partner would remain here; but the court refused the motion, 1 Dallas, 169.

The act is intended for the benefit of every man, whether an inhabitant or a foreigner, who is about to leave the state; but where the application for a special court was made by the plaintiff, and the defendant was absent, the Judges, under the peculiar circumstan-

ces stated in the case refused to grant it. 1 Dallas, 267.

On a motion for a special court by the defendant, it was objected, that the act did not apply to cases where there were other partners, who could remain during the usual course of proceeding to defend the cause, and who did not join in the application; but the objection was over-ruled. *Ex parte Holker*—In the Supreme Court, July Term, 1790. [2 Dallas, 111.]

(o) The court will not set aside the verdict of juries of enquiry on frivolous grounds, nor examine the effects of any particular piece of evidence on the mind of the jury; for, unless it appears that there was no proper evidence, the court will presume that they had sufficient grounds for their inquest. 1 Dallas, 82.

After judgment by default, the defendant has a right to offer his evidence to the jury of enquiry, to combat the plaintiff's proof; and if the sheriff refuses to hear the evidence on both sides, the court will direct a new writ of enquiry. 1 Dallas, 377 But after a judgment in a foreign attachment, the defendant is not entitled to produce *evid-*

**XXVIII.** *And be it further enacted,* That there may be a competent number of persons of an honest disposition, and learned in the law, admitted by the Justices of the said respective courts, to practise as attorneys there, who shall behave themselves justly and faithfully in their practice : And if they misbehave themselves therein, they shall suffer such penalties and suspensions, as Attornies at law in Great-Britain are liable to in such cases ; by which Attornies actions may be entered, and writs, process, declarations, and other pleadings and records, in all such actions and suits, as they shall respectively be concerned to prosecute or defend from time to time, may be drawn, and with their names and proper hands signed : Which said Attornies so admitted may practise in all the courts of this province, without any further or other licence or admittance : And that the Attorney for the plaintiff in every action shall file his warrant of attorney in the Prothonotary's office the same court he declares : And the attorney for the defendant shall file his warrant of attorney the same court he appears : And if they neglect so to do, they shall have no fee allowed them in the bill of costs, nor be suffered to speak in the cause, until they file their warrants respectively. (p)

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Attornies may be admitted :

How punished for misbehaviour.

Attornies to file their warrants of attorney.

Passed 22d May, 1722.—Recorded A. vol. II. page 297. (q)

cence before the jury of enquiry. *Ibid.*

There is nothing in the act of assembly, which precludes the Sheriff from holding an inquest on real estate taken in execution, after the return of the *feri facias*. 1 Dallas, 379. But an inquisition quashed for irregularity becomes a nullity, and leaves the case just as if none had been taken. *Ibid.*

(p) By the act of the 25th day of September, 1786, (chap. 1235,) the court is empowered to make rules for the government of its own practice ; and by the act of the 13th day of April, 1791, (chap. 1564,) the Judges of the Courts of Record therein mentioned, are excluded from practising as Counsellors or Attornies.

[(q) It has been thought proper to retain the whole of this act, with the valuable and comprehensive summary and notes of the former editor. The present state of the judiciary, which has undergone various important alterations since those notes were first published, is exhibited in the following additional summary :

December 4th, 1807, an act was passed " to amend the several laws of this Commonwealth, relative to domestic attachments ;" and jurisdiction is given to Justices of the Peace and Aldermen, in all cases of attachment, where the demand does not exceed one hundred dollars, and all other acts altered or supplied by this act are repealed, (chap. 2873.) And by a supplement

passed April 4th, 1809, the *proviso* in the first section is repealed, and the oath to be administered on issuing the attachment, may be administered by the Prothonotary, or Justice of the Peace. And the trustees may be sworn before any Judge, Alderman, or Justice of the Peace.

Arbitrations and proceedings in Courts of Justice, are regulated by an act passed March 21st, 1806, (chap. 2686,) and a new form of summons in debt is directed, and a writ of ejectment formed, and the ancient fictitious mode of proceeding by ejectment is abolished. The plaintiff must file a statement of his demand in the Prothonotary's office in a certain time ; and the defendant, within a further given time, a statement of his defence. Amicable references may be entered into, and the form of proceeding prescribed. Suits shall not be set aside for informality, &c. but when such informality will, in the opinion of the Court, affect the merits of the cause, the plaintiff or defendant shall be permitted to amend, or alter, respectively, his declaration or plea, on or before the trial of the cause ; and if the adverse party be taken by surprise, the trial of the cause shall be postponed until the next court, &c. And the form of the juror's oath is altered. Amicable actions may be entered by Prothonotary, without the agency of an Attorney ; and in like manner, he may enter judgments. In all civil suits, the parties may be heard in person and

1722. by counsel. Attornies retaining their clients' monies to be struck off the rolls. A new form of writ of *capias* prescribed: all acts of Assembly to be strictly pursued, and nothing to be done agreeably to the provisions of the common law, in such cases, further than shall be necessary for carrying such act, or acts into effect.

By a supplement passed April 13th, 1807, (post. chap. 2872.) all parties having an undivided interest in lands, in any manner, may join in ejectment, and recover according to their title. Minors may sue by their guardians, as in other cases. Defendant may defend on his own title, or that of a third person; and the landlord, as heretofore, shall be admitted to defend, and in such case, on the trial, shall admit himself in possession.

On service of ejectments, if persons not named in the writ are in possession, the Sheriff shall add their names to the writ, and serve it on them, and the Prothonotary shall enter their names to the action, and they shall be parties thereto—and service by Sheriff, is made (*prima facie*,) evidence of the defendants being in actual possession.

Writs of ejectment shall not abate by the death of either party, &c.

Two verdicts and judgments on the same side in succession, to be conclusive, and bar the right.

No *ca. sa.* to issue where defendant has real or personal estate to satisfy plaintiff's demand; or if the whole cannot be satisfied, then only for the residue thereof.

On a *liberari facias*, the Sheriff, in certain cases, to deliver actual possession.

By a further supplement, passed March 28th, 1808, (post. chap. 2987,) in case of non-attendance of a competent number of Judges on the day appointed for holding a Court of Oyer and Terminer, in the city, or any county, any one Judge shall have power to adjourn said Court from day to day, &c. and any associate Judge may, in like manner, adjourn the Common Pleas and Sessions. The courts are also empowered to enforce by attachment the payment of monies had and received by Sheriffs, Coroners, or Attornies, and the delivery by Attornies of all papers belonging to their clients.

Compulsory arbitrations are established and regulated by an act passed March 20th, 1810, which alters and supplies the act of March 29th, 1809. More extensive powers are given to the arbitrators; and all costs are to be paid, and, on appeal, to be recovered back on a certain event.

The act "for the recovery of debts

and demands not exceeding one hundred dollars, before a Justice of the Peace, and for the election of constables, &c." is amended and consolidated with its supplements, by an act passed March 20th, 1810, and all previous acts on that particular subject are repealed. Particular regulations are made with respect to set-offs before Justices. Entering transcripts with Prothonotary—and how executions shall, in such case, be issued. No judgment either of Court, or before a Justice, shall defeat a freeholder's privilege, longer than until it shall be satisfied.

By consent of parties, Justices may take cognizance of demands exceeding one hundred dollars, and proceed to judgment and execution; and the penalty in case of fraudulent judgments is prescribed.

Justices have power to compel default in all cases of rent, not exceeding one hundred dollars, &c.

In what manner *certioraris* shall issue, prescribed; and a former law repealed.

Justices have jurisdiction in cases of executors, with certain restrictions in case of an allegation of an insufficiency of assets.

Jurisdiction of Justices in case of damage by trespass. March 1st, 1799. (post. chap. 2012). Revived and made perpetual, by the act of January 2d, 1804. (post. chap. 2390). regulated by act of 21st March, 1806. (post. chap. 2684). extended to 50 dollars by act of April 13th, 1807. (post. chap. 2859).

Their powers in cases of assault and battery, so as to affect compromises, in certain cases, regulated by act of March 17th, 1806. (post. chap. 2671).

An act for laying out, making, and keeping in repair the public roads and highways, &c. and for laying out private roads, was passed April 6th, 1802. (post. chap. 2287) and all previous acts, (except as to the city of Philadelphia, and other corporate towns, and any special laws for the county of Philadelphia), are repealed. See supplement to this act, chap. 2058, and an act passed April 3d, 1809, and the 4th section of the act of March 28th, 1808, giving power to the Courts of Sessions to enforce the road act.

With respect to juries—an act was passed (but limited to 3 years) directing the mode of selecting and returning them, on the 29th of March, 1805. (post. chap. 2577). By which act, the Jurors are to be selected annually by the County Commissioners and the Sheriff, and the names put into wheels and balloted for, &c. and the Jurors are to be paid one dollar for each day's attend-

ance—and by a supplement, passed April 4th, 1807, (post. chap. 2797), the assessors were required to return the names of all the white inhabitants of their respective wards or townships, of competent ability, triennially, (or oftener, if the wheels should be exhausted) to the Commissioners, who were to deposit them in the wheels, &c. But this system was repealed, and the act of March, 1805, was revived and made perpetual, by an act passed April 4th, 1809—which latter act allows each party in civil suits, to challenge two Jurors peremptorily; and the defendant, in criminal cases, where challenges have not heretofore been allowed, four Jurors peremptorily.

The power to grant divorces, &c. is extended to the Courts of Common Pleas, by an act passed April 2d, 1804, (post. chap. 2483).

The Alderman's Court in the city of Philadelphia, is abolished by the 30th section of the act of March 20th, 1810.

By an act concerning libels, passed March 16th, 1809, (and limited to three years, &c.) no person shall be prosecuted by indictment, for the publication of papers, examining the proceedings of the Legislature, or any branch of Government, or for investigating the official conduct of officers, or men in public capacity. And in all actions, or criminal prosecutions of a libel, the truth may be pleaded in justification, or given in evidence.

An act concerning writs of partition, passed April 11th, 1799. (post. chap. 2079). But much thereof is repealed by the act of March 28th, 1806, (post. chap. 2688,) and jurisdiction therein given to the Common Pleas. And see an act supplementary to the several acts concerning partitions passed April 7th, 1807. (post. chap. 2813,) which is amended by the act of March 26th, 1808. (post. chap. 2965).

In what manner Sheriffs and Coroners to give security; and how writs of *Distingas* shall issue, and issues be levied. See the act of March 28th, 1803. (post. 2355).

And in what manner writs of *Estrepement* may issue to prevent waste, see the act of April 2d, 1803. (post. chap. 2378).

The courts have also been very considerably altered.

The Courts of *Nisi Prius* in the several counties, except *Philadelphia*, are abolished, and a new Court of Record, styled a *Circuit* Court, was established by an act passed March 20th, 1799. (chap. 2021). and the times of holding them were to be prescribed at the *December* and *March* terms, annually. Ap-

peals were to be sustained by this court from the Register's and Orphans' Courts in the several counties, except *Philadelphia*; and the Justices of the said court (who were the Judges of the Supreme Court) had power to issue writs of *Certiorari*, *Habeas Corpus*, and all other remedial writs and process, grantable by the said Justices by virtue of their offices, excepting writs of *Error* and *Certiorari* after judgment, orders or decrees given or obtained, to be returnable into the office of clerk of the said court. Each of the said courts to have a seal, &c. The Judges, whilst holding said court, to give judgment, pass decrees, and award executions, and generally, to exercise similar powers, in cases of which they had jurisdiction, in as ample a manner as if sitting in bank. Also to try and pass judgment and award execution, in all criminal cases, on indictments removed to that court, though not sitting as a court of *oyer* and *terminer*, and without any new indictment.

An appeal lay from the judgment of the Circuit Court, to the Supreme Court, under certain restrictions and conditions; and after the decision of the Supreme Court, the record was to be remitted back to the Circuit Court to be there carried into execution and effect. The act also declared, that the record itself, and not barely a transcript, should be removed by *Habeas Corpus*, as on a *Certiorari*—but no removal after the cause was at issue one term below. Recognizances of bail, and all other entries and proceedings were removed by those writs to the Circuit Court, and to have the same operation and effect as they might have had, if the cause, or indictment had not been removed. The Prothonotaries of the Common Pleas, respectively, to be clerks of the Circuit Court. The Courts of *Nisi Prius* in the county of Philadelphia, are preserved by the 12th section.

The 14th section is still in force, and provides, that no judgment rendered in the Supreme Court, shall be a lien on real estates, excepting in the county in which such judgment is rendered. And a *testatum* execution shall be a lien on lands and tenements, only from the time of delivery thereof to the Sheriff.

By an act to "alter the Judiciary System of this Commonwealth," the following important arrangements were made, Feb'y 24th, 1806. (post. chap. 2634).

SECT. 1. No issues in fact, in the Supreme Court, to be tried in bank, but at Courts of *Nisi Prius* to be held in the city of Philadelphia, in the manner heretofore used, &c. and one of the

1722. Judges may hold sittings for the trials of issues in fact, in term time, without regard to the sittings of the Judges then in bank, with like powers and authority as a Judge at *Nisi Prius*.

SECT. 2, divides the state into two Districts of the Supreme Court—one to be called the Western District, and to consist of the counties of Bedford, Somerset, Westmoreland, Fayette, Greene, Washington, Allegheny, Beaver, Butler, Mercer, Crawford, Erie, Warren, Venango, Armstrong, Cambria, Indiana, Jefferson, Clearfield, and McKean; and the other to consist of the remaining part of the state, and to be called the Eastern District.

SECT. 3, directs a Prothonotary to be appointed for each District.

SECT. 4, establishes one term annually, for the Western District at *Pittsburg*, on the first Monday in September, to continue two weeks, if necessary, and adjourned courts to be held whenever the business therein depending may render it necessary. And two terms annually at *Philadelphia*, for the Eastern District, on the second Monday in December, to continue three weeks, and on the third Monday in March, to continue two weeks, if necessary; and adjourned courts to be held, whenever the business therein depending may render it necessary.

SECT. 5, declares the powers of these courts to be the same as are vested by the constitution and laws in the Supreme Court of the State.

SECT. 6, 7, and 8, consist of temporary arrangements to carry the act into effect, and renders the new Prothonotaries accountable to the former one, and to others, for antecedent fees and costs.

SECT. 9. Circuit Courts to be held only by one Judge, at least once in every year, in each county, except *Philadelphia*, where causes are at issue and undetermined in said court, &c.

SECT. 10. The Judges in the Circuit Court, so to alternate, that the same Judge shall not sit oftener than once in the same county in every fourth successive term of said court, unless rendered impracticable by accident.

SECT. 11, abolishes the High Court of Errors and Appeals, after a limited time; and all its records are transferred to the office of the Prothonotary of the Eastern District, who is authorized to make certified copies thereof. And although the powers of this court were partially continued to a further period by a subsequent act, it is now entirely extinguished.

SECT. 12, organizes the Courts of Common Pleas in Districts; to wit:

1. District, City and County of Philadelphia.
2. Lancaster, York, and Dauphin.
3. Berks, Northampton, and Wayne.
4. Mifflin, Centre, Huntingdon, and Bedford.
5. Beaver, Allegheny, Washington, Fayette, and Greene.
6. Mercer, Butler, Venango, Crawford, and Erie.
7. Delaware, Chester, Bucks and Montgomery.
8. Northumberland, Luzerne, and Lycoming.
9. Adams, Cumberland, and Franklin.
10. Somerset, Cambria, Indiana, Armstrong, and Westmoreland.

SECT. 13. The Governor to appoint a President in each of the new districts, viz. 7th, 8th, 9th, and 10th, with a salary to each of \$ 1600, annually.

SECT. 14. The President alone, is authorized to hold the Courts of Common Pleas.

SECT. 15. No vacancy in the office of Associate Judge of the Common Pleas, to be supplied in any county, unless the number of associates shall be reduced to less than two—when that number shall be completed.

SECT. 16. Four terms to be held annually in each county—in certain counties, each term to continue two weeks, and in such counties, the trials in the Common Pleas to be on the second week.

SECT. 17, and 18, prescribe the mode of selecting, summoning, and returning jurors to said Courts.

SECT. 19th, takes away the original jurisdiction of the Supreme Court in civil causes; and prohibits the removal of civil causes to the Supreme Court, or Circuit Court, unless the value in controversy between the parties, shall exceed the sum of one thousand dollars, if removed from the Common Pleas of the first district, and five hundred dollars, if removed from the Common Pleas of any other district. And, sect. 20, prescribes the conditions on which removals shall take place.

SECT. 21, empowers the Judges of the Common Pleas in counties in which the term is extended to two weeks, to shorten the term, by a special order, directing the ensuing term to be held but one week.

SECT. 22. The Judges of the Common Pleas are authorized to hold adjourned Courts, as they shall think proper, and at such adjourned Courts, to

act and decide upon all business within their jurisdiction respectively. And it is made the duty of the Judges of the Supreme Court, and of the Common Pleas, to see that all actions in their respective Courts shall be reached, and have a fair opportunity of trial, at least within one year after they shall have been commenced; and a neglect of the duties enjoined upon them by this act, shall be deemed a misbehaviour in office, and lay a sufficient ground for the removal of the Judge, or Judges, so offending.

SECT. 23 and 24, re-establish the Register's and Orphans' Courts, and declare their powers, in the same manner as they are established by the existing constitution, and former act founded thereon. But a new provision is introduced into the 23d section, by which the Orphans' Courts in the first district, are to be held at such times as the Judges may think proper. And in every county in the other districts, where the term is to continue two weeks, the Orphans' Courts shall be held on the first week of the term, and at such other times as they may think proper. In term time, the President is to be a component part of the Orphans' Court. And in each of the other counties, the Judges of the Common Pleas, or any two of them, *the President being one*, shall hold the Orphans' Courts, at such times as they may think proper: But any two judges in each county, may hold the Orphans' Courts in said county, for the appointment of guardians, and for the transacting, hearing, and deciding upon any business in the Orphans' Court; but if any person interested in the business then before the Court, shall request the same to be continued until the President can attend, in that case the business shall be continued accordingly.

SECT. 25. In all cases in which the Judges of the Supreme Court, &c. or Presidents of the Common Pleas shall deliver the opinion of the Court, if either party, by himself or council, require it, the said Judges, respectively, shall reduce the opinion so given, with their reasons therefor, to writing, and file the same of record in the cause.

SECT. 26, fixes the times of holding the several County Courts. In some instances these times have been altered by subsequent laws; and the stated terms in each county will be found under the several acts establishing and organizing the respective counties.

SECT. 27. The prothonotary is to furnish annually to the accounting officers, an account of fees received in his office; and the yearly amount received beyond

§ 1500, is made subject to a certain tax. And by

SECT. 28, the Prothonotaries are empowered to enter judgments, on confession, or by warrant, without the agency of an Attorney, or declaration filed, &c.

Again, on the 10th of April, 1807, (post. chap. 2846,) an act passed, "erecting a middle district of the Supreme Court."

This district was made to consist of the counties of York, Adams, Dauphin, Cumberland, Franklin, Huntingdon, Mifflin, Northumberland, Luzerne, Lycoming, Centre, Clearfield, M'Kean, Potter, and Tioga. And one term is to be held annually therein at Sunbury in the county of Northumberland, (then) on the first Monday in July. And the Supreme Court of this district is vested with the same powers as the other districts.

Alterations still more important were made by "a further supplement to an act entitled "an act to alter the judiciary system of this commonwealth," passed March 11th, 1809.

By this act, two additional districts are added to the Supreme Court: one to be called the Lancaster district, to be composed of the counties of Lancaster, York, Berks, and Dauphin. And the term therein is to be held at Lancaster, annually, on the third Monday in May; and the other to be called the Southern district, to be composed of the counties of Cumberland, Bedford, Franklin, Huntingdon, and Adams. And the term therein is to be held annually at Chambersburg, on the Monday week next following the end of the second week of the term of the Western district. Each term to continue two weeks, if necessary, and adjourned Courts to be held if necessary, and the term of the middle district is to commence on the Wednesday next following the end of the second week of the term of the Lancaster district. The Judges are invested with the same powers in the new, as in the other districts.

As soon as the Judges of the proper district of the Supreme Court shall have finally determined and rendered judgment in any action, &c. they shall order the records thereof, with their decision and determination thereon written and duly certified to be remitted to the appropriate court of the proper county, to be by such court duly carried into execution and effect, &c.

The Circuit Courts are abolished, and all causes, indictments and prosecutions therein pending and undetermined, are transferred to the appropriate County

1722. Court from which they were removed, there to be tried and determined. And appeals depending in said Circuit Court are transferred to the Supreme Court of the proper district for final determination. Courts of *Nisi Prius* to be held in the city and county of Philadelphia, as heretofore.

On appeals and writ of error to the Supreme Court, the party taking the same, must make oath or affirmation, to be filed with the record, that the same is not intended for delay: and where facts in any special verdict may be insufficiently found, the Judges may remand the record, and direct another trial—and that every party may have an opportunity to take a writ of error, no execution shall issue upon any judgment, on special verdict, demurrer, or case stated, unless by leave of the Court, in special cases, for security of the demand, within three weeks from the day on which such judgment shall be pronounced.

All recognizances of bail or other surety or security required by law to be entered into or given for the prosecution of any appeal or writ of error, may be taken by or before any Judge of the Court from whose judgment or decree, the same shall be taken or issued, and be certified and transmitted with the record; and may be sued upon in the Court of Common Pleas of the proper county or elsewhere, if the defendant shall not reside in such county.

Upon a vacancy, the Supreme Court hereafter to consist of but three Judges. There are now, in consequence of a vacancy, but three Judges in that Court.

Indictments in the Mayor's Court, may, at the sessions in which they are found, be removed to the Quarter Sessions of Philadelphia, for trial.

Finally, by another supplement to the act of February 24th, 1806, passed March 20th, 1810, the original jurisdiction of the Supreme Court, within the city and county of Philadelphia, is restored as to all controversies of the value of five hundred dollars and upwards, and removals may take place from the Common Pleas, in controversies of the same value; and Courts of *Nisi Prius* are to be held by the Judges severally, in order and rotation, at least 33 weeks in each and every year, hereafter, if necessary to do the business—and the fees in the Supreme Court are to be the same, as in the Court of Common Pleas.

And by another act, passed the same day, the Judges of the Supreme Court, are authorized to establish return days, in the respective Courts in bank.

How *certioraris* shall issue to Justices, and the manner of proceeding thereon, see the 21st, 22d, 23d, 24th, and 25th

sections of the consolidating act of March 20th, 1810.

Bills of exceptions are grounded on the English statute of Westminster 2d 13 Edward 1. stat. 1. chap. 31. But the use of them is now greatly superseded in practice, by the 25th section of the act of February 24th, 1806. By which, at the desire of the party, the opinion of the Judge may be annexed to the record—without the formality of tendering a bill of exceptions.

By an act passed April 3d, 1809, The power of the several Courts to issue attachments and inflict summary punishments for contempts of Court, is restricted and regulated. Contempts out of Court are to be punished by indictment. This act is limited to two years, &c.

The following is the arrangement of the Districts of the Supreme Court.

*Eastern District.*

Philadelphia, Bucks, Chester, Northampton, Montgomery, Delaware, and Wayne.

*Lancaster District.*

Lancaster, Berks, York, and Dauphin.

*Middle District.*

Northumberland, Luzerne, Lycoming, Mifflin, Centre, Clearfield, Mc Kean, Potter, and Tioga. And the counties of Ontario and Susquehanna are since erected within its boundaries, but are not yet organized.

*Southern District.*

Cumberland, Bedford, Franklin, Huntingdon, and Adams.

*Western District.*

Somerset, Westmoreland, Fayette, Greene, Washington, Allegheny, Beaver, Butler, Mercer, Crawford, Erie, Warren, Venango, Armstrong, Cambria, Indiana, and Jefferson.

MISCELLANEOUS NOTES, OF THE PRACTICE OF COURTS.

It is questionable whether the Court can issue writs of attachment for not obeying a *subpœna*, into another county. 2 Dallas, 45. (See sect. 8 and 23, of the act in the text.)

In what cases the Court will continue a cause, if witnesses, or even parties do not attend, and grant a rule for taking depositions *bene esse*. 2 Dallas, 45, 94, 108-9, 383.

It seems to have been admitted, that the Sheriff cannot be compelled to serve a *subpœna* out of his jurisdiction: And in a criminal case, the Attorney General applied for a special messenger, observing, that if, as in England, the Judges were attended by *tipstaves*, those would be the proper officers to employ on the occasion. But the Court

recommended that he should consult with the Sheriff, on a proper person to be hired for the special purpose. *Respublica v. St. Clair*, 2 Dallas, 101.

The defendant moved to put off a trial on an affidavit, that an attorney of the Court was a material witness. He had not been subpoena'd, but had promised the defendant to attend, and had left town a few days ago. Under these circumstances, the Court did not think a subpoena necessary to entitle the defendant to put off the trial. *White v. Lynch*, 2 Dallas, 183.

What is considered by the practice of the Circuit Court of the United States, as a reasonable time of serving a subpoena, and to move for an attachment, see 2 Dallas, 333-4.

*In what cases the Court will grant, or refuse new trials.*

*Shippen J.* New trials are frequently necessary for the purpose of obtaining complete Justice; but the important right of trial by Jury requires that they should never be granted without solid and substantial reasons; otherwise the province of Jurymen might be often transferred to the Judges, and they, instead of the Jury, would become the real triers of the facts. A reasonable doubt, barely, that justice has not been done, especially in cases where the value or importance of the cause is not great, appears to me, to be too slender a ground for them. But whenever it appears with a reasonable certainty, that actual and manifest injustice is done, or that the Jury have proceeded on an evident mistake, either in point of law, or fact, or contrary to strong evidence, or have grossly misbehaved themselves, or given extravagant damages; the Court will always give an opportunity, by a new trial, of rectifying the mistakes of the former Jury, and of doing complete Justice to the parties. 2 Dallas, 55-6.

*McKean, C. J.* (in delivering the opinion of the Court.) A motion for a new trial should not be made, after a motion in arrest of Judgment, unless in cases where the party had no knowledge of the fact, at the time of moving in arrest of judgment. For by moving in arrest of judgment, you tacitly admit the verdict is good. 2 Salk. 647. Bull. N. P. 326, 1 Burr. 334. This is also settled by the 32d printed rule of this Court; by which it is ordered, that no motion for a new trial shall be made, after a motion in arrest of Judgment. 2 Dallas, 121.

There must be notice given, according to the rules of Court, of a motion for a new trial, or the motion will be refused. 2 Dallas, 150. 1 Binney, 458.

New trial for defendant, granted in a capital case, by the Circuit Court of the United States. 3 Dallas, 515.

And see 4 Dallas 112, 315. And in *Walker v. Smith*, in the Circuit Court of the United States, on a motion for a new trial, because the verdict was against law, evidence, and the charge of the court, it was observed by *Washington J.* that although he was not satisfied with the verdict, nor should have assented to it as a Juror; yet the question of damages, or of interest in the nature of damages, belonged so peculiarly to the Jury, that he could not allow himself to invade their province, while he felt a determination to prevent on their part, any invasion of the judicial province of the court. *Ibid.* 391.

The day on which the verdict is given, is computed as one of the four days which are allowed to move for a new trial. 1 Binney, 292.

In civil cases, it must be an exceedingly clear error, that should induce the court to interfere, after the four days have expired without a motion for a new trial. See 1 Binney, 456.

*The following notes on this head, are from MSS. cases in the Supreme Court.*

New trial granted in ejectment, where the verdict was given for the defendant, against law, and the direction of the court.

The court will not grant a new trial, because the Jury have exceeded legal interest in the measure of damages for delaying the payment of money, unless it be excessive.

Where a fact has been submitted to a Jury, on a variety of evidence, the court will not grant a new trial, especially where there has been a view, in ejectment.

On a feigned issue to try the validity of a will, the court before whom it is tried, but not the Register, has power to award a new trial.

The Jurors are the constitutional Judges of the credit of witnesses; and if the sanity of a testator is fairly left to them, the court will not interpose, where they have discovered no leaning.

Though a Jury give liberal damages in *assumpsit*, for services performed, yet if they are not outrageous, the court will not order a new trial.

The mistake of a party, or his counsel, is no ground for a new trial.

A new trial refused to be granted, where a brother-in-law of one of the plaintiffs was sworn on the Jury; and the plaintiff's attorney being informed of it offered to waive the Juror, provided the defendant would consent to swear another in his room, and go on

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with the trial; no injustice having been done by the verdict.

It is no ground for a new trial, that the Judge who tried the cause inclined that the weight of evidence was with the plaintiff, and the jury found a verdict for the defendant. For, where the matter of fact has been left to the decision of the Jury, the court will not grant a new trial.

Nor where a juror has betted on both sides of the cause, unless it produced an evident bias on his mind.

Nor where some of the jurors have expressed their sentiments *on the opening of the cause*.

The proof of the jurors eating and drinking at the expense of the party for whom the verdict has gone, must be clear and full, and must establish undue management, or criminal intention in the party, before the verdict will be set aside.

On a motion for a new trial, the party must be confined to the grounds stated in his written notice.

Where a jury has given a verdict, manifestly and grossly wrong, the court will grant a new trial, though they give no charge to the jury.

New trial ordered because the jury received new evidence, after leaving the bar.

Where a party delivers a paper to the jury, without consent or leave of the court, and a verdict is found for him, a new trial shall be awarded.

No new trial will be granted, where justice has been done, on a technical objection to the form of action.

For the court will not grant a new trial, unless they are satisfied injustice has been done.

A second new trial awarded, after a trial by a special jury and view, without costs; improper evidence, which was afterwards overruled by the court, having been disclosed to the jury on the view. (*Stewart's Lessee v. Richardson*. Circuit Court, Huntingdon.)

A *tales man* sworn on the jury, after being struck off the list of special jurors, is no ground for awarding a new trial. (Supreme Court.)

Where the weight of evidence preponderates against a verdict, a new trial will be granted. (See 1 Binney, 403-4.)

A new trial will not be granted, where the motion is founded on the discovery of evidence, which it was the fault of the party that he did not produce at the trial.

Though severe damages be found against the Sheriff, where the conduct of his deputy has been wantonly injurious, the court will not grant a new

trial, on the principle of public safety. (See this case reported. 1 Binney, 240.)

Though a Judge on the trial should declare, that the evidence did not support the action, it is no ground for a new trial, unless he persists in that opinion.

Where an agreed line is to be ascertained, the Court will not readily grant a new trial, after a view by the jury.

Where an ejectionment has been brought to enforce the execution of a contract, on a sale of lands, and the jury have found for the defendant, the Court will not award a new trial, unless in a perfectly clear case.

*Of the postponement of trials.*

The defendant's counsel produced a certificate from a physician, stating that the defendant had been dangerously ill for three weeks last past; and thereupon moved to put off the trial.

But the Court held this to be no good cause for putting off the trial. And,

*By Shippen, J.* If there had been an *affidavit*, stating that there were material witnesses, who had not been summoned in consequence of this sickness; or if the plaintiff himself were a witness to prove books, or the like; that might have weight with the Court; as it is, the trial must proceed. *Jones v. Little*. 2 Dallas, 182.

The plaintiff's counsel, who was to have argued the case in the Supreme Court of the United States, died shortly before the time the argument was expected to come on—On motion to postpone, which was opposed, the court said, "In all questions of this nature, we must be governed by a sound discretion; in order to prevent, on the one hand, an unnecessary procrastination, and on the other hand, to avoid an injurious precipitation of trials. In the present instance, we think there is a sufficient foundation laid before us, to justify our granting a continuance till next term. If the cause were now to be taken up, it must be heard and decided *ex parte*. It is true, that counsel might, even at this time, be employed, so as to admit, perhaps, of an argument before the court rises; but it is reasonable that in a cause of magnitude, the counsel should have an opportunity, to investigate the principles, and consider the authorities connected with it, out of term and unincumbered by the pressure of the current business of the court. *Hunter v. Fairfax*. 3 Dallas, 305.

A trial will not be ordered on, where a party has not prepared, expecting a compromise from the declarations of his adversary. *Cornogg v. Cornogg's executors*. *Nisi Prius, Chester*, May, 1791. MSS. Reports.

Trial postponed, where there had been a late discovery of a material witness, in another state. The discovery was too late to enable the party to apply for a commission to procure the evidence; and the witness had promised to attend, but was prevented by sickness in his family. *Campbell's Lessee v. Sproat. Lancaster, Nisi Prius, May, 1791. MSS. Reports.*

*Of the rule for trial, or non pros. or by proviso.*

This cause being marked for trial, it was continued by the plaintiff; whereupon defendant's counsel moved for a rule to try at next term, or non pros.—This was opposed on the ground, that there was no default in plaintiff, as the delay arose, in fact, from the absence of a material witness, and the late arrival of a record from *New Jersey*, which was so imperfectly exemplified, that it could not be offered in evidence. To this it was answered, that there had been no *subpoena* taken out for the absent witness; and that as the action had been depending for more than two years, there was evidently a *laches* in not obtaining the exemplification sooner.

*By the Court.* It is certainly a great default that an earlier application was not made for the exemplification; and that instructions were not given to some person, to see that it was regularly made out. On that ground alone, therefore, the motion must be granted. But even if the plaintiff had not been guilty of a *laches*; if it was a misfortune, and not negligence, that had prevented the seasonable arrival of the record, we should still doubt the propriety of refusing the rule. *Todd v. Thompson. 2 Dallas, 105. See 1 Dallas, 251.*

The defendant had, at a former term obtained a rule to try, or non pros. At the next term, defendant's counsel, not recollecting this, desired the plaintiff to continue the cause, which he agreed to, and the continuance was entered; but immediately after, discovering that he had a rule on the plaintiff, he acquainted the opposite counsel, and gave notice that he should insist upon the rule. The plaintiff insisted that the entry of the continuance was conclusive.

*By the Court.* Such an entry cannot be conclusive. This is a mere mistake; and as it was immediately discovered, and notice given, no inconvenience arose from it. If the plaintiff had suffered any thing by it, it might have been another matter—but here he could suffer nothing. If he was ready for trial when the entry was made, he must be ready when the mistake was notified to him. *Nesbit v. Pope. 2 Dallas, 143.*

This was an action on an official bond executed by the defendant; and the real plaintiff having neglected to strike a jury, the defendant's counsel moved for a rule for trial by *proviso*; but on a suggestion from the attorney general, approved by the court, that such a rule could not be granted against the commonwealth, the motion was made for a peremptory rule to try at the next term; under which, the court said, they would order the jury to be qualified. *Republica v. Coates. 2 Dallas, 109.*

If an issue is joined, and the defendant submits to a rule for trial or non pros. before the declaration is filed, he cannot elude the operation of the rule at a subsequent term. *2 Dallas, 156.*

A non pros. entered on a mistaken presumption, that a rule had been obtained to try, or non pros. was taken off, on entering a rule to try, or non pros. as of the last term, so that it might operate at the present term, should the trial be postponed by the plaintiff's *laches*. *2 Dallas, 266.*

On a rule for trial, or non pros. the non pros. must be moved for in court; it cannot be signed in the Prothonotary's office. *1 Dallas, 347.*

Rule for trial or non pros.: but afterwards a plea added, and particular facts referred. By this, the rule is virtually vacated. *1 Dallas, 405.*

Rule for trial or non pros. in September term; and notice at bar, when the cause was continued generally till January term: held, that the rule for trial or non pros. was continued, and that no new notice was necessary. *1 Dallas, 410.*

But where a rule for trial or non pros. has been entered several years, defendant is bound to give reasonable notice of his intention to proceed under his rule. *Wallace v. Boyd. Circuit Court, Lancaster, April, 1800. MSS. Reports.*

The court will not direct a nonsuit to be entered against the plaintiff's consent. *MSS. Reports. Circuit Court.*

See chap. 556.

*Of Depositions and Commissions.*

On *Affidavit*, that material witnesses for defendant, (who was in confinement) were about to leave the state, the court granted a rule to take their depositions, though the writ was not returnable till next term. *§1 Dallas, 164.—Granted debene esse, subject to the opinion of the court. Ibid. 251. See 2 Dallas, 78.*

What is a good, or defective execution and return of a commission to examine witnesses abroad. See *2 Dallas, 143-4, 157, 192.*

The Supreme Court of the United States will not award a commission to

1792. examine witnesses till the commissioners are named. 2 Dallas, 401.

A joint commission to four persons to take depositions, cannot be executed by three. 4 Dallas, 410.

Want of jurisdiction may be taken advantage of in any stage of the cause. See 1 Binney, 138.

Under the plea of payment, mistake, or want of consideration may be given in evidence. The court said, there being no Court of Chancery here, this was necessary, in order to prevent a failure of justice. 1 Dallas, 17, 260.

It has been the settled practice of the Supreme Court to proceed upon equitable principles. See 1 Binney, 217.

In this state, says *C. J. McKean*, The Judges are sworn "to do equal right and justice to all men, to the best of their judgment and abilities, according to law." There is no Court of Chancery. The Judges here are, therefore, to determine causes according to equity, as well as the positive law: *Equity* being a part of the law. 1 Dallas, 213. See 4 Dallas, 245, 347-8.

## CHAPTER CCLX.

### *An ACT for regulating the gauging of Cask in this province.*

**WHEREAS** great abuses are daily committed in the trade of this province, by importing wine, rum, and other liquid merchandizes, in disproportionable cask, which have been usually gauged by the diagonal, which is known not to be an exact rule to find the contents of a disproportionable cask; and the person selling such commodities commonly refusing to submit to any other method or rule of gauging, the purchaser is thereby imposed upon, and often suffers great loss in want of just measure: For the redress of which abuse for the future within this province, *Be it enacted*, That if any merchant, or other person whatsoever, shall utter, sell, or put to sale, any butt, tun, pipe, hogshead, barrel, runlet, or other cask of rum, wine, molasses, or other liquid merchandize, imported into any port or place within this province, before the gaugers hereafter mentioned, or their deputies, shall have first plainly and truly set down or marked, upon the head of such vessel, the capacity and full contents of the same, according to the standard and excise of wine-measure by the gallon, such person or persons, shall forfeit, for the uses directed in this act, the sum of ten pounds for every cask so uttered, sold, or put to sale.

**II.** And further, if any merchant or other person shall utter, sell, or put to sale, any rum, wine, molasses, or other liquid merchandize, as aforesaid, within any port or place of this province, in any cask or vessel, having the number of gallons set down and marked on the head of such vessel, and the same shall be found to lack of the contents marked on the said vessel, such person shall forfeit and pay, to the uses directed in this act, the sum of ten shillings, for every gallon marked or numbered on the said cask more than it will truly contain.

**III.** And to the end that all persons, dealing in such merchandize, may the more easily and readily be informed and assisted in the discovering the true quantity of such liquid merchandize, so imported as aforesaid, *Be it enacted*, That Nathaniel Griffitts, and Benjamin Morgan, of Philadelphia, shall be and are hereby appointed gaugers, of all the wine, rum, molasses, and other liquid merchandize, imported into this province for sale. Which said gaugers, (before they enter upon their office, shall take an oath or affirmation, well and truly to execute the office of gaugers within

No person to sell liquors before gauged by the gaugers, under penalties, &c.

Forfeitures on liquors lacking the quantity sold for,

Gaugers names, and

how to be qualified.