

the said county, for the first year, to choose three commissioners for raising county rates and levies for the said county. 1749-50

Passed 27th January, 1749-50.—Recorded A. vol. III. page 213. (n)

(n) See the notes to the preceding act, relating to the county of York. The sections omitted are the same in form and substance, except the 13th section, and are all obsolete. The 13th section authorized the trustees of York and Cumberland to run the boundary lines, which are further explained by chap. 387, post.

The boundaries of Cumberland have been since greatly abridged. 1st, by the erection of the county of Bedford, March 9th, 1771, (post. chap. 629.) 2d, by the erection of Northumberland, March 21st, 1772, (post. chap. 644.) 3d, by the erection of Franklin county, September 9th, 1784; and finally, by the erection of Mifflin county, September 19th, 1789, (post. chap. 1425,) and by chap. 593, commissioners were appointed to run the lines between Lancaster, Cumberland and Berks.

By the last enumeration, the county of Cumberland contained four thousand four hundred and eighty-three taxables, and by the act of Assembly of March 21st, 1808, (chap. 2931,) apportioning the representation, sends three members to the house of representatives, and one member to the senate.

By the act of September 1785, (chap. 1164,) the county of Cumberland was divided into four election districts.

By act of September, 10th, 1787, (chap. 1290, sect 3,) the townships of Greenwood and Rye, were made the

sixth election district. Rye, and part of Greenwood, by act of March 21st, 1797, (chap. 1922.)

The division of Mifflin county, having taken away part of the old districts, by act of April 4th, 1792, the township of Newton, and part of West Pennsborough are made a district, and called the fifth district. April 15th, 1795, (chap. 1328,) East Pennsborough and Allen townships are made a separate district. Place altered, January 13th, 1803, (chap. 2298.)

The place of holding elections in Juniata, Greenwood, and part of Buffalo altered March 8th, 1802, (chap. 2238)

Tyrone, and Geboyne townships erected into two separate districts, March 21st, 1803, (chap. 2340.)

Buffaloe township made a district, February 11th, 1805, (chap. 2528.)

By the Judiciary act of February 24th, 1806, (chap. 2634,) the counties of Cumberland, Adams, and Franklin compose the ninth district; the terms continue one week, and are held in Cumberland on the first Mondays of January, April, August and November.

The borough of Carlisle was established April 13th, 1782, (chap. 958,) amended by a supplement April 19th, 1794, (chap. 1744.)

Dickinson College established at Carlisle, September 9th, 1783, (chap. 1018.)

CHAPTER CCCLXXXIV.

An ACT for barring estates tail.

FORASMUCH as the entailing of estates within this province, without a provision by law for barring them, would introduce perpetuities, prevent the improvement of such estates, disable tenants in tail to make provision for the younger branches of their families, prove of general detriment to the province, and be attended with manifold inconveniences. For preventing whereof for the future,

Be it enacted, That fines and common recoveries heretofore levied and suffered within the province of Pennsylvania, or which shall at any time or times hereafter be levied or suffered within the said province, duly, and according to the common or statute laws of England, either in the Supreme Court of Judicature within the said province, or in any of the County Courts for holding of Pleas, within the said province respectively, in which the houses, lands, tenements, or hereditaments entailed, do or shall lay, shall be and

Fines and recoveries heretofore and hereafter suffered to be valid.

1749-50. are hereby declared to be of like force and effect, to all intents, constructions and purposes, for barring estates so entailed, as fines and common recoveries, by the laws of England aforesaid, there levied or suffered, of lands, tenements, and estates, entailed within that realm, are received, declared, or enacted to be.

Remedy by writ of error.

II. *Provided always*, That it shall and may be lawful for any person or persons, either by appeal or writ of error, as the case may require, to seek and obtain redress against any error or errors which have happened, or may happen, in any such proceedings.

Passed 27th January, 1749-50.—Recorded A. vol. III. page 223. (o)

(o) On the subject of estates tail, fines and recoveries, by the report of the Judges, the following English statutes extend to *Pennsylvania*:

13 Edward 1. Stat. 1. Chap. 1. "In gifts in tail, the donor's will shall be observed"—except such part as has been altered by the act in the text, and the act passed January 16th, 1799, entitled "an act to facilitate the barring of entails."

27 Edward 1. Stat. 1. Chap. 1. "De Finibus levatis."

15 Edward 2. A statute concerning fines—except that part which relates to "the admission of attorneys."

14 Edward 3. Stat. 1. Chap. 18. "If the tenant will vouch to warranty a dead man, the demandant may aver that he is dead."

34 Edward 3. Chap. 16. "Item, it is accorded, that the plea of non claim of fines, which from henceforth be to be levied, shall not be taken nor holden for any bar in time to come."

5 Henry 4. Chap. 14. "Inrolling of writs in the common place whereupon fines be levied."—That part only of this Statute is in force, which directs that all the writs of covenant, and all other writs whereupon fines shall be levied, with the writs of *Dedimus, potestatem*, if any, with all knowledges and notes of the same, shall be inrolled in a roll, to be of record forever.

1 Richard 3. c. 7. "Who shall be bound by a fine levied before the Justices of the Common Pleas; and proclamations made thereof.

This Statute is in force, except such parts as are altered by the Statute of 31 Eliz. Chap. 2.

4 Hen. 7. Chap. 24. "How often a fine levied in the Common Pleas shall be read and proclaimed, and who then shall be bound thereby.

32 Hen. 8. Chap. 36. "For the exposition of the Statute of fines."

This Statute is in force, except the third and fourth Sections.

(See Williams' notes to 1 Saund. 259, 261.)

1 Mary. Session 2. Chap. 7. "An act touching proclamations upon fines."

14 Elizabeth, Chap. 8. "An act for the avoiding of recoveries suffered by collusion by tenants for term of life, and such others."

31 Elizabeth, Chap. 2. "An act for abridging of proclamations upon fines to be levied at Common Law."

The act in the text, validates and confirms all fines and recoveries, levied or suffered, according to the Common or Statute Laws of England. It has therefore, been thought necessary to refer, generally, to the foregoing Statutes, on this head.

But although the act in the text remains in force, and may be resorted to, in some cases necessarily, yet as far as it respects common recoveries, it is greatly superseded in practice by the act of January 16th, 1799, (post. chap. 2003.) By which act, estates tail may be barred by deed of grant, bargain and sale, which shall be good and available to all intents and purposes, as any mode of common recovery—and estates tail previously conveyed by such deeds may be again conveyed and confirmed by new deeds. "Provided always, That every grantor, bargainor, or vendor, by virtue of this act, shall, in the conveyance or assurance, made by him, her or them, state his, her or their intention thereby to debar any estate tail, in possession, reversion or remainder, that he, she or they has or have in the lands, tenements or hereditaments, so intended to be granted. *And provided also*, That every conveyance or assurance by virtue of this act, being first proved or acknowledged, agreeably to the laws of this Commonwealth, shall, in open court, on motion, be entered upon the records of the Supreme Court of this Commonwealth, or upon the records of the Court of Common Pleas for the county, in which the said lands or tenements so granted, lie, in the manner commonly used with respect to Sheriffs' deeds, and shall also be recorded within six months next after the execution of the said conveyance or assur-

ance, in the county where the said lands or tenements so granted shall lie."

By an act passed April 13th, 1791, (post. chap. 1564,) no fine or common recovery, &c. shall be avoided or reversed for any defect or error therein, unless the writ of error be commenced and prosecuted with effect within seven years, after such fines levied, or common recovery suffered.

What shall be construed an estate tail, and what not, see 1 Dallas, 47-8. 4 Dallas, (appendix,) 19, 22. 1 Binney, 546.

The heir at common law takes an estate tail, *per formam doni*. See 1 Binney, 96. Lessee of Sauder and wife, and Shultz and wife v. Morningstar. *Tork, Nisi Prius*, October 1793. Cor. McKean, C. J. and Teates, J. MSS. Reports. 1749-50.

Where the lands of tenant in tail have been sold by the Sheriff, and the vendee obtains possession, and suffers a common recovery, wherein he vouches the tenant in tail, it is good. Lessee of Sharp v. Pettit. Chester, April, 1807, Circuit Court. Affirmed on appeal. MSS. Reports.