

*ern Liberties,** any thing in this act contained to the contrary 1767. thereof in any wise notwithstanding.

Passed 21st February, 1767.—Recorded A. vol. V. page 162. (m)

(m) See the index to titles *Vagrant, Work-house*, and the different acts respecting the poor.

*Chap. 534, now repealed and supplied by an act passed March 29th, 1803, (chap. 2357.)

CHAPTER DLVI.

An ACT to prevent inconveniences arising from delays of causes, after issue joined.

WHEREAS many great inconveniences have arisen to the inhabitants of this province, by means of delaying the trials of causes between party and party, after issue joined: For remedy whereof, *Be it enacted*, That where any issue is or shall be joined in any action or suit at law, in any of the Courts of this province, and the plaintiff or plaintiffs in any such action or suit hath or have neglected, or shall neglect, to bring such issue on to be tried, according to the course and practice of the said Courts respectively, it shall and may be lawful for the Judges or Justices of the said Courts respectively, at any time after such neglect, upon motion made in open Court, due notice having been given thereof, in open Court, the preceding term, to give the like judgment for the defendant or defendants, in every such action or suit, as in cases of non-suit, unless the said Judges shall, upon just cause, and reasonable terms, allow any further time or times for the trial of such issue; and if the plaintiff or plaintiffs shall neglect to try such issue within the time or times so allowed, then, and in every such case, the said Judges or Justices shall proceed to give such judgment as aforesaid.

When issue is joined, and plaintiffs neglect to bring the same on to be tried, Judges may give judgment. &c.

II. *Provided always, and be it enacted*, That all judgments, given by virtue of this act, shall be of the like force and effect as judgments upon non-suit, and of no other force or effect.

III. *Provided also*, That the defendant or defendants shall, upon such judgment, be awarded his, her or their costs, in any action or suit, where he, she or they, would, upon non-suit, be entitled to the same, and in no other action or suit whatsoever.

Defendants awarded.

Passed 21st February, 1767.—Recorded A. vol. V. pa. 157. (n)

(n) For a general reference to all the acts respecting the Judiciary Department, see ante. chap. 255; and respecting the penal laws, see ante. chap. 236.

The proviso rule cannot be granted in a suit brought by the commonwealth; but the court will in such case grant a peremptory rule for trial at the next term; and under that direct the jury to be qualified. *Respublica v. Coates*. Supreme Court, July term 1790. 2 Dallas, 109.

A rule to try a cause at the next term, or *non pros*, is not like a rule to

plead or declare; for a trial is a thing that must be in the face of the country. A *non pros* of that kind ought, therefore, to be moved for in court, when the plaintiff may assign reasons for the delay of trial. 1 Dallas, 347.

A rule for trial, or *non pros*, was obtained at the last term; it was continued till this term, a plea added, and particular facts referred, upon which there was a report a few days before the day appointed for trial of the cause. *By the Court*:—The subsequent plea and reference virtually vacate the previous rule for trial, or *non pros*. The cause

1767. must, therefore, be continued under a new rule. 1 Dallas, 405.

A rule for trial, or *non pros*, was taken in September term, 1787, and notice at bar was entered on the docket. The cause was afterwards continued generally till January term 1789, when the plaintiff moved to put off the trial: But by the Court, the rule for tri-

al, or *non pros*, was continued; and as new notice is necessary. 1 Dallas, 410. (*Note to former edition.*) And see the notes and miscellaneous cases of Practice, ante. chap. 255, pa. 150, and the act to regulate arbitrations and proceedings in Courts of Justice, passed March 21st, 1806, (chap. 2686.)

CHAPTER DLVII.

A SUPPLEMENT to the act, entitled An Act for the advancement of justice, and more certain administration thereof. (o)

WHEREAS in and by the act, passed in the fourth year of his Majesty George the first, entitled, *An Act for the advancement of justice, and more certain administration thereof*, it is enacted, that if any person or persons shall be convicted of maliciously and voluntarily burning the dwelling-house, barn, stable or out-house of another, having corn or hay therein, he or they so offending, within this province, shall suffer death; but inasmuch as the said offenders are, under the said act, entitled on prayer to the benefit of clergy, many evil-minded persons have not been deterred by the said provision from the perpetration of the said dangerous and heinous offence:

Persons convicted of maliciously burning any house, barn, &c. to suffer death, without benefit of clergy.

Be it therefore declared and enacted, That if any person or persons, from and after the publication of this act, shall maliciously and voluntarily burn the dwelling-house, or any other house, barn or stable, adjoining thereto, or any barn or out-house, having corn or hay therein, although the same shall not be adjoining to such dwelling-house, belonging to any other person or persons, and shall be thereof legally convicted, every such person and persons shall suffer death without benefit of clergy, any thing in the said recited act to the contrary in any wise notwithstanding. (*p*)

Persons convicted of counterfeiting gold or silver coin to suffer death, without benefit of clergy.

II. *And be it further enacted*, That if any person or persons within this province, after the publication of this act, shall falsely forge and counterfeit any coin of gold or silver, which now is or shall be passing, or in circulation, in this province, every such person or persons, so offending, and being thereof lawfully convicted, shall suffer death without the benefit of clergy; and every person or persons, who shall pay, or tender in payment, any such forged and counterfeited coin of gold or silver, knowing the same to be so forged and counterfeited, and being thereof legally convicted in any court of record in this province, such person or persons shall be sentenced to the pillory for the space of one hour, and to have both his or her ears cut off, and nailed to the pillory, and be publicly whipped, on his or her bare back, with twenty-one lashes, well laid on; and,

Penalty on persons tendering counterfeited gold or silver coin in payment, knowing it to be such, &c.

(*o*) For the original act, and a general reference to the penal laws, see ante. chap. 236. For the laws relating to the Judiciary department, see ante. chap. 255. (*Note to former edition.*)

(*p*) The punishment of arson, or of being accessory thereto, has been com-

muted into confinement at hard labour, chap. 1766. For the antecedent modifications of the punishment, and a definition of the objects to which arson extends, see ante. chap. 236, sect. 13. (*Note to former edition.*)