

A C T S

OF THE

General Assembly of Pennsylvania.

Passed at a Session which commenced November 28th, 1776,
and ended March 21st, 1777.

THOMAS WHARTON, PRESIDENT OF THE EXECUTIVE COUNCIL.
JOHN JACOBS, SPEAKER OF THE GENERAL ASSEMBLY.

1776.

CHAPTER DCCXXVI.

An ACT to revive and put in force such and so much of the late laws of the province of Pennsylvania, as is judged necessary to be in force in this commonwealth, and to revive and establish the Courts of Justice, and for other purposes therein mentioned.

WHEREAS, by the unconstitutional power claimed by the British King and Parliament over the American colonies, and the cruel and oppressive measures which the said King and Parliament have pursued to establish that power, it became necessary for the colonies to declare themselves free and independent states, which was accordingly done, pursuant to a resolve of the Continental Congress: Whereupon all authority being in any person under the said king consequently ceased, and the laws enacted by his representatives here became of no force or effect, although the same were for the most part suited to the circumstances of the people: And whereas it is absolutely necessary, for the well governing every state, that laws properly adapted to the circumstances of the inhabitants be at all times in force.

II. *Be it therefore enacted, and it is hereby enacted, That each and every one of the laws or acts of General Assembly, that were in force and binding on the inhabitants of the said province on the fourteenth day of May last, shall be in force and binding on the inhabitants of this state from and after the tenth day of February next, as fully and effectually, to all intents and purposes, as if the said laws, and each of them, had been made or enacted by this General Assembly; and all and every person and persons whomsoever are hereby enjoined and required to yield obedience to the said laws, as*

All laws in force on the 14th May, 1776, shall be binding from and after the 10th February, 1777.

1776. the case may require until the said laws or acts of General Assembly respectively shall be repealed or altered, or until they expire by their own limitation; and the common law and such of the statute-laws of England, as have heretofore been in force in the said province, except as is hereafter excepted.

Also the common and statute laws.

Exceptions.

III. *Provided always, and be it further enacted,* That so much of every law or act of General Assembly of the province aforesaid, as orders the taking or subscribing any oath, affirmation or declaration of allegiance or fidelity to the king of Great-Britain, or his successors, or oath of office; and so much of every law or act of General Assembly aforesaid, as acknowledges any authority in the heirs or devisees of William Penn, Esq. deceased, the former Governor of the said province, or any other person whomsoever as Governor; and so much of every law or act of General Assembly, as ascertains the number of Members of Assembly in any county, the time of election, and the qualifications of electors; and so much of every law or act of Assembly aforesaid, as declares, orders, directs or commands any matter or thing repugnant to, against, or inconsistent with the constitution of this commonwealth, is hereby declared not to be revived, but shall be null and void, and of no force or effect; and so much of the statute laws of England aforesaid relating to felonies, as takes notice of or relates to treason or misprision of treason, or directs the style of the process in any case whatsoever, shall be, and is hereby declared, of no force or effect, any thing herein contained to the contrary notwithstanding.

Obsolete; see the general summary, ante, chap. 255, pa. 131.]

All courts shall be held at the same times and places as formerly.

IV. *And be it further enacted,* That Courts of General Quarter Sessions and Gaol Delivery, and Courts of Petty Sessions, Courts of Common Pleas, Orphans' Courts, and Supreme Courts, Courts of Oyer and Terminer and General Gaol Delivery, shall be held and kept in each respective county in this state, at the times and places directed and appointed by the said laws or acts of General Assembly, and Circuit and *Nisi Prius* Courts, as directed in and by an act of General Assembly of the said province, passed the twentieth day of May, one thousand seven hundred and sixty-seven, entitled *An act to amend the act for establishing Courts of Judicature within this province*, by the Justices and Judges that shall be hereafter elected and appointed; the same to commence in each county on the same days of the same months respectively appointed by the said laws for holding such courts, that shall be next after the Judges or Justices of such courts are qualified to hold the same, and shall have, use and exercise all the powers, authority and jurisdiction, that by the aforesaid laws Justices and Judges of such courts respectively heretofore have had, used and exercised, and the powers of Chancery given to the Justices by the constitution of this state, agreeable nevertheless with this act, and such other act or acts of General Assembly as shall be hereafter made: and every officer of all and every the courts in this state, that is or shall be appointed, shall have, use and exercise the same or like powers, that such officer or officers of the same title, character and distinction, might, could or ought to have had, used and exercised, under the charter and laws of Pennsylvania, until displaced. And all Constables, Overseers of the poor, Supervisors of the highways, and the War-

And all officers of courts shall exercise the same powers as formerly.

All Constables, Overseers, Super-

dens and Street Commissioners of the city of Philadelphia, that were last appointed or elected in the said province, are hereby authorized and strictly enjoined and required to exercise their several and respective powers, and execute, do, and perform all the business and duties of their several and respective offices, until others are appointed in their stead and places.

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visors, Wardens, and Street Commissioners, last appointed, shall continue.

[V. *And be it further enacted,* That all persons who have been appointed to any public office or offices by the said king of Great-Britain, or the late Governors of Pennsylvania, or by acts of General Assembly aforesaid, are hereby declared to be no longer officers in the several and respective offices to which they were so appointed, the trustees of the Loan-Office only excepted.]

All officers of the late government are declared to be removed, except the Trustees of the Loan-Office. [Obsolete,]

VI. *And be it further enacted,* That the President and Council shall appoint one of the Justices in each respective county to preside in the respective courts, and in his absence the Justices who shall attend the court shall choose one of themselves president for the time being.

President and Council shall appoint a president of each court. [Obsolete - see ante, p. 131 &c.]

VII. *And be it further enacted,* That every action that was in any court in the province of Pennsylvania, at the last term that the said court was held, except discontinued or satisfied, shall be, and is hereby declared to be, in the same state, and on the same rule, and may be prosecuted in the same manner in the courts in each respective county, to be hereafter held and kept, as if the authority of such court had never ceased; and if any recognizance has been taken, and not returned, it is hereby declared good and valid in law, and shall be returned and prosecuted as the laws direct, saving the style; and where any person had obtained a judgment before any Justice of the Peace, for any debt or sum of money, and such judgment not discharged, the person in whose favour the judgment is, may (on producing a transcript of such judgment to any Justice of the Peace in the county where the defendant dwells or can be found) demand and obtain an execution for the money mentioned in such judgment, which shall be of the same force and effect, as if the judgment was obtained before the Justice that granted the execution.

All actions shall be continued.

And former recognizances are declared valid.

VIII. *And be it further enacted,* That in all cases whatsoever, where any person, being an officer of the province of Pennsylvania, and by direction of the laws of the said province, gave bond to the governor, for the use of the province, and the condition of such bond not fully complied with, all such bonds are hereby declared to be in force for the purposes they were designed, and good and available in law, and may be sued and prosecuted in the name of the commonwealth, in any Court of Record within this state, as fully and effectually as such bonds might or could have been heretofore sued and prosecuted under the late government of Pennsylvania, and the money thereby recovered shall be applied as such acts direct, except where any such forfeiture, or part thereof, was granted to the Governor, and in that case such forfeiture, so granted, shall be paid into the State-Treasury, for the public use; and all fines and forfeitures granted to the governor of Pennsylvania, by the laws by this act put in force, shall, and are hereby declared to be for the use of the State, and shall be paid into the State-Treasury.

Bonds to the government are declared valid.

And all fines &c. shall be paid into the state treasury.

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Passed 28th January, 1777.—Recorded in Law Book, vol. I, page 69.

(b) The act for the revival of the laws was intended merely to declare that those laws, which were originally enacted under the authority of George the third, ceased any longer to derive their virtue and validity from that source. There is, however, great inaccuracy in penning the act; for though it would seem, by the former part of the second section, to be the sense of the legislature, that from the 14th of May, 1776, to the tenth of February, 1777, the operation of all the acts of Assembly should be suspended, yet in the close of the same section, obedience to those acts, to the common law, and to so much of the statute laws of England as have *heretofore* been in force, are expressly enjoined. 1 Dallas, 58.

No act of Parliament made in England, *previously* to the settlement of the province of Pennsylvania, was extended here, unless by act of assembly, adjudications of courts, or established usage. 1 Dallas, 67, 74, 75. The *common law* of England has always been in force in Pennsylvania; but all statutes made *since* the settlement of the province have no force here, unless the colonies are particularly named. 1 Dallas, 67.

The law of nations forms a part of the municipal law of Pennsylvania. 1 Dallas, 114. (*Note to former edition.*)

With respect to the British Statutes, which have been considered as extending to *Pennsylvania*, the report of the Judges of the Supreme Court, to be found in the journals of 1808-9, enables us to determine precisely. Such of the statutes as, in the opinion of the Judges, ought not to be incorporated into the statute law of the commonwealth, are marked with an asterisk, in the following abstract.

9 Hen. 3, c. 7, (only with respect to the widows quarantine.)

* c. 34.

20 Hen. 3, c. 1—2—3—9.

21 Hen. 3. (The day of the leap year, and the day before, shall be holden for one day.)

52 Hen. 3, c. 4—8—13—15—17—29.

3 Edw. 1, c. 9, (that part which provides, "that all generally, shall be ready at the commandment and summons of sheriffs, and

at the cry of the country, to pursue and arrest felons, where any need it.")

3 Edw. 1, c. 40—*42—*43—*44—47, (except those parts which relate to prelates, men of religion, and writs of attain.)

4 Edw. 1 stat. 2, (except those parts which relate to the Coloner's duty in the following points; *viz.*—making inquiry as to the property of any person; treasure that is found; appeal of rape, or of wounds, or any other appeals; deodands, and wrecks of the sea:—and also, except that part which provides, that land shall remain in the King's hands, until the Lords of the fee have made fine for it.)

5 Edw. 1, c. 1—2—3—5, (except that part which relates to waste, in the time of wardship, which is not applicable to this country.)

c. 6—*10—13—

13 Edw. 1, stat. 1, c. 1, (except such part as has been altered by an act of Assembly, passed 27th January, 749—50, entitled, "An Act for barring estates tail," and another act passed January 16th, 1799, entitled "an act to facilitate the barring of entails.")

c. 3—4, (except that part which relates to proceedings in a writ of right.)

c. 6—7—11—*12—14—15—*17—20—22—23—24, (except those parts which relate to ecclesiastical persons.)—25, (except that part which gives the remedy by assize in cases of keeping of parks, woods, forests, chases, warrens, gates, and other bailiwicks and officers in fee.—Also,

- by assize, in case any person holding land, for term of years, aliens the same in fee; and by such alienation the freehold is transferred to the feoffee. Also, that part which authorises the sheriff to take an ox for his fee.—26—*27—30, (the following parts, only, are in force—“ Sect 2: and when such inquests be taken, they shall be returned into the bench; and there shall judgment be given, and there they shall be enrolled. The Justices of Nisi Prius shall have clerks, to enrol all pleas pleaded before them. The said Justices shall not compel the Jurors to say precisely, whether it be a disseisin or not; so that they shew the truth of the deed and require aid of the said Justices. But if they, of their own head, will say that it is a disseisin, their verdict shall be admitted at their own peril.)—31—34, (that part only, which enacts * that if a wife willingly leave her husband, and go away, and continue with her avowter, she shall be barred for ever of action to demand her dower, that she ought to have of her husband's lands, if she be convict thereupon; except that her husband willingly reconcile her, and suffer her to dwell with him; in which case she shall be restored to her action.)—39 (those parts only which define “ what shall be accounted issues” direct the punishment of the Sheriff for false returns; give authority to the Sheriff to do certain things in case of resistance of the execution of process; and direct the punishment of those who resist the execution of process.)—40—45.—
- 18 Edw. 1, stat. 2, stat. 3, stat. 4.
 20 Edw. 1, stat. 1, stat. 2, stat. 3.
 27 Edw. 1, stat. 1, c. 1.
 28 Edw. 1, *stat. 2—stat. 3, c. 16.
 33 Edw. 1, stat. 2. (That part only is in force, which relates to “ Conspirators;” and from that part is to be excepted, what relates to “ Stewards and Bailiffs of great Lords.”)
 stat. 3. (That part only of this statute is in force which relates to conspirators.)
 stat. 4—stat. 6.
 34 Edw. 1, stat. 1. (except those parts which relate to writs of “ *Juris utrum*” and “ *indicavit*.”)
 12 Edw. 2, stat. 1, c. 1—c. 4. (Those parts only which are distinguished by the numbers 1, 2, and 6.)
 c. 5. (That part only, which obliges Sheriffs and other officers, to sign their names to the return of writs.)
 * Stat. 2—(The stat. of *Essoins*.)
 15 Edw. 2, (except that part which relates to the “ admission of attorneys.”)
 2 Edw. 3, c. 16—17.
 4 Edw. 3, c. 2. (Those parts only, which are distinguished by the numbers 6 & 7.)
 c. 7. (Executors shall have an action of trespass for a wrong done to their testator.)
 5 Edw. 3, c. 10.
 14 Edw. 3, stat. 1, c. 6.
 c. 15. (That part of it, only, which enacts, that “ the Justices of *Nisi Prius* shall have power to give judgment on verdicts of assize; and upon non-suits and defaults; and return the same to the Court in Bank.”)
 c. 18—
 25 Edw. 3, stat. 2. (That part, only, which is distinguished by No. 5.)
 Stat. 5, c. 3—5—16.
 28 Edw. 3, * c. 13. (That part only, which gives an Inquest *de medietate lingue*.)
 31 Edw. 3, stat. 1, c. 11. (except that part which relates to expending money for the soul of the deceased.)
 34 Edw. 3, c. 1. (Those parts, only, which are distinguished

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- by the numbers, 2, 3, 4,
5, 6, 10.)
- c. 8—16—
38 Edw. 3, stat. 1, c. 12.
50 Edw. 3, c. 6.
1 Rich. 2, c. 9. (except such parts as
are altered by the sta-
tutes of 4 Hen. 4, c. 7—
11 Hen. 6, c. 3—4 Hen.
7, c. 24 and 27. Hen. 8.
c. 10.)
c. 12. (except such parts as
relate to confessions of
debts to the king.)
6 Rich. 2, stat. 1, c. 3. (So much there-
of as gives the plaintiff
an election to have a
writ of nuisance, in na-
ture of an assize.)
8 Rich. 2, c. 4.
9 Rich. 2, c. 3. (So much only as gives
a writ of error to him
in reversion)
13 Rich. 2, stat. 1, c. 17.
15 Rich. 2, c. 2. (So much only as relates
to forcible entry and
detaimer, or either of
them.)
2 Hen. 4, c. 7.
4 Hen. 4, c. 7.
5 Hen. 4, c. 14. (That part, only, which
directs, that all writs of
covenant, and all other
writs whereupon fines
shall be leyed, with
the writs of *dedimus po-
restatem*, if any, with all
knowledge and notes of
the same, shall be in-
rolled in a roll, to be of
record for ever.)
1 Hen. 5, c. 5. (So much thereof, as re-
quires an addition of the
defendant's estate, or
degree, or mystery, and
of the county in which
the defendant is, or in
which he is conver-
sant.)
9 Hen. 5, c. 4.
4 Hen. 6, c. 3.
8 Hen. 6, c. 9—12. (Sect. 1 & 2.)—15—
*29—
11 Hen. 6, c. 2—3—5,
1 Rich. 3, c. 7. (except such parts as
are altered by stat. 31
Eliz. c. 2.)
3 Hen. 7, c. 1. (Those parts only, which
are distinguished by the
numbers from 6 to 19,
both inclusive, and by
the number 26.)
c. 3. (No. 5.)—c. 4—10.
4 Hen. 7, c. 20—24.
11 Hen. 7, c. 12—20,
19 Hen. 7, c. 20.
5 Hen. 8, c. 6. (So much only as dis-
charges surgeons from
service on juries.)
7 Hen. 8, c. 4. (Except those parts that
relate to writs of *quare
impedit*, and advow-
sons.)
21 Hen. 8, c. 3—5. (That part only
which relates to whom
administration is to be
granted.)
c. 7—15.
23 Hen. 8, c. 15.
24 Hen. 8, c. 8.
27 Hen. 8, c. 10. (sect. 1, 2, 3, 4, 5, 6,
7, 10, only.)
31 Hen. 8, c. 1.
32 Hen. 8, c. 5—28, (except the 4th, 5th,
and 8th sections)—
—30 (except the 2d and
3d sections)—
—32—33—34, (except
such parts as relate to
the King and his Gran-
tees.)—
—36 (except the 3d and
4th sections.)—
—37 (except the 2d sec-
tion.)—
37 Hen. 8, c. 8, (except the 2d section.)
2 & 3 Edw. 6, c. 24.
1 Mary, Session 2, c. 7.
1 & 2 Phil. & Mary, c. 12—13, (Sect 2,
3, 4, & 5, only.)
2 & 3 Phil. & Mary, c. 10.
5 Eliz. c. 9. (An act for the punishment
of such as shall procure
or commit any wilful per-
jury—except the 10th,
11th, 12th, & 13th sec-
tions, which are inap-
plicable to this Com-
monwealth, and except
the punishment by im-
prisonment and paying
of money, which is al-
tered by our act of As-
sembly for reforming the
penal laws.)
8 Eliz. c. 2, (sect. 1, 2, 4 & 5, only.)
13 Eliz. c. 5—
14 Eliz. c. 8—
18 Eliz. c. 14, (except the 3d section.)
23 Eliz. c. 3, (except sections 6, 8, 9
& 10.)
27 Eliz. c. 4, (except sections 7, 8, 9,
10, 11 & 12.)
c. 5—
31 Eliz. c. 2—11.
43 Eliz. c. 8.
3 James 1, c. 8.
4 James 1, c. 3.
21 James 1, c. 13—15—24.
12 Charles 2, c. 24. (Sections 8 & 9
only.)
13 Charles 2, stat. 2, c. 2. (An act for

the prevention of vexations and oppressions by arrests, and of delays in suits of law; except certain parts which have a local object, and are therefore inapplicable to this commonwealth; and certain other parts, which are altered by our acts of Assembly or the practice of our courts.)

- 16 and 17 Charles 2, c. 8. (Subject to the same exceptions.)
 17 Charles 2, c. 8.
 19 Charles 2, c. 6.
 22 and 23 Charles 2, c. 9. (c. 136.)
 30 Charles 2, c. 7.
 4 and 5 William and Mary, c. 21.
 8 and 9 William 3, c. 11.
 9 and 10 William 3, c. 15.
 10 and 11 William 3, c. 16.
 11 and 12 William 3, c. 6.
 3 and 4 Ann, c. 9. (Sect. 1, 2, 4 and 8 only.)
 4 Ann, c. 16. (The first 13, and 20th and 27th sections only.)

5 Geo. 1, c. 13.
 7 Geo. 2, c. 20. (Sections 1, 3.)
 11 Geo. 2, c. 19. (Sections 14 and 15 only.)

There are several statutes, called statutes of *mortmain*; one of which ('The statute *de religiosis*') was passed in the 7th year of Edw. 1, stat. 2d; another, in the 13th year of Edw. 1, c. 32, another in the 15th year of Rich. 2, c. 5; and another in the 23d year of Hen. 8, c. 10. These statutes are in part applicable to this country, and in part applicable, and in force. They are so far in force, that all conveyances, either by deed or will, of lands, tenements, or hereditaments, made to a body corporate, or for the use of a body corporate, are void, unless sanctioned by charter, or act of assembly. So also are all such conveyances void, made either to an individual, or to any number of persons associated, but not incorporated, if the said conveyances are for uses or purposes of a *superstitious* nature, and not calculated to promote objects of charity or utility.

CHAPTER DCCXXIX.

An ACT declaring what shall be treason, and what other crimes and practices against the state, shall be misprision of treason.

WHEREAS it is absolutely necessary, for the safety of every state, to prevent, as much as possible, all treasonable and dangerous practices that may be carried on by the internal enemies thereof, and to provide punishments in some degree adequate thereto, in order to deter all persons from the perpetration of such horrid and dangerous crimes: Therefore,

II. *Be it enacted, and it is hereby enacted,* That all and every person and persons (except prisoners of war) now inhabiting, residing, or sojourning within the limits of the state of Pennsylvania, or that shall voluntarily come into the same hereafter to inhabit reside, or sojourn, do owe, and shall pay allegiance to the state of Pennsylvania.

All persons now residing in this state owe allegiance to it.

III. *And be it further enacted,* That if any person or persons, belonging to or residing within this state, and under the protection of its laws, shall take a commission or commissions from the King of Great-Britain, or any under his authority, or other the enemies of this state, or the United States of America; or who shall levy war against the state, or government thereof; or knowingly and willingly shall aid or assist any enemies at open war against this state, or the United States of America, by joining their armies, or by enlisting, or procuring or persuading others to enlist for that purpose, or by furnishing such enemies with arms or ammunition, provision, or any other article or articles, for their aid or comfort; or by carrying on a traitorous correspondence with them; or shall form,

Enumeration of what shall constitute treason.