

1791.

And to the State Treasurer, the sum of two hundred pounds per annum.]

Additional clerks, how to be allowed

SECT. IV. *Be it further enacted by the authority aforesaid,* That besides the allowances already made by the provisions of this act, there is hereby vested in the Governor a discretionary power, (on application of the officers of the before mentioned departments,) to sanction the employment of additional clerks, whenever the urgent business of the offices requires it; provided the whole amount of the expense thereof does not exceed the following sums, in the respective offices:

In that of the Surveyor-General, the sum of seventy-five pounds.

Of the Secretary of the Land-Office, the sum of seventy-five pounds.

(Obsolete.)

[\*Repealed 30th March, 1811.]

[Obsolete.]  
[Obsolete.]

[Of the Receiver-General, the sum of seventy-five pounds.]

[Of the Treasurer,\* the sum of one hundred and fifty pounds.]

[Of the Comptroller-General, the sum of four hundred pounds.]

[Of the Register-General, the sum of seventy-five pounds.]

And the faith of the state is hereby pledged to provide for the increased expenses, incurred in consequence of this arrangement.

The salaries and pay when to commence.

SECT. V. *And be it further enacted by the authority aforesaid,* That the said salaries and allowances, respectively, shall commence from the passing of this act, except the following, which shall respectively commence from the several periods hereafter mentioned; that is to say,

For the Governor, from the third Tuesday of December last.

For the Speaker and members of each branch of the legislature, and their several officers, from the commencement of their services, respectively.

For the Chief Justice and Assistant Judges of the Supreme Court, from the respective dates of the commissions to them granted, or to be granted, by the Governor.

And for the Presidents and Judges of the Courts of Common Pleas, from the first day of September next.

Passed 13th April, 1791.—Recorded in Law Book No. IV. page 198.

#### CHAPTER MDLXIV.

*An ACT to establish the judicial courts of this commonwealth, in conformity to the alterations and amendments in the constitution. (y)*

WHEREAS it is expedient to carry into effect the provisions of the constitution respecting the courts of justice in this commonwealth, and so to organize the same, as to secure an efficient, safe, and uniform administration of the laws: Therefore,

(y) For a general view of the various acts respecting the judiciary department, and the many alterations in the constitution and jurisdiction of the courts of justice in Pennsylvania, see 1st vol. chap. 255, page 131, and the notes there subjoined. (*Notes to former edition.*)

**SECT. I.** *Be it enacted by the Senate and House of Representatives of the commonwealth of Pennsylvania, in General Assembly met, and it is hereby enacted by the authority of the same,* That the Supreme Court shall be established, in the same manner, and with the same powers, as it hath been heretofore established by the laws of this commonwealth, consistently with the provisions made in and by the constitution of this state: *Provided nevertheless,* That from and after the thirty-first day of August next, there shall be only three terms of the said court holden in every year; that is to say, one term beginning on the first Monday in January, which term shall continue three weeks, and no longer; another term beginning the first Monday in April; and a third term beginning on the first Monday in September; each of which last mentioned terms shall continue two weeks, and no longer: And that the courts of Nisi Prius shall be held at such intermediate times, as the Justices of the said court shall judge most convenient for the people.

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The Supreme court established;

to hold three terms in each year;

(Five districts established for Supreme Court. See note to chap. 255, vol. 1, pa. 131.) and courts of Nisi Prius.

**[SECT. II.** *And be it further enacted by the authority aforesaid,* That in order to render effectual the provisions made in the said constitution for establishing the courts of common pleas, this commonwealth shall be and hereby is, divided into five districts, or circuits, to be limited as follows, that is to say; the first circuit to consist of the city and county of Philadelphia, and the counties of Bucks, Montgomery and Delaware; the second circuit to consist of the counties of Chester, Lancaster, York and Dauphin; the third circuit to consist of the counties of Berks, Northampton, Luzerne and Northumberland; the fourth circuit to consist of the counties of Cumberland, Franklin, Bedford, Huntingdon and Mifflin; and the fifth circuit, or district, to consist of the counties of Westmoreland, Fayette, Washington and Allegheny.]

The state divided into five districts.

(See act of 24th Feb'y, 1806, (chap. 2634.) ten districts established.)

**SECT. III.** *And be it further enacted by the authority aforesaid,* That in and for each of the said districts, or circuits, a person of knowledge and integrity, skilled in the laws, shall be appointed and commissioned by the governor, to be President and Judge of the courts of Common Pleas within such district, or circuit, and that a number of other proper persons, not fewer than three, nor more than four, shall be appointed and commissioned Judges of the courts of Common Pleas in and for each and every of the counties of this commonwealth; which said Presidents and Judges shall, after the said thirty-first day of August next, respectively, have and execute all and singular the powers, jurisdictions and authorities of Judges of the Courts of Common Pleas, Judges of the courts of Oyer and Terminer and General Gaol Delivery, Judges of the Orphans' courts, and Justices of the Courts of Quarter Sessions of the peace, agreeably to the laws and constitution of this commonwealth.

A president to be appointed in each district;

number of associates limited.

(Since reduced.)

The powers of the judges, &amp;c.

**SECT. IV.** [*Be it enacted by the authority aforesaid,* That the courts of Common Pleas and Quarter Sessions of the Peace shall be held at the same times, and in the same places, as they are now held under the subsisting laws of this commonwealth, except the courts of Common Pleas and the courts of Quarter Sessions of the Peace in the county of Delaware, which shall be held at the times following the courts of Common Pleas on the first Tuesdays in the months of February, May, August and November, and the said

Courts when to be holden.

(Supplied by act of 24th February, 1806 chap. 2634.)

1791. courts of Quarter Sessions on the Mondays next preceding the first Tuesdays in the several months aforesaid.]

The register's court, how constituted, &c.

SECT. V. *And be it further enacted by the authority aforesaid,* That the said President and Judges, or any two of them, and the Register of wills, shall compose the Register's Court in each county, and shall have all and singular the powers, jurisdictions and authorities, thereunto belonging.

Orphans court when to be held.

SECT. VI. *And be it further enacted by the authority aforesaid,* That the Orphans' Court shall be held at such stated times, as the judges of the said court, in their respective counties, shall for each year ordain and establish.

How indictments may be removed into the supreme court:

SECT. VII. *And be it further enacted by the authority aforesaid,* That whensoever any person shall be indicted in any Court of Oyer and Terminer, Gaol Delivery, or Sessions of the Peace, the party charged shall be at liberty to remove the said indictment, and all proceedings thereupon, or a transcript thereof into the Supreme Court, by a writ of certiorari, or by writ of error, as the case may require. *Provided always,* That no such writ of certiorari, or writ of error, shall issue, or be available to remove the said indictment, and proceedings thereupon, or a transcript thereof, or to stay execution of the judgment thereupon rendered, unless the same shall be specially allowed by the Supreme Court, or one of the justices thereof, upon sufficient cause to it or him shewn, or shall have been sued out with the consent of the Attorney-General; which special allowance or consent shall be in writing, and certified on the said writ.

Proviso.

What suits shall not abate by death of a party.

(Extended to ejectments by act of 13th April, 1807, post, chap. 2871.)

SECT. VIII. *And be it enacted by the authority aforesaid,* That where any suit shall be depending in any court in this commonwealth, and either of the parties shall die before final judgment, the executor or administrator of such deceased, who was plaintiff, petitioner or defendant, in case the cause of action doth by law survive, shall have full power to prosecute or defend such action until final judgment, and the defendant or defendants are hereby obliged to answer thereto accordingly; and the court before whom such cause may be depending is hereby empowered and directed to hear and determine the same, and to render judgment for or against the executor or administrator, as the case may require; and if such executor or administrator, having been duly served with a scire facias or citation, from the office of the clerk of the court where such suit is depending, sixty days before the meeting thereof, shall neglect or refuse to become a party to the suit, the court may render judgment against the estate of the deceased party, in the same manner as if the executor or administrator had voluntarily made himself a party to the suit; and the executor or administrator, who shall become a party as aforesaid, shall, upon motion to the court where the suit is depending, be entitled to a continuance of the same until the next term or time of holding of the said court.

The proceedings how continued.

The president and judges may issue writs of habeas corpus.

SECT. IX. *Be it further enacted by the authority aforesaid,* That the said presidents and judges shall, from and after the said thirty-first day of August next, severally have the powers to issue writs of habeas corpus in vacation time, and out of term, and to give relief thereupon in the manner, and as fully, as the president of any

Court of Common Pleas in this commonwealth at present may or can do, by virtue of an act of Assembly, entitled "An act for the better securing personal liberty, and preventing wrongful imprisonments."

SECT. X. *And be it further enacted by the authority aforesaid,* That all acknowledgments and probates of deeds and conveyances of and concerning any lands, tenements and hereditaments, lying or being in any part of this state, made and done before any one of the Assistant or Associate Judges of the Courts of Common Pleas of any county within this state, shall be as effectual and available in law, to all intents and purposes whatsoever, as if the same were done before one of the Judges of the Supreme Court, or before the President of any of the Courts of Common Pleas within this commonwealth.

Acknowledgments and probates of deeds before an associate judge are valid.

SECT. XI. *And be it further enacted by the authority aforesaid,* That where lands are sold by the Sheriffs of the several counties of this state, by virtue of writs of fieri facias, levari facias, or venditioni exponas, issuing out of the Supreme Court, it shall and may be lawful for such Sheriffs to acknowledge the execution of deeds of conveyance to the purchasers of such lands before the Justices of the Supreme Court, or one of them, at their Court of Nisi Prius held in and for the county in which such lands lie, and that such acknowledgments shall be as good and effectual as if the same were made before the Justices of the Supreme Court in bank; and that whenever any lands, tenements or hereditaments, shall happen to be sold by virtue of writs of testatum, it shall and may be lawful for the Sheriff, who sells the same, to acknowledge the deed he makes to the buyer in the Court of Common Pleas of the county wherein the sale is made, which shall be as valid and effectual as if acknowledged in the county from which the process issued.

How sheriffs' deeds under executions from the supreme court may be acknowledged.

How under a testatum. [See vol. 1, pp. 57. (chap. 182,) and the notes thereto.]

SECT. XII. *And be it further enacted by the authority aforesaid,* That the Prothonotaries of the several Courts of Common Pleas within this commonwealth shall have the like power to sign all judgments, and writs and process, and to take bail in all actions in their respective courts, as they had for those purposes while they were Justices of the said courts, and, after the thirty-first day of August next, may as legally do the same, as any Judge of the same courts may or can do, affixing to all such writs and process the seals of the said courts, respectively; and that the Prothonotary of the Supreme Court shall have power to enter judgments confessed, in the manner usually practised in the said Supreme Court, which shall have like obligatory force, as if the said judgments were signed with his name; and shall have the like power to take bail, in all actions and suits removed thereto from any court or jurisdiction within this commonwealth, as by law he has, or may, or can do, in actions and suits originally commenced in the said Supreme Court, or as any Justice of the same court may or can do; and that the Prothonotaries and the clerks of the said Courts of Record in this commonwealth shall have full power and authority to administer oaths and affirmations, respectively, in conducting the business of their respective offices, in as full and ample manner as any Judge or Justice of the courts aforesaid might or could do therein.

Power of prothonotaries extended to signing judgments, &c.

The prothonotary of the Supreme Court may enter judgment by confession, &c.

The prothonotaries may administer oaths, &c.

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Writs depending not to abate.

SECT. XIII. *And be it further enacted by the authority aforesaid,* That all writs and suits, as well civil as criminal, which, on the said thirty-first day of August, shall be depending and undetermined in any court of justice in this commonwealth, shall be deemed to be depending in the same state, and shall proceed to a final determination, before the several courts in this act mentioned, having either original or appellat jurisdiction therein.

How satisfaction to be entered on judgments paid off.

SECT. XIV. And whereas it frequently happens that judgments long remain unsatisfied on record, although the monies for which these judgments have been rendered are justly discharged, whereby defendants in such cases, as well as the subsequent purchasers of real property, suffer much vexation and inconvenience: *Be it enacted by the authority aforesaid,* That from and after the thirty-first day of August next, each and every person, having received satisfaction for his or their debt or damages, recovered by judgment in any Court of Record within this commonwealth, shall, at the request of the defendant or defendants in the action, or of his, her or their legal representatives, or other persons concerned in interest therein, on payment of the costs of suit, and on tender of his reasonable charges and the costs of office for entering satisfaction, within eighty days after such request made, enter satisfaction of the judgment in the office of the Prothonotary of the court where such judgment was or shall be entered, which shall for ever thereafter discharge, defeat and release the same; and if such person, having received such satisfaction, as aforesaid, by himself, or his attorney, shall not, within eighty days after request and payment of the costs of suit, and tender of charges as aforesaid, repair to the said office, and there enter satisfaction, as aforesaid, he, she or they, refusing or neglecting so to do, shall forfeit and pay unto the party or parties aggrieved any sum of money, not exceeding one half of the debt or damages so adjudged and recovered, to be sued for and demanded by the defendant, or persons damaged, in like manner as other debts are now recoverable by law in this commonwealth.

Penalty on neglect.

No judge shall practise as attorney or counsellor.

SECT. XV. *And be it further enacted by the authority aforesaid,* That no Judge of any Court of Record mentioned in this act shall practise as an attorney or counsellor, in any court of justice in this commonwealth, or elsewhere.

When writ of error, or appeal may be brought to the High Court of Errors and Appeals.

[SECT. XVI. And whereas it is requisite that the good people of this commonwealth should enjoy the full benefit of a competent jurisdiction within this state, for the hearing, determining and judging, in the last resort, upon complaints of error at common law, and also that a competent Court of Appeals should be provided within the same, for reviewing, reconsidering and correcting the decrees and sentences of the several Register's Courts: *Be it therefore enacted by the authority aforesaid,* That when any final judgment shall be hereafter given in the Supreme Court in any suit or action, real, personal, or mixed, or when any final decree or sentence shall be pronounced by any Register's Court, the party or parties, his, her or their heirs, executors or administrators, against whom such judgment, decree or sentence shall be given, may sue forth, in the case of a complaint of error in the Supreme Court, a writ of error, according to the course of the common law, under the less seal of

the commonwealth, directed to the Chief Justice, or other Justice or Justices of the said court, commanding him or them to cause the record, and all other things concerning the judgment complained of, to be brought before the court herein after mentioned and constituted; and in case of an appeal from the definitive sentence or decree of any Register's Court, the appellant or appellants shall be allowed and shall have his, her or their appeal to the High Court of Errors and Appeals herein after constituted.] 1791.

(Repealed.)

[SECT. XVII. *And be it further enacted by the authority aforesaid,* That the Judges of the Supreme Court, the Presidents of the several Courts of Common Pleas for the five districts, or circuits, aforesaid, together with three other persons of known legal abilities, to be appointed and commissioned during good behaviour, and removable from office in the same manner as the Judges of the Supreme Court now are, be, and they are hereby constituted a Court of Record, by the name, style and title of the High Court of Errors and Appeals; which said High Court of Errors and Appeals, or any five or more of the Justices composing the same, shall have power and authority to examine all such errors, as shall be assigned or found in or upon any such judgment given in the Supreme Court, and thereupon to affirm or reverse the same judgment, as the course of the common law and justice shall require, other than for errors to be assigned for want of form in any writ, return, plaint, bill, declaration, or other pleading, process, verdict, or proceeding whatsoever; and that after the said judgment shall be affirmed, or reversed, the record and proceedings, and all things concerning the same, shall be remitted into the said Supreme Court, to the end that such further proceedings may be had thereon, as well for execution as otherwise, as to justice shall appertain; and the said High Court of Errors and Appeals shall receive, hear and decide all such appeals from the Register's Courts, as aforesaid. *Provided always,* That such of the Justices of the Supreme Court, and such of the Presidents of the Courts of Common Pleas, who shall have heard and determined, or given any judgment, in any of the causes removed or brought by writ of error, or by appeal, into the said High Court of Errors and Appeals, shall be excluded from sitting, judicially, on the hearing of the same cause or controversy in the said High Court of Errors and Appeals. *Provided nevertheless,* That no such writ of error shall be granted, nor any appeal allowed, as aforesaid, unless an affidavit be filed with the clerk of the said High Court of Errors and Appeals, made by the plaintiff or plaintiffs in error, or the appellant or appellants, or his, her or their agent or attorney in fact, attesting, that the matter in controversy exceeds the value of four hundred dollars: And the plaintiff in error, or appellant, or in case of his, her or their absence, then his, her or their agent or attorney in fact, shall enter into recognizance to the defendant in error, or appellee, with two sufficient surties, in double the sum, or double the value in dispute, conditioned to prosecute his, her or their writ of error, or appeal, with effect in the said High Court of Errors and Appeals, and that if the judgment or decree shall be affirmed, or if the plaintiff or plaintiffs in error, or appellant, shall fail to prosecute his, her or their suit with effect,

High court of errors and appeals how constituted. (Repealed.)

Powers of the court.

The record to be remitted.

Provido.

Provido.

The plaintiff in error or appellant, shall enter into recognizance to prosecute, &amp;c.

1791. then to satisfy the condemnation money, together with damages, or otherwise abide the judgment in error, or decree in appeal, with double costs; which said recognizance shall be taken before one of the Justices of the Supreme Court, or before the Register for the probate of wills and granting letters of administration, as the case may be, and subscribed by such Judge or Register; but if the said judgment or decree shall be reversed, each party shall pay his, her or their own costs in the said High Court of Errors and Appeals; and until such security shall be given, the power, authority or proceedings of the said Supreme Court or Register's Court, respectively, shall not be suspended.]

Depositions taken before the register to be part of the proceedings on an appeal, &c.

SECT. XVIII. *And be it further enacted by the authority aforesaid,* That upon the hearing of any cause litigated before the said Register's court, the depositions of the several witnesses examined therein shall be taken in writing, and made part of the proceedings in the cause, upon which the said High Court of Errors and Appeals may reverse the decree of the said Register's courts, for any error arising either in law or fact, or affirm the same, according to the merits and justice of the case: *Provided always,* That if the Register's court, upon a dispute upon facts arising before them, shall send an issue into the court of Common Pleas of the county, to try the said facts, which they shall do at the request of either party, and a verdict establishing the said facts be returned, the said facts shall not be re-examined on appeal;\* and that no appeal from the decree of the said Register's courts, concerning the validity of a will, or the right to administer, shall stay the proceedings or prejudice the acts of any executor or administrator pending the same, provided the executor shall give sufficient security for the faithful execution of the will and testament to the register; but in case of refusal the said register is hereby directed to grant letters of administration during the dispute, which shall suspend the power of such executor during that time.

Proviso.

\* [See vol. 1, page 39.]

The High Court of Errors and Appeals when to sit, and how adjourn. (Repealed.)

[SECT. XIX. *And be it further enacted by the authority aforesaid,* That the said High Court of Errors and Appeals shall sit in the city of Philadelphia, at least once in every year; that is to say, on the second Monday in the month of July; and if there be any causes depending, the said court shall have power to adjourn from time to time, and to require and compel the attendance of sheriffs, coroners, constables, and other ministerial officers, as fully as any court in this commonwealth can or may do.]

Writs of error, &c. to be brought within seven years.

SECT. XX. *And be it further enacted by the authority aforesaid,* That no fine or common recovery, nor any judgment in any real, personal or mixed action, nor any appeal from the said Register's courts, shall be avoided, or reversed, for any defect or error therein, unless the writ of error be commenced, or the appeal brought and prosecuted with effect, within seven years after such fines levied, common recovery suffered, judgment signed, or entered of record, or decree be pronounced: *Provided nevertheless,* That if any person, who is, or shall be, entitled to any such writ of error or appeal, as aforesaid, shall, at the time such title accrued, be within the age of twenty-one years covert, non compos mentis, in prison, or out of the limits of the United States of America, that then such person, his or her heirs, executors or administrators,

Proviso, as to persons under legal disabilities.

(notwithstanding the said seven years be expired) shall and may bring his, her and their writ of error or appeal, for the reversing of such fine, recovery or judgment, so as the same be done within five years after his or her full age, discoverture, coming to sound mind, enlargement out of prison, or return into some one of the United States of America, but not afterwards, nor otherwise. 1791.

SECT. XXI. [And be it further enacted by the authority aforesaid, That each of three persons to be appointed, and associated with the judges of the Supreme Court and the presidents of the Courts of Common Pleas as judges of the said High Court of Errors and Appeals, shall be entitled to the sum of six dollars for each day they shall attend upon the business of the said court, for which the governor shall draw warrants upon the state treasurer, countersigned by the Comptroller-General and Register-General.]

Pay of the associate judges of this court.

(Repealed.)

SECT. XXII. And be it further enacted by the authority aforesaid, That the act of assembly, entitled "An Act for erecting an High Court of Errors and Appeals," passed the twenty-eighth day of February, in the year one thousand seven hundred and eighty, and so much of any former act or acts of Assembly, as is hereby altered or supplied, shall be, and the same is hereby repealed, and made void: *Provided nevertheless*, That all such writs of error and appeals, which have been heretofore brought, and were depending and undetermined in the said High Court of Errors and Appeals, at the time of making and declaring the amendments and alterations of the constitution of this commonwealth, shall be held to be depending in the same state, and shall be determined by the justices of the said High Court of Errors and Appeals, established by this act, in the same manner as writs of error and appeals hereafter to be brought and returned into the said court.]

Repeal of the former law, and parts of laws supplied by this act.

Proviso. (Obsolete.)

Passed 13th April, 1791.—Recorded in Law Book No. IV. page 201.

## CHAPTER MDLXVI.

A SUPPLEMENT to an act, entitled "An Act for erecting certain parts of the counties of Westmoreland and Washington into a separate county."

WHEREAS in and by the act, entitled, "An Act for erecting certain parts of the counties of Westmoreland and Washington into a separate county," the trustees therein named, or any three of them, were authorized, within five years after the time of passing the said act, to make choice of any of the lots set apart for public buildings in the reserved tract opposite to the town of Pittsburgh, and thereon to erect a court-house and prison, sufficient to accommodate the public business of the said county: And whereas it has been represented to the legislature by a number of the inhabitants of the said county, that from a variety of causes it would be highly inconvenient to erect the said public buildings in the situation proposed, and therefore they have prayed the legislature to cause the same to be erected in the town of Pittsburgh:

[Ante. chap. 134B, vol. 3, page 446.]