

1794. government, shall be expressly transferred to the Governor of this commonwealth: Therefore,

The powers of the late executive vested in the Governor;

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 in all cases, where, by the laws of this commonwealth, the Supreme Executive Council, or the President or Vice-President thereof, is mentioned as having power and authority to carry the same into effect, the Governor for the time being shall be deemed and taken to be in the place and stead of the said Supreme Executive Council, or the President or the Vice-President thereof, and shall have and exercise all the powers in them, or any or either of them vested, unless such powers have been and are by law vested in some other officer or officers, person or persons, or shall be inconsistent with the provisions contained in the existing constitution of the commonwealth.*

unless otherwise vested by law, &c.

Passed 22d April, 1794.—Recorded in Law Book No. V. page 312.

## CHAPTER MDCCLXII.

*A SUPPLEMENT to the act, entitled "An Act to incorporate the subscribers to the Bank of Pennsylvania.*

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by the authority of the same, That the sixteenth article of the seventh section of the said act be, and is hereby repealed: Provided, That the President and Directors of the said Bank, on the requisition of the Legislature, shall furnish statements of the amount of the capital stock of the said corporation, and of the debts due to the same, of the monies deposited therein, of the notes in circulation, and of the cash in hand; and the Legislature shall have a right, by joint committee, to inspect such general accounts in the books of the Bank, as shall relate to the said statements: Provided also, That this shall not be construed to imply a right to inspect the accounts of any private individual or individuals.*

Repeal of the former act in part. (Ante. chap. 1656, page 97.) Of statements to the Legislature.

Of public and private accounts.

Passed 22d February, 1794.—Recorded in Law Book No. V. page 323.

## CHAPTER MDCCLXVI.

[See vol. 2, pa. 531, (chap. 1505,) and the notes thereto.] *An ACT for the better preventing of crimes, and for abolishing the punishment of death in certain cases.*

WHEREAS the design of punishment is to prevent the commission of crimes, and to repair the injury that hath been done thereby to society or the individual, and it hath been found by experience, that these objects are better obtained by moderate but certain penalties, than by severe and excessive punishments: And whereas it is the duty of every government to endeavour to reform, rather than exterminate offenders, and the punishment of death ought ne-

ver to be inflicted, where it is not absolutely necessary to the public safety: Therefore,

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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* no crime whatsoever, hereafter committed (except murder of the first degree,) shall be punished with death in the State of Pennsylvania.

The punishment of death abolished except for murder of the first degree.

SECT. II. And whereas the several offences, which are included under the general denomination of murder, differ so greatly from each other in the degree of their atrociousness, that it is unjust to involve them in the same punishment: *Be it further enacted by the authority aforesaid, That* all murder, which shall be perpetrated by means of poison, or by lying in wait, or by any other kind of wilful, deliberate and premeditated killing, or which shall be committed in the perpetration or attempt to perpetrate any arson, rape, robbery, or burglary, shall be deemed murder of the first degree; and all other kinds of murder shall be deemed murder in the second degree; and the jury, before whom any person indicted for murder shall be tried, shall, if they find such person guilty thereof, ascertain in their verdict, whether it be murder of the first or second degree; but if such person shall be convicted by confession, the court shall proceed, by examination of witnesses, to determine the degree of the crime, and to give sentence accordingly.

Of murder of the first degree:

Of murder of the second degree:

and how to be ascertained, on verdict or confession.

SECT. III. *And be it further enacted by the authority aforesaid, That* every person liable to be prosecuted for petit treason shall in future be indicted, proceeded against, and punished, as is directed in other kinds of murder.

Petit treason to be proceeded against as other murders.

SECT. IV. *And be it further enacted by the authority aforesaid, That* every person duly convicted of the crime of high treason shall be sentenced to undergo a confinement in the gaol and penitentiary-house of Philadelphia, for a period not less than six, nor more than twelve years, and shall be kept therein at hard labour, or in solitude, and shall in all things be treated and dealt with as is prescribed by an act, entitled "An Act to reform the penal laws of this state," or by the provisions of this act; that every person duly convicted of the crime of arson, or as being an accessory thereto, shall be sentenced to undergo a similar confinement, for a period not less than five, nor more than twelve years, under the same conditions as are herein expressed in the first clause of this section; that every person duly convicted of the crime of rape, or as being accessory thereto before the fact, shall be sentenced to undergo a similar confinement, for a period of time not less than ten years, nor more than twenty-one years, under the same conditions as are herein expressed in the first clause of this section; that every person duly convicted of the crime of murder, of the second degree, shall be sentenced to undergo a similar confinement, for a period not less than five years, nor more than eighteen years, under the same conditions as are herein expressed in the first clause of this section.

Of high treason.

Of arson:

Of rape.

Punishment of murder of the second degree.

SECT. V. *And be it further enacted by the authority aforesaid, That* every person who shall be convicted of having, after the passing of this act, falsely forged and counterfeited any gold or silver,

Of counterfeiting and uttering counterfeit.

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gold or silver coin.

Offorging, or uttering forged Bank notes.

coin, which now is or hereafter shall be passing or in circulation within this state, or of having falsely uttered, paid, or tendered in payment, any such counterfeit and forged coin, knowing the same to be forged and counterfeit, or having aided, abetted, or commanded the perpetration of either of the said crimes, or shall be concerned in printing, signing, or passing any counterfeit notes of the Banks of Pennsylvania, North America, or the United States, knowing them to be such, or altering any genuine notes of any of the said Banks, shall be sentenced to undergo a confinement in the gaol and penitentiary-house aforesaid for any time, not less than four, nor more than fifteen years, and shall be kept, treated and dealt with in the manner aforesaid; and shall also pay such fine as the court shall adjudge, not exceeding one thousand dollars.

Of maiming.

[In order to convict on the first clause of this section, there need only be a general intent to maim and disfigure; but on the second clause there must be a particular intent to put out the eye.

The malice and lying in wait, need not be expressly proved, but may be collected from all the circumstances of the case. *Respublica v. Langcake, & al. Sup. Court, January, 1795. (MS. Reports.)*

Of voluntary manslaughter.

Second offence.

Of involuntary manslaughter; how to be proceeded against,

and punished.

Benefit of clergy abolished.

SECT. VI. *And be it further enacted by the authority aforesaid,* That whosoever, on purpose and of malice aforethought, by lying in wait, shall unlawfully cut out or disable the tongue, put out an eye, slit the nose, cut off the nose, ear or lip, or cut off or disable any limb or member of another, with intention in so doing to maim or disfigure such person, or shall voluntarily, maliciously, and of purpose, pull or put out an eye, while fighting, or otherwise, every such offender, his or her aiders, abettors and counsellors, shall be sentenced to undergo a confinement in the gaol and penitentiary-house aforesaid for any time not less than two, nor more than ten years, and shall be kept, treated and dealt with in manner aforesaid; and shall also pay a fine not exceeding one thousand dollars, three fourth parts whereof shall be for the use of the party grieved.

SECT. VII. *And be it further enacted by the authority aforesaid,* That whosoever shall be convicted of any voluntary manslaughter, hereafter committed, shall be sentenced to undergo an imprisonment, at hard labour and solitary confinement, in the gaol and penitentiary-house of Philadelphia, for any time not less than two, nor more than ten years, and to give security for his or her good behaviour during life, or for any less time, according to the nature and enormity of the offence; and for the second offence shall be sentenced to undergo an imprisonment at hard labour and solitary confinement, in the gaol and penitentiary-house aforesaid, for any time not less than six, nor more than fourteen years.

SECT. VIII. *And be it further enacted by the authority aforesaid,* That wheresoever any person shall be charged with involuntary manslaughter, happening in consequence of an unlawful act, it shall and may be lawful for the Attorney-General, or other person prosecuting the pleas of the commonwealth, with the leave of the court, to waive the felony, and to proceed against and charge such person with a misdemeanor, and to give in evidence any act or acts of manslaughter; and such person or persons, on conviction, shall be fined or imprisoned, as in cases of misdemeanor; or the said Attorney-General, or other person prosecuting the pleas of the commonwealth, may charge both offences in the same indictment, in which case the jury may acquit the party of one, and find him or her guilty of the other charge.

SECT. IX. *And be it further enacted by the authority aforesaid,* That all claims to dispensation from punishment by benefit of clergy,

or benefit of the act of Assembly, entitled "An Act for the advancement of justice, and more certain administration thereof," (\*) shall be and hereby are for ever abolished; and every person convicted of any felony, heretofore deemed clergyable, shall undergo an imprisonment at hard labour and solitary confinement, in the gaol and penitentiary-house aforesaid, for any time not less than six months, and not more than two years, and shall be treated and dealt with as is directed in the act to reform the penal laws of this state, except in those cases where some other specific penalty is prescribed by the act aforesaid to reform the penal laws of this state, or by this act.

SECT. X. *And be it further enacted by the authority aforesaid,* That every person convicted in any county in this state, other than Philadelphia county, of any crime (except murder of the first degree,) which now is, or on the fifteenth day of September, one thousand seven hundred and eighty-six, was capital, or a felony of death, without benefit of clergy, or of knowingly uttering counterfeit coin, or of being concerned in printing, signing, or passing any counterfeit notes of the Banks of Pennsylvania, North America, or of the United States, knowing them to be such, or of altering any of the genuine notes of either of the said Banks, shall as soon as possible, be safely removed and conveyed by the Sheriff, and at the expense of the commonwealth, to the gaol and penitentiary-house aforesaid, and therein be kept during the term of their confinement, in the manner and on the terms mentioned in the thirty-fourth section of the act, entitled "An Act to reform the penal laws of this state;" (\*) and every Sheriff who shall neglect to remove and safely deliver at the gaol aforesaid such convict, within forty days after sentence is pronounced on the said convict, shall forfeit and pay the sum of one hundred dollars, to be recovered in any Court of Justice, and applied, one half to the use of the county in which the offence was committed, the other to such person as shall sue for the same.

SECT. XI. *And be it further enacted by the authority aforesaid,* That every person convicted of any of the crimes last aforesaid, and who shall be confined in the gaol and penitentiary-house aforesaid, shall be placed and kept in the solitary cells thereof, on low and coarse diet, for such part or portion of the term of his or her imprisonment, as the court in their sentence shall direct and appoint: *Provided,* That it be not more than one half, nor less than one twelfth part thereof: And that the inspectors of the said gaol shall have power to direct the infliction of the said solitary confinement at such intervals, and in such manner, as they shall judge best.

SECT. XII. Whereas it is of importance that the nature of the offence, and the former conduct and character of the convict, should be known by the said inspectors, and their successors in office: *Be it further enacted by the authority aforesaid,* That whensoever any person shall be convicted of any crime, which, on the said fifteenth day of September, one thousand seven hundred and eighty-six, was capital, or a felony of death, or shall be removed from any county to the gaol and penitentiary-house aforesaid, the court, before whom such conviction is had, shall, within forty days after such offender is removed from the said county, make and cause to

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\* (Vol. 1, pa. 105.)

Punishment for offences heretofore clergyable.

Convicts in any county (except for murder of the first degree,) whose crimes were formerly punished with death, &amp;c. to be removed to the gaol of Philadelphia.

Penalty on neglect or refusal of sheriff so to do.

\* (Vol. 2, pa. 531.)

Such convicts to be kept for a certain period in the solitary cells.

Limitations of such period; and how to be directed.

On the removal of convicts to the Philadelphia gaol, the court shall report to the inspectors the circumstances of their crimes and characters.

1794. be transmitted to the said inspectors, a report or short account of the circumstances attending the crime committed by such convict, particularly such as tend to aggravate or extenuate the same, and also what character the said convict appeared on the trial to sustain, and whether he had at any time before been convicted of any felony or other infamous crime; which report the said inspectors shall cause to be entered in books or registers, to be provided for that purpose.

Reports to be registered.

Punishment on committing an offence, heretofore capital, a second time.

SECT. XIII. *And be it further enacted by the authority aforesaid,* That if any person convicted of any crime, which, on the said fifteenth day of September, one thousand seven hundred and eighty-six, was capital, or a felony of death, without benefit of clergy, shall commit any such offence a second time, and be thereof legally convicted, he or she shall be sentenced to undergo an imprisonment in the said gaol and penitentiary-house, at hard labour, during life, and shall be confined in the said solitary cells at such times, and in such manner, as the inspectors shall direct; and if any person sentenced to hard labour and solitary confinement, by virtue of this or any former act, shall escape, or be pardoned, and after his or her escape or pardon shall be guilty of any such offence, as on the said fifteenth day of September, one thousand seven hundred and eighty-six, was capital, or a felony of death, without benefit of clergy, such person shall be sentenced to undergo an imprisonment for the term of twenty-five years, and shall be confined in the solitary cells aforesaid, at the discretion of the said inspectors.

Punishment on committing such offence, after escape or pardon.

Offences previously committed shall be punished as heretofore, unless the party pray to be sentenced agreeably to this act.

SECT. XIV. *And be it further enacted by the authority aforesaid,* That if any person shall hereafter be convicted of any crime committed before the passing of this act, he or she shall be sentenced to undergo such pains and punishment, as by the laws now in force are prescribed and directed, unless such convict shall openly pray the court, before whom such conviction shall be had, that sentence may be pronounced agreeably to the provisions of this act for the like offence, in which case, the said court shall comply with the said prayer, and pass such sentence on such convict, as they would have passed had the said offence been committed subsequent to the passing of this act.

Punishment of murder of the first degree.

SECT. XV. *And be it further enacted by the authority aforesaid,* That every person convicted of murder, of the first degree, his or her aiders, abettors and counsellors, shall suffer death by hanging by the neck.

Challenges to be allowed as heretofore;

SECT. XVI. *And be it further enacted by the authority aforesaid,* That no person indicted for any crime, the punishment whereof is altered by this act, shall lose any peremptory challenge, to which he or she would have been entitled, had this act not been passed; nor be liable to be tried before any court, other than the Supreme Court or Court of Oyer and Terminer in the county where the fact was committed.

and trials to be had in the proper court.

Concealment of the death of a bastard, how punished;

SECT. XVII. *And be it further enacted by the authority aforesaid,* That if any woman shall endeavour privately, either by herself, or the procurement of others, to conceal the death of any issue of her body, male or female, which, if it were born alive, would by the law be a bastard, so that it may not come to light, whether it

was born dead or alive, or whether it were murdered or not, every such mother, being convicted thereof, shall suffer imprisonment at hard labour in the county gaol of the county where the fact was committed, or in the gaol and penitentiary-house aforesaid, for any time not exceeding five years; or shall be fined and imprisoned at the discretion of the court, according to the nature of the case; and if the grand jury shall in the same indictment charge any woman with the murder of her bastard child, as well as with the offence aforesaid, the jury, by whom such woman shall be tried, may either acquit or convict her of both offences, or find her guilty of one, and acquit her of the other, as the case may be.

SECT. XVIII. *And be it further enacted by the authority aforesaid,* That the concealment of the death of any such child shall not be conclusive evidence to convict the party indicted of the murder of her child, unless the circumstances attending it be such as shall satisfy the mind of the jury, that she did wilfully and maliciously destroy and take away the life of such child.

SECT. XIX. *And be it further enacted by the authority aforesaid,* That the several acts of Assembly of this commonwealth, and such parts thereof, so far as the same are repugnant to or supplied by this act, and no further, shall be, and hereby are, repealed.

Passed 22d April, 1794.—Recorded in Law Book No. V. page 324.

## CHAPTER MDCCLXVII.

*An ACT to enable the Governor of this commonwealth to incorporate a company, for making an artificial road from the borough of Lancaster to the river Susquehanna, at or near Wright's ferry.*

SECT. I. [COMMISSIONERS appointed to receive subscriptions for a turnpike road from Lancaster to Wright's ferry. Their duty; to open subscriptions; to notify the same; and to attend at the place and time of notice. Subscriptions, by whom and in what number to be received; when to be closed. How subscriptions, in case of an excess in applications, shall be apportioned. Advance to be paid on subscribing; (obsolete.) 2. Of certifying the subscriptions to the Governor, in order to obtain a patent. Proceedings thereon to incorporate the subscribers, by the style of "The President and Managers of the Lancaster and Susquehanna Turnpike Road;" powers and privileges of the corporation. 3. Of notice to elect the corporation officers. Power to make by-laws. Limitation of the number of votes. 4. Of the annual meetings to choose officers, make by-laws, and do other corporate acts. 5. Certificates of shares, how to be prepared and issued; which shall be transferable. Assignments to be registered. 6. Of the meetings of the managers, and power of such meetings. 7. Penalty on neglect to pay dividends on shares; and forfeitures of shares. 8. Power to enter on lands for the road, and to survey and fix the course thereof; and 9. Power to take materials for the road; making amends therefor, and paying damages done to improvements, &c. 10. Breadth and construction of the road; which shall be kept in perpetual repair. 11. Proceedings to establish tolls; and

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and proceedings, in case the mother is indicted for that offence, and also the murder of the child.

Concealment of the death of such child not to be conclusive evidence of the murder.

Repeal of former acts repugnant to or supplied by this act.