

1799. from and after the passing of this act, if any apprentice shall absent himself or herself from the service of his or her master or mistress, before the time of his or her apprenticeship shall be expired, without leave first obtained, every such apprentice, at any time after he or she arrives to the age of twenty-one years, shall be liable to, and the master or mistress, their heirs, executors or administrators, are hereby enabled to sustain all such actions and other remedies against him or her, as if the said apprentice had been of full age at the time of executing his or her indenture of apprenticeship.

Apprentices who abscond, liable to actions for damages after they become of age.

When and how indentures may be assigned, on the death of the master or mistress of an apprentice; or by him or her in his or her life-time.

SECT. II. *And be it further enacted by the authority aforesaid,* That when any master or mistress shall die, before the term of apprenticeship shall be expired, the executors or administrators of such master or mistress, provided the term of the indenture extended to executors and administrators, shall and may have a right to assign over the remainder of the term of such apprenticeship to such suitable person, of the same trade or calling mentioned in the indenture, as shall be approved of by the Court of Quarter Sessions of the county where the master or mistress lived, and the assignee to have the same right to the service of such apprentice, as the master or mistress had at the time of his or her death; and, also, when any master or mistress shall assign over his or her apprentice to any person, of the same trade or calling mentioned in the indenture, the said assignment shall be legal, provided the terms of the indenture extended to assigns, and provided the apprentice, or his or her parent or parents, or guardian or guardians, shall give his, her or their consent to such assignment, before some Justice of the Peace of the county where the master or mistress shall live.

Passed 11th April, 1799.—Recorded in Law Book No. VII. page 1.

CHAPTER MMLXXIX.

An ACT concerning writs of partition.

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 have original jurisdiction over the whole commonwealth, as to the granting and proceeding upon writs of partition, at the suit of any tenant in common, joint tenant or co-partner, and that such writs may be directed to and executed by the Sheriff of any one county, wherein any part of the lands and tenements intended to be divided are situate, who shall have power, in cases where lands lie in different adjacent counties, or where the lands lie partly in one county and partly in another, to summon a proportionable number of jurymen of the freeholders of each of the said counties, to form an inquest for making a just and equal partition between the parties; and that such Sheriff shall hold the inquisition either in his own county or any such adjacent county, and make return thereof to the Court as in ordinary cases; and that such proceedings shall be as good and available in law, as if the partition had been made by the Sheriff and inquest of each respective county.

The original jurisdiction of the Supreme Court on writs of partition extended throughout the state.

Power of the Sheriff to whom the writ is directed, when lands lie in different counties.

SECT. II. *And be it further enacted by the authority aforesaid,* 1799.

That where any writs of partition shall issue from the Supreme Court, or from any Court of Common Pleas in this state, having jurisdiction and power to issue such writs, if the inquest who are directed to make such partition shall be of opinion that the lands or tenements cannot be divided, according to the command of the writ, without prejudice to or spoiling the whole, the said inquest shall then make and return to the Court a just valuation and appraisement of such lands and tenements; whereupon, if the said Court shall approve of the said return, and if any one or more of the parties shall elect to take the said lands and tenements, at the appraised value, the same shall be adjudged to him or them, he or they paying or securing to be paid, to the other parties, their proportions of the appraised value, according to their respective rights; but in case each of the persons interested, or more than one of them, shall be willing to take the lands and tenements at the appraised value, then, in that case, the Court shall determine to whom the lands and tenements shall be conveyed; and the Sheriff, and his successor in office, shall, according to the said order of Court, make and execute conveyances to the party or parties electing to take the same, subject, nevertheless, to a lien thereon, in favour of the others of the said parties, until payment be made to them of their respective shares of the money as aforesaid; and in case none of the said parties shall agree to take the said lands and tenements on the terms aforesaid, then the said Court shall and may, at the instance of the demandant in the said partition, make an order for the sale of the said lands and tenements at public auction, by the Sheriff who shall have holden the said inquisition, or his successor in office, after due and fair notice of the time and place of such sale, by advertisements published and set up in the several counties where the lands lie, and also in such public newspapers as shall be most likely to give fair and full notice of such sale to all the parties, concerned and others, which public notice shall be given at least twenty days before the time of sale, in cases where the lands all lie in the same county, and at least sixty days, where the lands lie in different counties; and the said Sheriff is hereby empowered and ordered to execute deeds to the purchasers for the lands and tenements so as aforesaid sold, on receiving payment of the consideration money, or taking sufficient security therefor, to the satisfaction of all the parties concerned, which money or securities shall be brought into Court, before or at the time of the said Sheriff's acknowledging the deed in open Court, to be distributed and paid, by order of the said Court, to and amongst the several parties entitled to receive the same, in lieu of their respective parts and purparts of the said lands and tenements, according to their just rights and proportions.

If an estate cannot be divided, without prejudice to or spoiling the whole, the inquest shall make return of the value thereof.

If the court approve the return, they may adjudge the whole to one of the parties, on securing to the rest their respective shares.

The premises thereupon to be conveyed to such party, subject to a lien in favour of the rest.

If none of the parties will take the land at the valuation, the Court may order sale thereof; proceedings thereupon.

[SECT. III. And whereas divers persons, having an interest in large tracts of unimproved lands in this commonwealth, jointly, or in common with others, may be desirous of obtaining a partition of such lands, but, from the unavoidable expense attending the execution of writs of partition in the ordinary way, as well as by the absence or minority of some of the owners thereof, are prevented from obtaining such partition, to the great injury of such persons,

1799.

Provision for making sale and partition of unseated or unimproved lands.

[Repealed.]

and to the manifest discouragement of persons wishing to improve the land: *Be it further enacted by the authority aforesaid,* That in all cases where the lands are not seated or improved, but remain in their natural state, any person or persons, holding at least one fourth part of such lands, jointly, or in common with others, may exhibit his, her or their petition to the Supreme Court, or to the Court of Common Pleas, of the county where the lands lie, praying for a valuation and sale thereof, and it shall be lawful for the Justices of either of the said Courts to order a writ, directed to the Sheriff of the county where the lands lie, commanding him to summon an inquest for that purpose, who shall make and return a just valuation and appraisement of the land, due notice first being given to the several parties concerned or interested in the said lands, or to the guardians of such of them as are minors, to appear, if they think proper, at the time and place of holding the said inquisition; and on the return of the said inquisition, if the several persons concerned in interest, and the guardians of such of them who are under age, shall refuse to take and pay for the lands at such valuation, it shall be in the power of the Court, in case they approve of the said return of the appraisers, to order that sale be made of such lands, in manner aforesaid, and to make distribution of the produce of such sale to and amongst the several persons interested in the said lands, according to their several rights: *Provided always,* That every deed or conveyance made by any Sheriff or Sheriffs, by virtue of this act, shall be acknowledged in open Court, and entered on the records thereof, and shall also be recorded, within six calendar months next after the execution thereof, in the county or counties where the said lands and tenements shall lie.] (o)

All deeds under this act to be acknowledged in open Court, and recorded in six months.

Passed 11th April, 1799.—Recorded in Law Book No. VII. page 11.

(o) By an act passed 28th March, 1806, (ch. 2688.) The respective County Courts of Common Pleas, shall have and exercise all the powers which the Supreme Court had and possessed by the act in the text, as to the granting and proceeding upon writs of partition, at the suit of any tenant in common, joint-tenant, or co-partner; but in every case the writ of partition shall be directed to the Sheriff of that county in which it issues.

§ 2. An exemplification of the proceedings which may at any time hereafter be had by virtue of this act, together with the deed or conveyance made by the Sheriff, shall within six months after the execution thereof, be delivered to the recorder of deeds, in such adjoining county or counties, in which the application shall not have been made, and in which any part or parts of the said lands are or may be situated; which Recorder shall enter the same on record of his proper county, at the joint expense of all parties concerned therein.

§ 3. All lands not seated or improv-

ed, but remaining in their natural state, shall be divided and valued according to the second section of the act in the text, and the third section of the same act is hereby repealed.

(Note. The original jurisdiction of the Supreme Court was taken away in civil cases, by the 19th section of the act of 24th February, 1806, (chap. 2624.) But it was afterwards restored in the city and county of Philadelphia.)

By a supplementary act, passed 7th April, 1807, (chap. 2813.) The Courts of Common Pleas of the different counties are authorized to issue writs of partition in all cases in which partition is demanded, of lands, tenements or hereditaments in this commonwealth, owned and held in joint-tenancy, coparcenary or in common, and whether the demandant or defendants be minors or of full age; and where a minor or minors is or are the defendant or defendants in any action of partition, the writ shall be served upon his, her or their guardian or guardians, or, if he or she have no guardian, then upon a guardian to be appointed for this pur-

pose by the Court, or notice thereof given in the manner herein after directed, and upon appearance of the parties, or on default being made, the Court shall proceed to examine the plaintiff's title, and quantity of his part or purpart, and accordingly as they shall find his right or purpart to be, they shall give judgment, and award a writ to make partition, whereby such proportion or purpart shall be set out in severalty, which writ being executed after ten days public notice, and the inquest of partition being returned, and final judgment thereupon entered, the same shall be good, and shall conclude all persons whomsoever, in the same manner as though the parties were under no disability of age, and notwithstanding all persons concerned are not named in the proceedings, nor the title of the defendants truly set forth.

§ 2. If any defendant, or other person against whom, or against whose right or title judgment by default be given, shall within the space of one year after the final judgment entered, apply to the Court by motion where such judgment is entered, and shew a good and probable matter in bar of such partition, or that the plaintiff hath not title to so much as he hath recovered, then in such case the Court may suspend or set aside such judgment and admit the party to appear and plead, and the cause shall proceed according to the due course of law; and if the Court upon hearing thereof, shall adjudge for the plaintiff, then the said first judgment shall stand confirmed, or in case such defendant or other person shall within the time aforesaid appear and admit the plaintiff's title, part or purpart, and shew to the Court any inequality in the partition, the Court may award a new partition to be made in presence of all parties concerned, if they will appear notwithstanding the return and filing upon record of the former, which said second partition returned and filed, shall be good and firm against all persons whomsoever.

§ 3. Where any of the defendants in any action of partition reside in the county where the lands lie, service of the said writ shall be made upon them by the Sheriff of the county or his deputy, by leaving a copy of the writ at his, her or their usual place of abode, at least fifteen days before the return day thereof; and when any of the said defendants reside out of the county where the lands lie, but within this commonwealth, service of the said writ shall be made upon them in like manner, by the Sheriff of the county where the lands lie, or his deputy; and where any of

the said defendants reside out of this commonwealth, or beyond sea, [a copy of the said writ] shall be published in one public newspaper printed within, or nearest to the said county, and in one daily newspaper of the city of Philadelphia, for the space of [two months] prior to the said return day, which said publication shall be deemed and taken by the Court, and it is hereby declared to be, a good and effectual service of the said writ upon the defendant, or defendants so residing out of this commonwealth; *provided*, that where the lands lie in more than one county, the service aforesaid shall be made by the Sheriff of the county where the action is brought.

§ 4. No plea in abatement shall be admitted or received in any suit for partition, nor shall the same be abated by reason of the death of any defendant.

§ 5. Where equal partition in value cannot be made of any share or purpart, the Sheriff and inquest shall have power to equalize such partitions or purparts, by valuing the purparts respectively, and to award that any one or more shares or purparts shall be subject to the payment of such sum of money as shall be equal to the difference in value of any other share or shares, purpart or purparts, and shall return the same with their inquest, which sum or sums of money, when final judgment shall be rendered on such writ of partition, shall be a lien on the lands or tenements which the inquest aforesaid shall have determined to be liable to pay the same.

By act of 26th March, 1808, (chap. 2965,) instead of the provision in the third section of the act of 7th April, 1807, (*supra*) it shall be sufficient to make publication of the nature and substance of any such writ of partition, and if such publication be made in such daily newspaper, one day in each week for six weeks successively, prior to the return day of the writ, and in the same manner in one newspaper printed within, or nearest to the county where such writ is to be executed, it shall be deemed an effectual service in the cases by the said section intended to be provided for.

See notes to intestate act, ante, pa. 143.

Recovery in partition is no bar to an action of dower, in that part of the premises which is assigned to the tenant, though the partition had been brought by the demandant for the other part of the premises, which had been devised to her, 1 Dallas, 418.

Previous to the act of 7th April, 1807, the death of a tenant abated the writ

1799. of partition. The statute 8 and 9th William 3 c. 31, does not extend here.

Partition can only be made between tenants of the freehold. *M'Kee v. Straube*, 2 Binney, 3-4.

A parol partition between tenants in common, made by marking a line of di-

vision on the ground, and followed by a corresponding separate possession, is good, notwithstanding the act for the prevention of frauds and perjuries. *Ebert v. Wood*, 1 Binney, 216. See vol. 1, pa. 395.

CHAPTER MMLXXX.

(Vol. 2, pa. 462, post. chap. 2205.)

An ACT to supply certain defects in the acts incorporating the city of Philadelphia, and sundry towns and boroughs within this commonwealth, and to explain and amend an act, entitled "An act to alter and amend the several acts of the General Assembly of this commonwealth, incorporating the city of Philadelphia, and for other purposes."

WHEREAS the ordinances and by-laws of the city of Philadelphia, and of sundry other incorporated towns and boroughs within this commonwealth, impose, in certain cases, fines, penalties and forfeitures, which inure to the benefit of the said Corporations, respectively, by reason whereof it has been held that none of the freemen of the said Corporations are competent to prove the breach of the said ordinances and by-laws, and the accruing of such fines forfeitures and penalties, or to hear, judge and determine respecting the same, inasmuch as the same would operate a diminution of their share of contribution for supporting such Corporation: And whereas it would be in all cases difficult, and in many instances impracticable, to prove such breaches by any other testimony, or to hear, judge and determine respecting the same, before any other than Judges or Jurors liable to such exception, and the interest of each individual in the application of such fines, forfeitures and penalties, is too remote and inconsiderable to give an improper bias to his testimony, judgment or verdict, respecting the same: Therefore for furtherance of justice, and the due enforcement of wholesome regulations,

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* from and after the passing of this act, no freeman of the city of Philadelphia, or of any other incorporated town or borough within this commonwealth, nor any other person, otherwise competent to give testimony respecting the breach of any ordinances, by-laws or regulations of the said city of Philadelphia, or any such other incorporated town or borough, shall be excluded from giving testimony respecting the same, by reason that the fine, forfeiture or penalty, imposed for such breach, is or may be appropriated in aid of the funds of such Corporation, but every such person, otherwise competent, shall be admitted to give testimony, as fully as though he or she were not resident within the bounds, or a partaker in the interests of such city, town or borough: *Provided, That* nothing herein contained shall authorize any person or persons, who receive

No freeman of the city or any corporate town shall be disqualified as a witness to prove a breach of the ordinances or by-laws, by reason that the penalty or forfeiture is appropriated to the use of the Corporation; except as to paupers.