

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.

alms, or any pension or gift, out of the funds, in aid of which any of the said fines, forfeitures or penalties are appropriated, to give testimony touching the breach of such ordinances or by-laws, and the accruing of such fines, forfeitures and penalties.

SECT. II. *And be it further enacted by the authority aforesaid,* That no Court, Aldermen or Burgesses, otherwise by the laws of this commonwealth qualified and authorized to hear, judge and determine, respecting the breach of any such ordinances or by-laws, and the accruing of such fines, forfeitures and penalties, shall be disqualified to hear, judge and determine the same, by reason of the interest they, as members of such borough or Corporation, may have in the said fines, forfeitures and penalties, but shall have as full, perfect and complete jurisdiction, respecting the same, as if no such fine, forfeiture or penalty were to be incurred, or they had no such interest in the same.

No Court, Aldermen or Burgesses shall be disqualified to hear and decide respecting breaches of the ordinances and by-laws, by reason of their interest as members of the corporation.

SECT. III. *And whereas the freemen and citizens of the city of Philadelphia only are competent and compellable to serve in the Courts of the said city, held by the Mayor, Recorder and Aldermen, as Justices of the Peace, and Justices of Oyer and Terminer and Gaol Delivery: Therefore, Be it further enacted by the authority aforesaid,* That in all prosecutions and proceedings before the said Mayor, Recorder and Aldermen of the said city, for or respecting the breach of any ordinances, by-laws or regulations of the said city, the said freemen and citizens of the said city shall be competent to be jurymen on such prosecutions and proceedings, and the trials thereof; and no exception shall be allowed against the said freemen or citizens, either to the array or the polls, for or by reason that the same fine, forfeiture or penalty, imposed for such breach, is expressly or by implication forfeited to the said corporation, or is or may be appropriated in aid of the funds of the said city, or for the use thereof, in the same manner, and under like rules and regulations, as if the said fines, penalties and forfeitures had not been appropriated, and were not to accrue to the use of the Corporation of the said city.

The freemen of the city shall be competent as jurymen, notwithstanding their interest as members of the Corporation.

SECT. IV. *And whereas doubts have arisen upon the construction of the act, entitled "An act to alter and amend the several acts of the General Assembly of this commonwealth, incorporating the city of Philadelphia," and it is necessary that the same be explained and amended: Be it further enacted by the authority aforesaid,* That the Mayor of the city of Philadelphia shall appoint all and every the officer and officers of the Corporation, whose authorities and powers shall have been, or hereafter shall be given or established by any resolution or ordinance by the Select and Common Councils of the said city of Philadelphia, excepting only the Treasurer* of the Corporation, and the clerks, messengers and door-keepers of the said Councils, who shall be appointed as heretofore.

Officers of the Corporation of the city, by whom to be appointed.

(*See post, chap. 3205.)

SECT. V. *And be it further enacted by the authority aforesaid,* That the Select and Common Councils shall have all and singular the powers and authorities, rights and privileges, incident to the Corporation, and to the well governing thereof, which were formerly vested in the Mayor, Aldermen and Common Council, by an act, entitled "An act to incorporate the city of Philadelphia," pass-

Powers of the Select and Common Councils.

1799. ed the eleventh day of March, one thousand seven hundred and eighty-nine, which are not otherwise by law directed and provided for.

Provision for supplying a vacancy in the office of Mayor or member of the select Council, by death, resignation, or otherwise.

SECT. VI. *And be it further enacted by the authority aforesaid,* That whenever the office of Mayor shall become vacant, by death, resignation, or otherwise, it shall be lawful for the Select and Common Councils of the city of Philadelphia, as soon as conveniently may be after such vacancy shall so happen, to assemble together, and elect a Mayor, in the manner directed by law in ordinary cases, and the Mayor so chosen shall continue in office until the third Tuesday in October next succeeding such election, and no longer; and that in case of any vacancy happening by the death, resignation, or otherwise, of any member of the Select Council, such vacancy shall be supplied at the next general election, and the person chosen shall serve the residue period of time, and in the class of such person whose vacancy he may be chosen to fill.

The present corporate officers to continue till the first of January next.

SECT. VII. *And be it further enacted by the authority aforesaid,* That all the officers of the Corporation, already appointed by the Select and Common Councils, now in office, shall continue to exercise the powers and duties of their several offices, respectively, until the first day of January next, any irregularity in the appointment of such officers to the contrary in any wise notwithstanding.

The Mayor and Recorder empowered to take acknowledgments of deeds for real estate in any part of the commonwealth.

SECT. VIII. *And be it further enacted by the authority aforesaid,* That, from and after the passing of this act, the Mayor and Recorder of the city of Philadelphia, respectively, shall be, and they are severally hereby, empowered and authorized to take acknowledgments of deeds for lands or other real estate in any part of this commonwealth; and for taking every such acknowledgment, either of the said officers so taking the same shall be entitled to receive thirty-seven cents and an half, and no more.

Passed 11th April, 1799.—Recorded in Law Book No. VII. page 15.

CHAPTER MMLXXXI.

(Chap. 1997, ante. pa. 329.)

An ACT to extend for a limited time, an act, entitled "A further Supplement to the act, entitled "An act for making an artificial road from the city of Philadelphia to the borough of Lancaster, and for other purposes."

SECT. 1. [THE limitation of the former act extended. (Now made perpetual.) 2. The tolls of the turnpike may be leased for any term not exceeding seven years, &c.]

Passed 11th April, 1799.—Recorded in Law Book No. VII. page 14.

CHAPTER MMLXXXIV.

An ACT to raise and collect county rates and levies.

WHEREAS the several laws of this commonwealth, now in force, for raising county rates and levies, from frequent supple-