

And for the prevention of disputes that may arise:

[Section II.] Be it further enacted by the authority aforesaid, That all laws whatsoever heretofore made, other than the laws under the titles above expressed, shall be null and void, and are hereby declared null and void to all intents and purposes.

Passed October 28, 1701; repealed by the Queen in Council, February 7, 1705-6. See Appendix I, Section II.

CHAPTER CVI.

AN ACT FOR ESTABLISHING COURTS OF JUDICATURE IN THIS PROVINCE AND COUNTIES ANNEXED.

For the better and more orderly establishment and regulation of the courts of justice within this government:

[Section I.] Be it enacted by the Proprietary and Governor, by and with the advice and consent of the freemen of this Province and Territories in General Assembly met, and by the authority of the same, That there shall be holden and kept a county court or sessions four times in every year, in each county of this province and territories: (That is to say) in the county of Philadelphia, to begin on the third day of the week, called Tuesday, in the first week of the months called March, June, September and December; in the county of Bucks, to begin on the fourth day, called Wednesday, in the second week of every the said months; in the county of Chester, at the town of Chester, to begin on the third day of the last week in the months called February, May, August and November; in the county of Newcastle, at the town of Newcastle, to begin on the third day, called Tuesday, in the months called May, August, November and February; in the county of Kent, to begin on the second third day, called Tuesday, in the same months; [and in] the county of Sussex, at the town of Lewes, to begin on the first third day, or Tuesday, in the same months, called May, August, November and February: and that there shall be a competent number of justices in [every] of the said counties, appointed and authorized by the governor or his lieutenant for the time being by commission under the broad seal of the province, to hold the

said county courts or sessions; three of which justices in each county shall be a quorum, who are hereby empowered to deliver the gaols, award process, and hold all manner of pleas of the Crown or criminal causes in the respective counties wherein they shall be commissioned (excepting treason, murder, manslaughter, rapes, sodomy, buggery, burglary and burning of houses); which the provincial judges hereafter mentioned are hereby authorized to hear and determine, and shall award process, call special courts, hold pleas, and hear and determine all actions, suits and causes, civil, personal, real and mixed, observing as near as may be, respecting the infancy of this government and capacities of the people, the methods and practice of the King's court of common pleas in England; having regard to the regular process and proceedings of the former county courts; always keeping to brevity, plainness and verity in all declarations and pleas, and avoiding all fictions and color in pleadings. And as for such causes that may arise between merchants and seamen, which cannot be tied to formality of pleadings and proceedings requisite at common law, it shall and may be lawful to and for the said justices within their respective jurisdictions, as often as there may be occasion, to hear, determine and decree, in a brief [and] summary way, all the said causes between merchants and seamen which are by the laws and usage of the kingdom of England, not within the conusance and proper jurisdiction of the admiralty; and for that purpose the said justices shall cause to come before them twelve indifferent merchants, masters of vessels or ship carpenters, as the case may require; and for want of such, then so many lawful men of the neighborhood as may make up twelve, who are hereby empowered, upon their solemn attestations, to be given them by the court, to hear, examine and make report (according to the best of their understandings) of the matter to the justices, who shall proceed to give judgment or sentence therein accordingly, and to award judicial process or execution thereon as upon judgments at common law.

And further, that the said justices in the respective county courts shall have full power, and are hereby empowered and authorized to hear and decree all such matters and causes of

equity as shall come before them in the said courts, wherein the proceedings shall be by bill and answer, with such other pleadings as are necessary in chancery courts and proper in these parts; with power also for the said justices to force obedience to their decrees in equity, by imprisonment or sequestration of lands, as the case may require.

Provided always, That if any person or persons shall find themselves grieved with any decree or sentence made or given by the said justices, either in equity or upon their summary proceedings aforesaid, it shall and may be lawful to and for him or them so grieved forthwith to appeal or have recourse to the judges of the provincial court, to set forth his or their case by petition, bill or plaint, so as he or they so appealing first pay down the court charges, and either satisfy the decree or sentence so given, or deposit with the justices the sum awarded, or give sufficient security to prosecute the said appeal, and to pay all costs and damages that shall be awarded against him or them; and then, albeit the party appealing be imprisoned upon that decree or sentence, he shall be enlarged; and that such appeals shall supersede all further process in the county court upon the decree or sentence appealed from, till the same be heard and determined in the provincial court.

And moreover that the said justices shall have power, and are hereby empowered and authorized respectively, to do and execute all things relating to the duty and office of justices of the peace according to the laws of this government, with power to hold and keep private sessions as often as they see occasion.

[Section II.] And be it further enacted by the authority aforesaid, That there shall be five provincial judges appointed by the governor or his lieutenant for the time being; which judges or any three of them shall be a provincial court, and sit twice every year at the town of Philadelphia, on the four-and-twentieth day of the Seventh month, and the tenth day of the Second month; and at least two of the five, every fall and spring yearly, shall go their circuit into every of the said counties, and there hold a provincial court, on the twenty-eighth day of the Seventh month and the fourteenth day of the Second month, in the county of Bucks; and on the second day of the Eighth

month and on the eighteenth day of the Second month, at Chester; and on the fifth day of the Eighth month and the one-and-twentieth day of the Second month, at Newcastle; and on the ninth day of the Eighth month and twenty-fifth day of the Second month, in the county of Kent; and on the thirteenth day of the Eighth month and twenty-ninth day of the Second month, at Lewes in the county of Sussex; when, where and as often as there shall be occasion, of which occasion notice shall be given by the respective clerks, where any appeals are made and granted as aforesaid, under the county seal, directed to the governor for the time being by the first opportunity after such appeals are granted, of which the governor is to give notice to the judges respectively; and that the said judges in the said respective provincial courts shall have full power and authority as formerly to hear and determine all treasons, murder[s], manslaughter[s], rapes, sodomy, buggery, burglary and burning of houses, and are hereby empowered and authorized to hear and decree all such matters and causes as by appeal from the respective county courts shall come before them as aforesaid, and thereupon to revoke, make void, alter or confirm such decrees or sentences, acts or proceedings of the said county courts relating thereto, and to make such decrees and take such order therein as shall be agreeable to equity and justice; and that it shall and may be lawful to and for the judges who make any decrees by virtue of this act, to compel and order the execution thereof by imprisonment of bodies or sequestration of any of the lands of such who upon sight or due notice of such decree, or upon service of the judges' decretal, order or judicial process duly proved before one or more of the judges, shall refuse or neglect to comply with or perform the same.

[Section III.] And it is hereby further enacted, That if any person or persons find they have just cause to move in arrest of judgment, they may do so after verdict and before judgment; but if they neglect their motion, and judgment be entered, then, if they intend to avoid such judgment, they may have recourse to the governor for the time being, who without examination of the matter is to grant the party grieved writ or writs of error under the lesser seal of this province, commanding the justices

of the county court where such judgment or judgments are given, to cause the record of the said judgment and proceedings to be brought before the judges at the next provincial court in course. And for writing, sealing and granting of every writ of error, the party shall pay to the secretary six shillings and no more, which writ or writs so obtained shall be brought before one or more of the justices of the county court where such judgment was entered, together with the particular cause or causes of error assigned in writing; and if it shall appear to the said justice or justices that those errors so assigned are errors in law (which is the fault of the justices) and not errors in process, defaults or misprison of clerks, or any other defect, error or insufficiency in the process or pleadings, whereto the plaintiff in the writ of error might have demurred or pleaded in abatement in the county court, nor want of form in any writ, returned bill, plaint, declaration, pleadings, verdict or proceedings, nor any other defect of the like nature mentioned and provided for in the several acts of Parliament, called statutes of jeofails, which shall be redressed, corrected and amended by the justices of the respective county courts aforesaid without any writ of error, that then the said justice or justices before whom the said writ or writs and cause or causes of error be brought as aforesaid, shall allow thereof; provided that the party in whose name the writ of error is brought, with one or more sufficient sureties (such as the said justice or justices do approve of) shall first be bound to the party for whom such judgment is given, by recognizance in double the sum adjudged to be recovered by the said former judgment, conditioned that the plaintiff in the writ of error hath good cause of error and shall follow the same writ with effect; and if the judgment be affirmed in the said writ of error, or that the plaintiff or plaintiffs therein suffer a discontinuance or be nonsuit, then the said plaintiff or plaintiffs in the said writ of error shall pay all the debts, damages and costs adjudged upon the former judgment, and all costs and damages that shall be awarded for delaying execution, whereunto the justice before whom the recognizance is given shall subscribe his hand; and then such justice or justices shall

order the execution to be stayed, if not granted, and to be superseded, if granted and not executed, as the case may require.

[Section IV.] And it is further enacted, That the governor for the time being shall grant the said writs of error, as also writs of *habeas corpus* and all other remedial writs without delay.

[Section V.] And it is further enacted, That the said judges of the provincial courts, or any two of them, shall, in the respective courts where they are concerned from time to time, have power, and are hereby empowered and authorized, to hear and examine all such errors in law as shall be so as aforesaid assigned or found in or upon any such judgment, and thereupon to reverse or affirm the said judgment as the law shall require; and after such judgment reversed or affirmed, the said record shall be remanded to the court from whence it was so as aforesaid removed, that such further proceeding may be [had] thereupon, as well for execution or otherwise, as appertain, according to the direction of the judges.

Provided always, That such reversal or affirmation of any such former judgment, or of the abovesaid decrees or sentences, shall not be so final but that the party grieved therewith may appeal to the King, so that such appellant does deposit the sum or sums recovered or decreed against him, or become bound with one or more sufficient sureties to the party for whom such judgment or sentence is given, by recognizance in double the sum adjudged to be recovered by the sentence, decree or judgment of the said provincial courts; with condition that the person or persons appealing shall, and will within twelve months next after, prosecute his or their appeal in England with effect; and if the judgment or decree be affirmed there, or that the appellant fails in his prosecution of his said appeal within the time aforesaid, then the appellant, or party in whose name the appeal is made, shall pay all the debts, damages and costs adjudged upon the former judgment, sentence or decree and all costs and damages as shall be awarded for the delaying execution, or they the sureties shall do the same for him, whereunto the judges before whom the recognizance is given shall subscribe their hands, and then execution shall stay.

[Section VI.] And it is further enacted, That if any person or persons obtain execution upon any judgment or sentence which shall afterwards be reversed for error in manner aforesaid, the judges who reversed the same shall issue forth their writ or writs to the sheriff or officer that serves such execution, commanding him to restore to the party the lands, goods or chattels so taken in execution, as also to inquire of the damages sustained by reason of such taking; and for the better executing of the powers and jurisdictions hereby granted, it shall and may be lawful to and for the said judges and justices to make and publish all and every such reasonable rules and orders as may be fit and necessary to regulate the officers and ascertain the practice of the respective courts they belong to.

Provided always, That no judges, justices or other persons shall by any means or under any pretense whatsoever make, promote, introduce or suffer any rule, order or practice in any of the said courts that shall exact greater fees than what are or shall be allowed by the general assembly of this government, or which may debar or render any person or persons (who for conscience' sake shall scruple to take an oath in any case) incapable to serve, officiate or act in any office, duty or service whatsoever, in or belonging to the said respective courts.

Provided also, That where the said assembly has not made due provision for any fee or fees for any matter or thing to be acted or done by the officers of the respective courts, then and in such case the judge or justices of the said courts shall and may from time to time (until the assembly shall provide for the same) make, order and appoint all such reasonable fees as the business or matter shall require and deserve.

Provided also, That nothing herein contained shall be deemed or taken to discontinue or avoid any action, suit or process now or hereafter depending in any court of this government, or to vacate or annul any judgment, record, judicial process or proceedings heretofore entered, transacted or done in any of the courts of this government contrary to the methods hereby prescribed.

[Section VII.] And be it further enacted, That the forms of all summons, arrests and attachments heretofore prescribed

and now used shall be observed for the future, and that all writs of execution shall be directed to the sheriff or other officer who is to serve the same, thus:

To A. B. sheriff of the county of or, to A. B. coroner of the county of , greeting, &c. These are by the King's authority to require thee that of the lands and tenements, goods and chattels of C. D. in thy bailiwick, thou cause to be levied (if it be in debt) as well a certain debt of , which E. F. in the county court held at , in the said county recovered against him, as also costs of suit; and have thou that money before the justices at the next county court, to be held at aforesaid, on the day of month next, to render [to] the said E. F. for his debt and costs aforesaid; and have thou there then this writ. Given under my hand, and seal of the said county, the day of the month, *Anno Domini* . Signed by one of the justices.

And so in other actions, changing what is to be changed. And that the writ of restitution above provided for shall be directed as above, and then it shall recite the judgment that is reversed, and conclude thus:

As by inspection into the record, and process aforesaid thereupon, which, before us for cause of error in the same to be corrected was caused to be brought, to us appears of record, which said record and process being seen and by us diligently examined and fully understood, we, for divers errors in the judgment and proceedings aforesaid, have revoked and annulled. And we have further considered that the said J. D. to all things which by occasion of the judgment aforesaid hath lost may be restored; and now on the behalf of the said J. D. we are given to understand that the said (insert here the sum levied by execution) by reason of the judgment aforesaid formerly rendered was levied, and to the said C. D. delivered. Therefore we command thee that if it be so, then without delay thou cause the said A. B. to have full restitution of the said the sum of if the same to the said A. B. thou can cause to be delivered. And as this our precept shall be executed, thou shalt make known to us at the next provincial court, to be held here the day of the month next, with this writ. Given under our hands and seals, the day of the month, *Anno Domini* . Signed by the judges. And if the sheriff returns that he cannot cause restitution to be made, then there shall a writ be

awarded, commanding the sheriff to take the said C. D. and him safely keep, so that the sheriff have his body before the judges, to restore the said A. B. the said sum with such damages and costs as the court shall assess.

Provided always, That this act, nor anything therein, or in any other act, law or ordinance in this province or territories contained, shall [not] extend or be construed to extend to the annulling or abridging of any proprietary or signiory courts, or any other court or courts, jurisdiction or jurisdictions, privilege or privileges granted, appointed or constituted, or to be granted, appointed or constituted, by William Penn, Proprietary of this province and territories, his heirs and assigns, by virtue of any powers for that purpose to him and them granted by any letters patent or other authorities from or under the King of England.

And for the better establishment and regulation of the Orphans' courts in this government:

[Section VIII.] It is hereby enacted, That the justices of the respective county courts, or a quorum of them, calling to their assistance the Register-General or his deputy for the time being in each county of this province and territories shall have full power, and are hereby empowered, to hold and keep the said Orphans' courts after the business of the county court in spring and fall is ended, or as often as they shall see occasion, in the same places where the respective county courts are held from time to time, with full power to award process, and cause to come before them all and every such person and persons as are or shall be intrusted with, or anyways accountable for, any lands, tenements, goods, chattels or estate belonging or which shall belong to any orphan or person under age, either as guardians, trustees, tutors, executors or administrators, and cause them to make and exhibit within a reasonable time true and perfect inventories and accounts of the said estates, and to require and take bonds and security of such guardians, trustees, tutors, executors and administrators for the legacies, portions, shares and dividends of estates real and personal belonging to orphans or minors as occasion shall require; with power also to make equal distribution of the surplusage of the

said estates as to justice and equity shall appertain, having due regard to the directions and bequests of all last wills and testaments in ordering such distributions, as also to the laws of this government from time to time; with power also to admit orphans and minors when and as often as there may be occasion, to make choice of guardians or tutors, and to appoint guardians, next friends or tutors over such as the said court shall judge too young or incapable according to the rules of the common law to make choice themselves, and to order and direct the binding and putting out of orphans or minors apprentices to trades, husbandry or other employment as shall be thought fit; and that all guardians, *prochains amis* or tutors which shall be appointed by the respective Orphans' courts shall be admitted and received without further admittance to prosecute and defend all actions and suits relating to their pupils, orphans or minors, as the case may require, in any court or courts of this province and counties annexed.

[Section IX.] And it is further enacted, That if any person or persons being duly summoned ten days before the day to be appointed for his or their appearance in the respective Orphans' court[s] to which the summons is returnable, shall refuse or neglect to appear according to summons, or if when they appear do refuse or delay to become bound to bring in their inventories or render accounts as abovesaid, then it shall and may be lawful for the justices of the respective Orphans' courts to issue forth their warrants for arresting and committing the person or persons so refusing or neglecting to the county gaol, where he or they are or can be found, there to remain until they comply with the court's order in that behalf.

Provided always, That those who bring inventories, give bond and make accounts in the Orphans' courts pursuant to this act, shall not be obliged to give bond, exhibit inventories or accounts for the same things or estate to the Register-General's office or elsewhere, but that all persons having the power of probate of wills and granting administrations in this government shall cause all inventories and accounts as shall be brought to them relating to orphans or minors' estates into the respective Orphan's courts as aforesaid, to be filed and kept

there, and shall receive and take the fees due for the same as if they were to be filed, entered, copied and transacted in the Register-General's office.

[Section X.] And it is further enacted, That if any person or persons who shall be so as aforesaid admitted or appointed guardians or tutors to orphans or minors by any of the said Orphans' courts, shall receive and give discharges for any sums of money, debts, rents or dues belonging to such orphan or pupil for whom they are intrusted, such discharges or receipts shall be binding and conclusive to and upon the orphan when he attains his full age, and shall be most effectual in law to discharge the person or persons that takes [sic] the same. And when any orphan is of full age and his guardian or tutor hath rendered his account to the Orphans' court pursuant to the direction[s] of this act, and paid the orphan his full due according to the order of the Orphans' court, then the orphan shall acknowledge satisfaction in the said court; but in case the orphan refuse so to do, then the Orphans' court shall certify how the guardian has accounted and paid, which shall be a sufficient discharge to the guardian, tutor or trustee, executor or administrator who shall so account and pay; and thereupon all bonds entered into or given to the court by the person or persons so discharged shall be delivered up to be canceled, and all recognizances so entered into shall be crossed and discharged; and that all officers concerned in carrying on the affairs of the Orphans' court shall be allowed such reasonable fees for what they do therein as the justices of the said respective courts shall see cause to order, having due regard to the poverty of the orphans and just demerit of what shall of necessity be done in the premises by virtue of these presents.

[Section XI.] And it is further enacted by the authority aforesaid, That all the laws formerly made and now in force concerning the erecting, regulation or jurisdiction of county courts, provincial courts, or Orphans' courts shall, from and after the publication of the laws now made for the establishment and regulation of the said courts, be repealed, and are hereby repealed, annulled and made void to all intents and purposes.

[Section XII.] And be it further enacted by the authority aforesaid, That the sheriff of every respective county shall meet and attend the judges into and out of their respective bailiwicks; which said judges shall be allowed out of the respective county rates, during their sitting and traveling in that service, twenty shillings each for every day, which shall be in lieu of all other charges and provision.

Passed October 28, 1701; repealed by the Queen in Council, February 7, 1705-6. See Appendix I, Section II, the Ordinance for Establishing Courts, and the Act of Assembly, passed February 28, 1710-11, Chapter 168.

CHAPTER CVII.

AN ACT DIRECTING THE PUNISHMENT OF LARCENY UNDER FIVE SHILLINGS.

Whereas by the seventh law of this government, made at Newcastle in the year one thousand seven hundred,¹ the punishment for stealing is very severe, and the manner of prosecuting such offenders may be tedious, as also very chargeable; for the preventing whereof:

[Section I.] Be it enacted by the Proprietary and Governor, by and with the advice and consent of the freemen of this Province and Territories in General Assembly met, and by the authority of the same, That if any person within this government shall at any time hereafter steal any goods whatsoever, under the value of five shillings, it shall and may be lawful for any justice, before whom such offender shall be brought, upon proof thereof to punish such person or persons by ordering him or her to be publicly whipped upon his or her bare back, not exceeding fifteen lashes, and restore the goods to the party wronged, or pay the value thereof; and also shall [sic] pay the charge of whipping and prosecution, any act or law in this government to the contrary in anywise notwithstanding.

Passed October 28, 1701; allowed to become a law by lapse of time, in accordance with the proprietary charter, having been considered by the Queen in Council, February 7, 1705-6, and not acted upon. See Appendix I, Section II; repealed by an Act of Assembly, passed May 31, 1718, Chapter 236.

¹ Passed November 27, 1700, Chapter 7.