

province where any of the said offenses shall happen to be committed.

Which said provincial judges shall have power and are hereby authorized and empowered from time to time to deliver the gaols of all persons which now are or hereafter shall be committed for treasons, murders and such other crimes as (by the laws of this province) now are or hereafter shall be made capital or felonies of death as aforesaid; and for that end from time to time to issue forth such necessary precepts and process and force obedience thereto, as justices of assize, justices of oyer and terminer, and of gaol delivery may or can do in the realm of Great Britain.

Provided always, That the fees due to the judges and officers of the said court for hearing and determining any of the said capital offenses for anything done there shall be double the fees usually taken in the general quarter-sessions held in any the counties in this province, anything herein or in any other law to the contrary notwithstanding.

Passed May 28, 1715. Repealed by the Lords Justices in Council July 21, 1719. See Appendix IV, Section II.

CHAPTER CCXIII.

AN ACT FOR ESTABLISHING THE SEVERAL COURTS OF COMMON PLEAS IN THIS PROVINCE.

[Section I.] Be it enacted by Charles Gookin, Esquire, by the royal approbation Lieutenant-Governor, under William Penn, Esquire, Proprietary and Governor-in-Chief of the Province of Pennsylvania, by and with the advice and consent of the freemen of the said Province in General Assembly met, and by the authority of the same, That a competent number of persons shall be commissioned by the governor or his lieutenant, under the broad seal of this province, who shall hold and keep a court of record in every county, which shall be called and styled The County Court of Common Pleas, and shall be holden

four times in every year, at the places where the general quarter-sessions shall be respectively kept, viz., at Philadelphia, for the county and city of Philadelphia, on the day called the first Wednesday next after the day appointed for the quarter-sessions to begin on [there, in] the months called March, June, September and December; at Bristol, for the county of Bucks, on the ninth day following inclusive in every of the said months; and at Chester, for the county of Chester, on the day called the last Tuesday, in the months called May, August, November and February. Which said justices or any three of them (according to the tenor and directions of their commissions) shall hold pleas of assizes, *scire facias*, replevins, and hear and determine all and all manner of pleas, actions, suits and causes, civil, personal, real and mixed, as near as conveniently may be to the rules of the common law, and to the course and practice of the King's court of common pleas at Westminster, and according to the laws and constitutions of this province.

[Section II.] And be it further enacted by the authority aforesaid, That every of the said justices shall and are hereby empowered to grant, under the seal of the respective counties, replevins, writs of partition, writs of view and all other writs and process upon the said pleas and actions cognizable in the said respective courts, as occasion may require, excepting the original process, which are to be granted under the seal of the respective justices.

[Section III.] And be it further enacted, That the said justices of the said respective courts shall and are hereby empowered to issue forth subpoenas under their respective hands and seal of the counties, into any county or place of this province for summoning or bringing any person or persons to give evidence in or upon the trial of any matter or cause whatsoever depending before them, or any of them, under such pains and penalties as by the rules of the common law and course and practice of the King's courts at Westminster are usually appointed.

[Section IV.] And be it further enacted, That upon any judgment obtained in any of the said courts of this province, and execution returned by the sheriff or coroner of the proper

county where such judgment was obtained that the party is not to be found; or hath no lands or tenements, goods or chattels in that county; and thereupon it is testified that the party skulks, or lies hid, or hath lands, tenements, goods or chattels in another county of this province, it shall and may be lawful to and for the court that issued out such execution to grant, and they are hereby required to grant, an alias execution with a *testatum*, directed to the sheriff or coroner of the county or place where such person lies hid, or where his lands or effects are, commanding him to execute the same, according to the tenor of such writ or writs, and make return thereof to the court of common pleas, where such recovery is had or judgment given.

And if the sheriff or coroner (to whom any such writ or writs shall be directed) shall refuse or neglect to execute and return the same accordingly, he shall be amerced in the court where he ought to return it, and be liable to the action of the [party] grieved and the said ameracements shall be truly and duly [set] according to the quality of the offense, and estreated by the prothonotary of the respective courts of common pleas of this province, into the next succeeding supreme or provincial court in course, that thence process may issue out against the offenders for levying such fines and ameracements as shall be unpaid to the uses for which they are or shall be appropriated.

[Section V.] And be it further enacted by the authority aforesaid, That if any defendant or defendants in any suit or action, by reason of his or their sudden departure out of this province, shall require a more speedy determination in such action or suit, than can be obtained by the common or ordinary rules of proceeding in any of the said courts of common pleas in this province, the said justices in the said respective courts, upon application to them made, shall grant to such defendant or defendants special courts, and shall [proceed] to hear and determine the premises, according to the course and practice [of] the said courts of common pleas.

Provided always, That before the said justices shall grant such special court or proceed to hear and determine the premises, such defendant shall give bail to the plaintiff's action, by

recognizance according to the course and practice of the said court of common pleas.

Provided also, That the fees due to the justices and officers of each special court for anything done there, shall be double the fees usually by them taken for the same in the said court of common pleas, anything herein or [in] any other law contained to the contrary notwithstanding.

And to prevent the excessive charges that have of late arisen upon executing writs of inquiry of damages:

[Section VI.] It is hereby enacted, That the justices who give any interlocutory judgment shall (at the motion of the plaintiff or his attorney in the action where such judgment is given) make an order, in the nature of a writ of inquiry, to charge the jury attending the same or the next court after such judgment is given, to inquiry of the damages and costs sustained by the plaintiff in such action, which inquiry shall be made and evidence given in open court; and after the inquest consider thereof, they shall forthwith return their inquisition under their seals; whereupon the court may proceed to give judgment as upon inquisitions of that kind returned by the sheriff.

[Section VII.] And be it further enacted by the authority aforesaid, That there may be a competent number of persons of honest disposition and learned in the law, admitted by the justices of the said respective courts to practice as attorneys there, who shall behave themselves justly and faithfully in their practice, and if they misbehave themselves therein, they shall suffer such penalties and suspensions as attorneys at law in Great Britain, are liable [sic] in such cases; by which said attorneys actions may be entered, and writs, process, declarations and other pleadings and records, in all such actions and suits as they shall respectively be concerned to prosecute or defend, from time to time, may be drawn, and with their names and proper hands signed; which said attorneys so admitted may practice in all the courts of this province without any further or other license or admittance.

And that the attorney for the plaintiff in every action shall file his warrant of attorney, in the prothonotary's office, the

same court he declares, and the attorney for the defendant shall file his warrant of attorney, the same court he appears; and if they neglect so to do they shall have no fee allowed them in the bill of costs, nor be suffered to speak in the cause till they file their warrants respectively.

Passed May 28, 1715. Repealed by the Lords Justices in Council July 21, 1719. See Appendix IV, Section II.

CHAPTER CCXIV.

AN ACT FOR THE BETTER ASCERTAINING THE PRACTICE OF THE COURTS OF JUDICATURE IN THIS PROVINCE.

Whereas the law (which ought to be the rule and standard of all judicial proceedings) is in itself just and grounded upon that most excellent principle of doing to others what we would have done to us. Nevertheless complaints are made that the practice of the law in this province falls under some irregularities. For rectifying whereof, and to prevent the like inconveniency for the future, and to the end that the said courts of judicature may be governed by the same rules and course of proceedings throughout this province:

[Section I.] Be it enacted by Charles Gookin, Esquire, by the royal approbation Lieutenant-Governor, under William Penn, Esquire, Proprietary and [Governor-in-Chief] of the Province of Pennsylvania, by and with the advice and consent of the freemen [of] the said Province in General Assembly met, and by the authority of the same, That the first commencement of all suits or actions in the courts of common pleas, within this province, shall be by the plaintiffs or their attorneys taking out or obtaining writs of summons, *capias* or attachment (as the case may require), under the hand and seal of one of the justices of the said courts, directed to the sheriff or coroner of the proper county, returnable to the next court, after the date or *teste* thereof; which writs shall contain and express the names of the plaintiffs and defendants, with the places of abode and