

and from thence to the next sitting of the general assembly and no longer.

Passed September 17, 1785. Recorded L. B. No. 3, p. 39.

CHAPTER MCLXXXVII.

AN ACT CONCERNING DIVORCES AND ALIMONY.

(Section I. P.L.) Whereas it is the design of marriage and the wish of parties entering into that state that it should continue during their joint lives, yet where the one party is under natural or legal incapacities of faithfully discharging the matrimonial vow, or is guilty of acts and deeds inconsistent with the nature thereof, the laws of every well regulated society ought to give relief to the innocent and injured person:

Therefore:

[Section I.] (Section II. P.L.) Be it enacted and it is hereby enacted by the Representatives of the Freemen of the Commonwealth of Pennsylvania in General Assembly met and by the authority of the same; That where a marriage hath been heretofore or shall hereafter be contracted and celebrated between any two persons and it shall be adjudged in the manner hereinafter mentioned that either party at the time of the contract was and still is naturally impotent or incapable of procreation, or that he or she hath knowingly entered into a second marriage in violation of the previous vow he or she made to the former wife or husband, whose marriage is still subsisting, or that either party hath committed adultery or wilful and malicious desertion and absence without a reasonable cause for and during the term and space of four years in every such case it shall and may be lawful for the innocent and injured person to obtain a divorce not only from bed and board but also from the bond of matrimony itself.

[Section II.] (Section III. P.L.) And be it further enacted by the authority aforesaid, That if any person hath been or shall be injured in any of the ways before mentioned, the husband

in his own proper person or the wife by her next friend may exhibit his or her petition or libel to the justices of the supreme court of this state in term time or to one or more of the same justices in the vacation, at least thirty days before the next term, setting forth therein particularly and specially the causes of his or her complaint, and shall together with such petition or libel also exhibit an affidavit on oath or affirmation, taken before one of the same justices or before some justice of the court of common pleas or justice of the peace within the county in this state where he or she resides, that the facts contained in the said petition or libel are true to the best of his or her knowledge and belief, and that the said complaint is not made out of levity or by collusion between the said husband and wife, and for the mere purpose of being freed and separated from each other; but in sincerity and truth for the causes mentioned in the said petition or libel; and thereupon a subpoena may and shall issue from the said court signed by one of the justices thereof, directed to the person so complained against, commanding him or her to appear at the next supreme court to answer the said petition or libel and upon due proof at the return of the said process that a copy thereof was served either personally on the said party and the original shown to him or her under the seal of the court or that he or she could not be found, and that a copy thereof was left at the place of his or her usual and last abode at least fifteen days before the day of said return inclusive, if he or she shall refuse or neglect to appear, then an alias subpoena shall issue, returnable the first day of the next term, and be served personally in manner aforesaid, but if he or she cannot be found, then proclamation shall be publicly made by the sheriff of the city and county of Philadelphia on three several market-days at the court house of the said city and county and by the sheriff of the proper county on three several days in term time at the court house for the party to appear and answer as commanded by the subpoena and that notice be also given in some of the public newspapers of said city for four successive weeks previous to the return day of the said process; and in the meantime the said court shall and may make such preparatory rules and orders in the

cause that the same may be brought to issue or a hearing at the second term when the court may determine the same, ex parte, if necessary. But if the defendant shall appear and answer agreeably to the rules of the court and either of the parties shall desire any matter of fact that is affirmed by the one and denied by the other to be tried by jury the same shall be tried accordingly at bar or at nisi prius in the county where the said fact is charged to have arisen, and in case the ground of the petition or libel be for the cause of adultery committed within this state, then and in such cases, an authenticated transcript of the record of the conviction and attainder of the said offence shall be filed together with the said petition or libel, and shall be admitted as good evidence thereof at the hearing; but if the said offence is charged to have been committed within this state, and that the party fled before conviction or that it was done beyond the seas or without the limits and jurisdiction of this state, then the same may be put in issue, and tried by a jury at bar, if either party shall desire the same or, if not desired to be so tried, may be inquired into by the court in the presence of the parties, or if either of them will not attend, then ex parte, by the examination of witnesses on interrogatories, exhibits, or other legal proof, had either before or at the hearing

[Section III.] (Section IV. P.L.) And be it further enacted by the authority aforesaid, That if any husband or wife, upon false rumor in appearance well founded, of the death of the other (where such other has been absent for the space of two whole years) hath married, or shall marry again, he or she shall not be liable to the pains of adultery; but it shall be in the election of the party remaining unmarried, at his or her return, to insist to have his or her former wife or husband restored, or to have his or her own marriage dissolved, and the other party to remain with the second husband or wife; and in any suit or action instituted for this purpose within one year after such return, the court may and shall sentence and decree accordingly.

[Section IV.] (Section V. P.L.) And be it further enacted by the authority aforesaid, That in any action or suit com-

menced in the said court for a divorce for the cause of adultery, if the defendant shall allege and prove, that the plaintiff has been guilty of the like crime or has admitted the defendant into conjugal society or embraces after he or she knew of the criminal fact, or that the said plaintiff (if the husband) allowed of the wife's prostitutions, and received hire for them, or exposed his wife to lewd company whereby she became ensnared to the crime aforesaid; it shall be a good defence and a perpetual bar against the same.

[Section V.] (Section VI. P.L.) And be it further enacted by the authority aforesaid, That it shall and may be lawful for the said supreme court after hearing any cause commenced before them by virtue of this act to determine the same as to law and justice shall appertain, by either dismissing the petition or libel or sentencing and decreeing a divorce and separation from the nuptial ties or bonds of matrimony, or that the marriage is null and void, agreeably to the prayer thereof and that after such sentence nullifying or dissolving the marriage, all and every the duties, rights and claims accruing to either of said parties at any time theretofore in pursuance of the said marriage shall cease and determine, and the said parties shall severally be at liberty to marry again in like manner as if they never had been married.

(Section VII. P.L.) Provided always nevertheless, That he or she who hath been guilty of the adultery may not marry the person with whom the said crime was committed during the life of the former husband or wife: Provided also, That nothing herein contained shall be construed to extend to or affect or render illegitimate any children born of the body of the wife, during the coveture.

[Section VI.] (Section VIII. P.L.) And be it further enacted by the authority aforesaid, That where any woman shall be divorced as aforesaid, and shall afterward openly cohabit at bed and board with the person named in the petition or libel and proved to be the partaker in her crimes, she shall not and she is hereby declared to be incapable to alienate, directly or indirectly, any of her lands, tenements or hereditaments, but that all deeds, wills, appointments, and conveyances there-

of, shall be absolutely void and of none effect, and after her death, the same shall descend and be subject to distribution, in like manner as if she had died seized thereof intestate.

[Section VII.] (Section IX. P.L.) Provided always and it is hereby further enacted by the authority aforesaid, That no person shall be entitled to a divorce from the bond of matrimony by virtue of this act who is not a citizen of this state and who has not resided therein at least one whole year previous to the filing his or her petition or libel.

[Section VIII.] (Section X. P.L.) And be it further enacted by the authority aforesaid, That if any husband shall maliciously, [either] abandon his family or turn his wife out of doors, or by cruel and barbarous treatment endanger her life or offer such indignities to her person as to render her condition intolerable or life burdensome, and thereby force her to withdraw from his house and family, it shall and may be lawful for the supreme court upon complaint and due proof thereof in manner aforesaid, at the first or any subsequent term, to grant the wife a divorce from bed and board and also to allow her such alimony as her husband's circumstances will admit of, so as the same do not exceed the third part of the annual profits or income of his estate, or of his occupation of labor; or to decree but one of them, as the justice of the case shall require; which shall continue until a reconciliation shall take place, or until the husband shall by his petition or libel offer to receive and cohabit with her again and to use her as a good husband ought to do; and then in such cases the court may either suspend the aforesaid sentence or decree or in case of her refusal to return and cohabit under the protection of the court to discharge and annul the same according to their discretion; and if he fails in performing his said offers and engagements the former sentence or decree may be revived and enforced and the arrears of the alimony ordered to be paid.

[Section IX.] (Section XI. P.L.) And be it further enacted by the authority aforesaid, That the said court may award costs to the party in whose behalf the sentence or decree shall pass or that each party shall pay his or her own costs as to them shall appear to be reasonable and just.

∟[Section X.] (Section XII. P.L.) And be it further enacted by the authority aforesaid, That either of the parties in any suit or action to be brought in pursuance of this act after the final sentence or decree given may appeal therefrom to the high court of errors and appeals upon entering into a recognizance before one of the justices of the supreme court, with at least one good surety, in a sum amounting to double the costs incurred in the said supreme court, conditioned to prosecute the said appeal with effect, and the said appeal may and shall be prosecuted and conducted in the manner prescribed and directed by an act, entitled "An act for erecting an high court of errors and appeals,¹ with respect to appeals from the judge of the admiralty, and the register of the probate of wills, and for granting letters of administration, within this state; and their judgment with all the proceedings, shall be again remitted to the supreme court as in other cases.

Passed September 19, 1785. Recorded L. B. No. 3, p. 41, etc.

CHAPTER MOLXXXVIII.

AN ACT TO ENCOURAGE AND PROTECT THE MANUFACTURES OF THIS STATE BY LAYING ADDITIONAL DUTIES ON THE IMPORTATION OF CERTAIN MANUFACTURES WHICH INTERFERE WITH THEM.

(Section I. P.L.) Whereas divers useful and beneficial arts and manufactures have been gradually introduced into Pennsylvania, and the same have at length risen to a very considerable extent and perfection, insomuch that during the late war between the United States of America and Great Britain when the importation of European goods was much interrupted and often very difficult and uncertain, the artizans and mechanics of this state were able to supply in the hours of need not only large quantities of weapons and other implements but also ammunition and clothing, without which the war could not have been carried on, whereby their oppressed country was greatly assisted and relieved:

¹ Passed February 28, 1780, Chapter 879.