

CHAPTER MDLXXV.

AN ACT TO ESTABLISH THE JUDICIAL COURTS OF THIS COMMONWEALTH IN CONFORMITY TO THE ALTERATIONS AND AMENDMENTS IN THE CONSTITUTION.

Whereas it is expedient to carry into effect the provisions of the constitution respecting the court of justice in this commonwealth, and so to organize the same as to secure an efficient, safe and uniform administration of the laws; therefore:

[Section I.] (Section I, P. L.) 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 be established, in the same manner, and with the same powers, as it hath been heretofore established by the laws of this commonwealth, consistently with the provisions made in and by the constitution of this state. Provided nevertheless, That from and after the thirty-first day of August next, there shall be only three terms of the said court holden in every year; that is to say, one term beginning on the first Monday in January, which term shall continue three weeks, and no longer; another term beginning the first Monday in April; and a third term beginning on the first Monday in September; each of which last mentioned terms shall continue two weeks, and no longer; and that the courts of nisi prius shall be held at such intermediate times as the justices of the said court shall judge most convenient for the people.

[Section II.] (Section II, P. L.) And be it further enacted by the authority aforesaid, That in order to render effectual the provisions made in the said constitution for establishing the courts of common pleas, this commonwealth shall be, and hereby is, divided into five districts or circuits, to be limited as follows; that is to say, the first circuit to consist of the city and county of Philadelphia, and the counties of Bucks,

Montgomery and Delaware; the second circuit to consist of the counties of Chester, Lancaster, York and Dauphin; the third circuit to consist of the counties of Berks, Northampton, Luzerne and Northumberland; the fourth circuit to consist of the counties of Cumberland, Franklin, Bedford, Huntingdon and Mifflin; and the fifth circuit or district to consist of the counties of Westmoreland, Fayette, Washington and Allegheny.

[Section III.] (Section III, P. L.) And be it further enacted by the authority aforesaid, That in and for each of the said districts or circuits, a person of knowledge and integrity, skilled in the laws, shall be appointed and commissioned by the governor, to be president and judge of the courts of common pleas, within such district or circuit, and that a number of other proper persons, not fewer than three, nor more than four, shall be appointed and commissioned judges of the courts of common pleas, in and for each and every of the counties of this commonwealth, which said presidents and judges shall, after the said thirty-first day of August next, respectively, have and execute all and singular the powers, jurisdictions and authorities of judges of the courts of common pleas, judges of the courts of oyer and terminer and general gaol delivery, judges of the orphans' courts, and justices of the courts of quarter sessions of the peace, agreeably to the laws and constitution of this commonwealth.

[Section IV.] (Section IV, P. L.) Be it enacted by the authority aforesaid, That the courts of common pleas and quarter sessions of the peace, shall be held at the same times, and in the same places, as they are now held under the subsisting laws of this commonwealth, except the courts of common pleas and the courts of quarter sessions of the peace in the county of Delaware, which shall be held at the times following the courts of common pleas, on the first Tuesdays in the months of February, May, August and November, and the said courts of quarter sessions on the Mondays next preceding the first Tuesdays in the several months aforesaid.

[Section V.] (Section V, P. L.) And be it further enacted by the authority aforesaid, That the said president and judges,

or any two of them, and the register of wills, shall compose the register's court in each county, and shall have all and singular the powers, jurisdictions and authorities thereunto belonging.

[Section IV.] (Section VI, P. L.) And be it further enacted by the authority aforesaid, That the orphans' courts shall be held at such stated times as the judges of the said court, in their respective counties, shall for each year ordain and establish.

[Section VII.] (Section VII, P. L.) And be it further enacted by the authority aforesaid, That whensoever any person shall be indicted in any court of oyer and terminer, gaol delivery, or sessions of the peace, the party charged shall be at liberty to remove the said indictment and all proceedings thereupon, or a transcript thereof, into the supreme court, by a writ of certiorari or by writ of error, as the case may require. Provided always, That no such writ of certiorari or writ of error, shall issue or be available to remove the said indictment and proceedings thereupon, or a transcript thereof or to stay execution of the judgment thereupon rendered, unless the same shall be specially allowed by the supreme court, or one of the justices thereof, upon sufficient cause to it or him shown, or shall have been sued out with the consent of the attorney general, which special allowance or consent shall be in writing and certified on the said writ.

[Section VIII.] (Section VIII, P. L.) And be it enacted by the authority aforesaid, That where any suit shall be depending in any court in this commonwealth, and either of the parties shall die before final judgment, the executor or administrator of such deceased, who was plaintiff, petitioner or defendant, in case the cause of action doth by law survive, shall have full power to prosecute or defend such action until final judgment, and the defendant or defendants are hereby obliged to answer thereto accordingly, and the court before whom such cause may be depending is hereby empowered and directed to hear and determine the same, and to render judgment for or against the executor or administrator, as the case may require, and if such executor or administrator, having been duly served

with a scire facias, or citation, from the office of the clerk of the court where such suit is depending, sixty days before the meeting thereof, shall neglect or refuse to become a party to the suit, the court may render judgment against the estate of the deceased party, in the same manner as if the executor or administrator had voluntarily made himself a party to the suit, and the executor or administrator who shall become a party as aforesaid, shall, upon motion to the court where the suit is depending, be entitled to a continuance of the same until the next term or time of holding of the said court.

[Section IX.] (Section IX, P. L.) Be it further enacted by the authority aforesaid, That the said presidents and judges shall, from and after the said thirty-first day of August next, severally, have the powers to issue writs of habeas corpus in vacation time, and out of term, and to give relief thereupon in the manner and as fully as the president of any court of common pleas of this commonwealth at present may or can do, by virtue of an act of assembly, entitled "An act for the better securing personal liberty and preventing wrongful imprisonments."

[Section X.] (Section X, P. L.) And be it further enacted by the authority aforesaid, That all acknowledgments and probates of deeds and conveyances of and concerning any lands, tenements and hereditaments, lying or being in any part of this state, made and done, before any one of the assistant or associate judges of the courts of common pleas of any county within this state, shall be as effectual and available in law, to all intents and purposes whatsoever, as if the same were done before one of the judges of the supreme court, or before the president of any of the courts of common pleas within this commonwealth.

[Section XI.] (Section XI, P. L.) And be it further enacted by the authority aforesaid, That where lands are sold by the sheriffs of the several counties of this state by virtue of writs of fieri facias, levari facias or venditioni exponas, issuing out of the supreme court, it shall and may be lawful for such sheriffs to acknowledge the execution of deeds of conveyance

to the purchasers of such lands before the justices of the to the purchasers, of such lands before the justices of the supreme court, or one of them, at their court of nisi prius, held in and for the county in which such lands lie, and that such acknowledgments shall be as good and effectual, as if the same were made before the justices of the supreme court in banc; and that whenever any lands, tenements or hereditaments shall happen to be sold by virtue of writs of testatum, it shall and may be lawful for the sheriff who sells the same to acknowledge the deed he makes to the buyer in the court of common pleas of the county wherein the sale is made, which shall be as valid and effectual as if acknowledged in the county from which the process issued.

[Section XII.] (Section XII, P. L.) And be it further enacted by the authority aforesaid, That the prothonotaries of the several courts of common pleas within this commonwealth shall have the like power to sign all judgments, and writs and process, and to take bail in all actions in their respective courts, as they had for those purposes while they were justices of the said courts, and, after the thirty-first day of August next, may as legally do the same, as any judge of the same courts may or can do, affixing to all such writs and process the seals of the said courts, respectively, and that the prothonotary of the supreme court shall have power to enter judgments confessed, in the manner usually practiced in the said supreme court, which shall have like obligatory force as if the said judgments were signed with his name, and shall have the like power to take bail in all actions and suits removed thereto from any court or jurisdiction within this commonwealth, as by law he has, or may, or can do, in actions and suits originally commenced in the said supreme court, or as any justice of the same court may or can do, and that the prothonotaries and the clerks of the said courts of record in this commonwealth shall have full power and authority to administer oaths and affirmations, respectively, in conducting the business of their respective offices, in as full and ample manner as any judge or justice of the court aforesaid might or could do therein.

[Section XIII.] (Section XIII, P. L.) And be it further enacted by the authority aforesaid, That all writs and suits, as well civil as criminal, which, on the said thirty-first day of August, shall be depending and undetermined in any court of justice of this commonwealth, shall be deemed to be depending in the same state, and shall proceed to a final determination before the several courts in this act mentioned, having either original or appellate jurisdiction therein.

(Section XIV, P. L.) And whereas it frequently happens that judgments long remain unsatisfied on record, although the moneys for which these judgments have been rendered are justly discharged, whereby defendants in such cases, as well as the subsequent purchasers of real property, suffer much vexation and inconvenience.

[Section XIV.] Be it enacted by the authority aforesaid, That from and after the thirty-first day of August next, each and every person, having received satisfaction for his or their debt or damages, recovered by judgment in any court of record within this commonwealth, shall, at the request of the defendant or defendants in the action, or of his, her or their legal representatives, or other persons concerned in interest therein, on payment of the costs of suit, and on tender of his reasonable charges and the costs of office for entering satisfaction, within eighty days after such request made, enter satisfaction of the judgment in the office of the prothonotary of the court where such judgment was or shall be entered, which shall forever thereafter discharge, defeat and release the same, and if such person, having received such satisfaction, as aforesaid, by himself, or his attorney, shall not, within eighty days after request and payment of the costs of suit, and tender of charges, as aforesaid, repair to the said office, and there enter satisfaction, as aforesaid, he, she or they refusing or neglecting so to do, shall forfeit and pay unto the party or parties aggrieved any sum of money, not exceeding one-half of the debt or damages so adjudged and recovered, to be sued for and demanded by the defendants or persons damnified, in like manner as other debts are now recoverable by law in this commonwealth.

[Section XV.] (Section XV, P. L.) And be it further enacted by the authority aforesaid, That no judge of any courts of record mentioned in this act shall practice as an attorney or counsellor, in any court of justice in this commonwealth, or elsewhere.

(Section XVI, P. L.) And whereas it is requisite that the good people of this commonwealth should enjoy the full benefit of a competent jurisdiction within this state, for the hearing, determining and judging in the last resort, upon complaints of error at common law; and also that a competent court of appeals should be provided within the same, for reviewing, reconsidering and correcting the decrees and sentences of the several register's courts.

[Section XVI.] Be it therefore enacted by the authority aforesaid, That when any final judgment shall be hereafter given, in the supreme court, in any suit or action real, personal or mixed, or when any final decree or sentence shall be pronounced by any register's court, the party or parties, his, her or their heirs, executors or administrators against whom such judgment, decree or sentence shall be given, may sue forth, in the case of a complaint of error in the supreme court, a writ of error, according to the course of the common law, under the less seal of the commonwealth, directed to the chief justice or other justice or justices of the said court, commanding him or them to cause the record, and all other things concerning the judgment complained of, to be brought before the court hereinafter mentioned and constituted, and in case of an appeal from the definitive sentence or decree of any register's court, the appellant or appellants shall be allowed, and shall have his, her or their appeal to the high courts of errors and appeals hereinafter constituted.

[Section XVII.] (Section XVII, P. L.) And be it further enacted by the authority aforesaid, That the judges of the supreme court, the president of the several courts of common pleas for the five districts or circuits aforesaid, together with three other persons of known legal abilities, to be appointed and commissioned during good behavior, and removable from office in the same manner as the judges of the supreme court

now are, be, and they are hereby constituted a court of record, by the name, style and title of the high court of errors and appeals, which said high court of errors and appeals, or any five or more of the justices composing the same, shall have power and authority to examine all such errors as shall be assigned or found in or upon any such judgment given in the supreme court, and thereupon to affirm or reverse the same judgment, as the course of the common law and justice shall require, other than for errors to be assigned for want of form in any writ, return, plaint, bill, declaration, or other pleadings, process, verdict or proceeding whatsoever, and that after the said judgment shall be affirmed, or reversed, the record and proceedings, and all things concerning the same, shall be remitted into the said supreme court, to the end that such further proceedings may be had thereon, as well for execution, as otherwise, as to justice shall appertain, and the said high court of errors and appeals shall receive, hear and decide all such appeals from the register's courts as aforesaid. Provided always, That such of the justices of the supreme court, and such of the presidents of the courts of common pleas, who shall have heard and determined, or given any judgment, in any of the causes removed or brought by writ of error, or by appeal, into the said high court of errors and appeals, shall be excluded from sitting judicially on the hearing of the same cause or controversy in the said high court of errors and appeals. Provided nevertheless, That no such writ of error shall be granted, nor any appeal allowed, as aforesaid, unless an affidavit be filed with the clerk of the said high court of errors and appeals made by the plaintiff or plaintiffs in error or the appellant, or appellants, or his, her or their agent or attorney in fact, attesting that the matter in controversy exceeds the value of four hundred dollars; and the plaintiff in error, or appellant, or in case of his, her or their absence, then his, her or their agent or attorney in fact, shall enter into recognizance to the defendant in error, or appellee, with two sufficient sureties, in double the sum, or double the value, in dispute, conditioned to prosecute his, her or their writ of error, or appeal,

with effect in the said high court of errors and appeals, and that if the judgment or decree shall be affirmed, or if the plaintiff or plaintiffs in error, or appellant, shall fail to prosecute his, her or their suit with effect, then to satisfy the condemnation money, together with damages, or otherwise abide the judgment in error, or decree in appeal, with double costs, which said recognizance shall be taken before one of the justices of the supreme court, or before the register for the probate of wills and granting letters of administration, as the case may be, and subscribed by such judge or register; but if the said judgment or decree shall be reversed, each party shall pay his, her or their own costs in the said high court of errors and appeals, and until such security shall be given, the power, authority or proceedings of the said supreme court or register's court, respectively, shall not be suspended.

[Section XVIII.] (Section XVIII, P. L.) And be it further enacted by the authority aforesaid, That upon the hearing of any cause litigated before the said register's court, the depositions of the several witnesses examined therein, shall be taken in writing and made part of the proceedings in the cause, upon which the said high court of errors and appeals may reverse the decree of the said register's court, for any error arising either in law or fact, or affirm the same, according to the merits and justice of the case. Provided always, That if the register's court upon a dispute upon facts arising before them, shall send an issue into the court of common pleas of the county to try the said facts, which they shall do at the request of either party, and a verdict establishing the said facts be returned, the said facts shall not be re-examined on appeal, and that no appeal from the decree of the register's court, concerning the validity of a will, or the right to administer, shall stay the proceedings, or prejudice the acts of any executor or administrator, pending the same; provided the executor shall give sufficient security for the faithful execution of the will and testament to the register; but in case of refusal, the said register is hereby directed to grant letters of administration during the dispute, which shall suspend the power of such executor during that time.

[Section XIX.] (Section XIX, P. L.) And be it further enacted by the authority aforesaid, That the said high court of errors and appeals shall sit in the city of Philadelphia, at least once in every year; that is to say, on the second Monday in the month of July, and if there be any causes depending, the said court shall have power to adjourn from time to time, and to require and compel the attendance of sheriffs, coroners, constables and other ministeral officers, as fully as any court in this commonwealth can or may do.

[Section XX.] (Section XX, P. L.) And be it further enacted by the authority aforesaid, That no fine or common recovery, nor any judgment in any real, personal or mixed action, nor any appeal from the said register's court, shall be avoided, or reversed, for any defect or error therein, unless the writ of error be commenced, or the appeal brought and prosecuted with effect, within seven years after such fines levied, common recovery suffered, judgment signed or entered of record, or decree be pronounced. Provided nevertheless, That if any person, who is, or shall be, entitled to any such writ of error or appeal, as aforesaid shall, at the time such title accrued, be within the age of twenty-one years, covert, non compos mentis, in prison or out of the limits of the United States of America, that then such person, his or her heirs, executors or administrators (notwithstanding the said seven years be expired) shall and may bring his, her and their writ of error or appeal for the reversing of such fine, recovery or judgment, so as the same be done within five years after his or her full age, discoverture, coming to sound mind, enlargement out of prison, or return into some one the United States of America, but not afterwards nor otherwise.

[Section XXI.] (Section XXI, P. L.) And be it further enacted by the authority aforesaid, That each of the three persons to be appointed and associated with the judges of the supreme court and the presidents of the courts of common pleas, as judges of the said high court of errors and appeals, shall be entitled to the sum of six dollars for each day they shall attend upon the business of the said court, for which

the governor shall draw warrants upon the state treasurer, countersigned by the comptroller-general and register-general.

[Section XXII.] (Section XXII, P. L.) And be it further enacted by the authority aforesaid, That the act of assembly entitled "An act for erecting an high court of errors and appeals,"¹ passed the twenty-eighth day of February, in the year one thousand seven hundred and eighty, and so much of any former act or acts of assembly as is hereby altered or supplied shall be, and the same is hereby repealed and made void. Provided nevertheless, That all such writs of error and appeals, which have been heretofore brought, and were depending and undetermined in the said high court of errors and appeals, at the time of making and declaring the amendments and alterations of the constitution of this commonwealth, shall be held to be depending in the same state, and shall be determined by the justices of the said high court of errors and appeals established by this act, in the same manner as writs of error and appeals hereafter to be brought and returned into the said court.

Passed April 13, 1791. Recorded L. B. No. 4, p. 101 p etc.

Supplement passed September 30, 1791, Chapter 1601. Further supplement passed April 4, 1792, Chapter 1635. Further supplement passed April 17, 1795, Chapter 1845. Further supplement passed March 15, 1800, Chapter 2142. Section 7 repealed by the Act of Assembly of March 31, 1860, Chapter 376, P. L. of 1860, p. 452.

¹Chapter 879.