

said stream of water to its ancient course, or taking it in some other direction; in which latter case the course in the said inquisition shall be laid down and particularly described, together with the amount of the damages if any so found, duly expressed under the hands and seals of the said jurors; and the inquisition so taken together with the writ aforesaid, the said sheriff shall return to the said judges of the court of common pleas aforesaid; and if the said judges shall approve the same, then in that case, the said judges shall render judgment that the aforesaid persons, their associates or agents, or either of them, paying the money to the owner or owners, which may have been assessed by the jurors aforesaid, or paying the same into the hands of the prothonotary of said county, for the use of said owner or owners of said tract of land; the said David Mahon, John Simpson, George M'Candless, Robert Porter and John Duncan, their associates or agents, shall have full power and authority to enter into and upon the said premises, and to restore the said stream of water to its ancient course, or to conduct it some other course as in said inquisition shall have been described; and at all times thereafter, as occasion may require, making amends therefor, if any damages they shall do, to keep the same water-course in repair.

Approved April 7, 1807. Recorded in L. B. No. 11, p. 31.

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## CHAPTER MMDCCCXLII.

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A SUPPLEMENT TO, AND MAKING PERPETUAL AN ACT ENTITLED "AN ACT FOR THE RECOVERY OF DEBTS AND DEMANDS NOT EXCEEDING ONE HUNDRED DOLLARS BEFORE A JUSTICE OF THE PEACE, AND FOR THE ELECTION OF CONSTABLES, AND FOR OTHER PURPOSES." (1)

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 justices of the peace

of the several counties of this state and aldermen, shall have jurisdiction of all causes of action arising from contract, either expressed or implied, in all causes where the sum demanded is not above one hundred dollars; except in cases of real contract where the title to lands or tenements may come in question; or action upon promise of marriage.

Section II. (Section II, P. L.) And be it further enacted by the authority aforesaid, That the right to appeal from the judgment of a justice or alderman rendered on award of referees, shall be allowed in all cases where the judgment shall exceed twenty dollars; subject to all the consequences resulting from and by the fourth section of the act to which this is a supplement to the party appellant, if he shall fail; and subject moreover to the payment of four dollars to be paid by such party in lieu of counsel-fee, which the opposite party may have paid in sustaining his cause before the court; and on the reversal or an abatement of the amount of a judgment brought from before a justice of the peace or alderman by appeal, the defendant if the appellant, shall be allowed his daily pay and costs only, in case he produces no evidence before the court, other than that which he exhibited before the justices or referees; or in case of his having offered legal security if he is not a freeholder, for his appearance on an after day; or being a freeholder was refused time to prepare or produce his proofs; or in case of judgment against him by default, the plaintiff refused his consent to a rehearing.

Section III. (Section III, P. L.) And be it further enacted by the authority aforesaid, That a defendant who shall in any case refuse or neglect to set off his book account against a plaintiff, which shall not exceed the sum of one hundred dollars before a justice of the peace or alderman, shall be and is hereby forever barred from recovering against the party plaintiff by any after suit; but in case of judgment by default the defendant if he has any account to set off against the plaintiff's demand, shall be entitled to a rehearing before the justice or alderman, within twenty days; on proof being made either on the oath or affirmation of the defendant or other

satisfactory proof, that the defendant was absent when the process was served, and did not return home before the return-day of such process; or that he was prevented by sickness of himself, or other unavoidable accident, and the justice or alderman shall have power to render judgment for the balance in favor of the plaintiff or defendant, as justice may require.

Section IV. (Section IV, P. L.) And be it further enacted by the authority aforesaid, That it shall be the duty of the person in whose favor such judgment may be given, in all cases of payment of the amount thereof, together with the costs, within three months thereafter, either by himself or his agent, to enter satisfaction on the docket of the justice or alderman, under a penalty of one-fourth of the amount of the debt paid, for the use of the party aggrieved; except where one of the defendants (if there be more than one), shall by a writing to be filed by him in the said office within twenty days after payment, forbid the plaintiff so to do; and the usual fee for entering satisfaction, shall be charged to, and be paid by the defendant.

Section V. (Section V, P. L.) And be it further enacted by the authority aforesaid, That process to be awarded against a constable for default may be directed to and be executed by any other person who shall consent thereto; and having so consented, by accepting of such process, shall be bound to execute the same under a penalty of twenty dollars, to be recovered as other fines are recoverable by the act to which this is a supplement.

Section VI. (Section VI, P. L.) And be it further enacted by the authority aforesaid, That it shall be the duty of each and every alderman and justice of the peace, in case of his resignation or removal from office, and of his legal representatives, in case of the death of such alderman or justice of the peace, to deliver his docket, together with all the notes, bonds, accounts and papers in his possession, touching any judgment or suit entered thereon, to some other alderman of the city or to the nearest justice of the county: Provided, that if the alderman or justice so having resigned, or been removed, or the

legal representatives of a deceased alderman or justice, shall choose to retain the said docket, he or they shall on demand deliver a certified transcript of any judgment or proceedings in any suit therein, to the party or parties interested, under the penalty of one hundred dollars, to be recovered by the party grieved, in the same manner as debts of that amount are by law recoverable: And the said alderman or justice of the peace to whom the said docket or transcript shall be delivered shall issue process and proceed thereon in the same manner and with the like effect as the said justice so having died, resigned or having been removed, might have done, if he had remained in office.

Section VII. (Section VII, P. L.) And be it further enacted by the authority aforesaid, That if the party defendant shall not reside in the county where a judgment is had against him before a justice of the peace, the person in possession of the docket in which such judgment may be entered, on application to him made by the plaintiff or his agent, shall make out, certify, and deliver to such applicant, a transcript thereof; and also deliver all evidence in his possession connected therewith for the fee of twenty-five cents, for the recovery of the amount thereof with costs; any justice of the peace in any county where the defendant may reside or can be found, may proceed as in other cases.

Section VIII. (Section VIII, P. L.) And be it further enacted by the authority aforesaid, That any justice of the peace or alderman, shall take cognizance of any matter or thing made so by this act, and the act to which this is a supplement, for any sum exceeding one hundred dollars if the parties voluntarily appear before him for that purpose; and shall proceed for the recovery thereof by entering judgment if confessed; or if submitted to him by reference; but no execution shall issue before the expiration of one year from the date of such judgment, if the party defendant is a freeholder or shall have entered special bail; and the party plaintiff shall have the right at any time before the execution is issued, to file in the office of the prothonotary of the proper county, a transcript

of such judgment, which shall remain a lien on the real estate of the defendant until paid; but no execution shall be granted by the said prothonotary, the justice or alderman for the recovery thereof, with interest, before the expiration of one year, counting from the date of the judgment, except the defendant is not a freeholder or shall not have entered the requisite bail, before the justice; but if it shall afterwards appear by due proof on oath or affirmation that there is just cause to believe that any such judgment was confessed for the purpose and with a view to defraud just creditors, it shall be the duty of the justice or alderman to transmit a certified transcript of his proceedings to the prothonotary of the proper county, who shall file the same for adjudication of the court of common pleas, whose judgment thereon shall be final; and if on trial of the merits of the cause it shall be found that the sum for which judgment was confessed was not actually due at the time, both the parties, if both shall have been privy to the fraud, shall each pay a fine equal to the amount of such fraudulent judgment; and shall also pay the reasonable costs and expenses of the party prosecuting; or in any case of inability to pay such fine and costs, shall be imprisoned for six months; but if it shall appear on such trial, that the judgment was just, the party prosecuting shall pay all the costs of suit and the reasonable costs of the parties to such judgment.

Section IX. (Section IX, P. L.) And be it further enacted by the authority aforesaid, That where any writ of certiorari shall be issued to remove the proceedings before or judgment of any justice of the peace, or alderman, the judgment of the court of common pleas thereon shall be final, and no writ of error shall issue thereon; and awards made out by referees though not under seal, shall be good and available.

Section X. (Section X, P. L.) And be it further enacted by the authority aforesaid, That in all cases where a warrant, or *capias* on original process, may be issued against the person of a debtor, it shall and may be lawful for the proper constable of any township, town, ward or district, to take

bail for the appearance of the defendant before the justice from whom said warrant or *capias* may have been issued in the following words: "We A B and C D, are held and firmly bound unto E F, constable of \_\_\_\_\_ in the sum of \_\_\_\_\_ on condition that the said A B shall be, and appear before G H esquire, justice of the peace, in the \_\_\_\_\_ of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ to answer unto \_\_\_\_\_ in a plea of \_\_\_\_\_ Witness our hands and seals, the \_\_\_\_\_ day of \_\_\_\_\_" and if on the return of the said warrant or *capias*, the defendant shall not appear and enter bail before the justice in the nature of special bail, the constable may assign the obligation aforesaid to the plaintiff, if he will accept the same, which obligation may be sued in the name of the plaintiff as assignee of the said constable; but if the bail for the appearance so taken by the constable shall be insufficient, the constable shall be liable therefor, as sheriffs now are, to the plaintiff or plaintiffs named in the warrant or *capias*, notwithstanding such assignment; but if the defendant shall appear and enter special bail, the justice may proceed to the final determination of the suit according to law; and after judgment such bail shall be proceeded against by *scire facias*; and shall be liable in the same manner as special bail is now liable in cases in the courts of common pleas, and may surrender the principal to the jail of the proper county within ten days after service of the *scire facias*, in discharge of the bail: And provided also, that the bail to the constable may enter sufficient special bail to the suit, or cause it to be entered at the return of the warrant or *capias*, in discharge of the obligation where the defendant may neglect or refuse to appear; in which case the justice may proceed in the same manner as if the defendant had appeared.

Section XI. (Section XI, P. L.) And be it further enacted by the authority aforesaid, That the act, entitled "An act for the recovery of debts and demands not exceeding one hundred dollars before a justice of the peace, and for the election of constables, and for other purposes,"<sup>(1)</sup> except the twenty-first section thereof, be, and the same is hereby made perpetual.

Section XII. (Section XII, P. L.) And be it further enacted by the authority aforesaid, That the first and fifteenth sections of the act to which this is a supplement, be, and they are hereby repealed.<sup>(2)</sup>

WE DO HEREBY CERTIFY, That the bill entitled "A supplement to, and making perpetual, an act entitled, 'An act for the recovery of debts and demands not exceeding one hundred dollars, before a justice of the peace, and for the election of constables, and for other purposes therein mentioned,'" was presented to the Governor on Thursday, the twenty-sixth ultimo, but was not returned by him within ten days, (Sundays excepted) thereafter, and agreeably to the constitution it became a law.

Lancaster,  
April 9th, 1807.

GEO. BRYAN,  
Clerk of the Senate.

MATTHEW HUSTON,  
Clerk of the House of Representatives.

Recorded in L. B. No. 11, p. 33.

Note (\*) Chapter 2482; 17 Statutes at Large, p. 673.

Note (\*) See a supplement to act in text Chapter 2871; (Act April 13, 1807) *infra* this volume, p. 782.

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## CHAPTER MMDCCCXLIII.

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AN ACT TO RAISE BY WAY OF LOTTERY A SUM OF MONEY TO DEFRAY THE EXPENSES INCURRED BY THE TRUSTEES OF THE LUTHERAN CONGREGATION, IN AND NEAR THE VILLAGE OF STRASBURG, IN THE COUNTY OF LANCASTER.

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 Michael Withers, George Withers, William Duffield, esquire, John Kerr, esquire, James Whitehill, Jacob Baer, Nathaniel Sample, junior, John Baer, Isaac Burrows, Abraham Huber, and Moses Hemor, be, and