

CHAPTER MMMLXXX.

AN ACT SUPPLEMENTARY TO AN ACT, ENTITLED "AN ACT TO REGULATE ARBITRATIONS AND PROCEEDINGS IN COURTS OF JUSTICE."
(²).

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 from and after the first day of June next, it shall and may be lawful for either party, plaintiff or defendant, or their lawful attorney, in all civil actions or suits then brought or that may be brought in any court of this commonwealth to enter at the prothonotary's office a rule of reference, wherein the said party shall state his, her or their determination to have arbitrators chosen on a certain to be mentioned therein, for hearing and determining of all matters in variance between the parties in such suit or action, which rule shall be entered on record by the prothonotary, and the following proceedings shall be had thereon, that is; the party entering the rule of reference shall procure from the prothonotary a copy thereof under his hand and seal and serve the same or a copy thereof on the opposite party, his, her or their agent or attorney, or if not to be found, leave a copy thereof at his, her or their last place of abode, giving at least ten days notice in the city and county of Philadelphia, of the day when the arbitrators are to be chosen, and at least twenty days notice of such time in the other counties of this commonwealth; and the proof of service shall be the oath or affirmation of the person serving the same.

Section II. (Section II, P. L.) And be it further enacted by the authority aforesaid, That where both parties attend either by themselves, their attorneys or agents before the prothonotary, the arbitrators shall be chosen in the following manner, to wit: The parties having first agreed as to the number of arbitrators, or in case of disagreement, the number shall be fixed by the prothonotary, which shall be either three, five

or seven, the plaintiff shall in the first place nominate one person, if the number fixed upon be three; two, if the number be five; and three, if the number be seven; if all or either of them be objected to by the defendant, the plaintiff shall nominate other persons in place of those objected to, until he nominates to the number of six persons for each and every person allowed to be by him nominated, and the same privilege shall be given to the defendant, and the like right to object extended to the plaintiff: but if it should so happen that both or either of the parties should object to a greater number of persons than is above stated, in that case the arbitrators shall be appointed in the same manner as is hereinafter provided for; where one of the parties neglects to attend on the day appointed for selecting the arbitrators, but in case the parties agree in the choice of arbitrators as above directed, the umpire shall be chosen in the following manner, viz. the parties shall nominate alternately (beginning with the plaintiff,) seven persons, with liberty given to each or either of them in turn to object to such nomination, and if all the persons thus nominated be objected to, the prothonotary shall name a person for the umpire, if he be objected to by either of the parties, he shall name another, and so on until he names seven persons, if all are objected to, he shall make out a list of three suitable persons, if the number of arbitrators fixed upon be three, five if the number be five, and seven if the number be seven, the parties shall then strike out alternately, beginning with the plaintiff until one name only be left, who shall be the umpire.

Section III. (Section III, P. L.) And be it further enacted by the authority aforesaid, That if either of the parties shall refuse or neglect to appear by themselves, their attorney or agent, on the day appointed to choose arbitrators, proof being made on oath or affirmation, that notice had been given to such party agreeably to the provisions contained in the first section of this act, it shall be the duty of the prothonotary, (but not in the presence of the party attending) to select and put on record the names of three, five or seven intelligent, reputable, temperate and disinterested persons, who shall be the arbitrators to determine such cause, suit or action.

Section IV. (Section IV, P. L.) And be it further enacted by the authority aforesaid, That when the prothonotary may be interested in the event of any suit or action, or near of kin to either of the parties, the duties of nominating, selecting or appointing arbitrators shall then be performed by the recorder of deeds or the sheriff of the proper county.

Section V. (Section V, P. L.) And be it further enacted by the authority aforesaid, That the arbitrators chosen or appointed, as aforesaid, shall reside within the city or county where the action or suit may be pending.

Section VI. (Section VI, P. L.) And be it further enacted by the authority aforesaid, That if any prothonotary, recorder or sheriff, as the case may be, shall knowingly and wilfully select or appoint under the provisions of this act, any arbitrator or arbitrators who shall be interested in such suit or action, or who shall have prejudged the cause, or shall appoint any arbitrator or arbitrators at the instance, suggestion, or request of the party attending, where the adverse party neglects or refuses to attend or confer with, or consult such party, their agent or attorney, as to the propriety of appointing any arbitrator or arbitrators, then and in either or all such case or cases, the prothonotary, sheriff or recorder thus offending shall on conviction thereof before the court of quarter sessions of the peace of the proper county, forfeit and pay any sum at the discretion of the court not exceeding two hundred and fifty dollars, and moreover, if the offense be committed by a prothonotary or recorder, he shall be removed from office.

Section VII. (Section VII, P. L.) And be it further enacted by the authority aforesaid, That it shall be the duty of the party at whose requisition the arbitrators shall have been appointed, within ten days within the city and county of Philadelphia, and within twenty days in the other counties of this commonwealth, after such appointment, to serve on each of them either by such party, a constable or any other person, a certificate of such appointment under the hand of the prothonotary, and also a notification as well to the adverse party as to the arbitrators of the time when and place where the said arbi-

trators are to meet, which time and place shall be fixed by the prothonotary and inserted in the notice of appointment; and the proof of serving such notice shall be the oath or affirmation of the party serving the same, of which at least ten days notice shall be given previous to the day of meeting.

Section VIII. (Section VIII, P. L.) And be it further enacted by the authority aforesaid, That if any arbitrator or arbitrators shall refuse or neglect to attend, or be prevented by sickness or other unavoidable accident, a majority of the whole number of arbitrators and the parties being present, and where one of the parties be absent, unless prevented by sickness or other unavoidable cause, notice thereof being given to the arbitrators, the sufficiency of which shall be left to their discretion, it shall then be the duty of the arbitrators present, or a majority of them (when the parties cannot agree on suitable persons to supply such vacancy,) to appoint a competent number of persons in place of those who may be absent, and the arbitrators thus appointed shall have the same authority as if appointed under the foregoing provisions of this act.

Section X. (Section X, P. L.) And be it further enacted by the authority aforesaid, That the arbitrators thus appointed and met shall be sworn or affirmed either by a justice of the peace, or in the following manner: to wit, The first named of the arbitrators shall swear or affirm the rest, and either of them thus qualified, shall then swear or affirm such first named arbitrator, and they being all thus sworn or affirmed justly and equitably to try all matters in variance submitted to them, any one of them shall have power to administer oaths or affirmations to such persons called before them, (as they or a majority of them shall believe to be proper, disinterested and competent witnesses) as well as to judge of the credibility of their testimony, and likewise to decide the law and the facts that may be involved in the cause to them submitted, and moreover the said arbitrators or a majority of them shall have full power to adjourn their meetings from day to day, or for a longer time if they think proper, and if both parties appear either by themselves, their attornies or agents

before the arbitrators, on the first or any subsequent day of meeting, or if one of the parties be absent unless prevented by sickness or some unavoidable cause the sufficiency of which shall be left to the discretion of the arbitrators, then and in either case the arbitrators shall proceed to investigate, examine and decide the cause, suit or action to them submitted and report their determination and make out an award signed by all, or a majority of them, and transmit the same to the prothonotary, who shall make an entry thereof on his docket, which shall from the time of such entry, rank as a judgment against the party against whom it is made.

Section XI. (Section XI, P. L.) And be it further enacted by the authority aforesaid, That if either of the parties shall be dissatisfied, or think him, her or themselves aggrieved by the report of arbitrators made as aforesaid, he, she or they shall have an appeal to the court of common pleas of the proper county under the following rules, regulations and restrictions: to wit, The party appellant, whether plaintiff or defendant, shall by himself, his agent or attorney, enter such appeal with the prothonotary of the proper county, with the bail and recognizance hereinafter required, within fifteen days after the entry of the award of the arbitrators on his docket, and if such appeal, bail, and recognizance, should not be entered within the time above mentioned, then it shall be the duty of the prothonotary at the request of the party in favor of whom the report of the arbitrators shall have been made, to issue execution or such other process as may be necessary to carry into complete effect and operation such judgment obtained as aforesaid: Provided always, that where judgment has been rendered for any sum or sums of money, the like stay of execution shall be had, and under the like regulations as is provided by the seventh section of the act to which this is a supplement.

Section XII. (Section XII, P. L.) And be it further enacted by the authority aforesaid, That if the plaintiff be the appellant, he shall with one or more sufficient sureties, enter into recognizance with the prothonotary, the condition of

which shall be, that if the said plaintiff do not recover in the event of the suit, a sum greater or obtain a judgment more favorable than the report of the arbitrators, he shall pay all the costs that shall accrue, before the arbitrators, together with those accrued in consequence of the appeal had to the court of common pleas, and one dollar per day for each and every day that the defendant shall necessarily lose in attending on such appeal, which costs and daily pay shall be taxed and recovered as costs in other cases are by law recoverable.

Section XIII. (Section XIII, P. L.) And be it further enacted by the authority aforesaid, That if the defendant be the appellant, he shall enter into a recognizance with one or more sureties with the prothonotary, in the nature of special bail, the condition of which shall be, that if the plaintiff in the event of the suit shall obtain a judgment for a sum equal to, or greater, or a judgment as or more favorable than the report of the arbitrators, the said defendant shall pay all the costs which shall accrue before the arbitrators, or before the court of common pleas, together with the sum or value of the property or thing awarded by the arbitrators, with one dollar per day for each day, which shall be lost by the plaintiff in attending to such appeal, or in default thereof shall surrender the defendant or defendants to the jail of the proper county, in discharge of said recognizance, which costs and daily pay shall be recovered as is provided in the foregoing section of this act.

Section XIV. (Section XIV, P. L.) And be it further enacted by the authority aforesaid, That the prothonotary or any justice of the peace of the proper county, or the first named of the arbitrators, if requested by either of the parties, shall issue subpoenas to compel the attendance of witnesses before the arbitrators.

Section XV. (Section XV, P. L.) And be it further enacted by the authority aforesaid, That it shall be the duty of the prothonotary on application to him made by both, or either of the parties, their agents or attorneys, to enter a rule for taking the depositions of aged, infirm, going or absent wit-

nesses, in the same manner and subject to the same rules and regulations now observed in the courts of this commonwealth.

Section XVI. (Section XVI, P. L.) And be it further enacted by the authority aforesaid, That the fees to be allowed to constables or other persons to carry the provisions of this act into operation, shall be the same as the fees allowed by law to constables for similar services, and the like penalty for neglect of duty.

Section XVII. (Section XVII, P. L.) And be it further enacted by the authority aforesaid, That the arbitrators respectively shall receive the sum of one dollar, for each and every day necessarily spent by them in the investigation of any cause to them submitted under the provisions of this act, but they shall receive no daily pay or other compensation, unless they make their report, and transmit the same to the prothonotary within fourteen days, excepting in the city and county of Philadelphia, which shall not exceed seven days after they shall have agreed upon the same.

Section XVIII. (Section XVIII, P. L.) And be it further enacted by the authority aforesaid, That in case any one or more arbitrator or arbitrators chosen and notified as aforesaid, shall neglect or refuse to attend and take upon him or themselves, the duties of their appointment, each of them so offending shall, for every such offense, forfeit and pay the sum of two dollars, to be recovered by either party before a justice of the peace, in the same manner as debts of equal amount are by law recoverable, unless he or they can satisfy such justice, that his or their absence was occasioned by sickness or some other unavoidable cause.

Section XIX. (Section XIX, P. L.) And be it further enacted by the authority aforesaid, That the act⁽¹⁾ to which this is a supplement, and an act supplementary thereto, passed on the twenty-eighth day of March, one thousand eight hundred and eight,⁽²⁾ be, and they hereby are rendered perpetual, any thing contained in the said acts to the contrary notwithstanding.

Section XX. (Section XX, P. L.) And be it further enacted by the authority aforesaid, That after this act shall come into operation, so much of any law or laws as is or are hereby altered or supplied, be, and the same is hereby repealed.

Approved March 29, 1809. Recorded in L. B. No. 11, p. 349.

Note (1). Chapter 2693; Supra this volume, p. 222.

Note (2). Chapter 2999; Supra this volume, p. 897.

CHAPTER MMMLXXXI.

AN ACT MAKING PERPETUAL AN ACT ENTITLED "AN ACT TO REGULATE THE PAYMENT OF COSTS ON INDICTMENTS," (1), AND THE SECOND SECTION OF AN ACT, ENTITLED "AN ACT EXPLANATORY OF THE ACT ENTITLED 'AN ACT TO REGULATE THE PAYMENT OF COSTS ON INDICTMENTS' " (2).

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 act entitled "An act to regulate the payment of costs on indictments,"⁽¹⁾ and the second section of an act, entitled "An act explanatory of the act entitled 'An act to regulate the payment of costs on indictments,' " ⁽²⁾ are hereby continued and made perpetual. And provided, that any prosecutor, notwithstanding his being liable for the payment of or exemption from costs, shall be a competent witness before the grand or petit jury.

Approved March 29, 1809. Recorded in L. B. No. 10, p. 45.

Note (1). Chapter 2525; 17 Statutes at Large, p. 882.

Note (2). Chapter 2582; 17 Statutes at Large, p. 998.

CHAPTER MMMLXXXII.

AN ACT ENABLING CERTAIN TRUSTEES TO SELL AND CONVEY THE REAL ESTATE OF HENRY STRATER, A LUNATIC.

Whereas it appears by the proceedings had in the court of common pleas, for the county of Lycoming, that a certain Henry Strater, of the said county, has been adjudged a lunatic,