

for the monies due on such lands, by sale of the said lands, according to law, without further delay.]

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Passed 16th September, 1785.—Recorded in Law Book No. III. page 24.

CHAPTER MCLXX.

An ACT to establish a ferry from the south-west side of the Monongahela, opposite to the town of Pittsburgh.

SECT. I. A PUBLIC ferry established from the south-west side of Monongahela river, opposite to the town of Pittsburg, and vested in Jacob Bausman, his heirs and assigns, subject to such rates and regulations as the legislature may in future direct.]

Passed 16th September, 1785 —Recorded in Law Book No. III. page 24.

CHAPTER MCLXXI.

An ACT to re-establish the ancient Corporation of the borough of Bristol, in the county of Bucks.

SECT. I. [LETTERS patent to issue from the Executive Council, to re-establish the ancient corporation; and all the corporate privileges under the old charter vested in the new officers. The qualification of the electors and elected, prescribed.]

Passed 16th September, 1785.—Recorded in Law Book No. III. pa. 23:

CHAPTER MCLXXVI.

An ACT concerning divorces and alimony.

SECT. I. 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,

SECT. II. *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 ma-

Causes of divorce from the bonds of matrimony.

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Proceedings to obtain a divorce.

SECT. III. *And be it further enacted by the authority aforesaid,* That if any person hath been or shall be injured in any of the ways above 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 shewn 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 the 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 mean time, 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 a 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

Subpoena to issue to the defendant.

Alias subpoena to issue. Proclamations to be made;

And notice published.

Preparatory proceedings in the cause.

Controverted matters of fact may, upon request, be tried by a jury.

Proceedings thereon, if the fact

state, then, and in such case, 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 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 sotried, may be enquired 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.

SECT. IV. *And be it further enacted by the authority aforesaid,* That if any husband or wife, upon any false rumour, 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.

SECT. V. *And be it further enacted by the authority aforesaid,* That in any action or suit commenced 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.

SECT. VI. *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 the 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 the like manner as if they never had been married.

SECT. VII. *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 coverture.

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charged was committed here; or in case it was committed abroad, &c. If a trial is not desired, the court may examine into the fact, in the presence of the parties, or *ex parte*.

No adultery, if husband or wife marry again, on rumour of the death of the other, who has been absent for two years. The unmarried party may have the wife or husband restored, within one year after return.

Recrimination, &c. a bar to the divorce.

Sentence of the court, how to be pronounced, and the effect thereof.

Adulterer may not marry the particeps criminis, while the former husband or wife lives.

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Divorced
adulteress,
living with
her para-
mour,
incapable of
alienating
her estate.

SECT. VIII. *And be it further enacted by the authority aforesaid,* That where any woman shall be divorced as aforesaid, and shall afterwards openly cohabit at bed and board with the person named in the petition or libel, and proved to be the partaker in her crime, 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 thereof, 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.

None but
citizens enti-
tled to a di-
vorce under
this act.

SECT. IX. *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.

Cause of di-
vorce from
bed and
board,

SECT. X. *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 burthensome, 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 or labour; 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, and in such case, 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 fail 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.

Alimony,
how to be
allowed, and
how long to
continue.

When the
sentence
may be sus-
pended or an-
nulled;

and revived.

Of costs on
a libel for di-
vorce.

SECT. XI. *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.

Appeal al-
lowed to the
High Court
of Errors
and Appeals.

SECT. XII. *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 a High Court of Errors and Appeals," with respect to appeals from the Judge of the Ad-

miralty, 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.

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[3. The High Court of Errors and Appeals is abolished.]

Passed 19th September, 1785.—Recorded in Law Book No. III. page 41. (c)

(c) By a supplement to this act, passed 2d of April, 1804, (chap. 2483,) applications for divorces, may be made to the judges of the supreme court, or to the judges of the court of common pleas of the proper county, and the proceedings therein are directed and prescribed.

Steele v. Steele.

This was an issue joined on the facts alleged in a libel for a divorce: and upon the trial, the chief justice observed, that notice ought to be given of the facts intended to be proved under the general allegations of the libel.

Rush, J. I think it would be most convenient to give notice, that between two specific dates, acts of cruelty, &c. were intended to be proved.

The Court seemed to adopt that idea, and recommended it for the future practice of the bar. 1 Dallas, 409.

Thompson v. Thompson.

Libel for a divorce *a mensa et thoro*, charging defendant with various acts of cruelty and indignities, that rendered the libellant's situation unsupportable. Defendant, *protestando* &c. pleaded, that before the filing of the said libel, his wife (the libellant) had separated herself from him, and that "he had offered to receive and cohabit with her again, and use her as a good husband ought to do." To this plea the defendant demurred. *Tilghman*, in support of it, contended, that by the act, (§ 10.) The court were obliged either to suspend, or to discharge any sentence, separating husband and wife, from bed and board, whenever the husband should make the offer, that was stated in the answer; and that if this was a good reason to annul a sentence, *a fortiori* it is a sufficient answer to the complaint of this libel. This too, he added was agreeable to the practice of the spiritual court in *England, Prec. Chan.* 495. Where, it is said, that alimony continued no longer than the parties became reconciled, and consented to cohabit.

Serjeant, for the libellant, insisted, that the court had a discretion to suspend, or annul, the sentence, as the circumstances, under which the offer should be made, required; or to refuse to do either; and that, at all events, such an offer, as was stated, made before sentence, could not prevent the

jurisdiction of the court, or a separation, where such extreme cruelty was stated to have been used by the husband.

The Court inclined to think, that even after sentence, the mere offer of the husband, would not, in all cases, be a cause for suspending it; and that the act left them a discretion, upon the offer being made, to hear a wife, and to continue the sentence in full force, if the circumstance of the case required it, (3 Atk. 295.) But they were clearly of opinion, that the defendant's answer was insufficient, and thereupon decreed a divorce from bed and board. As to alimony, the defendant not being prepared upon that point, *cur. advis. vult.* 2 Dallas, 129.

Tiffin v. Tiffin.

Plaintiff and defendant were divorced *a mensa et thoro*, at December term, 1802, and in September following, this court, pursuant to an agreement between the parties, decreed that the defendant should pay to the wife \$ 300 a year, in equal monthly payments, transfer to her some personal property, and execute a conveyance to trustees for her use, of an estate in New-Jersey, worth about \$ 12,000, which she had brought him in marriage; the whole to be in full of all claim of alimony and dower, and in case the payment should be delayed three weeks after the time appointed, an attachment might issue to enforce the decree, without the necessity of applying to the court.

The transfers and conveyance were duly made; but, upon the affidavit of the wife, on the 12th of January, 1807, that 325 dollars were due for arrears of alimony, an attachment issued; and at March term following, *Rawle* for defendant, obtained a rule to shew cause, why the attachment should not be quashed, upon the ground of a reconciliation, prior to the attachment.

After evidence (which is substantially stated by the court,) and argument. The court decided, as follows.

Tilghman c. j. This motion is grounded on an alleged reconciliation which took place between them in September, 1806. On this point, evidence has been offered, and it is proved beyond doubt, that *Mrs. Tiffin*, at the instance of her husband, did return to his home, and cohabit with him four or five weeks,

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during which time she acted as mistress of the family. Their harmony was not without interruption; but it cannot be said, the fault was altogether on one side. *Tiffin* was in desperate circumstances. His goods and household furniture were taken in execution, and his wife left him; and after some time she took out an attachment, asserting that she had been fraudulently persuaded, and tricked into a short reconciliation. Soon after the decree of this court, *Tiffin* conveyed to trustees, for the use of his wife, pursuant to said decree, real and personal property of considerable value, which had belonged to her before their marriage. The alimony decreed by the court was 300 dollars a year, payable monthly, and it appears by the affidavit of the libellant, that 325 dollars were in arrear, when she took out the attachment. The act of assembly is express, that the alimony shall only continue until a reconciliation shall take place. When the wife returns to her husband, she puts herself under his power, and gives up her claim to the arrears of her alimony.

The court are strongly inclined to promote the union, rather than the separation of married people. They are not disposed, therefore, to strain the construction of the act of assembly in favour of a wife, who having been reconciled to her husband, leaves him again without just cause. The causes for divorce from bed and board, are, the husband's maliciously abandoning his family, turning his wife out of doors, or by cruel and barbarous treatment, endangering her life, or offering such indignities to her person, as to render her condition intolerable, or her life burthensome. It is not proved that *Mrs. Tiffin* experienced any treatment of this kind, after the reconciliation took place. When the household goods were taken in execution, she left her husband's house, which, unless she had received ill treatment, she ought not to have done; for she was bound to adhere to her husband, and share his fortune, in poverty or riches. If upon receiving ill treatment, she had brought her case before the court supported by proof, it would then have been considered whether the act of assembly authorizes us to order the arrears of alimony to be paid. As the matter stands, we have no such power. The opinion of the court therefore, is, that the attachment was improperly issued, and must be quashed.

Teates] I have no hesitation in saying, that in family quarrels, the maltreatment of the wife by the husband, uniformly excites strong feelings in my

mind, and that I view with much satisfaction every measure which tends to allay and compose those unhappy differences.

(Here the judge stated the circumstances as before.)

The reconciliation of husband and wife by our act of 19th September, 1785, vacates an order of alimony; and it is admitted on both sides, that the only question before us consists in the honest reality of that reconciliation. The counsel of the libellant have contended, that this temporary re-union was the effect of a fraudulent design to elude the decree of this court, and therefore not within the true reason of the law.

I know neither of the parties, nor their matrimonial conduct, except from the testimony taken in this cause. The husband has executed a deed to trustees, without reserving a power of revocation, of the property his wife had acquired before their intermarriage, in pursuance of the decree of this court. From the affidavit of the wife, stating, that on the 12th of *January*, 1807, there were 325 dollars due to her, it necessarily follows, that she must have received from him her separate maintenance for two years and three months.

I cannot consider the husband's soliciting his wife to return to his bed and board, as censurable, even if the embarrassed state of his affairs formed a considerable inducement to that measure. Mere pecuniary considerations too frequently form the *sine qua non* of matrimonial engagements, even in early life. They had taken each other for *richer* for *poorer*. It has not been suggested, that the pressure of *Tiffin's* debts was illusory; but it has been urged that his present agent and bail, was one of the plaintiffs in the executions. I see nothing in that circumstance from which I am warranted to conclude that his views were fraudulent. No one will deny, that it is the duty of a good wife to follow the state of her husband, whether his fortunes are prosperous or adverse, she should not desert him, unless on the strongest grounds. I regard the cohabitation of *Tiffin* and his wife for five weeks, as irrefragable proof of their reconciliation, and do not find myself at liberty to penetrate into the recesses of their chamber. The act was voluntary on her part, and we must presume was done upon due consideration. She thereby disturbed herself of the right to demand this money, and conferred on her husband a right to retain it, unless some instance of maltreatment or plain fraud can be shewn to intitle her thereto. On a mere offer

by the husband to take the wife back, the court would deliberately examine all the circumstances which had led to that offer; but the reality and sincerity of the reconciliation can only be known to the parties themselves, with the different grounds which have influenced their conduct. Had we even the power we have not materials sufficient to ascertain which of them was most liable to blame in their family broils, or to what sources their domestic discontents are to be ascribed. I content myself with observing, that sufficient evidence appears to place the wife in a most unamiable point of view. She has spread her own bed, and there she must be contented to lie, though it may now appear to her a bed of torture. I am of opinion the attachment should be quashed.

Brackenridge, J. concurred. 2 Binney, 202.

On issuing subpoenas in cases of divorce, a rule may be made to take depositions before the return thereof, *anon.* in Sup. court, September, 1794, (MSS. Reports.)

On a libel for divorce from bed and board, the facts, when contested, shall be tried by the court, *per testes Carre v. Carre.* Sup. Court, March term, 1797, (MSS. Reports.)

A marriage had, and the first husband being in full life, a second marriage of the woman is merely void, though her first husband has been absent eight or nine years. *Kinley v. Kinley*, same term, in Sup. Court. (MSS. Reports.)

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On a sentence of divorce, the wife's disclaimer of alimony, is not a perpetual bar to future applications.

Where there has been a reconciliation between the parties, after a divorce, a new divorce is necessary to found the wife's claim of alimony. *M^cKarracher v. M^cKarracher*, Supreme Court, September, 1800. (MSS. Rep.)

It is not indispensably necessary to name the *particeps criminis* in a libel for a divorce, founded on a supposed adultery.

Where such libel states the adultery to be committed, with *E. P.* and other lewd women unknown, the times and places, and attendant circumstances, should be specified in a written notice before trial, without requisition; and if their names should become known, they should also be specified. The party failing herein, should be confined in the evidence, to acts of adultery committed with *E. P. Garrat v. Garrat*, in the supreme court, September, 1803. (MSS. Reports.)

CHAPTER MCLXXVIII.

An ACT to appropriate the sum of two thousand pounds, of the public monies, to the laying out and making of an highway from the western parts of Cumberland county to the town of Pittsburg, and to authorize the President in Council to appoint commissioners to lay out the same.

[COMMISSIONERS to be appointed to lay out a State Highway from Miller's Spring, in Cumberland county, in as direct and straight a manner as the circumstances of the country and the situation of the ground would admit. Proceedings of the commissioners therein directed, report to be made to the Executive Council, who had power to direct reviews; and to judge of and finally determine the course and direction of said Highway. The road to be of the breadth of sixty-feet. "And the said highway when it shall be so established, shall be and remain, to all intents and purposes, the State highway between the western parts of the county of Cumberland, and the town of Pittsburg; and the courses and distances, and other circumstances of the said highway, shall be entered at length in the council book, which entry shall be deemed a record thereof."

The residue of the act provided for the compensation of the commissioners; and the appropriation of the money (§ 2000,) for improving the road, and the manner in which it should be accounted for.