

CHAPTER MDLXXXIII.

A SUPPLEMENT TO THE PENAL LAWS OF THIS STATE.¹

Whereas by the alteration of the time of holding the supreme court, it is become difficult to execute that part of the act of the general assembly of this commonwealth, which prescribes the form of outlawries, and it is expedient that further provisions should be made relative thereto, than are contained in the former act of assembly made on that subject:

[Section I.] (Section I, P. I.) Be it therefore 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 if any person who hath been or shall be legally indicted in any court of criminal jurisdiction within this commonwealth, of treason, felony of death, robbery, burglary, sodomy or buggery, or as accessories before the fact to any of the same offences, did not or will not appear to answer to such indictments, or having appeared, shall escape before trial, and the same indictment, record and proceedings shall be removed by writ of certiorari into the supreme court of this commonwealth, it shall and may be lawful for the same court to award a writ of *capias*, directed to the sheriff of the county where the fact shall be charged to have been committed, and if the party indicted shall be supposed by the indictment to inhabit or be conversant in any other county, then also to the sheriff of such county; which writ or writs shall be delivered to the said sheriff or sheriffs, at least two months before the day of the return thereof, commanding the said sheriff or sheriffs to take the person so indicted as aforesaid, if he or she may be found in his or their bailiwicks, and him safely keep, so that he may have his or her body before the justices of the said supreme court, at the next supreme court to be holden for the said commonwealth, to answer to the said

¹See Chapter 1516 reforming Penal Laws.

indictment or prosecute his or her traverse thereupon, as the case may be, and to be further dealt with as the law shall direct, and if the same sheriff or sheriffs shall make return to the same writ or writs of *capias*, that the person indicted as aforesaid cannot be found in his bailiwick, then, after such return, a second writ of *capias* may issue out of the said supreme court, and be delivered, at least three months before the return day thereof, to the sheriff of the county where the fact shall be charged to have been committed, and in case the party shall be supposed by the indictment to inhabit, or be conversant in any other county, then another writ of *capias* shall also issue, and be delivered at least three months before the return day thereof, to the sheriff of such county, which writ or writs of *capias* shall be returnable before the justices of same court, on the first day of the second term next after the teste of the said second writ of *capias*, so that a term shall intervene between the teste and return days of the same writ or writs, whereby the said sheriff or sheriffs shall be commanded to take the said person, so indicted as aforesaid, if he or she may be found in his or their bailiwicks, and him or her safely keep, so that he may have his or her body before the justices of the said supreme court at the day of the return thereof, to answer or prosecute his or her traverse as aforesaid; but if he or she cannot be found in his or their bailiwicks, then to cause public proclamation to be made on three several days, in one of the courts of quarter sessions of the peace to be held for the said counties, respectively, between the teste and return days of the same writ or writs; that the party so indicted shall appear before the said justices of the said supreme court, at a supreme court to be holden at the time and place contained in the same writs, to answer such indictment, or prosecute his or her traverse thereof, as the case may be, or through default thereof, he or she will at the return of the same writ or writs be outlawed, and attainted of the crime whereof he or she was indicted, as aforesaid, and the said second writ of *capias*, directed to the sheriff of the county where the crime hath been or shall be charged to have been committed, shall contain a further

clause, commanding the same sheriff, in case the person indicted as aforesaid cannot be found in his bailiwick, to cause public advertisement to be made in one or more of the public newspapers of this state, once a week, in six succeeding weeks between the teste and return of the said second writ of *capias*, specifying therein the coming of the said second writ of *capias*, to his hands, with the teste thereof, and the time and place of return to be made thereof, naming the person indicted as aforesaid, with his or her addition of degree, mystery, and place of abode, as contained in the writ, stating the nature of the offence charged against him or her, and commanding him or her to appear before the justices of the said supreme court, at the day and place directed by the said second writ of *capias*, to answer to the said indictment or prosecute his or her traverse thereof, as the case may be, or through default thereof, at the return of the said second writ of *capias*, he or she will be outlawed and attainted of the crime whereof he or she shall have been indicted as aforesaid, and if upon the return of the same writ or writs last mentioned by the said sheriff or sheriffs, that the directions of the said writ or writs had been fully complied with and pursued, and the person indicted as aforesaid shall not yield himself or herself to one of the said sheriffs, so that he may have his or her body before the justices of the said supreme court, at the day and place as directed by the said writ or writs, or having surrendered himself or herself, shall escape from his custody, or, having been bailed on his or her surrender or caption, shall not appear, so that, through want of his or her appearance at the time and place the said supreme court shall appoint for his or her trial, no trial of his or her offence can be had, the justices of the said supreme court shall, in either of these cases, pronounce and declare the said person, indicted as aforesaid, and not appearing at the time and place appointed for his or her trial as aforesaid to be outlawed and attainted of the crime whereof he or she shall have been indicted as aforesaid, the same supreme court taking care to pronounce and declare the judgment of outlawry against the principal offender previously to the declaration of outlawry against

the accessory, against whom, in all other respects, it shall be lawful to carry on the proceedings, together and at the same time; and at the same time the said supreme court shall declare the legal punishment for the same crime; and wherever imprisonment shall be part of the sentence for any of the said offences, the term thereof shall commence from the time the person outlawed shall, subsequent to his or her outlawry, actually be in the custody of the sheriff of the county where the offence was or shall be committed, which sentence shall be fully and particularly entered upon the records of the said supreme court; and the said sentence of outlawry shall have the legal effect of a judgment upon verdict, or confession, against the person so outlawed for the offence whereupon he or she shall have been outlawed, unless and until the same outlawry shall be afterwards avoided by the judgment of the same court on plea, pleaded in the nature of a writ of error.

[Section II.] (Section II, P. L.) And be it further enacted by the authority aforesaid, That when any person outlawed as aforesaid shall be taken, either by *capias utligatum* or other wise, or being in the sheriff's custody, shall be brought to the bar of the supreme court, the court shall, upon the suggestion and prayer of the attorney-general, award execution to be done upon him or her, unless the prisoner shall plead either *ore tenus*, or in writing, as his or her council shall advise, that he or she was not the person who was outlawed, or shall assign errors in fact or in law, sufficient to prevent the award of execution, in which case, the court shall proceed to determine the same, either by an inquest, or by their own judgment, agreeably to law, and the prisoner shall by such plea have all the benefit and advantage of all legal matters in his or her favor, as if he or she had brought a writ of error and had assigned the several matters pleaded as errors.

[Section III.] Provided always nevertheless, and be it further enacted by the authority aforesaid, That if any person outlawed shall, within the space of one year next after the outlawry pronounced against him or her, yield himself or herself to one of the justices of the supreme court and offer to traverse the indictment, whereon the said outlawry shall be pronounced

as aforesaid, that then he or she shall be received to the same traverse, and being thereupon found not guilty, by the verdict of a jury, of the offence for which he or she shall have been outlawed as aforesaid, he or she shall be clearly acquitted and discharged of the said outlawry, and of all penalties and forfeitures by reason of the same, as fully as if no such outlawry had been had, anything hereinbefore contained to the contrary thereof notwithstanding.

[Section IV.] (Section III, P. L.) And be it further enacted by the authority aforesaid, That all the costs and charges of the said proceedings to outlawry, shall be borne and paid by the county where the crime is laid to have been committed. Provided always, That if the person or persons so outlawed shall have real or personal estate, the same, or so much thereof as shall be necessary, shall be sold, by warrant from the commissioners of the said county, and the net proceeds of such sales shall be applied to the payment of the said costs and charges, or so far as the same shall extend, in exoneration of the county.

[Section V.] (Section IV, P. L.) Be it enacted by the authority aforesaid, That so much of the act of assembly, entitled "An act for the advancement of justice, and more certain administration thereof,"² as extends the British statute made in the first year of the reign of King James the First, chapter twelve, entitled "An act against conjuration, witchcraft, and dealings with evil and wicked spirits," is hereby repealed.

(Section V, L. P.) And whereas it may happen that persons, from obstinacy, may on their arraignment refuse to plead to indictments or informations found or exhibited against them, or challenge more of the persons summoned as jurors on their trials, than they are legally entitled to, and it being inconsistent with the principles of justice, that such obstinacy should subject any person to capital or other punishment, where all the effects of a plea may be otherwise obtained and the illegal challenge be overruled.

²Passed May 31, 1718. Chapter 236.

[Section VI.] Be it therefore enacted by the authority aforesaid, That if any prisoner shall, upon his or her arraignment for any capital or inferior offence, stand mute, or not answer directly, or shall peremptorily challenge above the number of persons summoned as jurors for his or her trial, to which he or she is by law entitled, the plea of not guilty shall be entered for him or her on the record, the supernumerary challenges shall be disregarded, and the trial shall proceed in the same manner, as if he or she had pleaded not guilty, and for his or her trial had put himself or herself upon the country, any law, custom, or usage to the contrary thereof in anywise notwithstanding.

(Section VI, P. L.) And whereas it sometimes happens that bastard children, begotten out of the state, are born within the state, and others begotten within one of the counties of the state are born in another county, and difficulties have arisen about the place of trial, and it is reasonable and just that the reputed fathers of bastard children should be at the expense of their maintenance:

[Section VII.] Be it therefore enacted by the authority aforesaid, That in the latter case, the prosecution of the reputed father shall be in the county where the bastard child shall be born; and the like sentence shall be passed, as if the bastard child had been or shall have been begotten within the same county; and in the former case, to wit., of a bastard child begotten out of the state, and born within the state, the like sentence shall be passed, except in the imposition of a fine or corporal punishment, in lieu thereof, which part of the sentence shall be omitted.

(Section VII, P. L.) Whereas it is unequal and unjust to offer an alternative for the punishment of offences, whereby the wealthy can be exonerated from corporal and infamous punishments, to which the indigent must be exposed.

[Section VIII.] Be it therefore enacted by the authority aforesaid, That so much of an act of assembly, entitled "An act against adultery and fornication,"⁸ as declares that whipping,

⁸See Ante.

imprisonment at hard labor, or branding, shall or may be a part of the sentence, on conviction of adultery, shall be and hereby is repealed, and that from and after the passing of this act, in all cases of conviction for adultery, a fine not exceeding fifty pounds shall be imposed, and in addition thereto, the offender shall be imprisoned for any time not exceeding twelve, nor less than three months.

[Section IX.] (Section VIII, P. L.) And be it further enacted by the authority aforesaid, That in all cases of felony of death, robbery and burglary, it shall and may be lawful to punish the receivers of such felons, robbers and burglars, by fine and imprisonment, although the principal felon, robber or burglar cannot be taken, so as to be prosecuted and tried for said offences, which conviction and sentence of the said receivers, shall exempt them from being prosecuted as accessories after the fact, in case the principal felon, robber or burglar, shall be afterwards taken and convicted.

(Section IX, P. L.) And whereas it is reasonable and just, that restitution of goods stolen by robbers and burglars, or of their value, should be made to the lawful owners before any forfeitures to the public should take place.

[Section X.] Therefore be it enacted by the authority aforesaid, That wherever any person or persons shall be convicted of robbery or burglary, such person or persons shall be ordered to restore to the lawful owner or owners the goods and chattels so stolen, or to pay to him, her or them the full value thereof, or of so much thereof as shall not be restored, and the forfeiture of his, her or their lands and chattels shall only extend to the residue thereof, after such restitution made as aforesaid, and the owner or owners of goods and chattels stolen as aforesaid, shall have like remedy for restitution, by executions issued by the court in which the attainders shall be had, as is provided by an act of assembly in the case of conviction of larceny, entitled "An act for the advancement of justice, and more certain administration thereof."

(Section X, P. L.) And whereas persons accused of burglary, robbery or larceny frequently have stolen goods in their possession, the owners whereof may not be known, and it is rea-

sonable that such goods should be secured for a time for the benefit of the owners.

[Section XI.] Be it therefore enacted by the authority aforesaid, That when any person shall be accused before a magistrate upon oath or affirmation, of any of the said crimes, and the said magistrate shall have issued his warrant to apprehend such person or persons, or to search for such goods as have been described on oath or affirmation to have been stolen, if any goods shall be found in the custody or possession of such person or persons, or in the custody or possession of any other person or persons, for his, her or their use, and there is probable cause, supported by oath or affirmation, to suspect that other goods which may be discovered on such search are stolen, it shall and may be lawful for the said magistrate to direct the said goods to be seized, and to secure the same in his own custody, unless the person in whose possession the same were found shall give sufficient surety to produce the same at the time of his or her trial, and the said magistrate shall forthwith cause an inventory to be taken of the said goods, and shall file the same with the clerk of that court in which the accused person is intended to be prosecuted, and shall give public notice in the newspapers, or otherwise by advertising the same in three or more public places in the city or county where the offence is charged to have been committed, before the time of trial, noting in such advertisements, the said inventory, the person charged, and time of trial, and if on such trial the accused party shall be acquitted, and no other claimant shall appear or suit be commenced, then, at the expiration of three months, such goods shall be delivered to the party accused, and he, she or they shall be discharged, and the county be liable to the costs of prosecution; but if he or she be convicted of larceny only, and after restitution made to the owner and the sentence of the court being fully complied with, shall claim a right in the residue of the said goods, and no other owner shall appear or claim the said goods, or any part of them, that then it shall be lawful, notwithstanding the claim of the said party accused, to detain such goods for the term of nine months, to the end that all persons having any claim thereto may have

full opportunity to come and, to the satisfaction of the court, prove their property in them, on which proof the said owner or owners, respectively, shall receive the said goods, or the value thereof, if from their perishable nature it shall have been found necessary to make sale thereof, upon paying the reasonable charges incurred by the securing the said goods, and establishing their property in the same; but if no such claim shall be brought, and duly supported, then the person so convicted shall be entitled to the remainder of the said goods, or the value thereof, in case the same shall have been sold, agreeably to the original inventory; but if, upon an attainder of burglary or robbery, the court shall, after due inquiry, be of opinion that the said goods were not the property of such burglar or robber, they shall be delivered, together with a certified copy of the said inventory, to the commissioners of the county, who shall indorse a receipt therefor on the original inventory, register the said inventory in a book, and also cause the same to be publicly advertised, giving notice to all persons claiming the said goods to prove their property therein to the said commissioners, and unless such proof shall be made within three months from the date of such advertisement, the said goods shall be publicly sold, and the net moneys arising from such sale shall be paid into the county treasury for the use of the commonwealth. Provided always nevertheless, That if any claimant shall appear within one year, and prove his or her property in the said goods, to the satisfaction of the commissioners, or, in the case of dispute, shall obtain the verdict of a jury in favor of such claim, the said claimant shall be entitled to recover and receive from the said commissioners or treasurer the net amount of the moneys paid as aforesaid into the hands of the said commissioners, or by them paid into the treasury of this commonwealth.

[Section XII.] (Section XI, P. L.) And be it enacted by the authority aforesaid, That the cost accruing on all bills returned ignoramus by the grand jury of the city or any county in this commonwealth, shall be paid out of the county stock, by the city or county in which the prosecution commenced, and not by

the party charged before such grand jury with any felony, breach of peace, or other indictable offence.

[Section XIII.] (Section XII, P. L.) Be it enacted by the authority aforesaid, That every person and persons who is, are, or shall be held in confinement by order or judgment of any court of this commonwealth for the costs of prosecution, shall be entitled to the benefit of the several acts of assembly of this commonwealth for the relief of insolvent debtors, and may be discharged from personal imprisonment by the court in which such prosecution was or may be had, so far as regards confinement of their bodies for said costs, if such court shall, on consideration of the circumstances of such person or persons, find that he, she or they are or shall be unable to discharge the said costs of prosecution, provided that the like previous notices of such application for discharge from confinement be given to the several persons interested in the said costs, as the law requires where insolvent debtors in other cases apply for such discharge.

[Section XIV.] (Section XIII.) And be it further enacted by the authority aforesaid, That where any person shall be brought before a court, justice of the peace, or other magistrate of any city or county of this commonwealth, having jurisdiction in the case, on the charge of being a runaway servant or slave, or of having committed a crime, and such charge, upon examination, shall appear to be unfounded, no costs shall be paid by such innocent person, but the same shall be chargeable to and paid out of the county stock by such city or county.

(Section XIV, L. P.) And whereas, on the removal of prisoners from one county to another, or from any other government into this state, in order to receive their trials for offences with which they are or may be charged, or for the purpose of safe custody, doubts have arisen by which of the counties, or by whom the expenses of such removal are to be paid, and it is proper and expedient that an equitable rule should be established by law in such cases.

[Section XV.] Be it therefore enacted by the authority aforesaid, That the expenses of such removal of prisoners from

one county to another for trial as aforesaid, shall be borne and paid by the county to which he, she or they shall be thus removed for trial; and wherever by order of the governor, or one of the judges of the supreme court, any person charged with having committed an offence in one county, shall be removed into another county for safe custody, or shall be transported from another state into this state for trial, the expenses of such removals or transportations shall be paid by the state treasurer, on the order of the governor, and the subsequent expenses shall be at the expense of the county where the fact is supposed to have been committed.

(Section XV, P. L.) And whereas the act, entitled "An act to reform the penal laws of this state,"⁴ hath not made the necessary provision for paying the costs of officers, jurors or witnesses, on public prosecutions, which had been theretofore paid to them, and although it is just and reasonable that in case of convictions of capital offenders, or where imprisonment at hard labor for a length of time is the punishment for the offence, the public should, in case of the defendant's insolvency, be at the charge of the prosecution, yet unnecessary expenses should be avoided.

[Section XVI.] Be it therefore enacted by the authority aforesaid, That in all cases where any person hath been, since the passing of the said recited act, or shall be convicted of any offence or offences, which shall be punishable capitally, or by imprisonment at hard labor, the county where the crime hath been or shall be committed, shall pay the costs of prosecution, if the defendant hath not property sufficient to discharge the same; but where the same person hath been or shall be convicted of divers offences at the same term of sessions, the costs of prosecution on one of the indictments only shall be paid out of the county stock.

[Section XVII.] (Section XVI, P. L.) And be it further enacted by the authority aforesaid, That this act shall operate as a repeal of any former acts of assembly, and of all other parts of the criminal law of this state and forms of proceedings relative thereto, so far as this act hath altered or supplied

⁴Passed April 5, 1790, Chapter 1516.

the same. Provided always nevertheless, That all prosecutions, convictions, attainders and outlawries, or other proceedings heretofore duly and legally had or made, or which may be had or made under the former laws of this state, during the existence thereof, shall have the like force and effect, as if this act had not been made, and that in all cases, where by this act any new punishment is declared for any offence, that the said former acts of assembly, and all other parts of the criminal law, shall remain and continue in force, with respect to all such offences as have been committed before the passing of this act.

[Section XVIII.] (Section XVII, P. L.) And be it further enacted by the authority aforesaid, That it shall and may be lawful for the mayor and two aldermen of the city of Philadelphia, and two justices of the peace for the county of Philadelphia, to appoint inspectors of the prison of the city and county of Philadelphia; and also to appoint a keeper of the said prison, in pursuance of the act for that purpose made and provided, on the first Mondays of May and November in every year, and on any other days when vacancies shall happen in the said office by death, resignation or otherwise.

[Section XIX.] (Section XVIII, P. L.) And be it further enacted by the authority aforesaid, That the prison inspector, appointed in pursuance of the act in such case provided, and of this act, shall have power, with the approbation of the mayor, two aldermen of the said city and two of the judges of the supreme court, or two of the judges of the court of common pleas of Philadelphia county, to make rules and regulations for the government of all convicts confined in the said prison, not inconsistent with the laws and constitution of this commonwealth, and to prescribe their allowance of provisions, ascertaining the quantity by weight and measure, and not by piece.

Passed Sept. 23, 1791. Recorded L. B. No. 4, p. 216, etc. All but sections 5 (4), 13 (12), 14 (13) and 17 (16) were repealed by the Act of Assembly passed March 31, 1860, Chapter 376, P. L. 1860, p. 452.