

plaintiff, or other person knowing the fact, filed in his office, that the tenant or defendant in such ejectment has committed, or is committing waste and destruction of or in the premises, to issue a writ of estrepement to prevent the same of course, without motion to the court and in vacation; which affidavit shall be sworn before one of the judges of the supreme court or common pleas, and shall be considered regular though the judge before whom it shall be taken, may not be a judge of the court in which such ejectment shall or may be depending.

Approved April 2, 1803. Recorded in L. B. No. 9, p. 219.
Note (4). Chapter 2032; 16 Statutes at Large, p. 199.

CHAPTER MMCCCXL.

AN ACT RELATING TO THE CLAIM OF THIS COMMONWEALTH,
AGAINST ELIZABETH SERGEANT AND ESTHER WATERS, SURVIV-
ING EXECUTRIXES OF DAVID RITTENHOUSE, ESQUIRE, DECEASED.

Whereas by an act of congress for the erecting of tribunals, competent to determine the propriety of captures during the late war between Great Britain and her then Colonies, passed the twenty-fifth day of November, one thousand seven hundred and seventy-five, it is enacted in the fourth section thereof as follows, viz. "That it be and is hereby recommended to the several legislatures in the United Colonies, as soon as possible, to erect courts of justice, or give jurisdiction to the courts now in being, for the purpose of determining concerning the captures to be made aforesaid, and to provide that all trials in such case be had by a jury, under such qualifications as to the respective legislatures shall seem expedient;" and in the sixth section thereof as follows, viz: "That in all cases an appeal shall be allowed to the congress, or to such person or persons as they shall appoint, for the trial of appeals:" And whereas by an act of the general assembly of Pennsylvania, passed the ninth day of September, one thousand seven hundred and seventy-eight,⁽¹⁾ entitled "An act for establishing a court of admiralty," appeals were allowed from the said court in all cases, unless from the determination or finding

of the facts by a jury, which was, under the provisions of the law, to be without reexamination or appeal; And whereas by a resolution of congress, of the fifteenth day of January, one thousand seven hundred and eighty, it was among other things declared, that trials in the court of appeals should be according to the law of nations and not by jury: And whereas the British sloop *Active*, having been captured as prize on the high seas, in the month of September, one thousand seven hundred and seventy-eight, and brought into the port of Philadelphia, and there libelled in the court of admiralty of the said state, held before George Ross, esquire, the then judge of the said court, on the eighteenth day of the said month of September: And whereas the libellants then and there against the said sloop *Active*, were Gideon Urmstead or Olmstead, Artimus White, Aquila Rumsdale and David Clarke, who claimed the whole vessel and cargo as their exclusive prize; Thomas Huston, master of the brig *Convention*, a vessel of war belonging to Pennsylvania, who claimed a moiety of the said prize for the state of Pennsylvania, himself and his crew; James Josiah, master of the sloop *Girard*, private vessel of war, who claimed one-fourth part of the said prize for himself, his owners and crew: And whereas all the facts respecting the said capture being submitted to the said court of admiralty, and a jury then and there returned, impanelled and sworn, a general verdict was brought in by the said jury, which was confirmed by the court, whereby Gideon Olmstead, Artimus White, Aquila Rumsdale and David Clarke, became entitled to one fourth of the said prize; Thomas Huston, for himself and crew, became entitled to another fourth; the state of Pennsylvania as owner of the vessel of war the *Convention*, to another fourth; and James Josiah for himself and owners and crew of the sloop *Girard*, become entitled to the remaining one-fourth part of the said prize: And whereas the said Gideon Olmstead, Artimus White, Aquila Rumsdale, and David Clarke, being dissatisfied with the verdict and sentence aforesaid, did appeal from the said court of admiralty of Pennsylvania, unto the court or committee of appeals appointed as aforesaid, under the authority of congress, notwith-

standing the recommendation of congress aforesaid, of the twenty-fifth day of November, one thousand seven hundred and seventy-five, for the appointment of courts of admiralty in each of the then United Colonies, did expressly provide that all trials respecting capture should be had by a jury, and under such qualifications as to the respective legislatures should seem expedient, and notwithstanding the court of appeals did decide not by a jury, but by the usage of nations, and notwithstanding the law for establishing the court of admiralty of Pennsylvania, did expressly take away the right of appeal, where the facts were found and determined by the intervention of a jury, and notwithstanding this state was authorized, at the time, to make such qualification or provision, taking away the right of appeal in jury cases, by virtue of the recommendation of congress aforesaid, which allowed and recommended the said courts of admiralty to be established with a jury, under such qualifications as to the respective legislatures should seem expedient: And whereas the said court of appeals of the United States, on the fifteenth day of December, one thousand seven hundred and seventy-eight, did reverse the sentence of the court of admiralty aforesaid, and did decree the whole of the said prize to the appellants: And whereas the judge of the court of admiralty, to wit: George Ross aforesaid, did refuse obedience to the decree of reversal, and did direct Matthew Clarkson, then marshal of the said court, to pay part of the said prize, to the amount of eleven thousand four hundred and ninety-six pounds nine shillings and nine pence, Pennsylvania currency, for the use of the state of Pennsylvania, whereof David Rittenhouse was then treasurer, taking a bond of indemnity from the said David Rittenhouse, as treasurer as aforesaid, to save him the said George Ross, his executors, administrators, &c. harmless from the consequence of such payment, which bond is dated the first day of May, one thousand seven hundred and seventy-nine: And whereas the said George Ross dying, suit was brought against his executors in the court of common pleas of Lancaster county, by and on the part of the appellants before named, for the money whereunto they pretended title, by

virtue of the decree aforesaid, of the court of appeals reversing the sentence of the court of admiralty, whereof the said George Ross had been judge: And whereas it does not appear that the said David Rittenhouse had any notice or information, or was in any legal way apprized of, or made a party to the said suit in the court of common pleas of Lancaster county, either in his personal capacity, or as treasurer of the state of Pennsylvania, so that judgment was obtained by default against the executors of the said George Ross, without any knowledge of the said David Rittenhouse, or his being able to take any measures on behalf of himself or the state of Pennsylvania, to prevent the same: And whereas in consequence of the judgment so obtained in the said court of common pleas of Lancaster county, against the executors of the said George Ross, the said executors brought suit against the said David Rittenhouse, which in the year one thousand seven hundred and ninety-two, in the term of April of the same year, was heard and determined in the supreme court of Pennsylvania (on a case stated for the opinion of the court after verdict taken for the plaintiff subject to that opinion) by Thomas McKean, chief justice and others, the judges of the said court, who among other things thereunto relating, did decree and determine, that the reversal as before mentioned, had and made in the court of appeals, was contrary to the provisions of the act of congress recommending the establishment of courts of admiralty, and of the general assembly of the state of Pennsylvania, in their act for the establishment of the said court, and was extra judicial, erroneous and void, and that the court of common pleas of the county of Lancaster, was incompetent to carry into effect the decree of the court of appeals, and that the judge of the court of admiralty aforesaid, George Ross, was not liable to an action in a court of law, for distributing money according to his decree as judge of the said court: And whereas at the second session of the third congress of the United States, held at the city of Philadelphia in the month of December, one thousand seven hundred and ninety-three, it was proposed as an amendment to the constitution of the United States, that the judicial power of the United States

shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state, which, having been adopted by the requisite number of states, as appears by the communication to congress of the then president John Adams, to this purpose, of January the eighth, one thousand seven hundred and ninety-eight, did become a part of the constitution of the United States: And whereas on the twenty-seventh day of May, one thousand eight hundred and two, the said Gideon Olmstead, Artimus White, Aquila Rumsdale and David Clarke, by their attorney William Lewis, esquire, did file a bill in the district court of the United States, at Philadelphia, for the district of Pennsylvania, before Richard Peters, judge of the said court, against Elizabeth Serjeant and Esther Waters, surviving executrixes of David Rittenhouse aforesaid, deceased, for the recovery of the monies with interest so paid into the hands of the said David Rittenhouse by Matthew Clarkson, marshal of the admiralty courts aforesaid, as proceeds of the prize, the brig Active, so captured as aforesaid, and by the said David Rittenhouse and his executrixes aforesaid, formerly and still retained: And whereas in the answer of the said Elizabeth Serjeant and Esther Waters to the bill aforesaid, it sufficiently and substantially appears, that the said money was originally received by the said David Rittenhouse, and was by him detained as treasurer of the commonwealth of Pennsylvania, which commonwealth was and still is interested in, and a claimant of the same under a decree of the said George Ross, as judge of the court of admiralty in manner as hereinbefore stated: And whereas the said Richard Peters, judge of the said district court, on the bill, answer and replication so filed by and between the said Gideon Olmstead, Artimus White, Aquila Rumsdale and David Clarke, of the one part, against Elizabeth Serjeant and Esther Waters, executrixes as aforesaid, did on the fourteenth day of January, one thousand eight hundred and three, proceed to decree as follows, viz. This is the long depending case of the sloop Active and cargo, it comes before me by libel filed against the executors of the late Mr. Rittenhouse, who

received from George Ross, esquire, then judge of the state court of admiralty, the sums mentioned in the libel, which were invested in the certificates of stock as stated therein; Mr. Rittenhouse, on receiving these certificates, which were proceeds of the sales of the said sloop and cargo, gave a bond of indemnity to Mr. Ross, which is now offered when payment of these proceeds is made to be delivered up; the suit is instituted for the purpose of carrying into effect a decree of the court of appeals established under the old confederation, a copy whereof appears among the exhibits; in answer it is alleged, that the monies were received for the state of Pennsylvania, in replication this is denied; in a memorandum made by Mr. Rittenhouse, at the foot of the account exhibited, it appears that he intended to pay over these proceeds to the state when idemnified; no such payment ever has been made, and the certificates and monies are yet in the hands of the respondents; it appears to me that Mr. Rittenhouse considered himself, as I conceive he was, a stakeholder, liable to pay over the deposit to those lawfully entitled thereto; his executors conceive themselves in the same predicament, and have declined paying over the said certificates and interest; no counsel have appeared and requested to be heard on the part of the respondents, and I am left to judge from the libel, answer, replication and exhibits which contain the state of the facts; if I should be thought mistaken in the opinion I form on the subject, there is time and opportunity to appeal to a superior tribunal; I throw out of the case all circumstances not immediately within my present view of the duty I have to perform; I have nothing to do with the original question that has been decided by the court of appeals, nor does it appear to me essential for me to determine with what intentions Mr. Rittenhouse received the certificates; the fact of the certificates and interest being now in the hands of the respondents, is granted by them in their answer; it has been determined by the supreme court of the United States, that this court has power to effectuate the decrees of the late court of appeals in prize causes, and this court has on several occasions practised agreeably to that decision; there is no doubt on my mind, (the au-

thorities in the books being clear on this point) that the process and jurisdiction of this court, will reach and extend over the proceeds of all ships, goods and articles, taken as lawful prize, found within the district, and legally proceeded therein; these proceeds are under the same legal disposition, and subject to the same responsibility, under whatever shape they may appear, as the original thing from which they were produced; it is conceded that the certificates and monies in question are proceeds of the sloop and cargo, in the libel mentioned; these were decreed to the libellants by the judgment of the late court of appeals: I am therefore of opinion, and accordingly decree, and finally adjudge and determine, that the certificates be transferred and delivered, and the interest monies paid over by the respondents to the libellants, of execution in the judgment and decree of the court of appeals, as stated in the proceedings in this cause, with costs; I make it however a condition that the bond of indemnity be cancelled or delivered to the respondents, on their compliance with this decree. Signed, Richard Peters. All which legal proceedings hereinbefore stated, will more fully and at large appear, on reference to the records of the respective courts wherein the same were had: Therefore it hath become necessary for the general assembly of Pennsylvania, as guardians of the rights and interests of this commonwealth, and to prevent any future infringements on the same, to declare: That the jurisdiction entertained by the court, or committee, of appeals over the decree of George Ross, as judge of the court of admiralty of Pennsylvania, in the suit where the claimants of the brig Active as prize were the libellants, as hereinbefore stated, was illegally usurped and exercised in contradiction to the just rights of Pennsylvania, and the proper jurisdiction of the court of admiralty established as aforesaid, under the authority of this state, and that the reversal of the decree of the said George Ross, in that suit, was null and void; that the jurisdiction entertained by Richard Peters, judge of the district court aforesaid, in the suit of Gideon Olmstead, Artimus White, Aquila Rumsdale and David Clarke, against Elizabeth Sergeant and Esther Waters, surviving executrixes of David Rit-

tenhouse, deceased, was illegally usurped and exercised; that the rights of this commonwealth as a claimant, and as the party substantially interested in the said suit, though apparent on the face of the proceedings, were unfairly passed over and set aside; that the said David Rittenhouse was not, and ought not to have been considered in the light of a mere stakeholder, but as the treasurer and agent of this commonwealth; and that the jurisdiction and decree of the said Richard Peters hereon, were entertained and made in manifest opposition to, and violation of the last amendment of the constitution of the United States hereinbefore stated, and ought not to be supported or obeyed: 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 governor of this commonwealth be authorized, and he is hereby authorized and required, to direct the attorney general of this commonwealth, to apply without delay to Elizabeth Sergeant and Esther Waters, executrixes as aforesaid, and require them forthwith to pay into the treasury of this commonwealth the monies by them admitted to have been received in respect of the premises, in their answer to the bill so as aforesaid filed against them, in the district court of Pennsylvania, before Richard Peters, judge of the said court, without regard to the decree of the said Richard Peters herein; and in default thereof by the said Elizabeth Sergeant and Esther Waters, to direct the said attorney general to bring suit in the name of the commonwealth, in the proper court of this commonwealth, against the said Elizabeth Sergeant and Esther Waters for the monies aforesaid, and proceed, as speedily as the course of legal proceedings will permit, to enforce the recovery and payment thereof, into the treasury of this commonwealth.

Section II. (Section II, P. L.) And be it further enacted by the authority aforesaid, That the governor of this commonwealth be authorized and required, and he is hereby authorized and required, to protect the just rights of the state, in respect of the premises, by any further means and meas-

ures that he may deem necessary for the purpose, and also to protect the persons and properties of the said Elizabeth Sergeant and Esther Waters from any process whatever, issued out of any federal court, in consequence of their obedience to the requisition, so as aforesaid directed to be made to them, by the attorney general of this commonwealth; and in the name of this commonwealth to give to the said Elizabeth Sergeant and Esther Waters, a sufficient instrument of indemnification in case of their payment of the monies aforesaid, in compliance with this act, without suit brought against them on the part of this commonwealth, for the recovery of the same.

Approved April 2, 1803. Recorded in L. B. No. 9, p. 221.
Note (*). Chapter 811; 9 Statutes at Large, p. 277.

CHAPTER MMCCCXCI.

AN ACT TO ORGANIZE THE PROVISIONAL COUNTIES OF BEAVER, BUTLER, MERCER AND ERIE, FOR JUDICIAL PURPOSES.

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 Monday of November next, the inhabitants of the counties of Beaver, Butler, Mercer and Erie respectively, shall at all times thereafter, enjoy all and singular, the jurisdictions, powers, rights, liberties and privileges whatsoever within the same, which the inhabitants of other counties of this state do, may or ought to enjoy within their respective counties, by the constitution and laws of the commonwealth.

Section II. (Section II, P. L.) And be it further enacted by the authority aforesaid, That the counties of Beaver, Butler, Crawford, Mercer and Erie, shall form a separate circuit or district, to be called the sixth district, and the president to be appointed for said district, and the associate judges to be appointed in each of the aforesaid counties, shall have like powers, jurisdictions and authorities within the same, as are