ACTS

OF THE

General Assembly of Pennsylvania. (a)

WILLIAM PENN, GOVERNOR.

1700.

(a) Previously to the period, at which the printed copy of the Laws (commonly called *Galloway's* edition) commenced, there had been held several sessions of the General Assembly, during which a considerable number of laws were enacted; but at that early period, a general preamble was prefixed to the laws of each session, and they were distributed numerically, into chapters, without distinction in date, or title. The laws passed during the period alluded to have either been repealed, or supplied, or are become obsolete. The first General Assembly of Pennsylvania, and the territories thereunto belonging, was holden at Chester, on the 7th of December, 1682. (*Note to former edition.*)

[In pursuance of the Act of Assembly, authorizing this Edition, the heads of all the laws, repealed, obsolete, or expired, are omitted in the body of the work, and will be found in the beginning of each volume.]

CHAPTER XI.

An ACT *against forcible entry.*

BE it enacted, That whosoever shall violently or forcibly enter into the house or possessions of any other person within this province or territories, being duly convicted thereof, shall be punished as a breaker of the peace, and make such satisfaction to the party aggrieved as the circumstances of the fact will bear. Forcible entry, how punished.

Passed in 1700.—Recorded A. vol. I. page 8. (b)

(b) By the 5th section of an act entitled a "Supplement to the act entitled "An act to extend the powers of the Justices of the peace of this state," passed March 1st, 1799, chap. 2012, after reciting that doubts had been entertained with respect to the mode of recovering the forfeitures and penalties prescribed in the following acts passed in the year 1700, to wit; "An act against forcible entry," "An act against removing landmarks," "An act against defacers of charters," and "An act about cutting timber trees," it is enacted, that in all cases arising under the said acts, *where the penalty is fixed*, and the court not mentioned in which the recovery shall be had, the same shall be prosecuted in the court

1700. of quarter sessions of the county where the offence is committed, &c.

But as there is no *penalty fixed* by the act in the text, it would seem to be questionable if any additional remedy is provided against the offence of forcible entry, by the act of 1799. It is, however, immaterial, as the power of the court of quarter sessions to punish this offence by indictment, has never been questioned.

The foregoing section of the act of March 1st, 1799, is re-enacted in the same words, by the act of March 20th, 1810.

The act in the text is analogous to the English statute of 5 Rich. 2. stat. 1. chap. 8 which, therefore, has been considered as not extending to *Pennsylvania*. But the remedy in cases of forcible entry and detainer is rendered effectual by the statutes of 15th Rich. 2. chap. 2.—8 Hen. 6. chap. 9.—31 Eliz. chap. 11.—and 21 Ja. 1. chap. 15. which have been adopted in practice, and are reported by the Judges to extend here. The report will be found in the Legislative journals of 1808-9—and so much of the statutes themselves, as are necessary to shew the remedy, and direct the proceedings, will be found in *Hawkins' Pleas of the Crown, Burn's Justice, and Bacon's Abridgment.*

Justices of the peace have power to convict for this offence of forcible entry, and a jury may be summoned by their authority, to inquire of the force. They may, on conviction, award restitution, and must make a record of their proceedings. The method of proceeding is somewhat similar to that under the landlord and tenant act, (as it is commonly called,) and useful precedents of the whole record and proceedings will be found in *Burn's Justice*, and *Graydon's Justice.*

The English cases upon the construction and subject matter of these important statutes, being impliedly precluded by the authority under which this edition of the laws is published; the only decisions of the courts of Pennsylvania applicable to this branch of the law, are the following:

Respublica v. *Shryber and others.*

In this case it was resolved, on solemn argument, that *title* could not be given in evidence by the defendant to prevent restitution. 8 Hen. 6. c. 9.

And *M'Kean, C. J.* ruled, that the wife of the prosecutor might be examined as a witness to prove the force; for, otherwise, the statutes might be eluded in some cases.

And in the same cause, the indictment stated "that the prosecutor was seized in his demesne as of fee," without saying when he was seized; so that it might be he was seized at the time of the indictment found, and not at the time of the forcible entry. 2d, "that he was seized in his demesne as of fee," and "his peaceable *possession* thereof, as aforesaid, continued until &c." which was alleged to be repugnant and inconsistent, inasmuch as he could not be both *seized* and *possessed* at the same time. And on motion in arrest of judgment for these causes, the Court overruled both objections. And *M'Kean, C. J.* said that the words "his peaceable possession thereof as aforesaid," were surplusage, and ought to be rejected. 1 Dallas, 68.

It is necessary that the prosecutor should have a *certain* interest in the property of which he is alleged to have been dispossessed; and his interest must be stated on the record. This principle is exemplified by the following case:

Respublica v. *Campbell.*

This was an inquisition of forcible entry, &c. taken before two justices of *Lancaster* county. The proceedings being removed by *certiorari* into this (the supreme court,) *Bradford* moved that they might be quashed; and shewed for cause, that the defendant is stated in the inquest to have been *possessed*, but no *estate*, or *term*, is laid; which, he said, was adjudged to be insufficient in a case of *Respublica* v. *Scott.* The court there observing, that *Hawkins* was express, that an inquisition of forcible entry, &c. will not lie in a case of a tenant at will.

The proceedings were accordingly quashed. 1 Dallas, 354.

But mere informality in the expressions will not vitiate, if sufficient appears upon the whole record to designate the nature of the estate or interest; as in

The *Commonwealth* v. *Fitch.*

Which was a *certiorari* to remove the judgment and proceedings in a case of forcible entry and detainer, from *Luzerne* county. The inquisition stated that N. B. was *possessed* in his demesne as of fee, &c. and continued so *seized* and possessed, until the defendant did enter; and him the said N. B. thereof *disseized*, &c.

It was objected, that the prosecutor is stated to have been only *possessed* of the premises, whereas the evidence proved him to have been *seized.*

But, by the court, there is some informality in the expressions; but surely stating that the prosecutor was *disseized* necessarily implies a previous seizin. Judgment affirmed. 4 Dallas, 212.

Evidence of force against a lessee for years, will not warrant a conviction on an indictment of forcible entry and detainer stating it to be against the freehold of the landlord.

Pennsylvania v. *Grier* & *al.*

Indictment for forcible entry into, and detainer of the close of W M. containing, &c. then and there being the freehold and frank tenement of the said W. M.

The evidence being, that W. M. had leased the premises to A. S. who entered, and was possessed when the forcible entry was committed, the court directed the jury that the evidence did not apply to this indictment, because it is not laid, that A. S. was ousted or dispossessed, and W. M. disseized. 1 Hawk. 148. Sect. 38.—Cumberland, Octr. 1791. S. MSS.—And the same point was adjudged at nisi prius in *Respublica* v. *Sloane—Pittsburgh*, May, 1797. The inquisition which had been taken before *one* Justice, stated, that *I. Denniston* was lawfully and peaceably seized in his demesne as of fee, of &c.

The facts disclosed in evidence, were, that *I. Denniston* and *C. Campbell*, had employed persons to erect a cabin on the land (which lay on the N. W. side of the river Alleghemy, and on the east side of Buffaloe Creek) which was done accordingly in August, 1793, and some rails were made. On the 21st of November, 1793, a survey was made by the deputy surveyor for one I. K. by virtue of his improvement began 14th November, 1793, and that evening they slept in the cabin. In September 1795, hands were employed to work the ground, and 2 1-2 acres were grubbed; and some time after the cabin was thrown down by some persons unknown, and a new one built. The defendant occupied the tract.

Evidence was offered to prove that D. and C. had leased the land to a tenant, and that defendant had dispossessed him and forcibly kept him out; but it was overruled. If the prosecution is founded on an injury done to the lessee for years, the indictment should have been framed accordingly, under the stat. of 21 Jac. 1. c. 15. but here the force is laid against the seizin of D. So, if D. and C. were the joint owners of the land, and were disseized, it should have been so stated. The defendant was accordingly acquitted. MSS. *Nisi Prius Reports.*

So, indictment for forcible entry and detainer of a *messuage*, in possession of W. C. for a *term of years*. The evidence was of a forcible entry into a *field*; and no lease was produced; and held that the indictment could not be supported. *Huntingdon.* April, 1792. *Pennsylvania* vers. *Geo. Elder* & *al.* S. MSS.

And, an indictment for a forcible entry into a messuage tenement and tract of land, without mentioning the quantity of acres, was held bad after conviction. MSS. Reports Sup. Court. 1700.

Prosecutions for this offence ought to be discouraged, unless there is an evident force against the party in actual possession. Thus, in the case of the *Commonwealth* v. *George Dixon* & *al.* Cumberland, Oct. 1792, where, on an indictment for a forcible entry, no other force was proved, than such as is implied in every trespass, the defendants were held not to be within the statutes against forcible entry, and were acquitted. S. MSS.

So, in *Respublica* v. *Devore. Bedford*, April, 1795. It appeared that one T. was in possession of the premises for 8 or 9 years, by having tenants thereon, who paid him rent. I. B. his last tenant, permitted C. D. (the brother of defendant) who claimed title therein, to come into possession in 1792. The defendant cultivated the land for his brother, but no one resided on it. In the spring of 1793, he was asked by the prosecutor to accompany him to the farm, which he did, and the prosecutor there requested him to give him possession. The defendant refused, and said the right was his brother's. T. then laid his hand gently on him, and desired him again to deliver up the possession. The defendant picked up a stick and bid him stand off. The prosecutor, who was admitted a witness merely as to the force, swore that he felt no fears, but expected to be struck if he had pressed him further.

The court said, the statutes of forcible entry and detainer were made for very wise and good purposes, when the spirit of the times was very different from the present; and are still beneficial, but in a variety of instances have been prostituted and abused. That their provisions, though formerly construed liberally, should, from the change of circumstances, now receive a strict construction. They were made for the security of persons in the actual possession of lands, which could scarcely be said of the prosecutor in the present instance. They require, as an indispensable ingredient in the offence, "force and arms, and a strong hand." The defendant was acquitted. MSS. *Nisi Prius Reports.*

And in *Sloane's* case before cited, the Judges said that the great object of the statutes was to punish lawless persons for forcibly dispossessing their peaceable neighbours from their quiet possessions, but not to turn mere civil suits into criminal procedure.