

1700.

CHAPTER XLI.

An ACT against Barrators.

Barratry.

BE it enacted, That if any person within this province and territories, in any court within the same, be indicted, proved and adjudged a common barrator, vexing others with unjust and vexatious suits, he shall be adjudged a common barrator, and his suits and actions rejected, if the court see cause for the same, and he punished for his barratry.

Passed in 1700.—Recorded A. vol. 1. page 32. (*d*)

(*d*) The act in the text, although it declares that a barrator shall be punished for his barratry, leaves the punishment at the discretion of the court. It is an offence at common law, and is indictable in the sessions. It is mentioned in the statute 34 Edw. 3, c. 1, which directs the mode of punishment. Such parts of which statute, as are distinguished by the numbers 2, 3, 4, 5, 6, and 10, are reported to extend to Pennsylvania, and are in the following words: “(2) And they (the Justices) shall have power to restrain the offenders, rioters, and all other barrators, and to pursue, arrest, take and chastise them according to their trespass or offence; (3) and to cause them to be imprisoned and duly punished according to the law and customs of the realm, and according to that which to them shall seem best to do by their discretions and good advisement; (4) and also to inform them, and to inquire of all those that have been pillors and robbers in the parts beyond the sea, and be now come again, and go wandering, and will not labour as they were wont in times past; (5) and to take and arrest all those that they may find by indictment, or by suspicion, and to put them in prison; (6) and to take of all of them that be not of good fame, where they shall be found, sufficient surety and mainprise of their good behaviour towards the king and his people, and the other duly to punish, to the intent that the people be not by such rioters or rebels troubled nor endangered, nor the peace blemished, nor merchants nor other passing by the highways of the realm disturbed, nor put in the peril which may happen of such offenders; (10) and that fines, which are to be made before Justices for a trespass done by any person, be reasonable and just, having regard to the quan-

tity of the trespass, and the causes for which they be made.”

A barrator is defined to be a common mover, exciter, or maintainer of suits or quarrels in courts of record, or otherwise; or in the country, by taking and keeping possession of lands in controversy—by all kinds of disturbance of the peace—or by spreading false rumours and calumnies, whereby discord and dissension may grow among neighbours. The offence is frequent, though too seldom punished; and we find no printed cases in Pennsylvania respecting it. It is, however, held, that it is essential to the validity of an indictment for this offence, that it should charge the defendant with being a *common barrator*, which is a term of art appropriated by law to this crime, and cannot be supplied by words which may impart as much; such as, common oppressor and disturber of the peace, or a stirrer up of strife among neighbours. And no one can be a barrator in respect of *one act*, for that would not make him a *common barrator*.

As the indictment is, therefore, general, it has become a settled principle, that, as no particular facts are stated, and as, from the nature of the crime, it consists of the repetition of several acts, which may have happened in several places, the prosecutor must give the defendant, before the trial, a note of the particular acts of barratry which he intends to prove against him; and if he do not, the court will not suffer the prosecutor to proceed in the trial of the indictment; for otherwise it would be impossible for the defendant to prepare for his defence. It follows, of course, that the prosecutor will not be permitted to give evidence of any other acts of barratry than those which are stated in the note of particulars.

CHAPTER XLIV.

An ACT to prevent the grievous sins of cursing and swearing, within this province and territories.

Blasphemy and profanely

AND be it further enacted, That whosoever shall wilfully, premeditatedly and despitefully, blaspheme or speak loosely and profanely