

1705.

void. And if any man or woman, being unmarried, shall knowingly marry the husband or wife of another person, such man or woman shall be punished as aforesaid; and the first wife or husband of the person offending against this act shall have a bill of divorce from board and bed, granted by the Governor for the time being, against the husband or wife so offending, if desired within one year after conviction.

Passed in 1705.—Recorded A. vol. F. page 149. (t)

(t) The offence defined in this act is said to be, properly, polygamy, and not bigamy, which originally had a different meaning. Bigamy is, however, now understood in law to be, where a person marries a second wife, or husband, the first being living; and in *England*, by the stat. 1. Jas. 1. c. 11, (which does not extend to *Pennsylvania*.) is felony.

By the 4th section of the act to reform the penal laws of this state, passed April 5th, 1790, (chap. 1505,) The punishment for this offence is altered, and it is enacted, that every person convicted of bigamy, &c. or of any other offence not capital, for which by the laws in force before the act entitled "An act to amend the penal laws of this state," (passed September 15th, 1786, and repealed by the act of 1790,) burning in the hand, whipping, or imprisonment for life, is or may be inflicted, shall instead of such parts of the punishment, be fined, and sentenced to undergo a confinement at hard labour, be fed and clothed as is in that act directed, for any term not exceeding two years, in the discretion of the court.

By the second section of the act, entitled "A further supplement to the penal laws of this state," passed April 4th, 1807, (chap. 2305,) any person convicted of this offence, and sentenced to hard labour for the term of two years, may, at the discretion of the court,

within three months after conviction, be removed to the gaol and penitentiary house of the city of Philadelphia, &c.

The latter part of this act is virtually repealed by the "Act concerning divorces and alimony;" passed September 19th, 1785, (chap. 1176,) which declares the causes, and regulates the proceedings respecting divorce. By the 4th section of that act it is provided, "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."

In prosecutions for bigamy, the second husband or wife, may be a witness to prove the fact of the second marriage, after the first marriage shall have been established; for the second marriage being void, they were, in fact, never husband and wife.

## CHAPTER CXXVIII.

### *An ACT against riots and rioters.*

*BE it enacted*, That if any persons, to the number of three or more, shall meet together with clubs, staves, or any other hurtful weapons, to the terror of any the peaceable people or inhabitants of this province, and shall commit, or design to commit, violence or injury upon the person or goods of any of the said inhabitants, and shall be convicted thereof, such persons shall be reputed and punished as rioters, according to the laws of *England*; and such act of terror or violence, or design of violence, shall be deemed and accounted a riot.

Passed in 1705.—Recorded A. vol. I. page 153. (u)

(u) The punishment in *England* for the offences provided against in this act, is Fine and Imprisonment.

The act in the text not only includes the actual violence, or injury, but the design to commit such violence or inju-

What to be deemed a riot.

ry, and seems to embrace *riots*, *roues*, and *unlawful assemblies*, under the general term of *Riot*, which, by the English law, are thus defined.

An *unlawful assembly* is, when three or more do assemble themselves together to do an unlawful act, as to pull down inclosures, &c. and part without doing it, or making any motion towards it.

A *Rout* is, where three or more meet to do an unlawful act, upon a common quarrel; as forcibly to break down fences, &c. upon any claim or pretence of right, &c. and make some advances towards it.

A *Riot* is, where three or more actually do an unlawful act of violence, either with, or without a common cause of quarrel; as if they beat a man, or do any other unlawful act with force and violence; or even do a lawful act, as removing a nuisance, in a violent and tumultuous manner.

The only English statute respecting riots, reported to extend to Pennsylvania, is the stat. 34 Edw. 3. c. 1. (referred to in the note to chap. 41. *ante*. p. 6,) which has been liberally construed for the advancement of justice; and it has been held, that if a justice of the peace find persons riotously assembled, he alone, hath not only power to arrest the offenders, and bind them to their good behaviour, or imprison them if they do

not offer good bail, but that he may also authorize others to arrest them by a bare *parol* command without other warrant; and that by force thereof, the persons so commanded, may pursue, and arrest the offenders, in his absence, as well as presence.

The following points have been ruled in the Supreme Court. MSS. Reports.

Information will lie against a justice of the peace, for not actively assisting in suppressing a riot.

It is the duty of every citizen to endeavour to suppress a riot; and when rioters are engaged in treasonable practices, the law protects other persons in repelling them by force.

After a recognizance taken to answer for a riot, justices of the peace should not issue warrants for assaults and batteries, which are *overt* acts of the former offence.

See the act entitled "An act to prevent intrusions on lands within the counties of Northampton, Northumberland and Luzerne," passed April 11th, 1795, (post. chap. 1815,) and a supplement thereto, passed February 16th, 1801, (post. chap. 2171,) for the punishment of settlers on certain land, on pretended titles not derived from Pennsylvania; and of combinations and conspiracies to effect certain objects by that act declared to be unlawful.

1705.

## CHAPTER CXXXII.

*An ACT for the better confirmation of the owners of lands, and inhabitants of this province, in their just rights and possessions. (x)*

WHEREAS the late king Charles the second, by his royal charter to William Penn, Proprietary and Governor of this province, did declare, that the laws for regulating and governing of property within this province, for descent and enjoyment of lands, as likewise for the enjoyment and succession of goods and chattels, should be and continue the same, as they should be for the time being by the general course of the law in England, until the said laws should be altered by the said William Penn, his heirs or assigns, and by the freemen of the said province, their delegates or deputies, or the greater part of them.

And whereas divers laws have been enacted in this province, that made all lands and tenements, without any regard to the fee-simple, and other tenures by which they were held, as liable to pay debts as chattels, and to be taken and sold upon executions, or by decrees in courts of equity, or to be sold by such executors, as had no power by their testators' wills for so doing, and in certain cases to be sold by administrators, as also to be divided, allotted and dis-

(x) See *post*. chap. 152, and the several acts respecting the judiciary department, *post*. chap. 236. This act is

chiefly retrospective. The second section, however, contains an important general provision.