

CHAPTER CLI.

1705.

An ACT for bailing of prisoners, and about imprisonment. (f)

All persons
bailable, ex-
cept for felo-
nies of death.

The liberty
of prisoners ;

and their al-
lowance.

BE it enacted, That all prisoners shall be bailable, by one or more sufficient sureties, to be taken by one or more of the Judges or Justices that have cognizance of the fact, unless for such offences as are or shall be made felonies of death by the laws of this province. And, at least every half year, there shall be a gaol delivery in every county of this province, where imprisonment is not the punishment. And that gaolers shall not oppress their prisoners; and that all prisoners shall be free as to room; and all prisoners shall have liberty to provide themselves with bedding, food and other necessaries, during their imprisonment. And that the public allowance shall be two pence per day, and no more. And that the respective prisons shall be workhouses, until others are provided, for felons, thieves, vagrants, and loose and idle persons, whereof one shall be in each respective county of this province. And that no person or persons shall be obliged to answer to any indictment or presentment, unless the prosecutor's name be inserted thereon. And if any person or persons shall be imprisoned or prosecuted without probable cause, he, she, or they shall have double damages against the informer or prosecutor, to be recovered by an action at common law.

Passed in 1705.—Recorded A, vol. I. page 199. (g)

(f) By a supplement (post. chap. 610.) an allowance of three pence *per diem* is made to each person committed for a criminal offence. By chap. 153, *post.* persons of known estates refusing to pay their debts are to be kept at their own charges. By chap. 229, *post.* provision was made for erecting houses of correction and work-houses in the respective counties.

In the old constitution, it was provided, that "All prisoners shall be bailable by sufficient sureties, unless for capital offences, where the proof is evident, or presumption great." Chap. 2, sect. 28, and the existing constitution declares, "that excessive bail shall not be required." Art. 9, sect. 13. The *Habeas Corpus* act, passed on the 18th of February, 1785, (chap. 1121,) provides satisfactorily for the better securing personal liberty, and preventing wrongful imprisonment. For the cases in which bail shall be allowed only by the Justices of the Supreme Court, see chap. 1505; and for the various alterations in the penal code of Pennsylvania, as well respecting the accommodation of prisoners, as the punishment of crimes, see the proper titles in the *index* to this edition.

By an act of the 4th of April, 1792, (chap. 1625,) provision is specially made for the relief and support of poor confined debtors.

The act in the text cannot be supposed to intend, that a prosecutor's name should be endorsed on an indictment, unless where a prosecutor really exists; and proof of the person prosecuting must be made by indifferent witnesses. 1 Dallas, page 5. (*Note to former edition.*)

(g) Chap. 153, referred to in the foregoing note to the former edition, is repealed by an act passed March 20th, 1810. And the supplement (chap. 610,) extends the act in the text to persons committed for any criminal offence whatever; whether before or after conviction; and the allowance is to be paid out of the county stock.

By the existing constitution, the powers and authorities of the Courts of *Oyer* and *terminer* and gaol delivery in all cases, is vested in the president and judges of the Courts of Common Pleas, who by their precept, may direct the times of holding such Courts; which is now usually done at the stated terms four times in the year, if occasion shall require it, for the trial of capital or other offences: and by the 4th section of the supplement to sundry penal laws of this commonwealth, passed March 21st, 1806, (post. chap. 2687,) The Presidents of the Courts of Common Pleas may admit to bail any person accused of robbery, burglary, sodomy or buggery, as fully as the judges

of the Supreme Court might do under the act of April 5th, 1790. (post. chap. 1505.)

See the act of April 7th, 1807, (chap. 2824,) with respect to the daily allowance to poor insolvent debtors.

Respublica v. Negro Jacob. Franklin, April 1799.

The prisoner was convicted of larceny, on an indictment removed from the sessions, upon slight evidence, and against the charge of the Court. Under the special circumstances, his counsel moved that he should be bailed till the day in bank, when they would move for a new trial.

The counsel for the prosecution gave no consent, but submitted to the Court's decision.

The Court said it lay in their discretion to admit him to bail, though after conviction.—One convicted of manslaughter has been bailed before clergy had. 1 Salk. 61, 103. 12 Mod. 109. 2 Hawk. c. 15. § 40. And the peculiar circumstances of the present case call for the Courts interposition. The prisoner accordingly entered into a recognizance; and in December 1799, a new trial was granted in bank, upon a statement made of the evidence, and the Attorney-General immediately entered a *nolle prosequi*. MSS. Reports.

See the statute 1 and 2 Philip and Mary, Sect. 2, 3, 4, 5, which extend to *Pennsylvania*. The 4th section which is in daily practice, is in these words: "And that the said justices, when any such prisoner is brought before them for any manslaughter or felony, before any bailment or mainprize, shall take the examination of the said prisoner, and information of them that bring him, of the fact and circumstances thereof, and the same, or as much thereof as shall be material to prove the felony, shall put in writing before they make the same bailment; which said examination, together with the said bailment, the said justices shall certify at the next general gaol delivery to be holden within the limits of their commission."

The 5th section relates to the duty of coroners.

So—Stat. 2d and 3d Philip v. Ma-

ry, chap. 10, sect. 2; "And for as much as the said act, (1 and 2 P. and M.) doth not extend to such prisoners as shall be brought before any justice of the peace for manslaughter or felony, and by such justice shall be committed to ward for the suspicion of such manslaughter or felony, and not bailed, in which case the examination of such prisoner and of such as shall bring him, is as necessary, or rather more than where such prisoner shall be let to bail or mainprize: *Be it therefore enacted, &c.* that from henceforth such justice or justices, before whom any person shall be brought for manslaughter or felony, or for suspicion thereof, before he or they shall commit or send such prisoner to ward, shall take the examination of such prisoner, and information of those that bring him of the fact and circumstance thereof, and the same, or as much thereof as shall be material to prove the felony, shall put in writing within two days after the said examination; and the same shall certify in such manner and form, and at such time, as they should and ought to do, if such prisoner so committed, or sent to ward, had been bailed or let to mainprize, upon such pain as in the said former act is limited and appointed for not taking, or not certifying such examinations as in the said former act is expressed. *And be it further enacted,* that the said justices shall have authority by this act, to bind all such by recognizance or obligation, as do declare any thing material to prove the said manslaughter or felony against such prisoner as shall be so committed to ward, to appear at the next general gaol delivery to be holden within the county, city, or town corporate where the trial of the said manslaughter or felony shall be, then and there to give evidence against the party; and the said justices shall certify the said bonds taken before them, in like manner as they should and ought to certify the bonds mentioned in the said former, upon pain as in the said former act is mentioned, for not certifying such bonds as by the said former act is limited and appointed to be certified."

1705.

CHAPTER CLII.

An ACT for taking lands in execution for payment of debts.

TO the end that no creditors may be defrauded of their just debts, due to them from persons who have sufficient real, if not personal, estates to satisfy the same, *Be it enacted,* That all such lands, tenements and hereditaments whatsoever, within this province, where no sufficient personal estate can be found, shall be liable to be seized and sold, upon judgment and execution obtained.

Lands, &c.
may be sold
for the pay-
ment of
debts;