

CHAPTER CCXXXVI.

1718.

An ACT for the advancement of justice, and more certain administration thereof. (u)

WHEREAS King Charles the second, by his royal charter to William Penn, Esq. for erecting this country into a province, did declare it to be his will and pleasure, That the laws for regulating and governing of property within the said province, as well for the descent and enjoyment of lands as for the enjoyment and succession

(u) Though the greater part of this act has been repealed, altered, and supplied, it is necessary, for the sake of preserving the context, to include the whole in this republication, giving here a general view of the subject, and noting the specific variations under each section.

In an excellent essay on the criminal law of Pennsylvania, written by the late William Bradford, (who had been successively Attorney-General and a Judge of the Supreme Court of the state, and who died while in the office of Attorney-General of the United States,) an historical view of our penal code is introduced, in the course of which he remarks, that "by this act, (chap. 236,) which is the basis of our criminal law, the following offences were declared to be capital: High treason, (including all those treasons which respect the coin,) petit treason, murder, robbery, burglary, rape, sodomy, buggery, malicious maiming, manslaughter by stabbing, witchcraft and conjuration, arson, and every other felony, (except larceny,) on a second conviction. The statute of James I. respecting bastard children, was extended in all its rigour, and the courts were authorized to award execution forthwith. Arson is included, because such was the construction of the act at the time, and long after it; one Hunt was actually executed under it. But on a sounder construction, it being held to be a felony within clergy, this benefit was expressly taken away in 1767, (see post. chap. 557.) To this list, already too large, were added at subsequent periods, counterfeiting and uttering counterfeit bills of credit, (chap. 684, chap. 1505, sect. 5,) counterfeiting any current gold or silver coin, (see post. chap. 557, chap. 1766, sect. 5,) and the crime of arson was extended, so as to include the burning of certain public buildings, (see chap. 652.) All these crimes, except, perhaps, the impossible one of witchcraft, were capital at the revolution.

"We perceive by this detail, that the severity of our criminal laws is an exotic plant, and not the native growth of Pennsylvania. It has been endured, but, I believe, has never been a favourite."

In support of this opinion we find, that as soon as the revolution was effected, it was made an article of the constitution, that the penal laws, as heretofore used, shall be reformed by the Legislature of this state, as soon as may be, and punishments made in some cases less sanguinary, and in general more proportionate to the crimes:" To which it was added, that "to deter more effectually from the commission of crimes, by continued visible punishment of long duration, and to make sanguinary punishments less necessary, houses ought to be provided for punishing, by hard labour, those who shall be convicted of crimes not capital"

The Legislature, in obedience to these instructions, proceeded in the year 1786, to ameliorate the penal code, and to introduce the punishment of hard labour.

1st. Thus, by the act of the 15th of September, 1786, (chap. 1231,) the crime against nature, robbery, and burglary, were punished by the forfeiture of real and personal estate, and imprisonment at hard labour, instead of death. The offenders, however, were only bailable before a Judge of the Supreme Court, and only triable in that Court, or in a court of Oyer and Terminer, or General Gaol Delivery, held in and for the county where the offence was committed. Peremptory challenges were allowed as heretofore; and it was declared that no attainder should work corruption of blood in any case, nor extend to the disinherison or prejudice of any person or persons, other than the offender. The last of these provisions, with some enlargement of its objects, has since, indeed, been incorporated into the existing constitution, which declares, (art. 9, sect. 19,) that "no

1718. of goods and chattels, and likewise as to felonies, should be and continue the same, as they should be for the time being by the gene-

attainder shall work corruption of blood, nor, except during the life of the offender, forfeiture of estate to the commonwealth; that the estates of such persons as shall destroy their own lives shall descend or vest as in case of natural death; and if any person shall be killed by casualty, there shall be no forfeiture by reason thereof." The same act of the 15th of September, 1786, modified the punishment for horse-stealing, grand and petty larceny, and of accessories to those offences before the fact; and declared, generally, that "every person convicted of bigamy, or of being an accessory after the fact in any felony, or of receiving stolen goods, knowing them to be stolen, or of any other offence not capital, for which, by the laws now in force, burning in the hand, cutting off the ears, nailing the ear or ears to the pillory, placing in and upon the pillory, whipping, or imprisonment for life, is or may be inflicted, shall, instead of such parts of the punishment, be fined, and sentenced to hard labour for any term not exceeding two years: It enacted that the robbery or larceny of obligations or bonds, bills obligatory, bills of exchange, promissory notes for the payment of money, lottery tickets, paper bills of credit, certificates on loan, on the credit of this commonwealth, or of all or of any of the United States, shall be punished in the same manner as robbery or larceny of any goods or chattels. It declared, that the constrained presumption that the bastard child, whose death was privately endeavoured to be concealed by the mother, was therefore murdered by her, should not be sufficient evidence to convict the party indicted, without probable presumptive proof was given that the child was born alive: And it concluded, that "every felony, or misdemeanor, or other offence whatsoever, not specially provided for by this law, may and shall be punished as heretofore. "The malefactors punished under this act were to be employed in public as well as private labours; they were to be clad in a particular uniform; and in case of escape, or absenting without good cause, they were liable to be condemned to a servitude of two days for every one of absence: Provision was likewise made for the interior government of the prisons; for restoring the credit of such convicts as evinced a sincere reformation; for appropriating the profits of the labour of the convicts;

and for the removal of convicts from one county to another, for safe-keeping: It was declared, that any person convicted of a capital offence, committed before the act was passed, might, upon application, be sentenced under the new system; and the continuance of the act was limited to three years from the 1st of November, 1786.

2d Respecting the preceding act, some additions and alterations were made on the 27th of March, 1789, (chap. 1398,) which related, principally, to the interior structure and regulation of the prisons; the appointment of inspectors, and other officers, to superintend and conduct the business of the prison of Philadelphia; and the assessment and raising monies to defray the expenses of the prison. It was, likewise, provided, that any felon escaping, should, on conviction thereof, suffer such additional confinement at hard labour, and such corporal punishment, as the court should direct; that if, after escaping, such felon should be guilty of any offence, which was capital before the act of the 15th of September, 1786, he should suffer death; that if a felon, after serving out the period of his sentence, or after being pardoned, in cases that were capital before the act of the 15th of September, 1786, shall be convicted of a second offence, that was also capital before that time, such person should suffer death, without benefit of clergy; and that if any keeper of the prison, or deputy, should suffer any spirituous liquors, (not allowed for the use of the sick,) to be introduced into the felons' prison, or suffer any communication between the men and women felons, or extort any perquisites, the offender should be liable to a fine of ten pounds.

3d. The continuance of the acts above referred to having nearly expired, by the limitation affixed to them, the Legislature embraced the opportunity of revising the system, and introducing such amendments as experience had suggested. Accordingly, the act of the 5th of April, 1790, (chap. 1505,) repealed the former laws, though it adopted and incorporated all the regulations, that are not effected by any provision specified in the following summary. The revised system provides for erecting cells, in order to confine therein the more hardened and atrocious offenders; for the commitment of any vagrant, or idle and disorderly

ral course of the law in the kingdom of England, until the said laws shall be altered by the said William Penn, his heirs or assigns, and 1718.

person, to be kept at hard labour in the gaol; for the prevention of contagious disorders in the prison; for the mode of feeding, clothing, and employing the convicts within the gaol, and not, as formerly, in public; for furnishing materials to work, and keeping accounts thereof; for the disposal of the profits of the labour of a convict, at the time of his discharge; for excluding all visitors from the gaol, except the keeper and his deputies, the inspectors, officers and ministers of justice, counsellors or attorneys at law, &c. for cleansing the prison, and exercising the prisoners; for establishing an infirmary in the gaol; for punishing assaults and other offences committed by the prisoners within the gaol; for the appointment of a keeper, &c. of the prison; for the appointment of the inspectors, and prescribing their powers and duties; for converting the house of correction into "The Debtors' Apartment;" for regulating the treatment of convicts in the counties; for proceeding against the keepers of prisons, on charges of partiality and cruelty; for furnishing the county commissioners with kalendars of the prisoners; for punishing the keepers of prisons, in cases of involuntary escapes; for the punishment of convicts for an escape, and also for committing offences, after an escape or pardon, in the same manner as the previous laws prescribed; for removing felons from the counties to the gaol of Philadelphia; and for imposing a penalty on selling liquors in the gaol. The continuance of this act was limited to five years from the 5th of April, 1790, and thence to the end of the next session of the General Assembly.

4th. In prosecuting this reformation of our penal code, another act was passed on the 23d of September, 1791, (chap. 1572,) by which the process of outlawry was regulated; the act in the text, (sect. 11,) so far as it extends the statute of 1st James I. ch. 12, respecting conjuration, &c. was repealed; the proceedings, in case any prisoner should stand mute, or exceed the lawful number of peremptory challenges, are prescribed: It is enacted, that the reputed fathers of bastards, begotten in one county, and born in another, or begotten in another state, and born here, shall be prosecuted in the county where the children are born; that the punishment for adultery shall be changed to fine and imprisonment; that in all capital

felonies, robbery and burglary, the accessories may be prosecuted and punished, though the principal is not taken; that restitution of stolen goods shall be made to the owner, before any forfeiture shall accrue to the state, and process may issue therefor, agreeably to the 30th section of the act in the text; that goods, suspected to be stolen, may be taken into a Magistrate's custody, with proceedings thereupon; that costs on bills returned *ignoramus*, shall be paid by the county; that persons confined for the costs of prosecution shall have the benefit of the insolvent laws; that costs on unfounded charges shall be paid by the county; that the expenses of removal for trial from one county to another, shall be defrayed by the latter, but if from another state to this, shall in part be defrayed by the state; and that the costs of prosecution, in cases of conviction, shall be paid by the proper county, not exceeding one conviction against the same person at the same sessions. The act concludes, by an alteration respecting the appointment of the inspectors and keeper of the prison of Philadelphia; and by repealing all former laws, so far as they come within its purview.

5th. The plan for rendering punishments less sanguinary having thus undergone an experiment of eight years, and the efficacy, as well as the humanity, of the policy in which it originated, being ascertained, the Legislature proceeded to consummate their great and exemplary work. By an act of the 22d of April, 1794, (chap. 1766,) it is declared, that "no crime whatsoever, hereafter committed, (except murder of the first degree,) shall be punished with death." The act then proceeds to define murder of the first and second degree, and the mode of ascertaining the offence, on verdict or confession; it abolishes all legal distinction between petit-treason and other kinds of murder; it prescribes the punishment in cases of murder of the first and second degree, high-treason, arson, rape, counterfeiting, and knowingly uttering counterfeit gold or silver coin; forging, or knowingly uttering forged bank notes; mayhem; voluntary or involuntary manslaughter; concealing the death of a bastard; committing a second offence, capital before the 15th of September, 1786, or committing such offence after an escape or pardon; it abolishes the claim of benefit of clergy, or of the act

1718. by the freemen of the said province, their delegates or deputies, or the greater part of them : And whereas it is a settled point, that

in the text, and prescribes the punishment for offences heretofore clergyable; it provides for the removal and reporting the cases of all convicts for offences (except for murder of the first degree) from the several counties to the gaol of Philadelphia, and for the treatment of all convicts there confined; it allows to persons committing crimes before the passing of the act a commutation of the punishment; and to all persons indicted, the same number of peremptory challenges heretofore allowed, and a trial in the Supreme Court, or Court of Oyer and Terminer, in the county where the fact was committed: It enacts, that in case the Grand Jury shall in the same indictment charge a woman with concealing the death of her bastard child and with murder, the petty Jury may either convict her of both offences, or convict her of one, and acquit her of the other; but that the concealment of the death of any such child shall not be conclusive evidence to convict the party indicted of murder, unless the circumstances attending it shall satisfy the jury, that she did wilfully and maliciously destroy and take away the life of such child.

6th. As the fundamental law of the penal code would have expired, by its own limitation, at the end of the session succeeding the 5th of April, 1795, it was extended for the term of three years, by an act passed on the 18th of April, 1795, chap. 1850. This act, likewise, declared that the inspectors of the gaol should be empowered to provide necessaries for all prisoners, to form them into classes, and to clothe and employ them. The authority previously given to punish convicts by whipping or close confinement is rescinded; and confinement in a cell, on bread and water, substituted. The power to appoint and remove the keeper of the gaol, to fix his salary, and to approve the appointment of his deputies, is vested in the inspectors; and the allowance of five per cent, on the manufactures of the convicts, formerly granted to the keeper, is withdrawn.

Having thus historically traced the progress of improvement in our penal code, it is thought proper to subjoin a sketch of miscellaneous matters, connected with that system: referring, for particulars, to the notes affixed to the several sections of the act in the text, and the index to the several volumes of this edition.

Of binding to the peace, see ante.

chap. 26. Of barrators, see ante. chap. 41, and post. chap. 1012. Of cursing and swearing, see ante. chap. 44, post. chap. 369, 1237, 1747. Of Sabbath-breaking, see ante. chap. 119, post. chap. 369, 822, 1236, 1747. Of incest, see chapters 119, 121, 1683. Of adultery and fornication, see chap. 122, 662, 1176, 1572. Of bigamy, see chap. 123, 1505, 1176. Of riots, see ante. chap. 128. Of bailing prisoners, see ante. chapters 151, 153, post. chap. 610, 1121, 1505, 1564. Of the recovery of fines and forfeitures, see ante. chap. 139, post. chap. 255, 879, 888, 971. Of the trials of petty larceny, see ante. chap. 107, post. chap. 243, 1505. Of importing from other countries impotent persons and convicts, post. chap. 314, and the acts there cited, and chap. 1403. Of lotteries, see post. chap. 478, 1592. Of horse stealing, see post. chap. 557, 879, 908, 1505. Of breaking knockers and spouts or taking down signs, see post. chap. 652. Of counterfeiting the paper money of this and other colonies or states, see chapters 684, 727, and the several acts issuing the same. Of high treason, see chapters 729, 878, 989, 1157, 1766. Of treasons, piracies and felonies committed on the high seas, see chapters 876, 904, and the notes there subjoined. Of robbery, see chap. 878, 1505. Of manslaughter, see chap. 878, 1766. Of the restitution of stolen goods, see chap. 1250, 1485, 1572. Of transporting or forcibly carrying negro or mulatto slaves, out of the state, and employing vessels in the slave trade, see chap. 1334. Of the removal of indictments, see post. chap. 249, and the notes there subjoined. Of wilfully firing woods, &c. see post. chap. 338, 1732. Of intrusion on lands, see chapters 11, 81, 1815.

For the institution, jurisdiction, and process of the various courts of justice established in this state, see post. chap. 255, and the notes there subjoined. For the punishment of the offences included in the law for suppressing vice and immorality (to wit, Sabbath-breaking, cursing and swearing, drunkenness, gambling, keeping billiard and EO tables, and duelling) (see chap. 1747.) For the law respecting juries, see chap. 1127.

An indictment will lie in Pennsylvania, for maliciously, wilfully, and wickedly killing a horse. 1 Dallas, 335. The poisoning of chickens; cheating with false dice; fraudulently tearing a promissory note; and many other offences of a similar description, have also

as the common law is the birth-right of English subjects so it ought 1718.
to be their rule in British dominions; but acts of parliament have

been indicted here. *Ibid.* (Note to former edition.)

For the reasons given by the former editor, the whole of this act, together with his valuable and comprehensive notes, are retained entire. To the acts reforming the penal laws (post.) the notes are differently arranged; and every public crime or offence, with its consequent punishment, and all collateral matters relating to it, are distinctly exhibited, and brought into one general view, so as to form a complete digest of the criminal law. It is therefore only necessary to add here, that since the foregoing note was drawn out, the following acts have been passed.

An act for perpetuating the penal laws of the state. April 4th, 1799, (post. chap. 2040.)

The 20th, 22d, 23d and 24th sections of the act to regulate the general elections, passed Feb'y 15th, 1799, (post. chap. 2019,) provides for the punishment of perjury in elections, and the forging, altering or embezzling election certificates, tickets, &c. and the frauds of election officers.

The act of April 10th, 1799, (post. chap. 2060,) provides, that the judges of the Supreme Court, or any two of them, may direct the sheriff of *Philadelphia* to remove from any pestilential danger, the prisoners who may be confined in the gaol of the said city and county, to such place of safety, as they may think proper; provided that nothing therein contained shall authorize the removal of any prisoners, confined by virtue of criminal process, without an application for that purpose from a majority of the inspectors of the gaol of the city and county of *Philadelphia*.

By an act passed Feb'y 12th, 1802, (post. chap. 2221,) it is made penal for any person to exercise any office or appointment, the exercise of which is by the said act declared to be incompatible with the holding or exercising any office or appointment under the United States.

By an act passed March 29th, 1802, (post. chap. 2264,) a penalty is inflicted on the superintendent or keeper of the gunpowder magazine, in the city and neighbourhood of *Philadelphia*, or his deputy, &c. for being concerned, directly, or indirectly in manufacturing, buying or selling gunpowder, in gross, or by retail.

The 13th section of the general road act, passed April 6th, 1802, makes it penal for any person working on the

highway, asking or extorting money, &c. from travellers, (post. chap. 2287,) and the 15th section of the same act fixes a penalty for committing nuisances on the highways.

March 2d, 1805, (post. chap. 2537) an act passed for the more effectual prevention of excessive and deceitful gaming, and to prevent unlawful sales of chances of lottery tickets, and to prevent insuring for or against the drawing of such tickets.

Indictments to be directed by the Court against persons obstructing the navigation, or impeding the passage of fish by mill dams, &c. in navigable streams declared public highways, March 23d, 1803, (post. chap. 2342.)

Costs on ignoramus bills, and acquittals by *petit* jury, regulated, and the power of grand and petit juries to decide by whom they shall be paid, and how to be enforced.

Where there are several defendants in an indictment, the costs shall be taxed as if there was only one defendant.

All persons concerned in the same offence to be included in the same indictment. Acts of December 7th, 1804, and March 28th, 1805, (post. chap. 2513, 2571,) made perpetual by an act passed March 29th, 1809.

A new prison, or house of employment to be erected in the city of *Philadelphia*, with the proceeds of the sales of the public unimproved lots therein, for the purpose of more completely carrying into effect the penal laws of the state, and a right reserved to the several counties, to send their convicts to the present prison of the city and county of *Philadelphia*. Act of April 2d, 1803, (post. chap. 2377.)

Penalty for counterfeiting the notes of the bank of *Philadelphia*, March 5th, 1804, (post. chap. 2439, sect. 7.)

Penalty for perjury and subornation of perjury, April 3d, 1804, (post. chap. 2510.)

Penalty on sheriff failing to give a bill of particulars of his fees and a receipt on payment, whether demanded or not, and for omitting to fix up in his office the 9th section of the act of March 28th, 1803.—Sect. 10 of that act, (post. chap. 2355.)

By an act passed March 26th, 1806, (post. chap. 2687,) persons convicted of felony or larceny, and sentenced to undergo an imprisonment at hard labour for any term not exceeding three years the Court, in their discretion, may direct the imprisonment, &c. to be in the

1718. been adjudged not to extend to these plantations, unless they are particularly named in such acts: Now forasmuch as some persons

county, or in the gaol and penitentiary of Philadelphia. In all cases of larceny, or, where by law a fixed or specific fine is affixed to the commission of any crime, the Court, in its discretion, may in lieu thereof, assess such fine, as they may judge right, not exceeding the fine heretofore affixed by law.

Persons wilfully setting fire to any barn, stable, outhouse, or to any barrack, rick, or stack of hay, grain, or bark, &c. or being accessory, &c. shall suffer imprisonment, &c. in the penitentiary of Philadelphia for any term not less than five, nor more than twelve years, and pay a fine not exceeding \$2000, at the discretion of the Court.

The Presidents of the Courts of Common Pleas may admit to bail, persons accused of robbery, burglary, sodomy, or buggery, as fully as the judges of the Supreme Court.

By a further supplement to the penal laws, passed April 4th, 1807, (post. chap. 2805,) instead of two years imprisonment limited by the 4th section of the act to reform the penal laws, the Court may extend the confinement to a term not exceeding seven years in their discretion, except in cases of bigamy, or of being accessory after the fact in any felony, or receiving of stolen goods, knowing them to be stolen: And persons convicted of any of the offences alluded to in the foregoing section for which he or she shall be sentenced to hard labour, for the space of two years or upwards, may, at the discretion of the Court, within three months after conviction, be removed to the penitentiary of Philadelphia for the residue of the time.

Persons charged with felony, and escaping, may be apprehended by the warrant of the President of the district where they may be found, directed to the Sheriff of the county where found, and shall be by him conducted to the proper county, or city, where the felony is alledged to have been committed, at the expense of the latter.

Section 4h, inflicts a penalty on gaolers refusing or neglecting to furnish the commissioners with lists of prisoners committed; and on the commissioners for neglecting or refusing to procure sufficient articles and materials of labour and manufacture, or otherwise neglecting the duties enjoined upon them by the 30th section of the act to reform the penal laws. And where the gaol of any county is insufficient, additional buildings shall be erected with the consent and approbation of the

Court and Grand Jury of the proper county.

Section 5th, inflicts a penalty on gaolers selling or suffering spirituous liquors, to be sold or delivered to prisoners, except in cases of sickness, and by section 8th, the 35th section of the act to reform the penal laws, is repealed.

And by section 6th, gaolers negligently suffering prisoners to escape, shall forfeit and pay for every such offence, a sum not exceeding three hundred dollars, and all the penalties of this act are to be recovered, on conviction in the Quarter Sessions of the proper county, by indictment or information.

By an act passed Feb'y 15th, 1808, (post. chap. 2903,) masquerades and masqued balls are declared to be common nuisances; and those who promote or encourage them shall be punished, &c.

By an act passed March 28th, 1808, (post. chap. 2984) no person arraigned on an indictment, who has been admitted to bail, &c. shall be put within the prisoner's bar to plead, or during the trial.

February 23d, 1809, an act passed, giving additional powers to, and changing the mode of appointment of the inspectors of the prison of Philadelphia.

By the act of April 4th, 1809, in all criminal prosecutions, wherein peremptory challenges have not heretofore been allowed, the defendant shall be allowed to challenge four jurors peremptorily.

By the 9th section of the act of March 11th, 1809, persons charged with any criminal offence in the Mayor's Court, may have the cause removed to the Court of Quarter Sessions of the county of Philadelphia at the first sessions of the Mayor's Court, in which the bill is found.

January 30th, 1810, The robbery or larceny of any bank note or notes of any incorporated bank, shall be punishable in the same manner as robbery or larceny of any goods or chattels of equal amount.

An act passed March 19th, 1810, inflicts a penalty on individuals, not incorporated, associating for the purpose of banking.

The act concerning foreign insurance companies, passed March 10th, 1810, makes such insurances penal, on the agents and the insured, and makes the policy void.

See the act concerning libels, passed March 16th, 1809, and the act concerning contempts of Court, passed April 3d, 1809, both of limited duration.

have been encouraged to transgress certain statutes against capital crimes, and other enormities, because those statutes have not been hitherto fully extended to this province: 1718.

I. Therefore, lest there should be any further failure in that behalf, *Be it enacted*, That all inquests and trials of high treason shall be according to the due order and course of the common law, observing the directions of the statute laws of Great-Britain, relating to the trials, proceedings and judgments, in such cases. (x)

Trials of high treason to be as in England.

II. *And be it further enacted*, That the enquiries and trials of all petty treasons, misprision of treason, murder, manslaughter, and homicides, and all such other crimes and misprisions, as by this act, or any other act of assembly of this province are or shall be made capital or felonies of death, which have been or shall be done, committed, perpetrated or happen, within this province, shall be as by this act is directed.

Trials of other capital crimes, as by this act.

III. And whereas the several crimes declared by this act to be felonies of death are, by the course of the laws of that part of Great-Britain, called England, to be enquired of and tried by justices, juries and witnesses, upon their oaths: But forasmuch, as the greatest part of the inhabitants of this province are such, who, for conscience sake, cannot take an oath in any case, yet without their assistance justice cannot be well administered, and too great a burthen will fall upon the other inhabitants: *Be it therefore enacted*, That all and all manner of crimes and offences, matters and causes whatsoever, to be enquired of, heard, tried and determined, by virtue of this or any other act or law of this province, or otherwise, shall and may be enquired of, heard, tried and determined by judges, justices, inquests and witnesses, qualifying themselves according to their conscientious persuasion respectively, either by taking a corporal oath, or by the solemn affirmation allowed by act of Parliament to those called Quakers in Great-Britain; which affirmation of such persons as conscientiously refuse to take an oath, shall be accounted and deemed in the law to have the full effect of an oath, in any case whatsoever in this province. And that all such persons as shall be convicted of falsely and corruptly affirming or declaring any matter or thing, which, if the same had been upon oath, would by

Qualifications of judges, juries and witnesses.

Their affirmation to have the effect of an oath. If false to be perjury.

(x) By chap. 726, so much of the common law, and such of the statute laws of England, as had been antecedently in force, are adopted and confirmed, with an exception (among other things) of so much of the statute laws of England aforesaid relating to felonies, as takes notice of or relates to treason, or directs the style of process in any case whatsoever. "It has been decided in our Courts that no act of Parliament made in England *previously* to the settlement of the province of Pennsylvania was extended here, unless by acts of assembly, adjudications of Courts, or established usage; that all statutes made *since* the settlement of the province have no force here, unless the colonies were particularly named; and that the common law of England had

always been in force in Pennsylvania." 1 Dallas, 67, 74, 75. For the definition of treason and misprision of treason in Pennsylvania, see chap. 729, 939, 1157, and the notes there respectively subjoined. By an act of the 8th of March, 1780 (chap. 888) it was provided, that persons charged with treason might be proceeded against for a misdemeanor, on the evidence of one witness. The same act declared, that no attainder of treason, to be had after the then existing war, should extend to the disinheriting any heir, nor to the prejudice of any person, other than the offender; the act of the 5th day of April, 1790, (chap. 1505,) adopted the same liberal policy; and our present constitution, (art. 3, sect. 19,) has confirmed it.

1718. law amount to wilful and corrupt perjury, shall incur the same penalties, disabilities and forfeitures, as persons convicted of wilful perjury do incur by the laws of Great-Britain. (y)

Privileges of criminals.

IV. And that upon all trials of the said capital crimes, lawful challenges shall be allowed, and learned counsel assigned to the prisoners, and shall have process to compel witnesses to appear for them upon any of the said trials. But before such witnesses shall be admitted to depose, or give any manner of evidence, they shall first take an oath or affirmation, *To say the truth, the whole truth, and nothing but the truth*, in such manner as the witnesses for the King are by the law of this province obliged to do: and if convicted of any wilful perjury in such evidence, shall suffer all the punishments, penalties, forfeitures and disabilities, which by any of the laws and statutes of Great-Britain are or may be inflicted upon persons convicted of wilful perjury. (z)

Persons standing mute, &c. to suffer as felons convicted, &c.

[V. But if any of the said prisoners shall, upon their arraignment for any of the said crimes, stand mute, or not answer directly, or shall peremptorily challenge above the number of twenty persons returned to serve of the jury, he or they so offending shall suffer as a felon convict, and shall lose the benefit of clergy, and of this act, in the same manner as he or they should have done, if they had been indicted, arraigned, and found guilty, if it appear to the Justices, before whom such felons be arraigned, by evidence given before them, or by examination, that the same felonies whereon they are so arraigned, had been such felonies, by reason whereof they should have lost the benefit of their clergy.] (a)

Judgments and executions of such criminals to be as in England.

[VI. And when any person or persons shall be so as aforesaid convicted or attainted of any of the said crimes, they shall suffer as the laws of Great-Britain now do, or hereafter shall, direct and require in such cases respectively. And it shall and may be lawful

(y) Mr. Bradford states in the essay, to which the introductory note refers, that the privilege acquired by this section was the inducement for adopting the sanguinary rigour of the English penal law, in violation of the humane policy, which had previously influenced the legislature of Pennsylvania, on the subject of crimes and punishments.—See the law concerning liberty of conscience, (ante chap. 115.—) By an act of the 9th of May, 1724, (post. chap. 281) the forms of affirmations to be taken by Quakers on various occasions were prescribed. By an act of the 3d February, 1742-3, (post. chap. 359,) the dispensation substituting an affirmation for the oath in the usual form, was extended to the case of other protestants, not being Quakers. By an act of the 21st of March, 1772, (chap. 660,) the privilege of making, in all cases, a solemn attestation, according to the conscientious persuasion of the party, either by affirmation, the usual oath, or with uplifted hand, was recognized and established.

[For the history of this act, see votes of assembly, vol. 2d. It finally passed under the administration of *Sir William Keith*.]

(z) The same privileges were expressly continued to all persons charged with the commission of crimes by the successive constitutions of the state; and the acts for reforming our penal law. See the constitution of 1776, chap. 1. sect. 9. The constitution of 1790, art. 9, sect. 11. And chap. 1505, 1766.

(a) By the existing law, (chap. 1572, sect. 5,) it is provided, that if a prisoner stands mute, does not answer directly, or shall peremptorily challenge more than the legal number of jurors, the plea of not guilty shall be entered on the record, the supernumerary challenges shall be disregarded, and the trial shall proceed, as if the prisoner had regularly pleaded. See, likewise, chap. 1505, and 1766, where it is repeatedly declared, that peremptory challenges shall be allowed in all such cases, wherein they have heretofore been allowed by law.

for the Justices of the Court, where any of the said attainders or convictions shall happen, to give and pronounce such judgment or sentence against the persons so attainted or convicted, as their crimes respectively require, according to the manner, form and direction, of the laws of that part of Great-Britain called England, in the like cases, and thereupon to award and order execution to be done accordingly.] (b)

VII. *And be it further enacted*, That if any person or persons shall commit sodomy or buggery, or rape or robbery, which robbery is done by assaulting another on or near the highway, putting him in fear, and taking from his person money or other goods, to any value whatsoever, he or they so offending, or committing any of the said crimes within this province, their counsellors, aiders, comforters, and abettors, being convicted thereof as abovesaid, shall suffer as felons, according to the tenor, direction, form and effect of the several statutes, in such cases respectively made and provided in Great-Britain, any act or law of this province to the contrary in any wise notwithstanding. (c)

VIII. *And be it further enacted*, That if any woman shall be delivered of any issue of her body, male or female, which being born alive, should, by law, be deemed a bastard, and that she endeavour privately, either by drowning or secret burying thereof, or any other way, either by herself, or the procuring of others, so to conceal the death thereof, as that it may not come to light whether it were born alive or not, but be concealed, in every such case, the mother so offending, being convicted thereof according to the usual course of proceedings in capital crimes within this province, shall suffer death, as in case of murder; except such mother can make proof, by one witness at the least, that the child, whose death was by her so intended to be concealed, was born dead.] And if any person or persons shall counsel, advise or direct such woman to kill the child she goes with, and after she is delivered of such child, she kills it, every such person, so advising or directing, shall be deemed accessory to such murder, and shall have the same punishment as the principal shall have. (d)

(b) This section is either expressly or virtually repealed, in the course of the laws founded on the revolution, or enacted for the reform of our penal code. See the introductory note.

(c) The crimes specified in this section have been subjected to the punishment of imprisonment at hard labour, by the successive acts for reforming our penal law. See chap. 1505, 1766.—Previously, however, by an act of the 8th of March, 1780, (chap. 878,) the locality contained in the above definition of robbery, was enlarged, and the crime made capital, “whether the same be committed on or near the highway or elsewhere, in any place or places whatsoever, within this commonwealth.” By the act of the 22d of April, 1794, (chap. 1766,) murder com-

mitted in perpetrating or attempting to perpetrate robbery, or rape, is declared to be of the first degree.

(d) The law relating to the crime described in this section has undergone the following alterations: In the successive acts of the 15th September, 1786, and the 5th March, 1790, (chap. 1505,) it was recited, that by the law in the text, “the bare concealment of the death is made almost conclusive evidence of the child’s being murdered by the mother, or by her procurement;” and both laws enacted, “that the constrained presumption, that the child, whose death is so concealed, was, therefore, murdered by the mother, shall not be sufficient evidence to convict the party indicted, without probable presumptive proof is given, that the child

1718.

Sodomy, &c.
how punish-
ed.Murder in
women concern-
ing the
death of
their bas-
tards, how
punished.Advising to
kill them, is
murder.

1718. **IX.** *And be it further enacted,* That the statute against stabbing, made in the first year of the reign of King James the first, (chap. 8.) entitled, *An act to take away the benefit of the clergy for some kind of manslaughter,* shall be duly observed and put in execution in this province, and be of like force and effect, as if the same act were here repeated and enacted; but that all such persons as shall happen to be present and aiding to the stabbing of another, which by the said act is made murder, shall not be deemed principals, but accessaries, to such stabbing.] (e)

The statute against stabbing extended.

Persons convicted of putting out an eye, &c. shall suffer as felons.

[X. *And be it further enacted,* That if any person or persons, on purpose, and of malice forethought, and by laying in wait, shall unlawfully cut out or disable the tongue, put out an eye, slit the nose, cut off the nose, or lip, or cut off or disable any limbs or members of any of the King's subjects, with intention in so doing, to maim or disfigure, in any of the manners before mentioned, such his majesty's subjects, that then, and in every such case, the person or persons so offending, their counsellors, aiders, and abettors, knowing of and privy to the offence as aforesaid, shall suffer death, as in cases of felony, without benefit of clergy.] (f)

Witchcraft, &c.

[XI. *And be it further enacted,* That another statute, made in the first year of the reign of King James the first, (chap. 12.) entitled *An act against conjuration, witchcraft, and dealing with evil and wicked spirits,* shall be duly put in execution in this province, and of like force and effect, as if the same were here repeated and enacted.] (g)

was born alive." The act of the 23d April, 1794, (chap. 1766,) in different terms, however, declares, that "the concealment of the death of any such child shall not be conclusive evidence to convict the party indicted of the murder of her child, unless the circumstances attending it be such as shall satisfy the mind of the jury, that she did wilfully and maliciously destroy and take away the life of such child." And it renders the bare concealment of the death of the child, under the circumstances stated in the text, an offence punishable by imprisonment at hard labour; providing, that "if the Grand Jury shall in the same indictment charge any woman with the murder of her bastard child, as well as with the offence of concealing its death, the jury, by whom such woman shall be tried, may either acquit or convict her of both offences, or find her guilty of one, and acquit her of the other, as the case may be."

(e) By the act of the 23d of April, 1794, (chap. 1766,) it is enacted, that no crime whatsoever shall be punished with death, except murder of the first degree, which is defined to be, "all murder which shall be perpetrated by means of poison, or by lying in wait, or by any other kind of wilful, deliberate

and premeditated killing, or which shall be committed in the perpetration, or attempt to perpetrate any arson, rape, robbery or burglary." All other kinds of murder are declared to be of the second degree, punishable by imprisonment at hard labour. The 7th section of the same act inflicts the same species of punishment on voluntary manslaughter, enlarging its duration for the second offence; and in cases of involuntary manslaughter, happening in consequence of an unlawful act, the felony may be waived, and the party prosecuted for a misdemeanor; or both offences may be charged in the same indictment, and the party be acquitted of the one, and found guilty of the other.

(f) The sixth section of the act of the 22d of April, 1794, (chap. 1766,) supersedes and supplies the section in the text; enlarging, at the same time, the description of the offence, so as to include in the punishment, (which is imprisonment at hard labour, and a fine not exceeding one thousand dollars, three-fourths whereof to the use of the party grieved,) all persons who shall cut off an ear, or shall maliciously, and of purpose, pull or put out an eye, while fighting, or otherwise.

(g) The British act of Parliament was repealed in England by the statute

XII. *And be it further enacted,* That if any person or persons shall be so as aforesaid convict of burglary, which is a breaking and entering into a dwelling-house of another in the night-time, with an intent to kill some reasonable creature, or to commit some other felony within the same house, whether the felonious intent be executed or not, he or they so offending, within this province, being convicted thereof as aforesaid, shall suffer death, without benefit of clergy, any law of this province to the contrary notwithstanding. (*h*)

1718.
Burglary
how punish-
ed.

[XIII.] And if any person or persons shall be so as aforesaid convicted of maliciously and voluntarily burning the dwelling-house, barn, stable or out-house, of another, having corn or hay therein, he or they so offending, within this province, shall suffer death, any law of this province to the contrary notwithstanding.] (*i*)

Arson how
punished.

[XIV.] *And be it further enacted,* That if any principal offender in any capital crime, which by the laws of this province for the time being is made felony of death, shall be convicted of any such felony, or shall stand mute, or peremptorily challenge above the number of twenty persons returned to serve of the jury, it shall and may be lawful to proceed against any accessory, either before or after the fact, in the same manner as if such principal felon had been attainted thereof, notwithstanding any such principal felon shall be admitted to the benefit of his clergy, pardoned, or otherwise delivered before attainder: and every such accessory shall suffer the same punishment, if he or she be convicted, or stand mute, or peremptorily challenge above the number of twenty persons returned to serve of the jury, as he or she should have suffered, if the principal had been attainted.] (*k*)

Accessaries.

of 9th Geo. II. chap. 5; but it continued in force in Pennsylvania till the 23d of September, 1794. See chap. 1572, sect. 4.

(*h*) By an act of the 21st of March, 1772, (chap. 652,) it is declared, that if any person shall break and enter the State-house, or any of the adjoining offices or buildings, or any church, meeting-house, or other building for public worship, or any academy or school-house, or library belonging to any body politic or corporate, in the night-time, with intent to commit a felony within the same, whether the felonious intent be executed or not, the offender should be sentenced to the pillory, corporal punishment, and imprisonment; but the sentence is changed to confinement at hard labour, by virtue of the general provision in the 4th section of the act of the 5th of April, 1790, (chap. 1505.)—The present punishment of burglary is confinement at hard labour, (chap. 1505,) but by the act of the 22d of April, 1794, (chap. 1766,) it is declared, that murder committed in the perpetration, or attempt to perpetrate burglary, &c. shall be deemed of the first degree, punishable with death.

(*i*) By an act of the 21st of Februa-

ry, 1767, (post. chap. 557,) it is declared, that "if any person shall maliciously and voluntarily burn the dwelling-house, or any other house, barn, or stable, adjoining thereto, or any barn or out-house; having corn or hay therein, although the same shall not be adjoining to such dwelling-house, belonging to any other," the offender shall suffer death. By an act of the 21st of March, 1772, (chap. 652,) it is declared, that "if any person shall maliciously and voluntarily burn the State-house, or any of the adjoining offices or buildings, or any church, meeting-house, or other building for public worship, or any academy or school-house, or library, belonging to any body politic or corporate," the offender shall suffer death. The punishment of arson, or of being accessory thereto, has been commuted, however, into confinement at hard labour, by the 4th section of the act of the 22d of April, 1794, (chap. 1766.)

(*k*) For the law respecting the punishment of accessaries before the fact, see the acts that relate to the various principal offences; particularly chap. 1505, and 1766; and the note to the next section.

1718.

Concealers
of robbers.

XV. *And be it further enacted,* That if any person or persons shall receive, harbour or conceal, any of the said robbers or burglars, felons or thieves, or shall receive or buy any goods or chattels, that shall be feloniously taken or stolen by any such robbers or burglars, felons or thieves, knowing the same to be stolen, and being so as aforesaid convicted of either of the said offences, if he or they pray to have the benefit of this act, in lieu of clergy, judgment of death shall not be given against them upon such conviction, nor execution awarded upon any outlawry for such offence, but they shall be burnt in their hands, in manner as herein after directed. (1)

Though the
principal fe-
lon is not ta-
ken, access-
aries may be
prosecuted.

XVI. *Provided always,* That if any such principal robber or burglar, felon or thief, cannot be taken, so as to be prosecuted and convicted for any such offence, nevertheless it shall be lawful to prosecute and punish every such person and persons, buying or receiving any goods stolen by any such principal felon, knowing the same to be stolen, as for a misdemeanor, to be punished by fine and imprisonment, or other such corporal punishment, as the court shall think fit to inflict, although the principal felon be not before convict of the said felony: Which punishment shall exempt the offender from being punished as accessory, if such principal felon shall afterwards be taken and convicted.] (m)

Proceedings
to outlawry
on indict-
ments.

XVII. *And be it further enacted,* That if any person or persons, who have been indicted or appealed, or hereafter shall be indicted or appealed, for any of the said crimes, did not, or will not, appear to answer such indictment or appeal, the Justices before whom the same hath been or shall be taken, shall award a writ, called *capias*, against every such offender, directed to the Sheriff of the county where the party indicted or appealed are, by such indictment or appeal, supposed to be conversant or inhabit, returnable before the Justices of that court, where such party is or shall be so indicted or appealed, at the Supreme or Provincial Court next after the taking of such indictment or appeal; by which writ of *capias*, the same Sheriff shall be commanded to take the body of him or them so indicted or appealed, if he or they can be found in his Bailiwick. And if he or they cannot be found, the Sheriff shall make a proclamation in every Court of Quarter Sessions which shall be held for the said county, where the said party so indicted or appealed, is supposed to inhabit or be conversant as aforesaid, *That he or they being so in-*

(1) By the 4th section of the act of the 5th of April, 1790, (chap. 1505,) it is enacted, that every person convicted of being an accessory after the fact, or of receiving stolen goods, knowing them to have been stolen, or of any other offence not capital, for which, before the 15th of September, 1786, burning in the hand, &c. might be inflicted, should be sentenced, instead thereof, to imprisonment at hard labour. By the 9th section of the act of the 22d of April, 1794, (chap. 1766,) the claim to the benefit of clergy, or to the benefit of the act in the text, is abolished. For the proceedings to restore stolen goods to

the owners, or to seize goods suspected to be stolen, see the act of the 23d of September, 1791, (chap. 1572, section 9, 10.)

(m.) By the 8th section of the act of the 23d of September, 1791, (chap. 1572,) it is likewise declared, that in all cases of felony of death, robbery and burglary, it shall be lawful to punish the receivers of such felons, &c. by fine and imprisonment, though the principals cannot be taken; and that a conviction, in such cases, shall exempt the party from being prosecuted as accessory after the fact, if the principal felon should be taken.

dicted or appealed, shall appear before the said Justices, at the said 1718.
 Supreme Court, on the day of the return of the said writ of *capias*,
 to answer our lord the king, or to the party, of the treason, felony
 or trespass, whereof he or they are so indicted or appealed; which
 writ shall be delivered to the said Sheriff or Sheriffs three months
 before the return thereof; after which writ of *capias*, so served and
 returned, if he who is so indicted or appealed comes not at the said
 day of return of the said *capias*, and yield his body to the Sheriff,
 he shall be, by the Justices of the said Supreme Court, pronounced
 out-lawed, and attainted of the crime whereof he is so indicted or
 appealed as aforesaid: and from that time shall forfeit and lose
 all his lands and tenements, goods and chattels: Which forfeiture,
 and all other forfeitures expressed or implied by the said judgments,
 to be given upon the said capital offences mentioned in this act, af-
 ter such criminal's just debts and reasonable charges of their main-
 tenance in prison are deducted, shall go, one half to the Governor
 for the time being, towards support of this government, and for de-
 fraying the charges of prosecution, trial and execution, of such cri-
 minals; and the other half or residue thereof shall go to such cri-
 minal's wife and children equally; but if he leaves no wife or chil-
 dren, then to the next of his kindred, not descending lower than the
 second degree, to be claimed within three years after the death of
 such criminals; otherwise the same shall go to the Governor as
 aforesaid, any law or usage to the contrary notwithstanding.] (n)

Persons out-
lawed how
punished.

XVIII. *Provided always, and be it further enacted*, That where
 any person or persons charged, committed to prison, or convicted
 of any of the said capital crimes, being justly indebted to any other
 person or persons, he or they so indebted may be arrested, or their
 goods and chattels attached, to answer the suits of their respective
 creditors, who, making due proof that the debts or sums demanded
 are really and without fraud due, shall recover judgment for the
 same, and executions may be awarded against the lands, goods and
 chattels, of such defendants, as is usual in other cases. *Provided*
also, That he or they, who shall happen to break prison, shall not
 have judgment of life or member for breaking of prison only, except
 the cause for which he or they were taken and imprisoned did re-
 quire such judgment, had he been convict according to law. (o)

Criminals ca-
ble to be
arrested by
their credi-
tors.

Breakers of
prisons.

[XIX. *And be it further enacted*, That if any person be con-
 victed of any such felony as is hereby made capital, for which he
 ought by the laws of Great-Britain to have the benefit of his clergy,
 and shall pray to have the benefit of this act, he shall not be required
 to read, but without any reading shall be allowed, taken and reputed
 to be, and punished as a clerk convict, and burnt, if for murder,
 with an (M) upon the brawn of the left thumb; and if for any
 other felony, with a (T) in the same place of the thumb; which
 marks are to be made by the Gaoler in open Court, as is usual in
 Great-Britain; which shall be effectual to all intents and purposes,

Benefit of
clergy how
obtained.

(n) The whole of this section is superseded and supplied by the act of the 23d of September, 1791, (chap. 1572.)

For an elaborate opinion on a process

of outlawry under this act, see 1 Dallas, 86. *Respublica v. Doan*.

(o) For the punishment on breach of prison, and escapes, see chap. 1505. and 1766.

1718.
The Justices shall commit offenders to some house of correction, &c.

and be as advantageous to him, as if he had read as a clerk, any law or usage to the contrary notwithstanding. And that the said Justices, before whom such offender or offenders shall be tried and convicted, shall also, at their discretion, award and give judgment, that such offender and offenders shall be committed to some house of correction, or public work-house, within the county, city, town or place, where such conviction shall be, there to remain and be kept, without bail or main-prize, for such time as such Justices shall then judge and award, not less than six months, and not exceeding two years, to be accounted from the time of such conviction, and an entry thereof shall be made of record, pursuant to such judgment and award; and such offender and offenders, so judged and awarded to remain and be kept in such house of correction or public work-house, shall be there set at work and kept at hard labour, for and during such time as shall be so adjudged and recorded: And in case such person or persons shall refuse or neglect to work and labour as they ought to do, the master or keeper of such house of correction, or public work-house, respectively, is hereby required to give such persons, such due correction as shall be fit and necessary in that behalf.] (p)

If offenders escape, and be re-taken, to be committed, &c.

[XX. *And be it further enacted*, That in case any such offender or offenders shall, after such judgment given, escape out of prison, or out of such house of correction or public work-house, as he, she or they shall be committed unto as aforesaid, such person or persons being afterwards re-taken, shall be brought before one or more of the Provincial Judges, or before two or more of the Justices of the Peace of such county, city, town or place, where such offender or offenders shall be so re-taken; which Judge or Justices are hereby required to commit such offender and offenders to some house of correction, or public work-house within such county, city, town, or place, where he, she or they shall be so re-taken, there to remain, without bail or main-prize, for any time not less than twelve months, and not exceeding four years, to be accounted from the time of such re-taking, and there be set at work, and kept at hard labour, and receive such due correction as aforesaid. And in case any master or keeper of any house of correction, or public work-house, shall neglect to do his duty as above directed, any Judge or Justice of Gaol Delivery, upon complaint and due proof thereof, upon the oath or affirmation of one or more witnesses to him made, shall be and is hereby empowered to remove such person from his said office.] (q)

The master of such work-house removable.

A woman convicted of felony may have the benefit of this act.

XXI. *And be it further enacted*, That where a man being convicted of any felony, for which he may demand the benefit of his clergy, if a woman be convicted for the same or like offence, upon her prayer to have the benefit of this act, judgment of death shall

(p) By the 9th section of the act of the 24th of April, 1794, (chap. 1766,) the claim to benefit of clergy, and to the benefit of the act in the text, is abolished, and this section is superseded and supplied.—Every person convicted of any felony previously deemed clergyable is now to be sentenced to confine-

ment at hard labour, except in cases where some other specific penalty is prescribed by the act of the 5th of April, 1790, (chap. 1505,) or the act of the 24th of April, 1794, (chap. 1766.)

(q) This section is superseded and supplied, (chap. 1505, sect. 21, 22.)

not be given against her upon such conviction, or execution awarded upon any outlawry for such offence, but shall suffer the same punishment as a man should suffer, that has the benefit of his clergy allowed him in the like case; *that is to say*, shall be burnt in the hand, in manner aforesaid; and further, to be kept in prison for such time as the justices in their discretion shall think fit, so as the same do not exceed one year. But if any man or woman, who have once had the benefit of this act as aforesaid, and shall be again convicted of any other felony, hereby made capital or felony of death, for which a man might have the benefit of his clergy, every such man and woman shall be, and are hereby totally excluded from having any benefit or advantage of this act, but shall suffer pains of death, as in cases where the benefit of clergy is by law taken away.] (r)

1718.

Benefit of
this act not
to be had
twice.

XXII. *And be it further enacted*, That where any murder or felony hath been, or hereafter shall be committed in one county of this province, and one or more persons shall be accessory or accessaries to any such murder or felony in another county, that then an indictment found or taken against such accessory or accessaries, upon the circumstances of such matter, before justices of the peace, or other justices or commissioners, to enquire of felonies in the county, where such offences of accessory or accessaries, in any manner, have been or shall be committed or done, shall be as good and effectual in law, as if the said principal offence had been committed or done within the same county, where the indictment against such accessory hath been or shall be found.

Felonies
committed
in one count-
ty, and ac-
cessaries in
another, in
indictment
against such
accessary
shall be effec-
tual.

XXIII. And that the justices of the said Supreme Court, or two of them, upon suit to them made, shall write to the keepers of the records, where such principal is or shall be hereafter attainted, or convict, to certify them whether such principal be attainted, convicted, or otherwise discharged of such principal felony; who, upon such writing to them or any of them directed shall make sufficient certificate in writing, under their seal or seals, to the said justices, whether such principal be attainted, convicted, or otherwise discharged, or not. And after they, [who] so have the custody of such records, do certify, that such principal is attainted, convicted or otherwise discharged of such offence by the law, then the justices of gaol delivery, or of oyer and terminer, shall proceed upon every such accessory, in the county where he or they became accessory, in such manner and form, as if both the said principal offence and accessory had been committed and done in the same county, where the offence of accessory was or shall be committed or done. And that every such accessory, and other offenders, as above expressed, shall answer upon their arraignments, and receive such trial, judgment, order and execution, and suffer such forfeitures, pains and penalties, as is used in other cases of felony, and as the statute made in the second and third years of King Edward the Sixth, (chap. 24,) entitled, *An act for the trial of murders and felonies committed in several counties*, doth direct in such cases; which sta-

Proceedings
against ac-
cessaries.

How they
shall be
tried.

(r) This section is rescinded and supplied by the 9th section of the act of the 24th of April, 1794, (chap. 1766.) See the note subjoined to sect. 19. *supra*.

1718. tute shall be observed in this province, any law or usage to the contrary notwithstanding. (s)

Penalties,
&c. on sub-
ornation of
perjury.

XXIV. *And be it further enacted*, That every person who shall unlawfully and corruptly procure any witness to commit wilful and corrupt perjury, in any matter or cause depending in suit and variance, in any of the courts of judicature in this province, or shall unlawfully and corruptly procure and suborn any witness to testify, upon oath or affirmation, in any matter, cause or thing whatsoever, such offender shall forfeit the sum of forty pounds, one half thereof to the governor, for the support of this government, and the other half to the party grieved: But for want of lands, goods or chattels, to satisfy the said forty pounds, every such offender, being convicted or attainted of perjury or subornation aforesaid, shall for his said offence, suffer imprisonment by the space of six months, without bail, and stand on the pillory the space of one whole hour, in some market-town, or public place, where the offence was committed; and shall suffer all the other punishments, penalties, forfeitures and disabilities, which are inflicted upon such offenders by any law or statute of Great-Britain. (t)

XXV. And that the statute made in the fifth year of Queen Elizabeth, (chap. 9,) entitled, *An act for punishment of such persons as shall procure or commit any wilful perjury*, shall be observed in this province, and be duly put in execution, as well against those that shall falsify their affirmations, as those who shall falsify their oaths, or be convicted of subornation of perjury.

Justices of
gaol delivery
to give judg-
ment, &c.
against per-
sons so re-
rieved.

XXVI. *And be it further enacted*, That in all cases, where any person or persons have been or shall be found guilty of any of the said crimes, for which judgment of death should or may ensue, and shall be reprieved to prison, without judgment at that time given him, her or them, so found guilty; that those who now are, or hereafter shall be assigned justices, to deliver the gaol where any such guilty persons shall remain, are hereby empowered and authorized to give judgment of death, and award execution against such persons so found guilty, and reprieved, as the same justices, before whom such person or persons was or were found guilty, might have done before such reprieve.

No process
to be dis-
continued by
issuing new
commissions
for justices,
&c.

[XXVII. And that no manner of process or suit, made, sued or had, before any of the King's Justices of the Supreme or Provincial Court, Gaol Delivery, Oyer or Terminer, Justices of the Peace, or either the King's Commissioners, in this Province, shall not in any wise be discontinued, by the making and publishing of any new commission or association, or by altering the names of the Justices of the said Supreme Court, Gaol Delivery, Oyer or Terminer, Justices of Peace, or other the King's Commissioners; but that the new Justices of the said Supreme Court, Gaol Delivery, and of the

(s) For the law respecting accessaries, see the notes subjoined to sections 14, 15, 16, *supra*.

(t) The general provision in the section of the act of the 5th April, 1790, (chap. 1505,) virtually includes perjury, and subornation of perjury, which are now, therefore, punishable

by imprisonment at hard labour. For the offence of perjury, and subornation of perjury at elections, see the act of February 15th, 1799, (post. chap. 2009, sect. 20.)

For the forms of attestations allowed by different acts of assembly, see the note subjoined to the 3d section, *supra*.

Peace, and other Commissioners, may proceed, in every respect, as if the old Commissions, and Justices, and Commissioners, had still remained and continued unaltered.] (u) 1718.

[XXVIII. And that no process, pleas, complaints, suits, actions or proceedings whatsoever, which now are, or at any time hereafter shall be commenced, sued, brought or depending, before any of the said Justices of the Supreme Court, Justices of the Courts of Common Pleas, or other the King's Justices, Commissioners or Magistrates, in this province, shall be discontinued, or put without day, by reason of the death or removal of the Proprietary, or his Lieutenant-Governor of this province, or by the death, new commissions, or not coming of the said Justices or Commissioners, or any of them; but shall stand good and effectual in law, to all intents and purposes, notwithstanding the death or removal of the said Proprietary and Governor, or of the death, new commission, association, or not coming of the said Justices, or any of them.] (x)

[XXIX. And be it further enacted, That if any person or persons, after the first day of October, in this present year one thousand seven hundred and eighteen, shall commit any simple larceny, which is not by this act made felony of death, and be duly convicted thereof, at the Court of Quarter Sessions of the Peace, to be held for the respective county where such offence is committed, or where the offender becomes accessory in this province, he, she or they, so offending, their aiders, comforters and abettors, shall, for the first offence, restore the goods and chattels, so stolen, to the right owner or owners thereof, or shall pay him or them the full value of such goods, or so much of them as cannot be restored; which value shall be set by such persons as the court, before whom such offenders are convicted, shall appoint to do the same, upon their oaths or affirmations; and the said offenders shall also pay the costs of prosecution, with all such other sums of money as the same court shall allow for such owner or owners loss of time, charges and disbursements, in the apprehending and prosecution of such offenders. And moreover shall forfeit and pay the like value of the goods to the Governor, for the support of this government, and shall be committed to the common gaol of the county where they are convicted, there to remain till they make satisfaction for all the sums so to be adjudged or recovered against them; and moreover, shall be publicly whipped on his or their bare backs with stripes, well laid on, not exceeding twenty-one. And that he or they, who shall so as aforesaid be convicted of the second offence, and his and their aiders, comforters and abettors, shall pay to the right owner or owners of the goods and chattels, so stolen, the full value of such goods and chattels, or of so much of them as are not restored, which value shall be set as aforesaid; and the said offenders shall also pay the costs and charges aforesaid, to be allowed as abovementioned; and moreover, shall forfeit and pay the double value of the said goods to the Governor, for the support of this government, and shall be committed to the common gaol of the county where they are convicted, there to remain till they make satisfaction as aforesaid, and

Nor by the death or removal of the proprietary, &c.

The punishment of persons convicted of larceny.

For the first offence.

For the second, cond.

(u) Obsolete.

(x) Obsolete.

1718. shall be publicly whipped on their bare backs with stripes, well laid on, not less than twenty one, nor exceeding forty. And he or they who shall be so as aforesaid convicted of the third offence, and his or their aiders or abettors, shall pay to the right owner or owners of such stolen goods the full value thereof, to be set as aforesaid; and the said offenders shall also pay the costs and charges aforesaid, to be allowed as aforesaid; and shall also forfeit and pay the like treble value to the Governor, for the support of this government, and shall be committed to the county gaol, there to remain till they make satisfaction as aforesaid; and shall be publicly whipped on his or their bare backs with stripes, well laid on, not less than thirty-nine, nor exceeding fifty. And that the said Justices, before whom such offenders shall be tried and convicted of the third offence, shall also, at their discretion, award and give judgment, that such offenders shall be sent to some house of correction, or public work-house, and there to be set to work, corrected, and remain, without bail, for such time as the said Justices shall then judge and award, not less than twelve months, and not exceeding four years, to be accounted from the time of such conviction, and an entry shall be thereof made accordingly, as is herein above directed in other cases.] (y)

For the third.

Imprisonments, &c. not to stop execution against their estates.

The form of such executions.

XXX. *Provided always, and be it further enacted*, That none of the said imprisonments hereby awarded, as part of the punishment of the said offenders, or any of them, shall stop or avoid the awarding or taking out of executions, to levy so much of the respective sums recovered against them as aforesaid, as such offenders refuse or neglect to pay, when such writs are taken out. Which executions shall be directed to the Sheriff or Coroner of the proper county, requiring him to levy the sums due upon such recoveries as aforesaid, of the lands and tenements, goods and chattels, of such offenders returnable to the Court of Quarter Sessions next after the date or test of such writs; which shall be executed accordingly, and the lands, goods and chattels, thereby seized, shall be sold and conveyed by the said officers; and such sales shall be as available and effectual in law, as any other sales of lands taken and sold for payment of debts, by virtue of writs of execution, awarded out of the Courts of Common Pleas in the said respective counties. (z)

(y) This section is, in a great measure, superseded and supplied. By the act of the 5th of April, 1790, (chap. 1505, sect. 24.) the punishment to be inflicted for simple larceny to the value of twenty shillings, or for being an accessory before the fact, is imprisonment at hard labour, restitution of the stolen goods, and forfeiture of the value to the state; and for petty larceny, the same punishment, differing only in the degree, is inflicted. By the 5th section of the same act, the robbery and larceny of obligations or bonds, and other specified paper securities, are put on the same footing as of any goods or chattels. Of the law respecting restitution of stolen goods, see chap. 1572. But by an act of the 28th of February,

1787, (chap. 1250,) it is declared, that felons committed till they make such restitution shall have the benefit of the insolvent laws; which privilege, a subsequent act of the 27th of March, 1790, (chap. 1485,) modified, so as to empower the court to direct the felon to perform additional labour, in commutation of the restitution.

(z) The remedy given by this section to enforce restitution, in the cases of conviction for larceny, is extended to the cases of conviction for robbery and burglary; and the forfeiture of the convict's lands and chattels is limited to the residue, after making such restitution. See the note to the preceding section.

[XXXI. *And be it further enacted*, That all the said forfeitures, 1718. arising from offenders who shall be convicted of the said simple larcenies, and by this act directed to be applied for support of government, shall be duly levied by the Sheriffs of the respective counties, and shall be paid into the treasury of this province, from time to time, as soon as the same can be levied; and the provincial Treasurer for the time being, shall keep true and just accounts thereof, and shall issue and pay the same to the use and public service of this government. *Provided*, That the forfeitures arising from the said simple larcenies, committed within the city of Philadelphia, shall go as their charter directs. *Provided also, and it is hereby enacted, and declared*, That the testimony of the said owners of stolen goods shall be allowed and taken to be good evidence, to convict the said felons for such stealing: And that the law of this province, entitled, *An Act against robbing and stealing*, passed in the fourth year of the late Queen Anne; and another act, directing the punishment of petty larceny under five shillings, shall be and are hereby repealed.] (a)

Forfeitures to be paid to the provincial treasurer:

Excepting Philadelphia.

The testimony of owners of stolen goods to be evidence.

XXXII. *And be it further enacted*, That if any person or persons shall agree or compound, or take satisfaction, for any stealing or goods stolen, such person shall forfeit twice the value of the sums agreed for or taken: but no person shall be debarred from taking his goods back, which are stolen, provided he prosecute the felon.

Such as compound for stolen goods forfeit twice the value, &c.

XXXIII. *Provided always, and be it further enacted*, That no indictment, presentment or inquisition, or any process whatsoever, now depending in any Court within this province, for any of the crimes or offences mentioned in this act, shall be discontinued, abated or quashed, for or by reason of this act, or any thing therein contained; but that the Judges and Justices of the respective courts within this province shall proceed to hear, try and determine, the said offences in such indictments, presentments and inquisitions, mentioned to be committed against any act or acts of Assembly of this province, as were in force at the time of finding, making or taking the said indictments, presentments and inquisitions, and thereupon to give judgment and award execution, according to the direction of the said respective acts of Assembly, upon which the said indictments, presentments or inquisitions, are founded, as if the same act or acts of Assembly were by a special clause in this act continued for that purpose, any thing herein contained to the contrary notwithstanding.

No indictment, &c. now depending, shall be discontinued. [Obsolete.]

Passed 31st May, 1718.—Recorded A. vol. II. page 190.

(a) See the existing law for the collection of fines and forfeitures. See, likewise, the acts relating to the corporation of Philadelphia, (chap. 1383.) And for the acts here repealed, see ante. chapters 7, 107. (Notes to former edition.)—[Sheriffs to account yearly, &c. See the act of April 17th, 1807, (post. chap. 2858, sect. 4.)].