

ACTS

OF THE

General Assembly of Pennsylvania,

Passed at a Session which commenced October 14th, 1720,
and continued by adjournments to August 26th, 1721.

1721.

WILLIAM KEITH, LIEUTENANT GOVERNOR,

CHAPTER CCXLII.

An ACT for regulating party-walls, buildings, and partition-fences, in the city of Philadelphia. (b)

WHEREAS divers inconveniences, irregularities and controversies, have lately been, and still frequently happen, in relation to par-

(b) This act had lain dormant and inoperative for some time, in consequence of the dissolution of the Corporation of Philadelphia, at the time of the revolution; the Corporation alone being empowered to appoint Surveyors and Regulators. It was, therefore, amended and rendered effectual by the act of the 15th of April, 1782, (chap. 971.) By the latter act, the power of appointing the Surveyors and Regulators was vested in any four or more of the Justices of the Peace of the city and county of Philadelphia; appeals from the orders of the Regulators were directed to be made to the Court of Common Pleas; the penalty on laying the foundation of a party wall, before it was adjusted and marked out by the Regulators, was raised to £10 to be recoverable within twelve months; provision was made for ascertaining the northern and southern boundaries of the city; the Regulators and Justices, on appeal, were directed to keep records of their orders, &c. the fees of regulators were prescribed, and they were empowered at all seasonable hours to enter on any lot in the city, in order to perform their duties; and the streets which have been opened by private persons and dedicated to public use, or which have been laid out by the Execu-

tive in pursuance of a law, are declared to be highways. The act, likewise, declared, that no length of possession of any part of a public street or way within the city should be available, as a bar to prevent the removal of a nuisance; [and in 1 Dallas's Reports, page 150, it was decided to be no justification, on an indictment, for a nuisance by intruding on the public property, that the public was benefited;] that no vaults should be dug under the street, without first obtaining leave from the four Justices aforesaid, and a majority of the Regulators; and that within three months, iron grates of a specified make and size should be placed over all vaults, where grates of a different kind had been previously placed. The 12th section of the act which empowered the Commissioners to remove all trees from the streets, was repealed on the 20th of September, 1782, (chap. 979.) But for the revival of the jurisdiction of the Corporation in appointing regulators, &c. see chapter 1383, sect. 29, 30. See, likewise, the acts for regulating the streets, &c. in Southwark, (post. chap. 481,) and the acts there referred to; and the acts regulating the streets, &c. in the Northern-Liberties, (post. chap. 624,) and the acts there referred to.

ty-walls, and laying the foundation of buildings, in the city of Philadelphia : For the remedying whereof for the future, *Be it enacted,* 1721, That no person or persons, builder or builders, whatsoever, shall, from and after the twenty-fifth day of March, one thousand seven hundred and twenty-one, lay the foundation of any building or party-wall within the said city, before they have applied themselves to the surveyors or regulators, to be appointed by the Mayor and Commonalty of the said city, in their Common Council, who are hereby empowered to appoint two or more discreet and skillful persons for that purpose. (c)

Regulators to be appointed by the Mayor, &c.

II. *And be it further enacted,* That the said surveyors or regulators, upon application to them made, shall have full power and authority to enter upon the land of any person or persons, in order to set out the foundations, and regulate the walls to be built between party and party, as to the breadth or thickness thereof : Which foundation shall be laid equally upon the lands of the persons, between whom such party-wall is to be made ; and the first builder shall be reimbursed one moiety of the charge of such party-wall, or for so much thereof as the next builder shall have occasion to make use of, before such next builder shall any ways use or break into the said wall. The charge or value thereof to be set by the said regulators. (d)

Their power.

The first builder of a party-wall shall be repaid, &c.

III. *And be it further enacted,* That if any person or persons shall, of their own authority, presume to begin or lay the foundation of any party-wall, before the same be viewed and directed by the said regulators, or some two of them, every such person, as well employer as master-builder, shall forfeit the sum of five pounds : One half to the prosecutor or informer, and the other half to the public use and benefit of the said city ; to be recovered by bill, plaint or information, in the Court of Common Pleas, to be held for the city and county of Philadelphia, wherein no protection or wager of law shall be allowed, nor any more than one imparlance.] (e)

Penalty on laying a foundation, without being viewed, &c.

IV. *Provided always, and be it further enacted,* That if either party, between whom such foundation or party-wall is to be made, shall find themselves any ways aggrieved, by the order or direction of the said regulators, he or they may appeal to the Mayor and Commonalty of the said city, at their next Common Council, who shall finally adjust and settle the same ; which shall conclude and bind all parties ; the costs whereof to be paid as the Mayor and Commonalty shall direct and appoint.] (f)

Persons finding themselves aggrieved may apply to the Mayor, &c.

(c) The act of the 15th of April, 1782, (chap. 1549,) gave the power of appointing regulators to the Justices ; but on the revival of the Corporation, that power was incidentally restored, (chap. 1383.)

(d) The claim for a reimbursement of the moiety of the cost of a party-wall is not a lien upon the land, but only a personal charge against the builder of the second house. 1 Dallas, 341.

(e) This section is supplied; the penalty for laying the foundation of a party-wall, before it is marked by the Regulators, is raised to £.10, and the

prosecution for recovering it is limited to twelve months, (chap. 1549.)

(f) The appeal from the Regulators was directed to be made to the Court of Common Pleas, by the act of 15th April, 1782, (chap. 971.)

On appeal from an order of the Regulators of Southwark, the Court observed, that a feigned issue, to try the controverted question, can only determine whether the regulators have done right or not ; it cannot determine the title, and finally settle the matter. For this reason it was thought proper to try the question by ejectment. 1 Dallas, 308.

1721. **V.** *And be it further enacted,* That the said regulators or surveyors, attending the said service, for their pains and trouble in and about the premises, shall be paid, by the party or parties concerned in such foundation, or erecting such party-wall, the sum of three shillings each. (*g*)

The Regulators fecs.

Regulation of partition fences, &c.

VI. *And be it further enacted,* That the said surveyors or regulators, or any two of them, shall have full power to regulate partition-fences within the said city; and where the adjoining parties do improve or inclose their lots, such fences shall be made in the manner generally used, and kept in good repair, at the equal cost of the parties, so that the price for making exceed not forty shillings for every hundred feet, unless the owners or possessors, between whom such fence is or shall be erected, do agree otherwise. (*h*)

Cost of erecting and repairing such fences, how to be recovered.

VII. *And be it further enacted,* That if either party, between whom such partition-fence is or shall be made, shall neglect or refuse to pay his part or moiety for the repairing or setting up of such partition-fence as aforesaid, that then the party, at whose cost the same was so repaired or set up, may have either his action at law, or have the same determined as in cases of debts under forty shillings, as the case may require.

Passed 24th February, 1721.—Recorded A. vol. II. page 214.

(*g*) This section is altered and supplied by (chap. 1549,) sect. 8.

(*h*) For the acts regulating and maintaining fences, generally, see ante. chap. 56, page 14, and the notes there subjoined. (*Notes to former edition.*)

[The regulation of a lot by Regulators, under the act of March 9th, 1771, (post. chap. 624,) from which no appeal is entered to the Common Pleas, is *conclusive* as to the foundations and party-walls of buildings erected conformably thereto, but not so as to the lines of the lot, on which there are no buildings. *Godshall v. Mariam*, 1 Binney, 352.]

April 18th, 1795, The following acts were passed—

Chapter 1448 “An act to empower the corporation of the city of *Philadel-*

phia to oblige the owners and occupiers of houses in the said city, to provide buckets, to be used in extinguishing fires.”

Chapter 1449, “An act to authorize the corporation of the city of *Philadelphia* to prevent the erecting of wooden buildings in certain parts of the city of *Philadelphia*.”

The validity of this last mentioned act, was brought into question before the Supreme Court, and it was determined to be constitutional. MSS. Reports, Supreme Court.

See the index to this edition, title *Philadelphia*, where all the laws and regulations respecting the city and liberties, are digested, and brought into one view.]

CHAPTER CCXLIV.

A Supplementary ACT to a law of this province, entitled an act that no public house or inn, within this province, be kept without licence. (i)

WHEREAS, divers persons within this province, under colour of retailing rum and other strong liquors without doors, for the conveniency and supply of the inhabitants in their families, and, for that end, having obtained permits from the Collector of the excise,

(*i*) For the act, to which this is a supplement, and a general reference to the laws respecting public houses and taverns, see ante. page 73, (chap. 172,) and the notes there subjoined. (*Note to former edition.*)