

1792. examine witnesses till the commissioners are named. 2 Dallas, 401.

A joint commission to four persons to take depositions, cannot be executed by three. 4 Dallas, 410.

Want of jurisdiction may be taken advantage of in any stage of the cause. See 1 Binney, 138.

Under the plea of payment, mistake, or want of consideration may be given in evidence. The court said, there being no Court of Chancery here, this was necessary, in order to prevent a failure of justice. 1 Dallas, 17, 260.

It has been the settled practice of the Supreme Court to proceed upon equitable principles. See 1 Binney, 217.

In this state, says *C. J. McKean*, The Judges are sworn "to do equal right and justice to all men, to the best of their judgment and abilities, according to law." There is no Court of Chancery. The Judges here are, therefore, to determine causes according to equity, as well as the positive law: *Equity* being a part of the law. 1 Dallas, 213. See 4 Dallas, 245, 347-8.

CHAPTER CCLX.

An ACT for regulating the gauging of Cask in this province.

WHEREAS great abuses are daily committed in the trade of this province, by importing wine, rum, and other liquid merchandizes, in disproportionable cask, which have been usually gauged by the diagonal, which is known not to be an exact rule to find the contents of a disproportionable cask; and the person selling such commodities commonly refusing to submit to any other method or rule of gauging, the purchaser is thereby imposed upon, and often suffers great loss in want of just measure: For the redress of which abuse for the future within this province, *Be it enacted*, That if any merchant, or other person whatsoever, shall utter, sell, or put to sale, any butt, tun, pipe, hogshead, barrel, runlet, or other cask of rum, wine, molasses, or other liquid merchandize, imported into any port or place within this province, before the gaugers hereafter mentioned, or their deputies, shall have first plainly and truly set down or marked, upon the head of such vessel, the capacity and full contents of the same, according to the standard and excise of wine-measure by the gallon, such person or persons, shall forfeit, for the uses directed in this act, the sum of ten pounds for every cask so uttered, sold, or put to sale.

II. And further, if any merchant or other person shall utter, sell, or put to sale, any rum, wine, molasses, or other liquid merchandize, as aforesaid, within any port or place of this province, in any cask or vessel, having the number of gallons set down and marked on the head of such vessel, and the same shall be found to lack of the contents marked on the said vessel, such person shall forfeit and pay, to the uses directed in this act, the sum of ten shillings, for every gallon marked or numbered on the said cask more than it will truly contain.

III. And to the end that all persons, dealing in such merchandize, may the more easily and readily be informed and assisted in the discovering the true quantity of such liquid merchandize, so imported as aforesaid, *Be it enacted*, That Nathaniel Griffitts, and Benjamin Morgan, of Philadelphia, shall be and are hereby appointed gaugers, of all the wine, rum, molasses, and other liquid merchandize, imported into this province for sale. Which said gaugers, (before they enter upon their office, shall take an oath or affirmation, well and truly to execute the office of gaugers within

No person to sell liquors before gauged by the gaugers, under penalties, &c.

Forfeitures on liquors lacking the quantity sold for,

Gaugers names, and

how to be qualified.

this province between buyer and seller) are hereby empowered, by themselves, or their proper deputies, or assistants, to gauge all rum, wine, molasses, or other liquid merchandize, imported in any butt, tun, pipe or hogshead, barrel, runlet, or other cask, into any port or place of this province, when they the said gaugers, or either of them, shall be thereunto required. (*) 1722.

IV. And that they shall mark or set down the true number of gallons, according to the English standard and excise of wine measure, which each cask or vessel will truly contain, with their own mark: All which casks, with their true marks and numbers, and owners names, shall be entered in a book or books, to be kept for that purpose by the said gaugers, or their proper deputies, to which recourse may be had, as occasion may require; for a copy of which entry, they shall receive four pence; and for each cask, so by them gauged and marked, they shall receive the sum of four pence, and no more.

Gaugers to mark the cask with the contents, and enter it in a book.

Fec for a copy and for gauging.

V. And if any cask or other vessel, gauged and marked by the said gaugers, or their lawful deputies, shall be found lacking one or more gallons of the quantity numbered or marked on the said cask or vessel, the aforesaid gaugers shall forfeit ten shillings, for each gallon lacking or exceeding the number or mark so set down on each cask.

Penalty on false gauging.

VI. And be it further enacted, That all and every the penalties and forfeitures in and by this act set and appointed shall be, one half to the Governor, for the support of government, and the other half to the informer, or him or them that will sue for the same; if under forty shillings, to be recovered as debts under forty shillings are usually recovered; and if above forty shillings, to be sued for and recovered by bill, plaint or information, in any Court of Record within this province, wherein no essoin, protection, or wager of law, shall be allowed for the defendant.

How the penalty shall be appropriated and recovered.

Passed 23d May, 1722.—Recorded A. vol. II. page 222. (r)

(r) By an act of the 18th of August, 1727. (post. chap. 295,) more effectual measures are taken to prevent unfair practices in packing Beef and Pork for exportation; which act is revised, and, in a great degree, supplied by supplements of the 12th of March, and 24th of September, 1789. (post. chap. 1384—1428.)

These two last acts prescribe the dimensions, make, quality, capacity, brand marks, and inspections of casks, &c. for packing Beef and Pork, Flaxseed, Butter, and Biscuit.

An act for the inspection of Butter intended for exportation, was passed January 7th, 1804. (post. chap. 2391), by which the dimensions and quality of the kegs are prescribed, and also the manner of inspecting and marking them; and the 9th section of the act of March 12th, 1789, is repealed.

Respecting the inspection of Bread and Flour, see the act of April 5th,

1781, (post. chap. 925), and the notes thereto subjoined. And the act of December 28th, 1781, (post. chap. 947), the act of September 15th, 1784, (post. chap. 1101), and the act of 12th September, 1789, (post. chap. 1422.)

For the inspection of Staves, Heading, Boards, and Timber, see the acts of May 20th, 1767, (chap. 562)—April 5th, 1790, (chap. 1501, March 17th, 1796, (chap. 1869) March 30th, 1803, (chap. 2462), and March 20th, 1810.—Of Shingles, September 29th, 1789, (chap. 1440, and April 5th, 1790, (chap. 1503.)

For the acts respecting Wine, Beer, and Ale Measure, and respecting weights and measures, see ante. pa. 18. 43. (chap. 7, 138.)

By an act passed April 7th, 1807, (chap. 2820.) Hog's Lard exported from the port of Philadelphia is subjected to inspection, by the inspector of Butter.

(*) This subject is now regulated under the inspection and revenue laws of Congress.