

tion, by the person or persons grieved, if they will sue for the same, wherein no essoin, protection or wager of law, nor any more than one imparlance, shall be allowed. 1729-30.

III. *Provided*, That nothing herein contained shall be deemed to extend to any person, who shall be married in the religious society to which they belong, so as notice be given to the parent or parents, guardian or guardians, masters or mistresses, of the person or persons so to be married, if such parent, guardian, master or mistress live within this province, at least twenty days before such marriage be solemnized; nor that this law shall extend to any person marrying by the authority of any lawful licence, so as such consent or approbation in writing of the parent or parents, guardian or guardians, masters or mistresses, as by this act is directed, be first had, and the same consent be certified in the body of the said licence; any thing herein, or in the aforesaid act of assembly, contained to the contrary notwithstanding.

Marrying in religious societies not forbid by this act, so as notice be given, &c.

Consent of parents, &c. to be certified in licences.

Passed 14th February, 1729-30.—Recorded A. vol. II. page 387.

CHAPTER CCCXV.

An ACT for the relief of insolvent debtors within the province of Pennsylvania.

WHEREAS, in compassion to such unhappy persons, as, by losses and other misfortunes, have been rendered incapable to pay their debts, it is provided by an act of assembly of this government, that if any person be imprisoned for debt, or fines, within this province, and have no sufficient estate to satisfy the same, the debtor shall make satisfaction by servitude, according to the judgment of the court; but there being no provision made by the said law to compel the debtor to render any account of his or her estate, great abuses have been committed by persons claiming the benefit of that law, in concealing their estates, or making them over in trust, so that no clear discovery could be made of the same by the creditors; and it being found by experience that the service of the debtor has in no wise answered the end proposed in making the said law: Therefore, for the relief of such prisoners, who shall be willing to satisfy their creditors as far as they are able, *Be it enacted*, That if any person or persons, charged in execution for any sum or sums of money, not exceeding in the whole the sum of one hundred pounds, from and after the twenty-fifth day of March, in the year of our Lord one thousand seven hundred and thirty, shall be minded to deliver up to his, her or their creditors, all his, her or their effects, towards the satisfaction of the debts wherewith he, she or they stand charged, it shall and may be lawful for such prisoner to exhibit a petition to any of the courts of law within this province, from whence the process issued, upon which he, she or they was or were taken or charged in execution, certifying the cause or causes of his or their imprisonment, and an account of his, her or their whole real and personal estate, with the dates of the securities wherein any part of it consists, and the deeds or notes relating thereunto, and

Prisoner to exhibit a petition, &c.

1729-30.

Creditors to
be summoned
to appear.
&c.

the names of the witnesses to the same, as far as his, her or their knowledge extends thereto: And upon such petition the court may, and is hereby required, by order or rule of court, to cause the prisoner to be brought up, and the several creditors, at whose suit, he she or they stand charged as aforesaid, and all other his or her creditors, that are or can be known to the court, to be summoned to appear personally, or by their attorney, in court, at a day to be appointed for that purpose; and upon the day of such appearance, if any of the creditors summoned refuse or neglect to appear, upon affidavit of the due service of such rule or order, or upon affidavit made that the creditor or creditors are not to be found, the court shall, in a summary way, examine into the matter of such petition, and hear what can or shall be alleged on either side, for or against the discharge of such prisoner; and upon such an examination, the court may and are hereby required to administer or tender to the prisoner an oath or affirmation, to the effect following:

The form of
the prisoner's
oath or
affirmation.

"I, A. B. do solemnly (swear, in the presence of Almighty God) or (sincerely and truly declare and affirm) that the account by me delivered into this honourable court, in my petition to this court, doth contain a full and true account of all my real and personal estate, debts, credits and effects whatsoever, which I, or any in trust for me, have, or at the time of my imprisonment had, or am, or was, in any respect entitled to, in possession, remainder or reversion (except the wearing apparel and bedding for me or my family, and the tools or instruments of my trade or calling, not exceeding five pounds in value in the whole) and that I have not, at any time since my imprisonment, or before, directly or indirectly, sold, leased, or assigned, or otherwise disposed, or made over in trust, for myself or otherwise, other than as mentioned in such account, any part of my lands, estate, goods, stock, money, debts or other real or personal estate, whereby to have or expect any benefit or profit to myself, or to defraud any of my creditors, to whom I am indebted."

Prisoner to
assign his ef-
fects to his
creditors,
&c.

II. And in case the prisoner shall in open court take the said oath or affirmation, and upon such examination, and his or her taking the said oath or affirmation, the creditors shall be satisfied with the truth thereof, the court may immediately order the lands, goods and effects, contained in such account, or so much of them as may be sufficient to satisfy the debts wherewith he or she is or shall be charged, together with costs of suit, and the fees due to the keeper of the gaol or prison from which the prisoner was brought, to be, by a short indorsement on the back of such petition, signed by the prisoner, assigned to the creditors, or one or more of them, in trust for the rest of them, or to some proper person, to be by the said court appointed, in trust for all the creditors: and by such assignment the estate, interest and property of the lands, goods, debts and effects, so assigned, shall be vested in the person or persons to whom such assignment is or shall be made, who may take possession of, or sue for the same, in his or their own name or names, in like manner as Assignees of Commissioners of bankrupts: to which suit no release of the prisoner, his or her executors or administrators, or any trustee for him or her, subsequent to such assignment, shall be any bar. And immediately upon such assignment executed, the said pri-

And upon
such assign-
ment to be
discharged.

soner shall be discharged out of custody, by order of court: and such order shall be a sufficient warrant to the Sheriff, gaoler or keeper of such prison, to discharge the said prisoner, if detained for the causes mentioned in such petition, and no other, and he is hereby required to discharge and set him or her at liberty forthwith, without fee; nor shall such Sheriff or gaoler be liable to any action of escape, or other suit or information, upon that account: 1729-30,
 And the person or persons to whom the said effects shall be assigned, paying the fees to the gaoler or keeper of the prison, in whose custody the party discharged was, shall and are hereby required to divide the effects so assigned among the creditors, and all the persons for whom they shall be entrusted, in proportion to their respective debts. Effects to be divided among the creditors.
 But in case the person or persons, at whose suit such prisoner was charged in execution, or any other creditor, shall not be satisfied with the truth of such oath or affirmation, but shall desire further time to inform himself of the matters contained therein, the said court may and shall remand the said prisoner, and direct the said prisoner, and the person or persons dissatisfied with such oath or affirmation, to appear at another day, to be appointed by the said court, some time within the term next following the time of such examination; and if at such second day, so to be appointed, the creditor or creditors dissatisfied with such oath or affirmation shall make default in appearing, or in case he or they shall appear, but shall be unable to discover any estate or effects of the prisoner, omitted in such his or her petition, or to shew any probability of his or her having been forsworn, or to have declared falsely in the said oath or affirmation, then the said court shall immediately cause the said prisoner to be discharged, upon such assignment of his or her effects, in manner as aforesaid, unless such creditor or creditors do insist upon his or her being detained in prison, and do agree, by writing under his hand, to pay and allow any sum of money that shall be assessed by the said court, not exceeding three shillings per week, unto the said prisoner, to be paid the second day of every week, so long as he or she shall continue in prison at his, her or their suit; on failure of the payment of which weekly sum, at any time, the said prisoner shall forthwith, upon application to the court, or to any three Justices of the said court in the vacation, be discharged by such order as aforesaid. Creditors not being satisfied with the oath, &c. the court may remand the prisoner, &c.
 But in case the said prisoner shall refuse to take the said oath or affirmation, or, having taken the same, shall be detected of falsity therein, he or she shall be presently remanded. Creditors insisting on the prisoner's being detained, to pay, &c. towards his maintenance.

III. *And be it further enacted,* That no person to be discharged by this act shall any time hereafter be imprisoned, by reason of any judgment or decree obtained for payment of money only, or for any debt, damages, contempts, costs, sum or sums of money, contracted, occurred, occasioned, owing, or growing due, before the time of his or her discharge; but that upon every arrest upon every such judgment or decree, or for such debts, damages or contempts, costs, sum and sums of money, it shall and may be lawful for any Judge of the court where the process issued, upon shewing the duplicate of such prisoner's discharge or discharges, to release and discharge out of custody such prisoner or prisoners as aforesaid: No person discharged by this act, to be hereafter imprisoned for any debt, &c. due before his discharge.

1729-30.

and the Judge is hereby empowered so to do, so as every such prisoner or prisoners, arrested or detained upon execution, or mesne process, do give a warrant of attorney to appear to every such action, and to plead thereunto.

Justices, Sheriffs, &c. may plead the general issue, &c.

IV. *And be it further enacted,* That if any action of escape, or any suit or action be brought against any Justice or Justices of the Peace, Sheriff, gaoler or keeper of any prison, for performing their office in pursuance of this act, they may plead the general issue, and give this act in evidence; and if the plaintiff be non-suited, or discontinue his action, or verdict pass against him, or judgment upon demurrer, the defendant shall have treble costs.

V. *Provided,* That the discharge of any person, by virtue of this act, shall not acquit any other person from such debt, sum or sums of money, or any part thereof: but that all others shall be answerable for the same, in such manner as before the passing of this act.

VI. *And provided,* That this act shall not extend to discharge any person out of prison, who shall stand chargeable at the suit of the crown only.

Judgment to stand good against what the prisoners may hereafter possess, &c.

VII. *Provided always, and be it enacted,* That notwithstanding the discharge of the person of such prisoner or prisoners as aforesaid, all and every debt and debts, due or owing from the said prisoner or prisoners, and all and every judgment or judgments had and taken, and decree obtained against him or her, shall stand and be good and effectual in the law, to all intents and purposes, against the lands, tenements, hereditaments, goods and chattels of the said prisoner, so discharged as aforesaid, which he, she or they, or any other person or persons in trust for him, her or them, at the time of such discharge, hath or have, or at any time hereafter, shall or may be any ways seized or possessed of, interested in, or entitled to, either in law or equity, except his, her or their wearing apparel, bedding for his, her or their families, and working tools and implements, necessary for his, her or their occupations, not exceeding the value of five pounds, in the whole; and it shall and may be lawful to and for such creditor or creditors of such prisoner or prisoners, so discharged as aforesaid, his, her or their executors or administrators, to take out a new execution against the lands, tenements, hereditaments, goods and chattels of such prisoner or prisoners, (except as are before excepted,) for the satisfaction of his, her or their debts, in such sort, manner and form, as he, she or they might have done, if the person or persons of such prisoner or prisoners had never been taken in execution, any act, statute, law or custom, to the contrary in any wise notwithstanding.

And the creditors may take out a new execution, &c.

Prisoner convicted of perjury, shall suffer, &c.

VIII. *Provided also, and be it further enacted,* That if any such person, who shall take such oath or affirmation as aforesaid, shall, upon any indictment for perjury, in any matter or particular, contained in the said oath or affirmation, be convicted, by his or her own confession, or by verdict of twelve men, the persons so convicted shall suffer all the pains and forfeitures which may by law be inflicted on any person convicted of wilful perjury; and shall likewise be liable to be taken on any process *de novo*, and charged in execution for the said debt, in the same manner, as if he or she had never been discharged or taken in execution before, and shall never after have the benefit of this act.

IX. *Provided also, and be it further enacted,* That if the effects so assigned shall not extend to satisfy the whole debts due to the creditors of the person or persons so discharged, and the fees due to the gaoler, there shall be an abatement in proportion, and such gaoler shall come in as a creditor, for what shall be then due to him for his fees, in proportion with the other creditors. 1729-30.
Gaoler to come in as creditor for his fees.

X. *And be it further enacted,* That where there are mutual debts between the debtor or debtors, and his, her or their creditors, or if either party sue or be sued, as executor or administrator, where there are mutual debts between the testator or intestate and either party, one debt may be set against the other, and such matter may be given in evidence upon the general issue, or pleaded in bar, as the nature of the case shall require: so as at the time of the pleading the general issue, where any such debt of the plaintiff, his testator or intestate, is intended to be insisted on in evidence, notice shall be given of the particular sum or debt so intended to be insisted on, and upon what account, it became due, or otherwise such matter shall not be allowed in evidence upon such general issue. Where there are mutual debts, one may be set against the other, &c. Antc. p. 2, 57.

XI. *Provided,* That where any rent shall be due from any prisoner or prisoners, at the time of his or their respective discharges, no goods or chattels, then lying or being in or upon the respective tenements or lands so in lease, or liable to be distrained, shall be removed or disposed of, without the consent of the landlord or person to whom the rent is due, until the same, not exceeding one year's rent, be paid or satisfied; and that the landlord may use all lawful ways for the having and recovering his rent, so as the same exceed not one year's rent, by distress or otherwise, as he might have had, or could have done, before the making of this act, any thing herein contained to the contrary in any wise notwithstanding. Landlords may recover one year's rent, as before this act. See chap. 645, sect. 4.

XII. *And provided also,* That this act shall not bar any absent or distant creditor, who had not notice of the prisoner's application to the court as aforesaid.

XIII. And whereas, by an act of Assembly of this province, entitled *An Act for better determining debts and demands under forty shillings*, power is given to any one Justice of the Peace to hear and determine any debt or demand under forty shillings, and, upon judgment given, to award execution against the body, and goods or effects of the defendant; in pursuance of the execution of which law, many poor persons have been taken and imprisoned a long time, for very small sums of money, to the utter ruin of their families, and without any real benefit to the creditors; and forasmuch as it will be a very great hardship and charge upon a poor prisoner, confined for a small debt, to oblige him or her to apply to be discharged in the manner directed by this act, for persons imprisoned for a greater sum: Therefore, for the ease of such poor persons, *Be it enacted,* That where any person or persons shall be charged in execution for any sum of money, not exceeding in the whole the sum of forty shillings, besides costs of suit, such person or persons may, by petition, apply to any two Justices of the Peace of the county or city where he or she is imprisoned, and therein set forth the truth of his or her case, with a true account of his or her whole effects; which Justices shall thereupon give reasonable notice to the plaintiff. How prisoners for debt under forty shillings may be relieved.

1729-30.

or creditor to appear before them at a certain day and place, to shew if that the said debtor or debtors have some effects that he or she will not discover and yield up, for payment of the debt and costs: at which day the defendant or defendants shall make such oath or affirmation as; in the case of other debtors, is by this act directed to be taken, the words five pounds, in the said oath, only excepted, and the words twenty shillings, in the case of a single person, and the words fifty shillings in the case of a married person, to be taken or inserted instead thereof: And if the plaintiffs or creditors shall, upon notice given as aforesaid, neglect or refuse to appear, or appearing, and not making out to the said Justices that the debtor hath omitted to discover some of his or her effects in his or her petition, or to shew any probability of his or her being forsworn in the said oath or affirmation, then the said Justices shall immediately cause the said prisoner to be discharged, upon his or her making an assignment to the plaintiff, on the said petition, of all the effects contained therein, the wearing apparel, to the value of twenty shillings, if a single person, and to the value of fifty shillings, if a married person, only excepted; and the persons of the debtor or debtors shall never after be arrested for the same debt or costs.

See chap.
1505, sect. 26,
and chap.
1625.

Sheriff, &c.
shall not
carry per-
sons arrested
to any tav-
ern, &c.
without
their con-
sent;

nor demand
extravagant
fees, &c.

For shall
keep persons
arrested in
any public or
private house
above twenty
days, &c.

Justices to
make orders
for regulat-
ing expenses,
&c.

XIV. And whereas many persons may suffer by the oppression and exactions of gaolers, and other inferior officers, in the execution of process for debt: For prevention whereof, *Be it further enacted*, That no Sheriff, Under-Sheriff, Bailiffs, or other officer or minister whatsoever, shall, at any time or times hereafter, convey or carry, or cause to be conveyed or carried, any person or persons by him or them arrested, or being in his or their custody, by virtue or colour of any writ, process or warrant, to any tavern, alehouse, or other public victualling or drinking-house, or to the private house of any such officer, without the voluntary consent of the person so taken or arrested; nor charge, demand, take or receive, or cause to be demanded, taken or received, directly or indirectly, any other or greater sum or sums of money, than is or shall be by law allowed to be taken or demanded, for such arrest, taking, detaining, or waiting till the person or persons, so arrested or in custody, shall have given in an appearance or bail, as the case shall require, or agreed with the person or persons at whose suit or prosecution he, she or they shall be taken or arrested, or until he, she or they shall be sent to the proper gaol belonging to the county, city, town or place where such arrest or taking shall be; nor shall keep the person or persons, so taken or arrested, in any tavern, alehouse, or other public victualling-house, or private house of any officer, with or without the consent of the persons so arrested, above the space of twenty days; nor shall exact or take any reward, gratuity, or money, for keeping the person or persons so arrested or in custody out of gaol or prison: nor shall take or receive any other or greater sum or sums of money, for one or more night's lodging, or for a day's diet, or other expenses, than what shall be allowed as reasonable in such cases, by some order or orders to be made by the Justices of the respective Courts of Common Pleas within this province, at some court to be held for such county, city, town, or place, where such arrest or taking shall be, who are hereby autho-

rized and required, with all convenient expedition, to make some standing order or orders for ascertaining such expenses within their respective counties or cities. 1729-30.

XV. *And be it further enacted,* That every Sheriff, Under-Sheriff, gaoler, keeper of any prison or gaol, or other person or persons whatsoever, to whose custody or keeping any one so arrested or taken shall be committed on any pretence, shall permit and suffer him, her or them, so arrested or taken, at his, her or their will and pleasure, to send for and have any beer, ale, victuals, or other necessary food, from what place they please; and also to have and use such bedding, linen and other things, as he, she or they shall think fit, without purloining or detaining the same, or any part thereof, or enforcing or requiring him, her or them, to pay for the having or using thereof, or putting any manner of restraint or difficulty upon him, her or them, in using thereof, or relating thereto.

Officers shall permit prisoners to send for necessaries where they please.

See chap. 1506, sect. 25, and chap. 1325.

XVI. *And be it further enacted,* That no fees shall be taken by any gaoler, or keeper of any gaol or prison, within this province, for any prisoner or prisoners commitment or coming into gaol, or chamber-rent there, or discharge from thence, or other expenses, than what shall be allowed by law, until such fees shall be settled and established by the Justices or Judges of the respective County Courts, and other Courts of Record, within this province, for and in respect of the counties and courts to which they belong, who are hereby directed, empowered and required, to settle and establish the same as soon as conveniently may be: And tables shall be made of the respective orders, rules and fees, so settled and established, and signed by the Justices or Judges of the respective County Courts, Courts of General Quarter Sessions of the Peace, and other Courts of Record, for the respective gaols within their respective jurisdictions; and signed by the Mayor, Recorder and Aldermen, for and in respect of the Courts of Record held before the Mayor, Recorder and Aldermen of the city of Philadelphia; which rules, orders and fees, may from time to time be enlarged, reformed, or altered and amended, as occasion shall require, by the Judges of the Supreme Court, by rules and orders of the said court, to be signed by the Judges of the same: and duplicates shall be transmitted to the respective County Courts, and other Courts of Record, for which they are made, to be entered of record and enrolled, without any fee to be taken for the enrolment thereof.

Justices shall settle tables of fees, &c.

Which may be altered and amended, and shall be entered on record.

See chap. 1506, sect. 25, chap. 1325 and 1322.

XVII. *And be it further enacted,* That the several Courts of Common Pleas, and other Courts of Record, in the several counties and cities of this province, shall, at every time of the sitting or meeting of such court or courts, enquire whether such tables of fees, and such rules as aforesaid, be hung up, and remain public and easy to be resorted to, in the several prisons to the said courts respectively belonging, and whether the same be duly complied with and observed, and cause eight days notice to be given to the prisoners in the said prison of the time appointed for such enquiry; and shall inform themselves, touching the same, in the best manner they can, and supply and redress whatever they find neglected or transgressed: And that the Judges of the Courts of Oyer and Terminer and General Gaol Delivery shall likewise make enquiry of

Courts to enquire concerning the tables of fees, &c.

1729-30. the matters aforesaid, at all such Courts and Sessions of Gaol Delivery within this province, for and in respect of the gaols and prisons, within their respective jurisdictions; and shall expressly give it in charge to the Grand Jury to enquire concerning the same.

How gaol-
ers, &c. guilty of extortion, shall be punished.

XVIII. And, for the more speedy punishing gaolers, bailiffs, and others, employed in the execution of process, for extortions, or other abuses in their respective offices and places, *Be it further enacted*, That upon petition of any prisoner or person, being or having been under arrest or in custody, complaining of any extortion or extortion by any gaoler, bailiff, or other officer or person, employed in the keeping or taking care of any gaol or prison, or the arresting or apprehending of any person or persons, by virtue of any process or warrant, or any other abuse whatsoever, committed or done in their respective offices or places, unto any of his Majesty's Courts of Record within this province, from whence such process issued, or under whose power such gaol or prison is; or to any two Justices of such court, in the time of vacation; or to the Judges of the Supreme Court, or any of them, in their respective Sessions of Oyer and Terminer or General Gaol Delivery; it shall and may be lawful for the said court, Justices or Judges, to hear and determine the same in a summary way, and to make such order thereupon, for redressing such abuse, and punishing of such officer or person complained of, and making reparation to the party or parties injured, as they shall think just, together with the full costs of such complaint; and all orders and determinations which shall be made by the said courts, or of the said Justices or Judges respectively, in such summary way as herein prescribed, shall have the same effect, force and virtue, to all intents and purposes, as any other orders of the said respective courts; and obedience thereunto may be enforced, either by attachments ordered by the said respective courts, or by attachments to be issued under the seal of the said courts, by direction of the Justice or Judge making such order.

No Sheriff, Under-Sheriff or gaoler, to keep any tavern, &c. See an act passed April 4th, 1807, (Chap. 2805, sect. 5.)

XIX. And for the preventing prisoners being imposed upon, by being under a necessity of spending their money in prisons, where strong liquors are sold, *Be it enacted*, That no gaoler, or keeper of any gaol, or any Sheriff, or Under-sheriff, having the care or keeping of any gaol or prison within the Province of Pennsylvania, shall keep, or suffer to be kept, any tavern, public house or alehouse, or shall utter or sell to any person or persons under arrest, or in prison, any wine, rum, beer, ale, cyder, punch, or any other strong liquors, other than what shall be allowed by the Justices as aforesaid for a day's diet or expenses, by such order to be made as aforesaid on pain of being removed from his or their office or offices of Sheriff, Under-sheriff, or gaoler, upon complaint made, to be heard and determined, upon petition, in a summary way as aforesaid, before the Justices in the respective Courts of Common Pleas for the county to which such gaoler, Sheriff or Under-sheriff, having the keeping of any gaol, does belong.

No Sheriff to continue in his office above three years.

XX. And for the more effectual preventing oppressions to his Majesty's subjects within this province, *Be it further enacted*, That no Sheriff within this province shall continue in his office of Sheriff, or occupy the said office, above three years; and that no man

who hath been Sheriff or Under-sheriff of any county by the space of three years, shall be chosen Sheriff of that county again within three years next ensuing, upon pain of forfeiting two hundred pounds, by him who shall occupy his office contrary to the effect and intent of this act. 1729-30.

See the existing constitution, art. 6, sect. 1.

XXI. *And be it further enacted,* That one act of General Assembly of this province, entitled *An act about arrests, and making debtors pay by servitude*, be, and is hereby repealed and made void. Chap. 153.

Passed 14th February, 1729-30.—Recorded A. vol. II. page 397. (i)

(i) By the 28th section of the second chapter of the constitution of 1776, it is declared, "That the person of a debtor, where there is not a strong presumption of fraud, shall not be continued in prison, after delivering up, *bona fide* all his estate, real and personal, for the use of his creditors, in such manner as shall be hereafter regulated by law." The spirit of this humane provision is expressed in the following analogous terms, by the 16th section of the 9th article of the existing constitution:—"The person of a debtor, where there is not strong presumption of fraud, shall not be continued in prison, after delivering up his estate, for the benefit of his creditors, in such manner as shall be prescribed by law." The legislature, by various successive amendments, have gone far towards effectuating these constitutional injunctions. Thus, by chap. 321, post. it was declared, that persons unmarried, and under the age of forty years, having no charge of children, and being indebted to one or more persons in any sum not exceeding, in the whole, twenty pounds, should not have the benefit of the insolvent law; but, nevertheless, that such debtors, under arrest and imprisonment, having exhibited to the proper court, an account of their effects, a list of the names of their creditors, and a statement of their debts, proving by petition their inability to pay the debts for which they are imprisoned, making an assignment of their effects in trust, &c. and signifying their willingness to make satisfaction for the residue by servitude, shall be discharged, agreeably to the previous act, (chap. 153.) It was, likewise, provided, that persons who had not resided here for two years, next, before their imprisonment, should be excluded from the benefit of the insolvent law; that where plaintiffs refused to give security for paying a weekly allowance to the defendants, and that the defendants and their families should not become chargeable to the town or county, the action should be discontinued, and the parties discharged; and

that where the debt was under forty shillings, any two Magistrates might, on application, relieve the party imprisoned, by judging him to make satisfaction by servitude.

[The act about arrests, and making debtors pay by servitude, after having been repealed by the act in the text, and revived by the act of February 6th, 1730, 1731, was again repealed by an act passed March 20th, 1810. It is presumed, that all the subsequent provisions founded thereon, fall with the original act, having been long obsolete in practice, and that part of the above recited act, respecting the weekly allowance to debtors, is supplied and repealed, by an act of April 7th, 1807, (*infra*, chap. 2824,) and by the operation of subsequent acts, all of that act (321) has become obsolete.]

By chap. 518, post. it was provided, that persons charged in execution for any sums, not exceeding, in the whole, one hundred and fifty pounds to any one person, should be entitled to the benefit of the insolvent laws; and that a debtor should be discharged, after an examination on oath or affirmation, unless the creditor agreed, in writing, to make a weekly allowance, not exceeding the sums mentioned in the act.—And by (chap. 531,) it was provided, that no person indebted to any one creditor in a sum exceeding one hundred and fifty pounds, should be entitled to the benefit of the insolvent laws, although charged in execution for any other sum, not exceeding one hundred and fifty pounds. [See now the act of April 3d, 1794 referred to *infra*, by which chap. 531 is virtually repealed.]

By chap. 691, it is enacted, that where insolvent debtors shall assign their estates in trust, for the use of their creditors, and the trustees neglect or refuse to perform the trust, the creditors may petition the proper court; and on their making the necessary proof, the court shall appoint commissioners to audit and adjust the accounts of the trustees, their executors or administrators. The act likewise prescribes the duties and powers of such

1729-30. commissioners, and allows an appeal from their decision to the court.

By an act of the 28th of February, 1787, (chap. 1250,) it is provided, that persons committed until the restoration of stolen goods, or payment of the value, &c. may be discharged by the proper court, if they are found unable to pay; but reasonable previous notice must be given to the owner of the stolen goods, or his attorney. Debtors in execution for rent, are, likewise, admitted to the benefit of the insolvent laws; but this shall not affect the landlord's remedy by distress. Insolvent debtors shall not be remanded on a weekly allowance, except in case of a strong presumption of fraud.

By an act of the 27th of March, 1789, (chap. 1400,) it is provided, that so much of the insolvent laws, as deprives persons of the benefit thereof, by reason of their non-residence for two years next before their imprisonment, shall be repealed, as against the plaintiffs at whose suits they are imprisoned, and so far as relates to the debts due to such plaintiffs, if the same shall not, in the whole, exceed one hundred pounds. Persons confined for thirty days in execution, or otherwise, for any debts, fines or forfeitures, none of which exceed five pounds, exclusive of costs, shall, upon application be discharged by the gaoler, and shall not be liable to be again imprisoned for the same cause.

By an act of the 4th of October, 1788, (chap. 1363,) it is provided, that persons imprisoned for taxes shall be admitted to the benefit of the laws respecting insolvent debtors. [But this seems to be confined to persons imprisoned under that act.]

By an act of the 27th of March, 1790, (chap. 1485,) it is provided, that insolvent debtors, remanded under a strong suspicion of fraud, may be discharged from confinement by the court in a reasonable time, not less than twelve months after being remanded.

By the same act it is provided, that an insolvent debtor, aged fifty years, or upwards, and married, or having a charge of children, may, on petition, have a certificate from the proper court, operating with regard to all previous debts, as a discharge both of his person, and property afterwards acquired, provided he is indebted to no one person more than twenty pounds; but no person shall be entitled twice to the benefit of the act.

By the same act it was provided, that no insolvent debtor should be discharged, unless at least fifteen days notice of the hearing on his petition for that purpose be given to his creditors; and

that where actions are depending, or judgments obtained against an insolvent debtor, by non-inhabitants of the state, he may be discharged from imprisonment, as to the same, on due notice being given to the attorney at law for the plaintiffs, or their attorney in fact, or known agent, although the creditors are not personally notified. [And, if the court shall think it reasonable and expedient, on application of the creditor, they may remand the debtor for a further time, to allow the creditors an opportunity to make enquiry relative to the estate and effects of such debtor.]

By an act of the 5th of April, 1790, (chap. 1505, sect. 26,) provision is made to reserve the building, heretofore appropriated as a house of correction, [in the city of Philadelphia,] for the exclusive reception and confinement of debtors, and persons committed to secure their attendance as witnesses.

By an act of the 23d of September, 1791, (chap. 1572, sect. 12,) it is declared, that persons confined for costs on a criminal prosecution shall have the benefit of the insolvent laws.

By an act of the 16th of February, 1792, (chap. 1594,) it is declared, that an insolvent debtor, who has been in gaol six months or more, next preceding the time of preferring his petition, but has not resided here two years before his imprisonment, and has not been proceeded against as a bankrupt, shall have the benefit of the insolvent laws, if it appear, to the satisfaction of the court, that he is actually arrested and confined on adversary process, and has made a full disclosure of his estate. All other persons in actual confinement, in actions founded on contract, for thirty days next preceding the time of preferring the petition, shall have the benefit of the insolvent laws, although not charged in execution.—It is proper here to remark, that the laws for the regulation of bankruptcy, (chap. 1172, 1264,) have expired by their own limitation; though the Commissioners have been allowed to perfect the business unfinished at the time of expiration, (chap. 1632, 1735.)

By an act of the 4th of April, 1792, (chap. 1623,) provision is made for establishing Inspectors of the debtor's apartment, and for furnishing necessaries to such of the prisoners as cannot maintain themselves. It is also declared, that the Inspectors shall make an allowance of seven cents *per diem*, for food to each of such poor debtors, to be paid weekly by the plaintiffs, at whose suits they are confined; and on a plaintiff's neglect or refusal, to pay such allowance on every Monday, after ten days

notice from the Inspectors to him, or his attorney, or agent, the prisoner shall be discharged from his confinement. The same rules extend to the gaols of the respective counties, as well as to the gaol of the city and county of Philadelphia.

[That part of the above cited act, as respects the payment of the weekly allowance, is supplied and repealed by an act of 7th of April, 1807, (chap. 2824.)]

By an act of the 3d of April, 1794, (chap. 1713,) it is declared, that debtors may have the benefit of the insolvent laws, though their debts exceed one hundred and fifty pounds to one creditor. It is also provided, that in the cases of petitions presented to the Supreme Court, during April and September terms, for the discharge of insolvent debtors, the court may proceed to hear and determine the same, upon the petitioner's having given ten days notice to his creditors. [The terms of the Supreme Court are now altered, ante. page 148.]

A debtor in confinement, under a Magistrate's execution, presented his petition after the court had fixed the day for hearing insolvent debtors, and had adjourned; but the application was held to be too late. 1 Dallas, 142.—In a subsequent case it was declared to be the practice, that only those insolvent debtors should be discharged, who made application within the three first days of the term; and that the writ of execution must be returnable at the term, to which the application is made, and not to a subsequent term. *Ibid.* page 149.

How far a *cessio bonorum* and discharge of an insolvent debtor in a sister state, or a foreign country, will avail here, has been the subject of various adjudications in our courts. Dallas, 188, 229, 294, 366.

On a writ of error from the Common Pleas, it was adjudged in the Supreme Court, that a bond given by an insolvent debtor, before his discharge, and assigned afterwards, might be set off by the assignee, in an action brought against him by the obligor, for goods sold and delivered subsequent to the obligor's discharge. 1 Dallas, 225, 452. (Notes to former edition, excepting such parts as are between crochets.)

The notes to the former edition, contain a full and clear view of the insolvent laws of the State. It remains only to add an act passed April 7th, 1807, (post. chap. 2824.)

Where any person confined for debt in any gaol of this commonwealth, shall

assign his or her property for the benefit of his or her creditors, the fees and charges of maintenance due the gaoler at the time of the discharge of the debtor, (being approved by the court,) shall have the priority, and be paid out of the property so assigned, previous to any distribution of the same. 1729-30.

It shall be the duty of the several courts of Common Pleas, at their first term in each and every year, to fix and order a daily allowance, for all such poor and insolvent debtors, as shall or may be confined in the prison of their respective county, during the year, and have not property to maintain themselves; and it shall be the duty of the plaintiff or plaintiffs, at whose suit any such debtor may be imprisoned, his or their agent or attorney, upon notice to him or them given by the keeper of the prison, to pay the said daily allowance at the prison, on every Monday morning, while the debtor continues in prison; on failure whereof, for the space of three days, the said debtor may apply to the Court of Common Pleas, if it be in session, or if not, then to a Judge of the same court, who upon enquiry, and finding the said debtor to be destitute of property for his support in prison, and failure of payment to have been made as aforesaid, shall forthwith discharge the said debtor from his imprisonment; *Provided*, always, that the said daily allowance shall not exceed the sum of fourteen cents.

So much of any law as is thereby altered or supplied, is repealed.

It has been held by the Judges of the Supreme Court, that the words "five pounds in value" in the insolvent debtors oath, refers to the value of the articles in 1729. MSS. Reports.

(The principle on which the foregoing decision rests, has, in a parallel case, been elaborately and casuistically considered by the learned Bishop Fleetwood, in his *Chronicon Preciosum*.)

One in declining circumstances, who makes conveyances to his children, to the prejudice of his creditors, is excluded from the benefit of the insolvent acts. MSS. Reports, Supreme Court.

The discharge of a debtor under the insolvent acts, is *prima facie* evidence of service of notices on the creditors, but not conclusive. MSS. Reports, Supreme Court.

A debtor, who has no property whatever, is nevertheless entitled to the benefit of the insolvent laws. 1 Binney, 462. And for decisions on the act of 1798, (now expired,) see 1 Binney, 462, 580.