

A C T S

OF THE

General Assembly of Pennsylvania,

Passed at a Session which commenced October 14th, 1771,
and ended September 19th, 1772.

1771.

RICHARD PENN, LIEUTENANT GOVERNOR.

CHAPTER DCXLII.

An ACT for rendering Justices of the Peace more safe in the execution of their office, and for indemnifying constables and others, acting in obedience to their warrants.

WHEREAS Justices of the Peace may be discouraged in the execution of their office, by vexatious actions brought against them, for or by reason of small and involuntary errors in their proceedings: And whereas it is necessary that they should be (as far as is consistent with justice, and the safety and liberty of the subjects over whom their authority extends) rendered safe in the execution of the said office and trust: And whereas it is also necessary, that the subject should be protected from all wilful and oppressive abuse of the several laws, committed to the care and execution of the said Justices of the peace: *Be it therefore enacted*, That, from and after the publication of this act, no writ shall be sued out against, nor any copy of any process, at the suit of a subject, shall be served on, any Justice of the Peace, for any thing by him done in the execution of his office, until notice, in writing, of such intended writ or process shall have been delivered to him, or left at the usual place of his abode, by the party, his attorney or agent, who intends to sue, or cause the same to be sued out or served, at least thirty days before the suing out or serving the same; in which notice shall be clearly and explicitly contained the cause of action, which the said party hath, or claimeth to have, against such Justice of the Peace; on the back of which notice shall be indorsed the name of such attorney or agent, together with the place of his abode, who shall be entitled to the fee of twenty shillings for the preparing and serving such notice, and no more.

No writ or process to be served on any Justice, for any thing done in the execution of his office, until notice be given in writing, &c.

II. *And be it further enacted,* That it shall and may be lawful 1772.
to and for such Justice of the Peace, at any time within thirty days
after such notice given as aforesaid, to tender amends to the party
complaining, or his or her agent or attorney; and in case the same
is not accepted, to plead such tender in bar to any action to be
brought against him, grounded on such writ or process, together
with the plea of not guilty, and any other plea, with leave of the
Court; and if, upon issue joined thereon, the jury shall find the
amends so tendered to have been sufficient, then they shall give a
verdict for the defendant; and in such case, or in case the plaintiff
shall become non-suit, or shall discontinue his or her action, or in
case judgment shall be given for such defendant or defendants, upon
demurrer, such Justice shall be entitled to the like costs as he would
have been entitled unto, in case he had pleaded the general issue
only; and if, upon issue so joined, the jury shall find that no amends
were tendered, or that the same were insufficient, and also against
the defendant or defendants on such other plea or pleas, then they
shall give a verdict for the plaintiff, and such damages as they shall
think proper, which he or she shall recover, together with his or her
costs of suit.

Justice may
tender a-
mends to the
party com-
plaining,
within 30
days after no-
tice, &c.

III. *And be it further enacted,* That no such plaintiff shall recover any verdict against such Justice, in any case where the action shall be grounded on any act of the defendant, as Justice of the Peace, unless it is proved, upon the trial of such action, that such notice was given as aforesaid; but in default thereof, such Justice shall recover a verdict and costs as aforesaid.

No plaintiff
to recover a
verdict, un-
less notice
was given,
&c.

IV. *And be it further enacted,* That in case such Justice shall neglect to tender any amends, or shall have tendered insufficient amends, before the action brought, it shall and may be lawful for him, by leave of the court where such action shall depend, at any time before issue joined, to pay into Court such sum of money as he shall see fit; whereupon such proceedings, orders and judgments, shall be had, made and given, in and by such court, as in other actions where the defendant is allowed to pay money in court.

Justice neg-
lecting to
tender
amends be-
fore the ac-
tion, may pay
into Court,
&c.

V. *And be further enacted,* That no evidence shall be permitted to be given by the plaintiff, on the trial of any such action as aforesaid, of any cause of action, except such as is contained in the notice hereby directed to be given.

VI. *And be it further enacted,* That, from and after the publica-
tion hereof, no action shall be brought against any constable or officer,
or any person or persons acting by his or their order, and in his aid,
for any thing done in obedience to any warrant, under the hand and
seal of any Justice of the Peace, until demand hath been made, or
left at the usual place of his abode, by the party or parties intending
to bring such action, or by his, her or their attorney or agent, in
writing, signed by the party demanding the same, of the perusal and
copy of such warrant, duly certified under his hand, and the same
hath been neglected or refused for the space of six days after such
demand: and in case, after such demand, and compliance there-
with, by shewing the said warrant, and giving a copy thereof, cer-
tified as aforesaid, to the party demanding the same, any action
shall be brought against such constable, or other person or persons

No action to
be brought
against any
Constable,
&c. until de-
mand hath
been made of
the perusal
and copy of
the warrant,
&c.

1772. acting in his aid, for any such cause as aforesaid, without making such Justice or Justices, who signed or sealed the said warrant, defendant or defendants, that on producing and proving such warrant at the trial of such action, the jury shall give their verdict for the defendant or defendants, notwithstanding any defect or defects of jurisdiction in such Justice or Justices; and if such action be brought jointly against such Justice or Justices, and also against such constable or other officer, or person or persons acting in his or their aid as aforesaid, then, on proof of such warrant, the jury shall find for such constable or other officer, and person or persons so acting as aforesaid, notwithstanding such defect of jurisdiction as aforesaid; and if the verdict shall be given against the Justice or Justices, that in such case the plaintiff or plaintiffs shall recover his, her or their costs against him or them, to be taxed in such manner, by the proper officer, as to include such costs as such plaintiff or plaintiffs are liable to pay to such defendant or defendants, for whom such verdict shall be found as aforesaid. *Provided always*, That where the plaintiff, in any such action against any such Justice of the Peace, shall obtain a verdict, in case the Justices before whom the cause shall be tried shall, in open court, certify on the back of the record, that the injury for which such action was brought was wilfully and maliciously committed, the plaintiff shall be entitled to have and receive double costs of suit.

Limitation
of actions.

VII. *Provided always, and be it further enacted*, That no action shall be brought against any Justice of the Peace, for any thing done in the execution of his office, or against any constable or other officer, or person or persons acting as aforesaid, unless commenced within six months after the act committed.

Passed 21st March, 1772.—Recorded A. vol. V. page 507. (u)

(u) *Cook v. Beatty*, a Justice of the Peace.

Debt, £.50. The penalty for marrying plaintiff's infant daughter to one *J. B.* without a certificate of the consent, agreement, or privity of plaintiff to said marriage, contrary to the act of assembly, &c.

The fact was proved. But no inquiry was made at the bar, whether notice had been served on defendant agreeable to the act in the text; neither the plaintiff's or the defendant's attorney thinking it necessary in this case.

But, by the Court, the act of assem-

bly is in general words, that no such plaintiff shall recover any verdict against any such Justice in any case where the action shall be grounded on any act of defendant, as Justice of the peace, unless it is proved, upon the trial, that notice was given to defendant as by the said act is directed, but in default thereof, the Justice shall recover a verdict and costs, as directed in the said act. The point was however reserved at the request of plaintiff's counsel; but the case afterwards went off upon a reference. *Cumberland*, April 1792. S. MSS.