

1778. Courts, until such new seal shall be made and received by the said Prothonotary.

Passed 2d January, 1778.—Recorded in Law Book vol. I. page 155. (*f*)

(*f*) The remaining sections of the army kept possession of Philadelphia. act merely provided for holding the Supreme Court at such places as the laws, see chap. 255; and to the judicial Judges should direct, while the British laws, see chap. 236.

## CHAPTER DCCLXVI.

*An ACT to prevent the imprisonment of soldiers for small debts; and also to prevent the inlistment of soldiers within the bounds of the Commonwealth of Pennsylvania, by any officers of the other states, until the quota of this state be completed.*

WHEREAS it would be highly injurious to the common cause of this and the other United States of America, in our present necessary defence, to permit the imprisonment of soldiers for small debts: Therefore,

II. *Be it enacted, and it is hereby enacted,* That no soldier duly inlisted in the service of this or any other of the United States of America, shall be arrested or imprisoned by virtue of any writ or other process for debt or any breach of civil contract, issuing out of any court, of law or other legal jurisdiction within this Commonwealth, unless there be indorsed on the said writ, or other process, an affidavit, on oath or affirmation, that the defendant therein named, is justly indebted to the plaintiff therein mentioned, in a sum of money exceeding fifty dollars; and in case it shall happen that any soldier, so *bona fide* inlisted, and in actual service, shall be so arrested, the Justices of the Supreme Court of this Commonwealth, and the Justices of the Peace of the several counties thereof, and each and every of them, is hereby enjoined, empowered and required, upon application of the said soldier or his officer or officers, to discharge the said soldier from the said arrest or imprisonment: And all Sheriffs and other officers are hereby enjoined and required, that they do not arrest any persons whom they may or shall know to be regularly inlisted soldiers, unless such affidavit be endorsed on the said process, under the penalty of twenty pounds, to be recovered by the said soldier or the commanding officer of the company to which he belongs, by action of debt, in any Court of record within this state.

Passed 2d January, 1778.—Recorded in Law Book vol. I. page 156. (*g*)

(*g*) In Mr. Dallas's edition, vol. 1, pa. 749—it is said, the operation of this act ceased with the war—It is not printed in that edition, and is also omitted in the last 8vo. edition—But in consequence of the following case, the Editor has deemed it to be his duty to restore the act to its place in this edition.

At *Nisi Prius* at Wilkes-Barrè, May Assizes, 1792. *Coram M<sup>r</sup> Kean, C. J. and Yates, J.*

*Thomas Wright v. John Quinn.*

A motion was made to discharge *John Quinn*, a soldier enlisted by *Capt. John Cook*, in the service of the United States, from his imprisonment, under the act of Assembly of January 2d, 1778.

No soldier to be arrested, unless affidavit of debt above fifty dollars.

It appeared that he had been arrested under the warrant of *John Paul Schott, Esq.* a Justice of the Peace, at the suit of *Thomas Wright*, after his inlistment; and that the Justice had given judgment, and issued execution against him for 5*s.* debt, and 6*s.* and 6*d.* costs, under which he was confined.

He was now brought up by rule of court, and the agent of the creditor directed to attend.

On the part of the creditor, his counsel objected to the discharge; and contended, that the reasons contained in the preamble of the act, ceased to operate. *America* is now at peace with *Great Britain*, and the object of the present war, is merely to quell the incursions and ravages of a few restless savages. Besides, the act speaks of soldiers inlisted in the service of this, or any other of *these United States*; and, moreover, the operations of the Federal Government must be supposed virtually to have repealed this law. The present matter is to be considered as a dispute between the Federal Government and the creditor, which ought to be determined only in the Federal Courts.

But, *By the Court*, it was found expedient for the common welfare to supersede the interests of individuals, who claimed debts of soldiers to a certain amount. The resolve of congress of the 26th December, 1775, declares that no soldier shall be arrested for a debt under 35 dollars. The act of assembly of January 2d, 1778, raises it to fifty dollars, the former sum having been thought inadequate to the object in view. When this law was passed, each state furnished its own quota of troops; under the present federal government, the *United States* at large raise the army. *America* was then engaged

in a war with *Great Britain*. But though this is not now the case, yet the reason of the law still subsists, though not in so strong a degree as at that period. It is, however, of the utmost consequence that the inlistments of the troops now intended to be raised, should be completed. The general enacting words of the act cannot be controlled by the preamble, nor are they restricted by any subsequent clause.

The articles of war, which are now incorporated into the general system of the Union, by the act of congress passed the 30th day of April, 1790, gives a power to officers to *detain* soldiers not owing the sum of thirty-five dollars. And there is nothing that we know of in the federal government, which repeals or alters this resolve of congress, either expressly, or virtually.

The act of assembly of January 1778, must therefore be considered *in full force*. But this does not relate to judicial process, which on the face of it ascertains the plaintiff's demand. The soldier here, having been arrested by *mesne* process, after he was inlisted, is within the words of the act, and unless that arrest was legal, the subsequent proceedings cannot be supported. The soldier and creditor are citizens of the same state, and the case is certainly cognizable before us.

We are therefore of opinion that the soldier be discharged: But strongly recommend, that he should give an order on his officer for ten shillings per month, to be stopped out of his pay, until the debt and costs are discharged. This was accordingly done, and the order accepted by the captain. MSS. Reports.

(The third and fourth sections are obviously obsolete.)

## CHAPTER DCCLXXIII.

*An ACT for the attainder of divers traitors, if they render not themselves by a certain day, and for vesting their estates in this commonwealth; and for more effectually discovering the same; and for ascertaining and satisfying the lawful debts and claims thereupon. (h)*

WHEREAS Joseph Galloway and Andrew Allen, Esquires, late Members of the Congress of the thirteen United Colonies, now

(h) By chap. 807, 842, the attainder of Reynold Keen is annulled. A part of Joseph Galloway's estate appropriated to public use, (chap. 818,) but afterwards directed to be sold, (chap.

1214). By chap. 821, post. provision is made for the immediate sale of the estates forfeited by the act in the text; for satisfying *bona fide* claims of creditors against them; and for assuring the

1778.