

The Surveyor-General and Secretary of the Land-Office to be appointed for three years, but removable by the Governor, on the address of both houses of the Legislature. And see the act relating to the patenting of Lands, passed February 21st, 1810.

ting to lands, see the General Index to this edition.

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For a general summary of the law on this important subject, and notes of cases decided on the land titles in this state, see the act for opening the Land-Office, &c. passed April 1st, 1784; (chap. 1083.)

CHAPTER DCCCCXXXI.

An ACT for the better support of the public credit, by an immediate sale of the lands therein mentioned, and fully securing the purchasers thereof in their titles, and also for preserving the common lands appurtenant to the city of Philadelphia, and other towns in this state, from unwarrantable encroachments.

WHEREAS the speedy and honourable redemption of the bills of credit, issued for the support of the just and necessary war in which we are now engaged, will have a happy tendency to re-establish public faith, and induce well-affected individuals freely to advance their property for the purposes of government, if they are secured of a true and real equivalent: And whereas the bills of credit of this state, dated on the twenty-ninth day of April last, were funded upon the solid property of the state, consisting of the Province Island, and the unappropriated lots contained within the bounds of the city of Philadelphia, which said lands were, by a former act of Assembly, subjected to sale, to be made by the President or Vice-President in Council, at any time within four years thereafter: And a speedy sale of the said island having become necessary, the same hath been advertised at public auction, to redeem the said bills of credit, so far as the price thereof shall extend: And whereas it is manifest that a part of the said bills of credit will remain unredeemed, after the said island shall be sold as aforesaid, for the redemption of which the said city lots have been solemnly pledged, and it is necessary to dispose of the same, in like manner, so that the purchasers may be assured of a clear and indefeasible title, and thereby be induced to offer the full value thereof:

II. *Be it therefore enacted, and it is hereby enacted,* That it shall and may be lawful for the President or Vice-President in Council, and he is hereby authorised and required, with all convenient speed, to apportion and set off such and so many of the said city lots, as shall, in his judgment and discretion, be sufficient to satisfy and redeem the residue of the said bills of credit, together with the interest which shall be due thereon, and also the charges of selling the said lands, and cancelling the said bills of credit remaining unredeemed, after the sale of the said island, and, so apportioned and set off, sell the same at public auction to the highest bidder, pursuant to the said act, entitled *An Act for striking the sum of one hundred thousand pounds in bills of credit, for the present support of the army, and for establishing a fund for the certain redemption of the same, and for other purposes therein mentioned;** in all cases

Certain city lots to be sold at public auction,

to redeem bills of credit, &c.

* [chap. 890.]

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What money shall be received in payment.

Purchasers to have indefeasible estates in fee-simple.

receiving in payment for the said island and the said lots, the said bills of credit, issued pursuant to the said act, or Spanish milled dollars, or an equal sum in gold or silver, and no other money whatsoever.

III. *Be it also enacted,* That each and every purchaser of the said lands, herein before mentioned, and every part thereof, having received his deed or grant from the President or Vice-President in Council, shall, from thenceforth, become seized of a sure and indefeasible estate in fee-simple, against all claims or demands whatsoever; and in case of any suits brought for such land, or any part thereof, the grantee under this act, his or her heirs or assigns, may plead the general issue, and give this act in evidence, which shall be final and conclusive to the court and jury against any claimant or demandant, in any suit to be brought at any time hereafter for the lands which shall be granted as aforesaid, or any part thereof.

IV. And whereas it may happen, that claims may be hereafter made upon some of the said lots, by the descendants of the original purchasers under William Penn, Esquire, or purchasers under his successors, or grantees, who have neglected to set out and appropriate the same in severalty, so as to be distinguished from the common lands appurtenant to the said city: For remedy whereof,

V. *Be it enacted,* That in every such case the claimant, having ascertained the justice and right of his claim agreeable to the laws of this state, as herein after set forth, shall be entitled to a full equivalent for the same, having due regard to situation, in any other of the unappropriated lots appurtenant to the city, and now vested in this commonwealth.

VI. And to the end that speedy and ample justice may be done to every such claimant, prosecuting his claim within the time herein after limited, *Be it enacted,* That in case any suit be brought, every such claimant, or other claimant of any part of the lands, whereof this commonwealth is possessed (lands in the counties of Bedford, Northumberland, Westmoreland and Washington, only excepted) before he or she takes possession of any part of the said lots or lands so claimed, shall proceed in manner following, and no other, viz. He shall present a petition to the President or Vice-President in Council, setting forth, in a summary manner, the nature of his claim, and whence derived; and if, in such petition, he or she shall request a trial by jury, the said President or Vice-President in Council shall, *ex officio*, grant the same, by directing the Attorney-General to receive a declaration in ejectment against himself, as representing the commonwealth in such cases, wherein the premises claimed shall be particularly described, and appear thereto in the Supreme Court only, and proceed to trial thereupon, according to the laws and practice of this State in possessory actions. And if it shall so happen, that judgment be obtained against the said Attorney-General, on verdict or demurrer, and the court awards costs thereupon, the said President or Vice-President in Council is hereby authorized and required to cause the same to be paid, the bill being first duly taxed, together with necessary and

How just claimants are to be satisfied.

Manner in which claimants are to be proceeded;

and the justice of claims is to be ascertained.

How costs are to be paid, &c.

reasonable expenses attending the defence, out of any monies which shall be in the hands of the Treasurer of the state, not otherwise specially appropriated. 1781.

VII. *And be it further enacted,* That upon such claim being ascertained as aforesaid, or if the claimant shall not, in his or her said petition, request a trial by jury (which omission shall be deemed a full and final consent to abide the determination of the President or Vice-President in Council on the merits of his or her claim) and if such determination shall be in his or her favour, he or she shall then be entitled, at his own expense, to a writ, to be framed by the Prothonotary of the Supreme Court, in which the premises recovered shall be also particularly described, directed to the Sheriff of the county, commanding him to summon a jury of twelve good and lawful men, who, being duly sworn or affirmed, shall proceed to assign to the said claimant so much of the said unappropriated lots within this city, as shall in their judgment (having due regard to quantity and quality) be equal in value to the lots so claimed by him or her; and such writ being duly returned to the said Supreme Court, such return approved of by the court, and judgment thereon entered, shall be conclusive in favour of the party, and a writ of possession issued thereupon.

Claimants to have a certain writ, &c.

VIII. And whereas a century hath now elapsed since the granting of the original charter of Pennsylvania, and upwards of eighty years since its actual settlement, and it being reasonable that there should be a limitation of suits and dormant claims upon the estate of the public, as well as that of individuals:

IX. *Be it therefore enacted,* That no person shall have or maintain any action, real, personal or mixed, against the commonwealth, represented as aforesaid, or otherwise, for any lands, tenements or hereditaments, within Pennsylvania, by virtue of any grant or conveyance of the original Proprietor to his or her ancestor or predecessor, or to the ancestor or predecessor of his or her grantor, unless he or she shall commence and prosecute the same within seven years after the publication of this act; or by virtue of any grant or conveyance of the subsequent Proprietaries, of this state (lands in the counties of Bedford, Northumberland, Westmoreland and Washington, only excepted) but within ten years from the publication hereof; and in default thereof, all and every such claimants or claimant shall be utterly barred and excluded from any entry, right of entry, title, property and demand, in or upon such lands, or any suit whatsoever, in law or equity, for the same.

Time limited in which claims are to be made against the commonwealth.

X. *Provided always,* That if any person or persons, who is or are entitled to have or maintain any such action, be, at the time of the publication of this act, within the age of twenty-one years, *feme covert, non compos mentis*, imprisoned, or beyond sea, other than those who have voluntarily gone to the dominions of the King of Great-Britain from this, or any of the United-States, since the fourth day of July, one thousand seven hundred and seventy-six, that then such person or persons shall be at liberty (except as before excepted) to bring the said actions; so as he or they commence the same within such times as are herein before limited, after his, her or their coming to or being of full age, discoverture, sound me-

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XI. And whereas divers persons, pretending title or leases or permission from the late Proprietaries, or without any pretence whatsoever, have taken into possession divers lots appurtenant to the city, and to the other towns within this state, which lots were held by the said Proprietaries as such, and not in their private several right and capacities: And whereas such possession is not only injurious to the other citizens, who are entitled to the use of said lands, as common for their cattle, but will embarrass the future sale and appropriation of the said lots, for the general benefit of the state: For remedy whereof,

XII. *Be it enacted,* That the care and custody of the city lots in Philadelphia shall be, and is hereby vested in the wardens of the city; and the care and custody of the lots appurtenant to the town of Reading shall be, and hereby is, vested in Samuel Mifflin, Henry Christ and Henry Haller; and the care and custody of the lots appurtenant to the town of York, in the county of York, shall be, and hereby is, vested in Archibald M'Clean, Michael Swoope and William Scott; and the care and custody of the lots appurtenant to the town of Carlisle, in the county of Cumberland, shall be, and hereby is, vested in John Montgomery, Samuel Laird and James Pollock; and the care and custody of the lots appurtenant to the several towns of Easton, in the county of Northampton, Bedford, in the county of Bedford, Sunbury, in the county of Northumberland, and Hannah's town, in the county of Westmoreland, shall be, and is hereby, vested in the Justices of the Peace residing in and within two miles of the said towns respectively; to the end that the said lots may be preserved from encroachment and private use, and for the benefit of common to the inhabitants of the said city and towns, until the same be appropriated, under the authority of the legislature of the state, for building, improvement or other use. And that all such encroachments and unwarrantable inclosures, within the said city and towns, may be discovered, and removed without delay:

XIII. *Be it enacted,* That the said Wardens of the city of Philadelphia, the said Samuel Mifflin, Henry Haller, Henry Christ, Archibald M'Clean, Michael Swoope, William Scott, John Montgomery, Samuel Laird, and James Pollock, of Reading, York and Carlisle, and the said Justices of Northampton, Bedford, Northumberland and Westmoreland, respectively, or any two of them, are hereby authorized and required, on their own knowledge, or on the complaint of any two reputable freeholders made to them, in writing, and in the said writing disclaiming any right or pretence in themselves to said lots, or any part thereof, to summon any person possessing any of the said lots before any Justice of the Supreme Court, in the vacation, or on the circuit, to shew by what warrant or authority he or she holds or possesses the said lots, or any part of them; and if the said party shall not plead title to the premises, under a patent, or judgment of court, or a possessory right, by virtue of an unexpired lease from the said Proprietaries, or their agent, duly authorized, at the same time producing such patent,

The manner in which the city lots and certain lots appurtenant to other towns are to be taken care of.

Manner of proceeding in cases where lots are in the possession of private persons, &c.

judgment or lease, or an authentic record thereof, it shall and may be lawful for the said Justice, at the expiration of fifteen days from the service of said summons, and he is hereby required to award the possession of said lot to the commonwealth, and issue his warrant to the Sheriff of the county, to abate and remove the enclosures of said lot, or buildings erected thereon, as in the case of common nuisance, and open the premises, as a free common of pasture to the inhabitants; upon which proceedings no writ of *certiorari*, or other writ of removal, to any superior court, shall be allowed or received, so as to stay the delivery of the possession, agreeable to the award of the said Justice, and the tenor and direction of said writ. But if the said judgment shall be reversed for any cause whatsoever, the party shall be restored to his possession.

XIV. *Provided always*, That nothing herein contained shall defeat or prejudice, or be construed to the defeasance or prejudice of any title, which the party so dispossessed may have, and which he may prosecute, as herein before directed.

XV. *Be it also enacted*, That if any suit or suits shall be brought against any person or persons, for any thing done pursuant to this act, the action shall be laid in the county where the cause of action, shall arise, and not elsewhere, nor after twelve months; and the defendant or defendants in such action to be brought may plead the general issue, and give this act and the special matter in evidence; and if the jury shall find for the defendant or defendants in such action or actions, or the plaintiff become nonsuit, or discontinue his, her or their action or actions, after the defendant or defendants shall have appeared, or if, upon demurrer, judgment shall be given against the plaintiff or plaintiffs, the defendant or defendants shall recover treble costs, and have the like remedy for the same, as any defendant or defendants had or have, in other cases, to recover costs by law.]

Manner of proceeding where persons are sued for executing this act.

[Obsolete.]

XVI. *Be it also enacted*, That if the said Wardens of the city of Philadelphia, or Samuel Mifflin, Henry Christ, Henry Haller, Archibald McClean, Michael Swoope, William Scott, John Montgomery, Samuel Laird, and James Pollock, of the towns of Reading, York and Carlisle, or the said Justices dwelling in or near the towns of Easton, Bedford, Sunbury, and Hannah's town, refuse or neglect to perform the duties herein and hereby directed, and the same shall be presented in the Court of Oyer and Terminer, or the Court of General Quarter Sessions of the peace of the proper county, and bills of indictment in either of the said Courts be found against them, or any of them, for such refusal or neglect, whereon they or any of them shall be prosecuted to conviction, they shall pay a fine of twenty pounds each, for every such offence, to the use of the poor of the said city and towns respectively, to be paid to the overseers thereof.]

Penalty on persons refusing to serve.

[Obsolete.]

How recovered, and applied.

Passed 10th April, 1781.—Recorded in Law Book vol. I. page 434. (o)

(o) By an act passed April 8th, 1786, (chap. 1214,) after reciting, that many of the lots sold in pursuance of the act in the text had reverted to the state, on account of the non compliance of the purchasers with the terms of sale, and that a considerable number remained unsold, that the house and lots in Market Street, the forfeited estate of *Joseph Galloway* remained un-

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occupied, and in a state of decay, and that it was necessary to discharge the debts due by the state, it was enacted, that the lots so reverted and unsold, except eight lots, numbered in the plan of the city, 34, 35, 36, 37, 38, 39, 40, & 41, should be sold under the direction of the Supreme Executive Council, &c.

The Supreme Executive Council was further directed to reserve so many of the public lots, at least two hundred feet, and not more than four hundred feet square in such part of the city as they should judge most convenient, to be appropriated as a burial ground for the interment of deceased strangers, and such other persons as were not in communion with any religious society at the time of their decease.

The form and effect of the deed to be given to purchasers, was prescribed, and *Galloway's* house and lots directed to be sold, in like manner as the city lots; and the purchase money was required to be paid, received, and accounted for by the Receiver General of the Land-Office, in specie, bills of credit of the state of the last emission, depreciation certificates, or in other certificates of debts due by this state, on which interest was receivable at the treasury of the commonwealth.

By a supplement to the act in the text, passed April 8th, 1791, (chap. 1544,) after the dissolution of the powers of the Supreme Executive Council, all the powers of that body relative to the claims depending before it, at the time of its dissolution, and all powers and authorities necessary to carry into effect the decisions of that board, were revived, continued and vested in the Judges of the Supreme Court, who were empowered to hear and determine all claims for city lots, agreeably to the directions of the act in the text which were depending or made at the time of the dissolution of the Executive Council, &c. And in case equivalents in lots for the whole, or any part of claims, could not be had, owing to the sale by the commonwealth, of lots which should have been assigned to those entitled thereto, the court is directed to award an inquest to value such lots, and return the valuation to the court, who shall certify the same to the Governor; and in case of a partial equivalent having been given, by virtue of the decree of the late council, and a balance should appear to be due, for which no equivalent in lots had been obtained, the said judges shall certify the amount of such balance to the Governor, or in case a lot or lots assigned by any jury, should appear to the judg-

es not to have been within the power of the state to grant, as an equivalent in whole or in part, the court, on being duly satisfied of the value of the lot so improperly assigned, shall certify to the Governor the amount of the value of such lot, &c. and the Governor shall cause the amount of the valuation first mentioned, that of the balance before stated, or the value of the lot so improperly assigned, to be entered in the books of the accounting officers, and certificates shall be issued for the amount bearing interest from the date, in favour of the parties entitled thereto. But no claim to be admitted which is barred by the original act. Petitions filed in due time with the executive Council, on which no decision was had, shall be decided on by the Judges.

By an act directing the sale of such of the Barrack and City lots, as remain the property of this commonwealth, passed April 5th, 1797, (chap. 1943.) The officers of the Land-Office were required to offer for sale all the barrack lots in the Northern Liberties, for the best price that could be obtained, at public auction, and all the public lots, in the city not before appropriated by law. Lots not paid for by the purchaser, to be sold a second time at public auction, and the first purchaser to be liable for any deficiency.

All such claims for city lots, as were made by petition to the Executive Council, and remained undecided, might be renewed by petition to the Judges of the Supreme Court, who were directed to proceed to hear and determine the same. And if their determination should be in favour of any such claim then to direct the Sheriff of Philadelphia county, by inquest to make valuation of such claim, and assign in satisfaction thereof such and so many of the city lots, unappropriated, as in their estimation would be equal to such valuation, and return the said valuation and assignment to the judges, who were to direct the Prothonotary to grant a certificate thereof under the seal of the court to the party interested, upon which certificate the Governor was to direct the Surveyor General to lay out the same, and grant a patent therefor; but if no unappropriated lots could be found, a certificate was to be granted for the amount of the valuation, &c. But if the determination of the Judges was against the claim, the petitioner was forever barred. And no petition was to be acted upon, or received by the Judges, unless presented within twelve months from passing the act, if not prevented by some legal disability.

and in such case within twelve months after the disability removed.

By an act passed April 2d, 1803, (post chap. 2377,) the inspectors of the prison in Philadelphia, are authorized to sell, or otherwise appropriate, all the vacant unimproved lots, the property of the commonwealth, and with the proceeds thereof to build a new prison, &c. but the state is to make no reparation in case of the title to any of them proving defective. And in consideration of the grant, the commonwealth reserved a right to the several counties to send their convicts to the present prison of the city and county.

All claim by the state to lands within the borough of York, was released by act of March 7th, 1805, (chap. 2548,)

and it would appear that the 11th and 12th sections of the act in the text have not been considered as having any effect; and the lands appurtenant to many of the towns therein mentioned, have at a subsequent period, been sold by the Proprietary agents.

City lots could not be located as vacant land, under the act of March 9th, 1796, to compensate *David Meade* and others; (chap. 1866,) so held, in the commonwealth v. *M^r Kissick* and others. 4 Dallas, 292.

By an act passed April 7th, 1807, the powers vested in the wardens of the city by the 13th section of the act in the text, are now vested in the Mayor, Recorder and any two Aldermen of the said city, (chap. 2815.)

