

frauded thereby, to the use of the party wronged. And whosoever shall counterfeit the privy or broad seal of the said province, being convicted thereof, shall suffer seven years' imprisonment as aforesaid, and be fined at the discretion of the court where such party shall be convicted, in any sum not exceeding one hundred pounds, to the support of the government.

Passed January 12, 1705-6. Allowed to become a law by lapse of time in accordance with the proprietary charter, having been considered by the Queen in Council, October 24, 1709, and not acted upon. See Appendix II, Section III, and the Act of Assembly passed April 15, 1734, P. L. 538, and March 31, 1860, P. L. 423. Repealed by the Act of March 31, 1860, P. L. 451.

CHAPTER CL.

AN ACT FOR DEFALCATION.

[Section I.] Be it enacted by John Evans, Esquire, by the Queen's royal approbation Lieutenant-Governor under William Penn, Esquire, absolute Proprietary and Governor-in-Chief of the Province of Pennsylvania and Territories, by and with the advice and consent of the freemen of the said Province in General Assembly met, and by the authority of the same, That if two or more dealing together be indebted to each other upon bonds, bills, bargains, promises, accounts or the like, and one of them commence an action in any court of this province, if the defendant cannot gainsay the deed, bargain or assumption, upon which he is sued, it shall be lawful for such defendant to plead payment of all or part of the debt or sum demanded, and give any bond, bill, receipt, account or bargain in evidence; and if it shall appear that the defendant hath fully paid or satisfied the debt or sum demanded, the jury shall find for the defendant, and judgment shall be entered, that the plaintiff shall take nothing by his writ and shall pay the costs. And if it shall appear that any part of the sum demanded be paid, then so much as is found to be paid shall be defalked, and the plaintiff shall have judgment for the residue only, with costs of suit. But if it appear to the jury that the plaintiff is over paid, then

they shall give in their verdict for the defendant, and withal certify to the court how much they find the plaintiff to be indebted [to] or in arrear to the defendant more than will answer the debt or sum demanded; and the sum or sums so certified shall be recorded with the verdict, and shall be deemed as a debt of record; and if the plaintiff refuse to pay the same, the defendant, for recovery thereof, shall have a *scirefacias* against the plaintiff in the said action, and have execution for the same, with the costs of that action.

Provided always, That in all cases where a tender shall be made, and full payment offered by discount or otherwise in such specie as the party by contract or agreement ought to do, and the party to whom such tender shall be made doth refuse the same, and yet afterward will sue for the debt or goods so tendered, the plaintiff shall not recover any costs in such suit.

Provided also, That in all cases where the plaintiff and defendant having accounts to produce one against another shall, by themselves or attorneys or agents, consent to a rule of court for referring the adjustment thereof to certain persons mutually chosen by them in open court, the award or report of such referees being made according to the submission of the parties and approved of by the court and entered upon the record or roll, shall have the same effect and shall be deemed and taken to be as available in law as a verdict given by twelve men; and the party to whom any sum or sums of money are thereby awarded to be paid, shall have judgment, or a *scirefacias*, for the recovery thereof, as the case may require and as is hereinbefore directed concerning sums found and settled by jury, any law or usage to the contrary of this act in anywise notwithstanding.

Passed January 12, 1705-6. Allowed to become a law by lapse of time in accordance with the proprietary charter, having been considered by the Queen in Council, October 24, 1709, and not acted upon. See Appendix II, Section III, and the Acts of Assembly passed February 27, 1797, Chapter 1920; April 6, 1802, P. L. 186; April 3, 1804, P. L. 522; March 13, 1812, P. L. 124; March 20, 1810, P. L. 145; March 30, 1811, P. L. 145; March 26, 1814, P. L. 218; June 13, 1836, P. L. 614; April 12, 1848, P. L. 537; April 9, 1849, Appendix to P. L. 1850, 1005; June 16, 1866, P. L. 719, and April 19, 1883, P. L. 10.