

At a General Assembly begun and holden at Philadelphia the fourteenth day of October, A. D. 1710, and continued by adjournments until the twenty-eighth day of February, 1710-1711, the following acts were passed:

#### CHAPTER CLXVIII.

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AN ACT FOR ESTABLISHING COURTS OF JUDICATURE IN THIS PROVINCE.

For the more orderly establishment and regulation of the courts of justice within this province:

[Section I.] Be it enacted by Charles Gookin, Esquire, by the Queen's royal approbation Lieutenant-Governor under William Penn, Esquire, true and absolute Proprietary and Governor-in-Chief of the Province of Pennsylvania, 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 there shall be holden and kept a court of record, twice in every year, in every county of this province, in the months commonly called, as followeth: (That is to say) at Philadelphia for the city and county of Philadelphia, the tenth day of April, and twenty-fourth day of September; at Bristol for the county of Bucks, the fourteenth day of April and twenty-eighth day of September; and at Chester, for the county of Chester, on the eighteenth day of April and the second day of October: which said court shall be called and styled the Supreme Court of Pennsylvania. And there shall be four persons of known integrity and ability appointed and commissioned by the governor or his lieutenant, from time to time, by several distinct patents or commissions under the great seal of this province, to be judges of the said court, one of whom shall be distinguished in his commission by the name of Chief-justice; and every of the said judges shall have full power and authority, by virtue of this act, when and as often as there may be occasion, to issue forth writs of *habeas corpus*, *certiorari*, writs of error, prohibitions, injunctions,

*audita querela*, *mandamus*, and all remedial and other writs and precepts (excepting the original writs and process, which by this act are to be granted by the respective justices or magistrates hereinafter mentioned or intended) and that the said judges or any two of them shall have full power to hold the said supreme courts, and therein to hear and determine all pleas, complaints, and causes which shall be removed or brought there from the other courts, according to the direction of this act; and to examine and correct all and all manner of errors of the justices and magistrates of this province, in their judgments, process and proceedings in the respective courts hereinafter mentioned, as well in all pleas of the Crown as in all pleas real, personal and mixed; and thereupon to reverse or affirm the said judgments, as the law doth or shall direct; and also to examine, correct and punish the contempts, omissions, neglects, favors, corruptions and defaults of all justices of the peace, sheriffs, coroners, clerks and other officers within the said respective counties. And if any person or persons be unjustly disfranchised in any town corporate the said judges in any of the said supreme courts shall give relief to such persons, and shall grant writs of *mandamus* and restitution, as occasion may require; and shall award writs of *certiorari*, and all other writs and process usually granted by the Court of Queen's Bench in Great Britain, upon and after removal of causes there, from other courts; and shall also award process for levying, as well of such fines, forfeitures and ameracements, as shall be estreated into the said supreme courts, as of the fines, forfeitures and ameracements which shall be lost, taxed and set there, and not paid to the uses they shall be appropriated. And generally shall administer common justice to all persons, and exercise the jurisdictions and powers hereby granted concerning all and singular the premises, according to the laws and usages of this province.

[Section II.] And be it further enacted by the authority aforesaid, That there shall be a fit person nominated by the judges of the said supreme courts, for the time being, and commissioned by the governor, to be the prothonotary or clerk of the same courts, who shall keep and duly attend his office at some

convenient place in the city of Philadelphia, and prepare all the said writs and precepts so as aforesaid grantable by the judges, which said writs and precepts may be granted and directed into any county of this province, as occasion may require. And all the said writs shall be made in the name and style of the Queen, her heirs and successors, and bear *teste* in the name of the said chief-justice for the time being; but if he be plaintiff or defendant, then in the name of one of the other justices; and that the said justices shall cause the provincial seal to be put to all the said writs, so as aforesaid grantable by them, and also to the exemplifications of all records and process in every of the said supreme courts. And that all writs of error, *habeas corpus*, *certiorari* and *audita querela*, shall be so as aforesaid granted of course in the vacation, as well as in the court time; and that the same, and all other writs, so as aforesaid to be granted by the judges (save only such of the said writs or other precepts which any one of the said judges may by law cause the return thereof to be immediately) may be awarded into any county of this province but shall be made returnable to the supreme court of the proper county, next ensuing the date of such writs.

Provided always, That in court time no *certiorari* or other writ at the prosecution of any party indicted for any offense cognizable in the inferior courts of this province, shall be granted by the said judges, to remove any indictment or presentment from any of the said inferior courts, before trial had there, unless such *certiorari*, or other writ shall be granted or awarded upon the motion of an attorney, and by rule of court made for granting thereof before the judge or judges of the said supreme court, sitting in open court; and that all the parties indicted prosecuting such writ, before allowance thereof, shall find two sufficient manucaptors who shall enter into a recognizance before one or more of the magistrates or justices of the peace of the county or place, in the sum of twenty pounds, with condition, at the return of such writs to appear and plead to the said indictment or presentment in the said supreme court, and at his and their own costs and charges to cause and procure the issue that shall be joined upon the said

indictment or presentment or any plea relating thereto, to be tried at the next supreme court to be held for the county or place wherein the said indictment or presentment was found, next after such writ shall be returnable; and that the party or parties prosecuting such writ or writs shall appear from day to day, in the said supreme court, and not depart until he or they shall be discharged by the same court. And that the said recognizance and recognizances taken as aforesaid, shall be certified into the said supreme court, with the said *certiorari* and indictment, to be there filed, and the name of the prosecutor (if he be the party grieved or injured) or some public officer to be indorsed on the back of the said indictment; and if the person prosecuting such writ, being the defendant, shall not before allowance thereof by one of the justices of the court, to whom the same writ shall be directed, procure such manucaptors to be bound in a recognizance as aforesaid, the magistrates or justices of the said inferior courts may and shall proceed to trial of the said indictments in the said courts, notwithstanding such *certiorari* or other writ so awarded; and if the defendant prosecuting such writ be convicted in the supreme court of the offense for which he was indicted, that then the said supreme court shall give reasonable costs to the prosecutor, to be taxed according to the course of the said court; and that the prosecutor shall for recovery of such costs, within ten days after demand made of the defendant, and refusal of payment, on oath or affirmation, have an attachment granted against the defendant by the said court, for such his contempt: and that the said recognizance shall not be discharged till the costs so taxed shall be paid.

Provided always, That in any of the vacations, writs of *certiorari* may be granted by any of the justices of the said supreme courts, whose names shall be indorsed on the said writ, and also the name of such person at whose instance the same is granted. And that the party or parties indicted, prosecuting such *certiorari* shall, before the allowance of such writ or writs of *certiorari*, find such sureties, in such sum and with such conditions as are before mentioned.

Provided also, That no writ or writs of *habeas corpus*, *certiorari*, or any other writ or writs whatsoever to be sued forth to remove out of any of the courts of common pleas hereinafter mentioned, any of the pleas, complaints or actions there depending, for any matter, cause or thing whatsoever, properly cognizable there, and whereof the court where the same pleas, complaints or actions are, or shall be so depending, shall have jurisdiction or power to hold plea, shall be received or allowed by any of the justices of the said courts, to whom the said writs shall be directed and delivered, but that he and they shall and may proceed in the said cause or causes, as if no such writ or writs were sued forth or delivered to him or them, unless that the said writ or writs be delivered to the justice or justices of the said court, before issue or demurrer joined in the said cause or causes, so depending in such court, having power to hold such plea; and unless such writ shall be under the seal of the said supreme court, and signed by one of the judges, as also by the prothonotary of the same court; and unless the party or parties suing forth such writ, shall, before the allowance thereof, pay down the lawful fees or charges of the inferior court then accrued; and when the said charges are paid, one of the justices of the court to whom such writ is directed, shall allow the same writ and make return thereof, and certify the causes, according to the command of such writ; whereupon the defendant or party that sues forth such writs, shall put in special bail before one of the judges of the supreme court where the writ is returnable, such as the said judge, when he sees what the causes are, and hears the objections of the plaintiff or his attorney against such bail, shall approve of. But before any such bail be taken, the defendant shall upon or within four days next after allowance of the writ as aforesaid, give to the plaintiff, or his attorney, notice in writing of the names and additions of the bail, the time when, and the judge before whom the same is intended to be put in; but if neither the plaintiff nor his attorney can be found, then notice of the premises shall be left with the clerk of the inferior court by the party that tenders the bail or his attorney, and affidavits upon oath or affirmation made thereof, otherwise the bail shall not be taken,

but a *procedendo* shall be granted by any of the judges, if it be desired, before bail accepted or taken. And if the plaintiff or his attorney, after such notice will not attend to take exceptions to the bail at the time of the taking thereof, nor within twenty days after, then the bail may be taken *de bene esse*, and upon an affidavit made of the said notice as aforesaid, the same bail shall be forthwith filed in the office of the prothonotary of the said supreme court, by the attorney that sues out the writ: but if it be not filed within four days next after the expiration of the said twenty days, a *procedendo* shall be granted, upon certificate thereof from the said prothonotary, that it is not filed; and if the defendant be in prison or under bail, in the inferior court, neither he nor his bail shall be discharged by reason of any of the said removals, until the bail is so as aforesaid, approved of and filed in the supreme court. And if any such plea, plaint or action shall be remanded by *procedendo* or otherwise, the same shall never afterwards be removed or stayed before judgment.

And if [in] any action, bill, plaint, suit or cause, not concerning freehold or inheritance or title of land, lease or rent, which shall be brought, commenced or depending in any of the said courts of common pleas, it shall appear to be laid in the declaration that the debt, damages or things demanded doth or shall not amount to or exceed the sum of ten pounds, that then such action, suit or cause shall not be stayed nor removed into any of the said supreme or other courts by any writ or writs whatsoever, other than writs of error or attainat.

Provided also, That when any writ of *habeas corpus* directed to any sheriff shall be made returnable immediately, he shall make his return the same day that such writ is delivered, and shall bring the body immediately without permitting the prisoner to wander abroad by color or pretense thereof.

[Section III.] And be it further enacted by the authority aforesaid, That there shall be a court of equity held by the judges of the said respective supreme courts, in every county of this province, which said judges or any two of them, within the limits of their commissions and authorities to them appointed by this act, shall have full power and are hereby empowered and au-

thorized to hear and decree all such matters and causes, as by appeals from the respective inferior courts shall come before them as aforesaid, and thereupon to revoke, make void, alter or confirm such decrees or sentences, acts or proceedings of the said respective courts relating thereto, and to make such decrees, and take such orders therein as shall be agreeable to equity and justice.

And that it shall and may be lawful to and for the judges who make any decrees by virtue of this act, to compel and order the execution thereof by imprisonment of bodies or sequestration of any of the lands of such, who upon sight or due notice of such decree, or upon service of the judges' decretal, order or judicial process, duly proved before one or more of the judges, shall refuse or neglect to comply with or perform the same.

Provided always, That nothing herein contained shall oblige the judges of the said supreme court, nor any of them to go their circuit to the said counties of Bucks or Chester, but when there shall be some cause removed from the respective inferior courts, or some writ or writs of error, appeals or other matter or cause cognizable by them, which shall require their coming, whereof the prothonotary or clerk of the said supreme court, shall give them notice, with all expedition after any such removal, appeal or writs of error shall come to his knowledge. And that the said judges, upon such notice given them, shall cause the sheriff of each of the said two counties respectively, forthwith to warn the justices, coroners and constables to yield their attendance, according to the directions of this act.

[Section IV.] And be it further enacted by the authority aforesaid, That days shall be given in all pleas, complaints, process and adjournments from day to day and court to court by the discretion of the said judges, within the limits of their authorities; and if need be, the said judges, for the more speedy ministrations of justice may give days before any one of them, in vacation times, for returning of *habeas corpus*, *certiorari*, or other writs, as also for assigning of errors, filing of pleas, and for performing such other things, as shall be necessary to expedite the hearing and determination of all matters and causes depending before them, from time to time.

Provided always, That no judgment, sentence or decree of the said supreme courts shall be so final but that the party grieved therewith may appeal to the Queen, so that such appellant does deposit the sum or sums recovered or decreed against him, or become bound with one or more sufficient sureties to the party for whom such judgment or sentence is given, by recognizance, in double the sum adjudged to be recovered by the sentence, decree or judgment of the said supreme courts; with condition, that the person or persons appealing, shall and will within eighteen months next after prosecute his or their appeal in Great Britain, with effect; and if the judgment or decree be affirmed there, or that the appellant fails in the prosecution of his said appeal within the time aforesaid, then the said appellant, or party in whose name the appeal is made, shall pay all the debts, damages and costs adjudged upon the former judgment, sentence or decree, and all such costs and damages as shall be awarded for delaying execution, or they the sureties shall do the same for him, whereto the judges before whom the recognizance is given, shall subscribe their hands, and then execution shall stay, and the appellant, if taken in execution shall be discharged.

[Section V.] And be it further enacted by the authority aforesaid, That there shall be a court styled "the general quarter-sessions of the peace and goal delivery," holden and kept four times in every year, in each county of this province, on the days of the weeks and months commonly called as followeth: (That is to say) at Philadelphia, for the county of Philadelphia, on the first Monday in March, June, September and December; at Bristol for the county of Bucks, on the second Tuesday in every of the same months; and at Chester, for the county of Chester, on the last Tuesday in May, August, November and February. And that there shall be a competent number of justices in every of the said counties nominated, appointed and authorized by the governor or lieutenant-governor, for the time being, by commission under the broad seal of this province, which said justices, or any three of them, according to the tenor and direction of their commission shall and may hold the said general sessions of the peace and goal delivery.

And each of them shall keep, and cause to be kept, the peace of our Lady the Queen, her heirs and successors, and all acts and statutes made, and to be made, for the conservation of the peace, and for the quiet rule and government in the respective counties for which they shall be commissioned, as aforesaid, and according as those acts and statutes do or shall direct, to chastise and punish all persons offending against those acts and statutes. And to cause to come before them, the said justices, or any of them, all such persons who shall threaten any of the people of our said Lady the Queen, her heirs or successors, concerning their bodies or estates, to find sufficient security for the peace or good behavior; and if they refuse to find such security, then to cause them to be safely kept in prison until they find such security. And to make due inquiry by good and lawful men of the said respective counties by whom the truth may be the better known, of all manner of felonies and other crimes and offenses whatsoever of which justices of the peace, justices of oyer and terminer, or of gaol delivery, may or ought lawfully to inquire by whomsoever or howsoever done or perpetrated, or which hereafter shall be done, or attempted in the said respective counties; and of all those who have gone or ridden, or hereafter shall presume to go or ride in companies with armed force against the peace, to the disturbance of the people. And also, of all those who have lain or shall lie in wait to maim or kill any of the Queen's subjects. And also, of inn-holders and keepers of taverns and ale-houses, and of all those who have offended or hereafter shall presume to offend in the abuse of weights and measures. And also of all sheriffs, clerks, coroners, gaolers, constables, or other officers whatsoever, who, in the execution of their offices about the premises or any of them, have unlawfully demeaned themselves, or hereafter shall presume unlawfully to demean themselves or have been or hereafter shall be careless or negligent in the said respective counties. And to inspect, hear and determine all indictments or presentments whatsoever, to be taken before the said justices or any of them or which have been made or taken before the present or late justices of the peace, and judges of the late provincial courts in the said counties not as yet determined. And to make and continue process thereupon against all persons so indicted or pre-

sented, or which hereafter shall be indicted or presented before the said justices, until the said persons be apprehended, render themselves, or be outlawed. And that the said justices in their said general sessions, shall have power, and are hereby empowered to hear and determine all burglaries, burning of houses, robberies, grand and petty larcenies, rape, sodomy, buggeries, incests, fornications, polygamies, transgressions, false conspiracies, unlawful maintenances, champerties, embraceries, barrateries, forestallings, regratings, engrossings, extortions, frauds and deceits of persons getting money and other things by false tokens or counterfeit letters, in any other person's name; or of tradesmen making their manufacture, or using their trades deceitfully; assaults, batteries, bloodsheds, mayhems, forcible entries, forcible detainers, nuisances, encroachments, disorders between masters and servants, disorders in ale-houses and taverns, unlawful gaming, entertaining inmates, unlawful assemblies, riots, routs and indictments aforesaid, and all and singular the premises, and all other crimes and offenses, of what natures, names or qualities soever they be, which have been or shall be done, committed, perpetrated or happen within the said respective counties against the common law or against the form of any law of this province (excepting treasons, murders, and such other crimes as shall be by the laws of this province, made felonies of death) and to chastise and punish all persons offending in the premises, and every of them, for their offenses, by fines, ransoms, amercements, forfeitures, or otherwise, as ought and hath been used to be done, according to law, and the form of the acts, ordinances and statutes aforesaid: And to commit to prison, let to bail, and discharge offenders of or for offenses or crimes cognizable before them the said justices: And to take recognizances and obligations in such cases as the law doth or shall direct: And to grant and issue forth all and all manner of writs, precepts and process, which by law are or ought to be awarded or issued in or upon the procedure of any of the offenses, matters, causes and things hereby made cognizable in the said courts of general quarter-sessions and gaol delivery. And generally to minister common justice, and to do, exercise, hear, determine and execute all things within

the said respective counties and limits of their commissions and authorities, as near as conveniently may be to the laws of Great Britain, and according to the laws of this province, as fully and effectually as any justices of assize, justices of oyer and terminer, or of gaol delivery, or justices of the peace may or can do.

Provided always, That nothing herein contained shall empower the said justices in the said general sessions to hear and determine any presentment or indictment made or taken before the late judges of the provincial courts of this province for or concerning any treason or murder; but that all and every the indictments and presentments, so made and taken for or concerning any treasons or murders, not as yet determined, as also all treasons, murders and such other crimes as shall be by the laws of this province made capital or felonies of death, which have been or shall be done, committed, perpetrated or happen within this province, shall be heard, tried and determined by and before such and so many commissioners of oyer and terminer and of gaol delivery, as shall be especially named and constituted for that purpose, by the governor, or lieutenant-governor for the time being, under the great seal of this province, whenever there shall be occasion, which said commissioners shall have power to deliver the gaols of all persons committed for treasons, murders, and such other crimes as by the laws of this province shall be made capital or felonies of death; and for that end, to issue forth such necessary precepts and process, and force obedience thereto, as justices of assize, justices of oyer and terminer, and of gaol delivery, may or can do in the realm of Great Britain.

Provided also, That if any presentment shall be made in the said sessions of the peace for or concerning any crimes or offenses which by law may be inquired of but not heard or determined in the said sessions of the peace, then and in every such case all such presentments or inquisitions of those offenses shall be set down in writing, indented and sealed by the grand inquest, one part to remain with them, and the other part with the justices of the peace, in order to be delivered by one of them to the said special commissioners of oyer and terminer at their

next succeeding court, there to be proceeded upon as the law in such cases shall direct.

[Section VI.] And be it further enacted by the authority aforesaid, That the said justices of the peace, or any three of them, may, pursuant to their said commissions, hold special and private sessions, when and as often as occasion shall require. And that the said justices, and every of them, shall have full power and authority, either in or out of sessions, to take all manner of recognizances and obligations, as any justices of the peace in Great Britain may, can or usually do; all which said recognizances and obligations shall be made to the Queen, her heirs and successors; and all recognizances for the peace, behavior, or for appearance, which shall be taken by any of the said justices, out of sessions, shall be certified into their said general sessions of the peace to be holden next after the taking thereof, where the justices may, by virtue of this act, discharge and cancel any of those recognizances and obligations, as they shall see meet; and every recognizance taken before any of them, for suspicions of any manner of felony, or other crime, not triable in the said court of general quarter-sessions of the peace and gaol delivery, shall be certified before the said special commissioners of oyer and terminer, to be holden next after the taking thereof, without concealment, detaining or embezzling of the same. But in case any person or persons shall forfeit his or their recognizances of the peace, behavior or appearance, for any cause whatsoever, then the said recognizances, so forfeited, with the record of the default or cause of forfeiture, shall be sent and certified, without delay, by the justices of the peace, into the said supreme court, as the case may require, that thence process may issue out against the parties, according to law. All which forfeitures shall be levied by the proper officers, and shall go to the governor.

[Section VII.] And be it further enacted by the authority aforesaid, That all fines and amercements which shall be lost before the justices of the said courts of general quarter-sessions of the peace and gaol delivery, or before the said special commissioners of oyer and terminer, shall be taxed and affeered by the said justices and commissioners respectively, and shall be

set truly and duly, according to the quality of the offense without partiality or affection, and shall be yearly estreated by the prothonotaries and clerks of the said court respectively into the said supreme courts, to the intent that process from thence may be awarded to the sheriff of every county, as the case may require for levying such of the said fines and ameracements, as shall be unpaid, to the uses for which they are or shall be appropriated.

Provided always, That none of the said courts of the general quarter-sessions of the peace shall be kept and continued above the space of three days in the county of Philadelphia, at any of the times hereinbefore appointed to hold and keep the same courts and sessions there, nor above the space of two days in either of the said counties of Bucks and Chester, respectively, at any of the said times hereinbefore appointed to hold and keep the said courts and sessions there, in manner aforesaid.

Provided also, That nothing herein contained shall deprive or abridge the mayor, recorder or aldermen of the city of Philadelphia of any powers, privileges, jurisdictions or franchises granted them by charter, or the laws of this province.

And to the end that persons indicted or outlawed for felonies, or other offenses in one county or town corporate, who dwell, remove or be received in another county or town corporate, may be brought to justice:

[Section VIII.] It is further enacted, That the said justices, commissioners and magistrates in any court, in any county or town corporate within this province, assigned to hear and determine such felonies or offenses, shall direct their writs or precepts to all or any the sheriffs or other officers of the said counties, or towns corporate, within this province, where need shall be, to take such persons indicted or outlawed. And that it shall and may be lawful to and for all and every the said justices, commissioners and magistrates, to issue forth subpoenas and other warrants, under their respective hands and seals, into any county or place of this province, for summoning and bringing of any person or persons to give evidence in and upon any matter or cause whatsoever, now or hereafter examinable, or in any wise triable by or before them, or any of them, under such

pains and penalties, as subpoenas, or warrants of that kind usually are, or shall be granted or awarded.

[Section IX.] And be it further enacted by the authority aforesaid, That if any person or persons shall find him or themselves aggrieved with the judgment of any of the said courts of general quarter-sessions of the peace and goal delivery, or of any of the said courts of special oyer and terminer, or of any of the courts of record for the said city of Philadelphia, or of any other town corporate within this province, it shall and may be lawful to and for the party or parties so grieved, to have his or their writ or writs of error, which shall be granted them of course, in manner as other writs of error are, by this act, to be granted, and made returnable to the supreme court of the proper county, so as no person or persons whatsoever shall, by virtue or color of any such writ of error be let to bail, or out of prison, if his or their crime, for which he or they are convicted, be felony of death by the laws of this province.

Provided always, That when any writ of error shall be granted upon any judgment given, or to be given in any court of record held or to be holden for the said city of Philadelphia, the mayor, recorder and aldermen of the said city of Philadelphia, and their successors, or any of them, shall not be compelled upon any of the said writs, or any other writ or writs directed unto them, or any of them, to remove, send or certify into the said supreme court or elsewhere, any of the indictments or presentments taken, or to be taken before them, or the record of the judgments and proceedings upon any such indictments or presentments, but only the tenors or transcripts of the said records, under their common seal; and after such judgments are reversed or affirmed, or causes lawfully removed from the said city courts, are tried in the said supreme courts, it shall be lawful for the mayor, recorder and aldermen, and their successors, to proceed to execution or otherwise, as shall appertain, according to the direction of the judges.

[Section X.] Provided also, and it is hereby enacted, That the magistrates and constables of the city of Philadelphia, and the justices, sheriffs, coroners and constables of the said respective

counties of this province shall attend the said supreme courts as also the said courts of special oyer and terminer and perform their respective duties therein as the law doth or shall require.

[Section XI.] And be it further enacted by the authority aforesaid, That the justices of the said courts of general quarter-sessions, in the respective counties for which they are commissioned as aforesaid, shall hold and keep a court of record in every county, which shall be called and styled the county court of common pleas, and shall be holden four times in every year at the places where the said quarter-sessions shall be respectively kept as aforesaid, in the months commonly called as followeth: (That is to say) at Philadelphia for the city and county of Philadelphia, on the first Wednesday in March, June, September and December; at Bristol, for the county of Bucks, on the second Wednesday in every of the same months; and at Chester, for the county of Chester, on the last Wednesday in May, August, November and February. Which said justices or any three of them, within the limits, and according to the tenor and directions of their commissions and authorities to them appointed as is aforesaid, shall hold pleas of assizes, *scire facias*, replevins and hear and determine all and all manner of pleas, actions, suits and causes, civil, personal, real and mixed as near as conveniently may be to the rules of the common law, and to the course and practice of the Queen's court of common pleas at Westminster, and according to the laws and constitutions of this province.

[Section XII.] And be it further enacted by the authority aforesaid, That every of the said justices shall grant replevins, and all writs and process upon the said pleas, complaints and actions, as occasion shall require the same to issue out of the prothonotary's office under the county seal. And that there shall be a prothonotary or clerk of the said courts of general quarter-sessions and common pleas in every county of this province, who shall attend upon the said justices for the entering of all pleas, process and matters of record in the same courts. And that the sheriff, coroner and constables of every county shall attend upon the said justices at their said courts.

[Section XIII.] And be it further enacted by the authority

aforesaid, That any one or more of the said justices in every county of this province, as they shall see occasion, may sit once in every six weeks, at the place where the said courts of common pleas shall be usually held, to the end only that original writs and process may be made returnable there, and rules for pleas, replications and other pleadings may be there given, and issues joined, and other preparations made for expediting the trials of causes depending in the said courts of common pleas; and that judgments, for want of appearance, or for not entering pleas, replications, and other pleadings may be there given and obtained.

Provided always, That no dilatory plea shall be received in any court of this province, unless the truth thereof shall be proved by affidavit or attest, or some matter shown to induce the court to believe the fact true.

Provided also, That any defendant in any action or suit, or any plaintiff in replevin in any of the said courts of common pleas, may, with the leave of the court, plead as many several matters as he thinks necessary. But if such matters shall upon demurrer be judged insufficient, costs may be given at the discretion of the court; or if a verdict shall be found upon any issue in the said cause for the plaintiff, costs shall be also given in like manner, unless it appears to the court, that the defendant or plaintiff in replevin, had a probable cause to plead such matters, which upon the said issue shall be found against him.

Provided also, That if it shall appear to the justices, that it will be proper and necessary, that the jurors who are to try such issues, shall view the messuages, lands or places in question, the better to understand the evidences in such cases, the justices may order special writs of view to issue to the sheriff, commanding him to have six out of the first twelve of the jurors named in the panel, at the place in question, some time before the trial, who then and there shall have the matters in question shown unto them by two persons in the said writs named to be appointed by the court, and the sheriff or other officer who executes the said writ, shall specially return the view made as aforesaid.

[Section XIV.] And be it further enacted by the authority aforesaid, That after demurrer joined and entered in any action or suit, in any court of record within this province, the justices shall proceed and give judgment, according as the very right of the cause and matter of law shall appear unto them, without regarding any imperfection, omission or defect in any writ, return, plaint, declaration or other pleading, process or course of proceeding whatsoever, except those only which the party demurring shall especially and particularly set down and express, together with his demurrer, as causes of the same, notwithstanding that such imperfection, omission or defect might have heretofore been taken to be matter of substance, and not aided by the statute of 27th of Elizabeth, Chapter the 5th, so as sufficient matter appear in the said pleadings, upon which the court may give judgment, according to the very right of the cause. And that no advantage be taken of an immaterial traverse, or default of entering pledges on any bill or declaration, or default of alleging the bringing into court of any bond, bill, indenture or other deed whatsoever, mentioned in the declaration or other pleading, or of bringing into court letters testamentary, or letters of administration, or by reason of omission of (with force and arms) or (against the peace) or for want of averring (this he is ready to verify) or for not alleging (as appears by the record). But the court shall proceed and give judgment according to the very right of the cause, as aforesaid, without regarding any such imperfections, omissions or defeats, or any other matter of like nature, except the same shall be specially and particularly set down and shown for cause of demurrer.

[Section XV.] And be it further enacted by the authority aforesaid, That in all actions upon any bond or penalty, for non-performance of covenants, the plaintiff may assign as many breaches as he shall think fit, and the jury at the trial shall and may assess damages for such of the said breaches as the plaintiff shall prove broken, and the like judgment shall be entered on such verdict, as hath been used in such actions. And if judgment be given for the plaintiff, upon demurrer, confession or *nihil dicit* the plaintiff upon the roll may suggest as many breaches as he shall think fit, upon which shall issue a writ

to summon a jury to inquire of the truth of every one of those breaches, and to assess damages accordingly, and to return the same to the court where the cause depends, and thereupon the proceedings shall be according to a statute made in the eighth and ninth years of William the Third, Chapter the 11th, entitled "An act for the better preventing frivolous and vexatious suits," which said statute shall, in that and all other things, be observed and put in practice in this province, so far as circumstances can admit.

And where any action of debt is or shall be brought upon any single bill or *scire facias* upon judgment, and the money due thereon paid, such payment may be pleaded in bar to such action or *scire facias*. And where an action of debt is brought upon a bond with condition or defeasance to be void upon payment of a lesser sum at a day or place certain, if the obligor, his heirs, executors or administrators have, before the action brought, paid or offered to pay the obligee, his executors, administrators or assigns, the principal and interest due by such condition or defeasance in the specie therein mentioned, though such payment or tender shall not appear to be strictly made, according to the said condition or defeasance, yet such payment shall be as effectual a bar of such action as if the money had been paid according to the condition or defeasance, and had been so pleaded; And such tender shall be a bar of damages and costs in such action and if at any time pending an action upon any such bond, the defendant shall offer to the plaintiff the principal and interest in the specie mentioned in the condition of such bond, with cost expended in law and equity, or shall bring the same into court, it shall be deemed a good discharge of the said bond and the court shall give judgment to discharge every such defendant accordingly. And when a penalty is declared for, the plaintiff shall have judgment but for his real debt, interest and charges, with such damages as the court shall adjudge, and the defendant shall, by the court's order, be discharged upon the record for the residue.

Provided always, That in all cases where the plaintiff recovers judgment, if at the instance or request of the defendant he delays taking out execution upon such judgment, then the

plaintiff shall have interest allowed from the day judgment is given.

[Section XVI.] And be it further enacted by the authority aforesaid, That if any person or persons find themselves grieved with the verdict of any jury, and have just cause to move in arrest of judgment, they may do so after verdict, and before judgment; but if they neglect their motion, and judgment be entered, then if they intend to avoid such judgment, they may have their writ or writs of error, which shall be granted them of course and made returnable before the judges of the said supreme court; and the plaintiff or plaintiffs in such writs of error shall bring the same to one or more of the justices of that court where such judgment was entered, and thereupon he or they, with one or more sufficient sureties, such as the said justice or justices shall approve of, shall become bound to the defendant or defendants in the writ of error, or the party for whom such judgment is given, by recognizance, in double the sum adjudged to be recovered by the said judgment; conditioned that the plaintiff in the writ of error hath good cause of error, and shall follow the same writ with effect; and if the judgment be affirmed in the supreme court, shall satisfy all the debts, damages and costs so adjudged, and all costs and damages for delaying of the execution by the writ of error. But before such recognizance be taken the said defendants in error may object the insufficiency of the sureties, which the justice or justices aforesaid, shall duly consider, and when the security is taken one of the justices of the same court shall allow the said writ of error, and subscribe his name to the *allocatur*, as also to the caption of the said recognizance; which writ of error, so allowed as aforesaid, shall be and is hereby declared to be a *supersedeas* of itself, to any execution granted, or to be granted, or not executed until the said writ of error be determined or discontinued in the supreme court. But if any writ of error shall be quashed for variance from the original record, upon which it is grounded, in such error the defendant shall recover against the plaintiff the costs he should have had if the judgment had been affirmed.

Provided always, That no plaintiff in error having complied

with and satisfied the judgment given against him, in any of the said courts, nor any executor or administrator, against whom judgment hath been or shall be obtained for debt or damages, to be levied of the goods and chattels of the testator or intestate shall be obliged to give bail upon allowance of any writ of error, by any of them to be brought for reversing such judgments.

[Section XVII.] And be it further enacted by the authority aforesaid, That if any verdict of twelve men hath been or shall be given in any action, suit, bill or demand, in any court within this province, judgment thereupon shall not be stayed or reversed for any of the omissions, defects, variances or defaults helped by any of the acts of parliament in Great Britain, called statutes of jeofails, all which said statutes shall be observed in this province, and shall be extended to judgments entered or to be entered in any court of record, upon confession *non sum informatus*, or *nihil dicit*; which said judgments, also judgments given upon any writ of inquiry of damages executed thereon, shall not be stayed or reversed for or by reason of any imperfection, omission, defect, matter or thing whatsoever, which would have been aided by the said statutes of jeofails, so that the original writs and warrants of attorney in such cases be duly filed.

[Section XVIII.] And be it further enacted by the authority aforesaid, That no freeholder inhabiting in any part of this province, shall be arrested or detained in prison by any writ of arrest or *capias ad respondendum*, in any civil action, unless it be in the Queen's case or where a fine is or shall be due to the Queen, her heirs or successors; but that the original process against such freeholders shall be a writ under the hand of the justice that grants the same, with the county seal affixed, directed to the sheriff or coroner of the proper county, commanding him to summon the defendant to be and appear at such a court, such a day of return; at which day if the defendant will not appear, but make default, and the officer to whom such writ shall be directed, or his attested or sworn deputy[ies] doth certify to the court that ten days before the day of the return of such writ he hath summoned the defendant, and served him

with a copy of the plaintiff's declaration or left notice in writing with a copy of the declaration at the defendant's dwelling-house in the presence of one or more of the defendant's family or neighbors, signifying that the defendant should be and appear, according to the contents of such writ; upon which return, it shall and may be lawful to and for the plaintiff, in such action to file a common appearance for the defendant so making default, and proceed to judgment and execution, which shall be as effectual in law, as if such defendant had actually appeared and confessed judgment, or suffered it to pass by *nihil dicit*. But if such freeholder be at any time arrested, the writ shall abate, and costs shall be given to the defendant by the court, where such writ is depending or returnable; for which costs, the like remedy shall be had, as in other cases where costs by law is [sic] given to defendants.

Provided always, That nothing herein or in any other act contained shall exempt any person or persons from being arrested or attached or shall debar any person or persons from having or taking out writs of arrest or attachment, so as the plaintiff in every such writ can make appear by affidavit, to be made by him, her or any other, upon oath or affirmation before the justice who grants such writ, testifying that the defendant in the same writ named, hath declared or signified his intentions of going to sea or of removing out of this province: or that the defendant in such writs hath refused or neglected upon demand, to give either real or personal security for the debt or sum owing to the plaintiff in such writ; or refused without process to appear and put in special bail to the plaintiff's action for the debt, matter or cause, for which he or she sues or complains: or that the defendant in such writ hath not been a resident in this province for the space of two years next before the taking out of such writ; or where the deponent can declare he is credibly informed or believes (giving the justice a particular account of the grounds of his information or reasons of his belief) that the defendant hath not a freehold estate in houses or lands in this province, to the value of the debt demanded, clear of all mortgages, extents or other incumbrances, but that in any of the said cases, writs of arrest or attachment shall issue forth against every such defendant, as occasion may require.

Provided also, That if the plaintiff in any of the said writs of arrest or attachment can make appear by affidavit to be made and taken as aforesaid, that the defendant lurks in secret places or absents from the place of his usual abode or conceals himself in his own house or in the house of any other, or suffers himself to be arrested or his goods attached or taken in execution for a debt or sum not due or makes over his lands, goods or chattels to some of his creditors or others, to defraud or deprive the rest of his creditors of their proportions of his effects; in which cases, as also in case the defendant is going to sea or removing out of this province, and refuseth to give security or appear gratis and put in special bail to the plaintiff's action as aforesaid, writs of arrest or attachment shall issue forth, as the case may require. All which affidavits shall be filed in the same court where such writs are returnable. And in case the day appointed by obligation or contract for payment of the debt or sum demanded, of any such defendant, be not come, nevertheless, writs of arrest or attachment shall issue forth, respectively as the case requires, directed to the sheriff or other officer, commanding him to take the body or attach the goods of the defendant in such writs, and to detain the same in safe custody until the day of payment be incurred, unless he or she shall find sufficient pledges or security for payment of the debt or sum, on the day wherein the same ought to be paid as aforesaid; and no defendant shall in such cases be received to plead that the writ precedes the day of payment; but may plead other matters in discharge or avoidance of such debt or demand; and if the defendant in any such writ or writs shall not appear on the day of the return thereof, then the sheriff or other officer to whom such writ or writs are directed shall return the same in due form. And thereupon the plaintiff may file a common appearance for such defendant so making default, and proceed to judgment and execution; which shall be as effectual in law as if such defendant had actually appeared and confessed judgment or suffered it to pass by *nihil dicit*. But the defendant in all attachments shall have liberty within a year and a day next after such judgment, to come into court and disprove or avoid the debt as hath been used.

Provided also, That no freeholder, inhabiting within this province, who by this act is exempted from arrests shall be obliged to put in special bail, unless the plaintiff's declaration be filed in the prothonotary's office, and the debt thereby declared for be twenty pounds or upwards; but in all actions of debt against such freeholder for a lesser sum common bail shall be accepted.

Provided also, That no person who shall be taken upon any of the said writs of arrest for any cause wherein by law he isailable, shall be forced to give security or enter into bond with sureties for his appearance at the day in such writ specified, in any sum above forty pounds, unless the cause of action be either expressed in the writ or endorsed upon it particularly. And where the cause of action is not so expressed, or the declaration filed, the sheriff or other officer who executed such writ, shall let to bail and deliver out of prison the person so taken or arrested, upon security in the sum of forty pounds, and no more, given for appearance of such person or persons so arrested, unto the said sheriff or officer, according to the statute in the three-and-twentieth year of King Henry the Sixth, in that behalf made and provided, and upon appearance by the defendant or his attorney in the court, on the day when such writ shall be returnable, the bond so given shall be discharged, unless it shall appear to such court, that the matter requires special bail to be put in by such defendant, in which case the bail-bond shall not be discharged, but the sureties named in such bail-bond shall stand bound, and they are hereby obliged to bring the body of the principal, if he be condemned or else pay the debt or sum he shall be condemned in, not exceeding such bail-bond. And where any person is or shall be arrested at any common person's suit, and bail taken as aforesaid, the sheriff or other officer shall assign the bail-bond or other security to the plaintiff therein named, by endorsing the same before two witnesses; and if the same bail-bond or security be forfeited after such assignment made, the said plaintiff may bring an action thereupon in his own name, and the court, where such action is brought, may by rules give such relief in the original action or suit, as shall be agreeable to justice; and such rules shall have the effect of a defeasance to such bail-bond or security.

Provided also, That before any definite judgment be given by default in any of the cases aforesaid, the court or jury of inquiry as the case may require, shall examine and hear the plaintiff, and the evidence that shall be produced on the plaintiff's part, to maintain the action and prove the debt or matter declared for.

Provided also, That no judgment shall be entered of record in any court of this province, unless it be signed by one of the justices who gave the same, nor any costs of suit be set down upon any of the said judgments so entered, before the same costs be taxed and allowed by one of the said justices. And where a *capiatur* is to be entered upon judgments in actions of trespass, ejectment, assault, and false imprisonment brought by party against party, in the said courts, the justice who signs such judgment shall have any sum not exceeding twenty shillings in full satisfaction of the *capiatur* fine, and shall make an increase to the plaintiff aforesaid. And if any judgment shall be acknowledged, or entered, and signed in the vacation time, the justice that signs the same shall set down the day of the month, and year of his so doing, upon the paper docket or record he signs, which day and year shall be also entered upon the margin of the roll of the record where the said judgment shall be entered, and shall have relation accordingly.

And to prevent the excessive charges that have of late arisen upon executing writs of inquiry of damages:

[Section XIX.] It is hereby enacted, That the justices who give the interlocutory judgment shall, at the motion and request of the plaintiff in the action where such judgment is given, or his attorney, make an order in the nature of a writ of inquiry, to charge the jury, attending the next court after such judgment is given, to inquire of the damages and costs sustained by the plaintiff in such action; which inquiry shall be made, and evidence given in open court; and after the inquest consider thereof, they shall forthwith return their inquisition under their seals; whereupon the court may proceed to give judgment, as upon inquisitions of that kind returned by the sheriff.

Provided always, That eight days' notice be given where

the defendant or his attorney appears to the action, as is usual upon executing writs of inquiry; and such inquest shall have and receive so much and no more than by law shall be allowed to juries that give their verdict upon issues joined. And if any of the witnesses to be produced to give evidence upon any trial or cause in the court of common pleas, in one county, do reside in another county of this province, it shall be lawful for any of the justices of that court, where such trial or cause is depending, to issue forth subpoenas and other process, to cause such witnesses to come to give evidence at the said court, under such pains as writs or precepts of that kind are usually granted.

[Section XX.] And be it further enacted by the authority aforesaid, That when any debt is recovered, damages awarded, or non-suit obtained in the said court, it shall and may be lawful for the plaintiff or defendant, who recovered or obtained the same, to take out his writ of *capias ad satisfaciendum, elegit, levari* or *feri facias*, as he shall think fit, and proceed thereupon, according to the course of proceedings upon such writs in Great Britain, having due regard to the directions of the laws of this province in the execution of lands.

[Section XXI.] And be it further enacted by the authority aforesaid, That when any sheriff or other officer to whom any of the said writs of execution shall be directed, shall return that the party is not to be found, or hath no lands or tenements, goods or chattels in that county, and thereupon it be testified that the party is run into skulks, or lies hid, or hath lands, tenements, goods or chattels in any other county of this province, it shall and may be lawful to and for the court that issued out such execution, to grant, and they are hereby required to grant an alias execution, with a *testatum*, directed to the sheriff or coroner of the county or place where such person lies hid or where his lands or effects are, commanding him to execute the same, according to the tenor of such writ or writs, and make return thereof to the court of common pleas where such recovery is had or judgment given. And if the said sheriff or coroner to whom any such writs shall be so directed, shall refuse or neglect to execute and return the same accordingly, he shall be amerced in the court where he ought to return it, and be liable

to the action of the party grieved. And as for what charges shall arise or accrue after the first execution is awarded, either for other or more writs of execution or for appraising lands or chattels or for portage of goods or otherwise, over and above the costs and damages inserted in the said first execution, the plaintiff or party who obtained such execution, shall be paid and satisfied the same out of the money which shall be made and levied of the lands or other effects taken in execution, according as the court, where the last execution is returned, shall award.

[Section XXII.] And be it further enacted by the authority aforesaid, That if any person or persons, being defendant or defendants in any suit or action, who shall, by reason of their speedy departure out of this province, require a more speedy determination in the premises, than can be had in the said court of common pleas, upon application to the justices of the said court, they shall grant such defendant special courts and shall proceed to hear and determine the premises according to the course and practice of the said court of pleas.

Provided always, That before the said justices shall grant such special court, or proceed to hear and determine the premises, such defendant shall give bail to the plaintiff's action, by recognizance, according to the course and practice of the said common pleas. Provided also, That the fees due to the justices and officers of such special court, for anything done there shall be double the fees usually by them taken for the same, in the said court of common pleas, anything herein or in any other law contained to the contrary notwithstanding.

[Section XXIII.] And be it further enacted by the authority aforesaid, That every fraudulent gift, conveyance or assurance of lands or goods to deceive creditors, shall be void, and the creditors shall have execution thereof, as if no such gift or assurance had been made. And all such bonds, suits, judgments and executions made to avoid the debt or duty of others, shall (as against the party only whose debt or duty is so endeavored to be avoided) be utterly void. And that the parties and privies to such frauds shall be punished, as is appointed by the several statutes made in Great Britain against such frauds; all which

statutes, as also all other statutes made in Great Britain for the relief of creditors in that behalf shall be put in execution in this province.

[Section XXIV.] And be it further enacted by the authority aforesaid, That writs of partition between copartners by the common law, joint tenants and tenants in common may be brought and proceeded on in the said courts of common pleas, for the proper county, as near as may be according to the course of proceedings in Great Britain, upon such writs, and as a statute made in the eighth and ninth years of the reign of the late King William the Third, entitled "An act for the easier obtaining partitions of lands in coparcenary, joint tenancy and tenancy in common," doth direct. And that all actions of waste, whether the same be grounded upon the common law or statute laws of Great Britain, may be brought and proceeded on in any of the said courts of common pleas, in the proper county. And that actions of account may be also brought and proceeded on in any of the said courts of common pleas of the proper county, against the executor of every guardian or bailiff; and also by one joint tenant and tenant in common, his executors or administrators against the other, as bailiff for receiving more than his proportion, and against the executors or administrators of such joint tenant or tenant in common. And the auditors appointed by the court, where such actions depend may administer attests and examine the parties and witnesses; and for their pains in auditing such accounts, to be paid by the party on whose side the balance appears, as by a statute made in the fourth and fifth years of the reign of the Queen that now is, entitled "An act for the amendment of the law and better advancement of justice," is ordained.

Provided, That no falling or destroying of timber trees for the necessary improvement of land or making plantations, nor the falling of timber trees for building or repairing any houses upon such plantations, nor the felling and cutting of wood and timber for any other use, unless the same be sold or carried off from the land it grew on, shall be adjudged waste, punishable within this province.

[Section XXV.] And be it further enacted by the authority

aforesaid, That there shall be a court of equity held by the justices of the said respective county courts of common pleas, four times a year, at the respective places, and near the said times as the said courts of common pleas are held, in every county of this province. And that the prothonotary of the common pleas shall be the register of the said court of equity in every county. Which said justices or any three of them within the limits of their commissions and authorities to them appointed as is aforesaid, shall have full power, and are hereby empowered and authorized to hear and decree all such matters and causes of equity, as shall come before them in the said courts, where the proceedings shall be as heretofore, by bill and answer, with such other pleadings as are necessary in chancery courts, and proper in these parts; with power also for the said justices of the respective courts of equity to issue forth all manner of subpoenas and all other process as may be needful to oblige and force defendants to answer suits there; as also to award commissions for taking answers, and examining witnesses; and to grant injunctions for staying suits in law, and stopping waste as there may be occasion, observing, as near as may be, the rules and practice of the high court of chancery in Great Britain; with power also to make orders, and award all manner of process, and do all other things necessary for bringing causes to hearing, and to force obedience to their decrees in equity, which may be by imprisonment of bodies or sequestration of lands; and admit bills of revivor, as the case may require. And if any defendant or defendants in any suit, which shall be commenced against them in one of the said counties shall after he or they are served with a subpoena or other process, remove into any other county of this province, all process necessary to bring such defendants to answer, and all commissions for taking their answers, and examining of witnesses, with all other proofs necessary to bring such causes to a hearing, shall and may be awarded out of the court where those causes or suits shall be first commenced, into any other county of this province, as the case may require.

Provided always, That no subpoenas or other process for appearance shall issue out of any of the said courts of equity, till

the bill is filed with the proper officer, except bills for injunctions to stay wastes or suits at law.

Provided also, That if any person or persons shall find themselves grieved with any decree or sentence made or given by the said justices in equity, it shall and may be lawful to and for him or them so grieved, forthwith to appeal or have recourse to the judges of the supreme court, to set forth his or their case by petition, bill or plaint, so as the sum adjudged to be paid by such decree amount to ten pounds or upwards this country money; and so, as he or they so appealing first pay down the court charges, and either satisfy the decree or sentence, so given, or deposit with the justices the sum awarded, or give sufficient security to prosecute the said appeal, and to pay all costs and damages that shall be awarded against him or them; and then, albeit the party appealing be imprisoned upon that decree or sentence, he shall be enlarged; and that such appeals shall supersede all further process upon the decree or sentence appealed from, till the same be heard, tried or dismissed in the said supreme court.

Provided also, That nothing herein contained shall give the said justices any power or authority to hear, decree or determine in equity, any matter, cause or thing wherein sufficient remedy may be had in any other court or before any other magistrate or judicature in this province, either by the rules of the common law or according to the tenor and directions of the laws of this province; but that when matters determinable at common law shall be brought before them in equity, they shall refer or remit the parties to the common law; and when matters of fact shall happen to arise upon their examination, or hearing of the matters and causes to be heard and determined in the said court, then and in every such case, they shall order the matter of fact to issue and trial at the court of common pleas, for the proper county, where the fact ariseth, before they proceed to sentence or decree in the said court of equity.

[Section XXVI.] And be it further enacted by the authority aforesaid, That if any prothonotary or clerk of the aforesaid supreme courts or of the said courts of general quarter-sessions of the peace and goal delivery or of the said courts of common

pleas, or register of the courts of equity, shall misbehave himself in the execution of his office, and be thereof legally convicted he shall be suspended or discharged from the same; and in such case the governor or magistrates, to whom of right it shall belong, may appoint another fit person to be prothonotary or register in his room; and in case of neglect or refusal to make such appointment before the next court after such refusal, the judges of that court may then appoint one. And that the like method may be used by the mayor, recorder and aldermen of the city of Philadelphia, for suspending or discharging the clerk of the courts of the said city; and in such case they may appoint others, in the room of him or them who shall be so suspended or discharged. And the said justices and mayor and recorder respectively may admit any attorney or attorneys to plead in any of the said courts respectively; and upon the misbehavior of such attorney or attorneys, to suspend or prohibit their pleading in any of the said respective courts.

And for the better executing of the powers and jurisdictions by this act granted or intended it may be lawful to and for the said judges and justices of the said respective courts, to make and publish all and every such reasonable rules and orders as may be fit and necessary to regulate the officers, and ascertain the practice of the courts they belong to.

Provided always, That no judges, justices or other persons shall by any means, or under any pretence whatsoever, make, promote, introduce or suffer any rule, order or practise in any of the said courts, that shall exact greater fees than what are or shall be allowed by the laws of this province or, which may debar or render any person or persons, who for conscience' sake shall scruple to take an oath in any case, incapable to serve, officiate or act in any office, duty or service whatsoever.

[Section XXVII.] And be it further enacted, That it shall and may be lawful to and for any person or persons who are or shall be unjustly disseized or kept out of their lands, tenements or hereditaments, to which they have or claim any estate or right of inheritance, to take out their writ or writs of summons against the tenant in possession of such lands or hereditaments; and in their declaration shall set forth their right to the

lands or tenements in question; and if such tenant will not appear at the day of the return of the summons, then the demandant or plaintiff shall take out a grand *cape*, upon which, if the tenant or defendant does not appear at the return thereof, the demandant shall recover by default, and have a writ of seizin of the lands.

[Section XXVIII.] And be it further enacted by the authority aforesaid, That all and every the pleas, writs, bills, actions, suits, plaints, process, pleadings, proceedings, indictments and informations, causes and things whatsoever pleaded, returned, depending or being, in all and every or any of the courts of law and equity within the said province, shall be, and are hereby continued, and may be proceeded upon at the respective courts, hereby erected and appointed to have consance of such pleas.

Passed February 28, 1710-11. Repealed by the Queen in Council, February 30, 1713-14. See Appendix III, Section II, and the Acts of Assembly passed March 27, 1712-13, Chapter 198, and May 28, 1715, Chapters 212, 213 and 215.

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## CHAPTER CLXIX.

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### AN ACT FOR REGULATING AND ESTABLISHING FEES.

For prevention of extortion and undue exactions of fees of the several officers and practitioners of law in this province, and to the end that all fees may be limited, and reduced to certainty:

[Section I.] Be it enacted by Charles Gookin, Esquire, by the Queen's royal approbation Lieutenant-Governor under William Penn, Esquire, absolute Proprietary and Governor-in-Chief of the Province of Pennsylvania, etc., 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 the fees of the several and respective lawyers and officers in this province shall be as is hereinafter respectively ascertained, limited and appointed, viz.,

That the fees belonging to the keeper of the great seal of this province shall be as followeth, viz.,