same court he declares, and the attorney for the defendant shall file his warrant of attorney, the same court he appears; and if they neglect so to do they shall have no fee allowed them in the bill of costs, nor be suffered to speak in the cause till they file their warrants respectively.

Passed May 28, 1715. Repealed by the Lords Justices in Council July 21, 1719. See Appendix IV, Section II.

CHAPTER CCXIV.

AN ACT FOR THE BETTER ASCERTAINING THE PRACTICE OF THE COURTS OF JUDICATURE IN THIS PROVINCE.

Whereas the law (which ought to be the rule and standard of all judicial proceedings) is in itself just and grounded upon that most excellent principle of doing to others what we would have done to us. Nevertheless complaints are made that the practice of the law in this province falls under some irregularities. For rectifying whereof, and to prevent the like inconveniency for the future, and to the end that the said courts of judicature may be governed by the same rules and course of proceedings throughout this province:

[Section I.] Be it enacted by Charles Gookin, Esquire, by the royal approbation Lieutenant-Governor, under William Penn, Esquire, 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 the first commencement of all suits or actions in the courts of common pleas, within this province, shall be by the plaintiffs or their attorneys taking out or obtaining writs of summons, capias or attachment (as the case may require), under the hand and seal of one of the justices of the said courts, directed to the sheriff or coroner of the proper county, returnable to the next court, after the date or *teste* thereof; which writs shall contain and express the names of the plaintiffs and defendants, with the places of abode and

additions of every defendant, as also the nature or cause of the action and the sums of the debts or damages sued for; and the day and place of their return, according to a note or praecipe drawn by the plaintiffs or their attorneys, or by the clerks of the said respective courts for that purpose, which they shall present to the justice before he grants such writs, which said praecipes shall be filed in the prothonotary's office by the plaintiffs or their attorneys, or by the said clerks, at or before the return of the writs, or else such writs shall abate.

And that all the said writs shall be made returnable the first day of the quarterly courts of common pleas and not otherwise, and returned the same day by the sheriff or coroner accordingly.

And when the defendant is arrested and bail bond taken for his appearance (according to the statute of the twenty-third of Henry the Sixth, chapter the tenth), every such defendant, upon his appearance, at the day that the writ is returnable, shall forthwith put in bail, special or common, as the court shall order, and as the law in such cases doth or shall direct. And till such bail be given, the defendant shall be committed to the sheriff's custody there to be safely kept accordingly. Which said special bail shall be by bail-piece or recognizance for the sum expressed in the writ to render the body of the defendant, if he be condemned, or else to pay the debt and damages he is condemned in. But before such bail be taken, the defendant or his attorney shall give to the plaintiff or his attorney one day's notice in writing of the names and additions of the bail, and the time when the same is intended to be put in; and if the plaintiff or his attorney, after such notice, will not attend to take exceptions to the bail, at the time and place appointed, the bail may be taken *de bene esse.*

But if the plaintiff or his attorney shall afterwards appear and except against the bail, then the bail-piece shall be brought into court, and the justices, upon examination of the matter, and what the bail upon oath or affirmation will declare themselves to be worth, may allow or disallow [of them], till which allowance the defendant shall be committed to gaol, there to remain in safe custody until he puts in bail to the action, in manner aforesaid.

Provided always, That it shall and may be lawful for any sureties on bail bonds, at or before the day whereon the defendant for whom they are bound ought to appear, to bring or deliver such defendant to the sheriff or officer, that took such bonds; who is hereby empowered and required to receive such defendant and put him in gaol, there to be safely kept till he gives bail to the action, in manner aforesaid. And upon the sureties bringing in or delivering the defendant to the sheriff or officer, as aforesaid, or upon the defendant rendering himself to the sheriff or officer, the bail bonds in all such cases shall be thereby discharged. And if the sheriff or keeper of such gaol shall, in any of the said cases, refuse to [receive the] defendant, and him safely keep, as aforesaid, he shall pay to the party grieved double damages, to be recovered in any court of record in this province.

Provided also, That where any freeholder or sufficient housekeeper in this province shall be taken by any of the said writs of arrest, his bail bond shall be discharged upon his appearance in person, or by his attorney, and filing common bail, unless it shall appear to the court that there is cause why special bail should be given.

Provided also, That where anyone is sued as executor or administrator, he shall not be held to bail upon any of the said writs, but shall be admitted to common bail upon appearance, and his bail bond shall be discharged, unless where he is charged by the declaration with wasting the decedent's goods, or where the action is brought for something done by him since he became executor or administrator, or where letters of administration have been granted out of this province, and no security given in the register-general's office, as is usually done upon granting administrations in this province.

[Section II.] And be it further enacted, That if the defendant doth not appear, according to the writ, and find bail as aforesaid, then the plaintiff or his attorney may call to the sheriff or other officer for a return endorsed on the said writ, which such sheriff or officer is hereby required to make on the day that such writ is returnable. And if he refuses or delays so to do, or if upon his return of a *cepi corpus* he has not the

body ready, nor taken bail, or if it appears that he has taken insufficient sureties, or has taken bail for appearance of such as are not to be bailed by the said statute of the twenty-third of Henry the Sixth, then and in every such case the plaintiff or his attorney may move the court to amerce such sheriff or officer, as is usual in such cases, and the party grieved may have his action to recover his damages in that behalf.

Provided always, That where the sheriff or other officer takes a bail bond, he shall, at the request and costs of the plaintiff or his attorney, assign the same by indorsing thereof, and attesting it under his hand and seal, in the presence of two or more credible witnesses; and if such bond be forfeited, the plaintiff, after such assignment, may bring an action in his own name; whereupon the court, where the action is brought, may give such relief to the plaintiff and defendant in the original action, and to the bail, as the statute made in the fourth and fifth years of the late Queen Anne, chapter the sixteenth (entitled "An act for the amendment of the law and the better advancement of justice,") doth direct in such cases; which said statute, in that and all other points, shall be observed and put in execution in this province, so far as circumstances can admit.

Provided also, That all bail bonds may be [put in suit] at any time after the last day of the court where the writ [was returnable]. And that the process upon bail bonds shall be summons; and the defendant in the original action shall be admitted upon payment of costs, to appear, put in bail, and plead to such original action, whereupon the bail-bond shall be discharged, and all proceedings thereon stayed, and relief given to the parties, as the case may require.

Provided also, That where any actions have been commenced against any person or persons upon bail bonds entered into since the seventeenth day of July last past (being the time when the late repeal of several laws of this province was published), all and every such action and actions shall be and are hereby declared to be discontinued; and the defendants, for whom such bail has been given, shall be admitted to plead to the original [action with]out paying costs, and no fees shall be demanded,

taken, or allowed [for the pro]cess or proceedings upon the said bail bonds.

Provided also, That nothing herein contained shall avoid any of the said bail bonds; but that the defendants may enter their appearance, which shall be accepted upon bail given, according to the direction of this act, and in default thereof the bail bonds to be put in suit forthwith.

Provided also, That nothing herein or in the said repeal contained, shall extend or be construed to discontinue any actions, suits, plaints, process, indictments or informations for any matter or cause whatsoever, now depending in any the courts of this province (except such actions as are commenced on bail-bonds as aforesaid): but that the same are hereby continued and shall be proceeded upon in the said respective courts.

[Section III.] And be it further enacted, That where any defendant shall be taken and charged in custody, upon any of the above-mentioned writs of arrest, and imprisoned for want of sureties or because his sureties will stand no longer bound for him, then and in every such case, the plaintiff on the first day of the court to which any such writ [is] returnable, shall file his declaration in the prothonotary's office, against the prisoner, and cause a copy thereof to be delivered to him or to the gaol keeper, to which declaration the prisoner shall appear and plead, or otherwise the plaintiff shall have judgment in such manner as if the defendant had appeared in court and refused to answer or plead to such declaration.

And where a writ of summons is served upon the defendant, or notice left in writing by the sheriff or his deputy at the defendant's dwelling house, or place of his last abode, in the presence of one or more of his family or neighbors, signifying that the defendant should be and appear according [to] the contents of such writ of summons, if (upon the sheriff's making return thereof accordingly) the defendant does not appear, the plaintiff before the end of the court where such writ is returnable, does file his declaration; and if the defendant, being solemnly called three times, the last day of the court, does not appear, judgment shall be entered against him, which shall be as valid and effectual in law as if such defendant had actually

appeared and confessed judgment or suffered it to pass against him by *nihil dicit.*

[Section IV.] And be it further enacted, That on or before the day of the return of the said writs, the plaintiff therein shall file his declaration in the prothonotary's office, otherwise a *non pros.* shall be entered against him, and the defendant may *imparle*, or have leave to plead to such declaration, till twenty-eight days after filing thereof; and in default of filing such plea, judgment by *nihil dicit* shall be entered against him.

And if the plaintiff shall not reply or join issue within twenty-one days next after plea pleaded, he shall be non-prossed.

And the defendant shall with[in twenty]-one days, after replication filed, rejoin or join issue, [or judgment] shall be entered against him.

And the plaintiff if occasion [be, shall] surrejoin or join issue, by the first day of the next ensuing court, or be non-prossed.

Provided always, That no execution shall issue upon any of the said judgments, to be entered upon the failures aforesaid, till the next succeeding court, after such judgment entered; at which court, and not after, it shall be lawful for the justices upon the motion of the party grieved, or his attorney, and good cause showed, to set aside such judgments, as is usually done in such cases.

And after issue joined the prothonotary or clerk of each court shall draw out a list thereof, successively, as they are joined, and set the same up in their respective offices, which said lists shall be [publicly] set up in the court house during the sitting of the court.

At [which court] every plaintiff shall bring his cause to trial in course as the same [stands in prior]ity upon the said lists; and no cause shall be postponed or put off to another time, without paying costs, and showing such sufficient cause as the justices shall approve of for so doing.

And that every defendant shall attend his trial without any notice to be given him for that purpose; and if the plaintiff declines such trial then the defendant may bring the same on, by proviso, at the next succeeding court.

And that in all actions upon 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 covenants 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 shall 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 twelfth, entitled "An act for the better preventing frivolous and vexatious suits," which said statute in that point, as also where the plaintiff or defendant dies, after an interlocutory judgment, and in all other things, shall be observed and put in practice in this province so far as circumstances can admit.

And that writs of inquiry shall be awarded upon all interlocutory judgments, and eight days' notice thereof be given to the defendant or his attorney, in order to [make his] defense.

[Section V.] And be it further enacted by the authority aforesaid, That motions may be made in arrest of judgment, or to lay aside the verdict; whereupon the court may, upon reasons usually allowed in such cases, either arrest the judgment, or lay aside the verdict, and order a new trial, as the case may require; as also mitigate excessive damages found or returned upon writs of inquiry, or lay aside the inquisition and grant new writs, where the same may be done in Great Britain.

Provided always, That no judgment shall be stayed or reversed, for any the omissions, defects, variances or defaults, helped by any the acts of parliament of 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 of record upon confession, *non sum informatus* or *nihil dicit*, which said judgments, as 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 VI.] And be it further enacted, That no judgment [shall be] entered of record in any of the courts of this province unless it be signed by one of the justices or prothonotary; nor costs of suit set down, before the same be taxed by one of the said justices.

And if any judgment be acknowledged or entered in 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 also be entered upon the margin of the roll of the record, where the said judgment shall be entered, and shall have relation accordingly.

[Section VII.] And be it further enacted by the authority aforesaid, That when any debt is recovered, damages awarded or [non-suit obtained], in any of the said courts, 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 *fieri 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.

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 VIII.] And be it further enacted, That when writs of error are brought to remove causes from inferior courts, the same shall be allowed by one of the judges of the supreme court; but before he allows thereof, the plaintiff in error, with one or more sureties, such as the judge shall approve of, must become bound to the defendant in error, in double the sum adjudged to be recovered by the judgment upon which the writ is brought, where the law requires such bail, conditioned that the plaintiff in such writ 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 execution by the writ of error.

And upon entering into such recognizance, the judge shall subscribe his name to the *allocatur*, and to the caption of the recognizance, which writ of error so allowed shall be a *supersedeas* of itself to any execution granted, or to be granted, and not executed until the writ of error be determined or discontinued in the supreme court.

But if the bail so given upon the allowance of the writ of error shall at any time afterwards be objected against and proved (before any of the said judges, in vacation time, or before the supreme court when sitting) [to be] insufficient, the plaintiff in error shall thereupon find better bail, or execution may be taken out upon the judgment, notwithstanding the writ of error and *supersedeas* aforesaid, but the writ of error shall still remain in force so that such plaintiff may proceed thereon.

Provided always, That no executor or other person, who by the law and course of proceedings in Great Britain are not to give bail or sureties, upon removal of any cause by writ of error or *habeas corpus* (other than such administrators, as have not given security in the register-general's office as aforesaid) shall be obliged to put in bail in such cases in this province.

Provided also, That no judgment given in any real or personal action in any court of this province, shall, after the five-and-twentieth day of March, one thousand seven hundred and fifteen, be reversed for any error therein, unless the writ or suit for reversing such judgment be commenced and prosecuted with effect within twenty years after such judgment signed or entered on record.

But persons entitled to such writs of error being within the age of twenty-one years, or covert, or not of sound mind [or in prison],[1] or not in this province when such title accrued, they the[ir heirs], executors or administrators may bring their writ or writs [of error] for reversing such judgment as they might

[1] Supplied from the edition of 1714.

have done, if this act had never been made, so that it be within five years after their being of full age, discovert, of sound mind, out of prison, or return to this province, or death, and not afterwards or otherwise.

[Section IX.] And be it further enacted, That no writ of *certiorari* for removing indictments or presentments into the said supreme court shall be granted or awarded in court time, but upon motion of an attorney and by rule of court made for granting thereof. But in vacation time the same writs may be granted by any of the justices of the said supreme court, whose name shall be endorsed on the said writ, with the names of the persons at whose instance the same is granted.

[Provided] always, That none of the said writs of *certiorari* shall be [allowed be]fore the party or parties prosecuting the same find sureties or manucaptors, [to be] bound in recognizances before one or more justices of the peace of the county or place where the said indictment or presentment was found, in such sum and sums, and with such conditions as are mentioned and directed in and by the statute of the fifth and sixth of William and Mary, entitled "An Act to prevent delays of proceedings in the quarter-sessions of the peace."[1]

And if the party prosecuting such writ of *certiorari*, be convicted of the fact for which he was indicted, that then the said supreme court shall be given reasonable costs to the prosecutor, and grant attachments against the defendant for such costs, according to the said statute, and that such recognizances shall not be discharged until the said costs be paid.

[Section X.] And be it further enacted, That all such records, dockets, minutes and process of the provincial courts, county courts, and other courts of this province, with the files, bundles, books and papers, relating thereto, as are not lodged with the present clerks or prothonotaries of the said courts, shall be forthwith delivered to them, whose receipts shall sufficiently discharge the former clerks, their executors or administrators, who shall deliver the same; and when any person has occasion to produce or make use of any of those records or process, the same shall be copied or exemplified by the prothonotary or clerk for the time being, in whose custody they then are, and

[1] 3 Ruffhead, 555.

attested under his hand and judicial seal of the court whereto he belongs; and when such copy or exemplification shall be produced in any court of this province, the party producing the same shall not be deemed to fail of his record or the judgment and proceedings thereon be reversed for error, if such copy or exemplification contains the essentials, though it may want the formal parts of a record.

Passed May 28, 1715. Repealed by the Lords Justices in Council July 21, 1719. See Appendix IV, Section II, and the Act of Assembly passed October 29, 1715, Chapter 220.

CHAPTER CCXV.

AN ACT FOR RAISING A SUPPLY OF ONE PENNY IN THE POUND, AND FOUR SHILLINGS A HEAD, AND FOR REVIVING OTHER ACTS THEREIN MENTIONED.

Forasmuch as the season is so far spent that the impost intended to be raised by an act of this present session may not prove effectual to answer all the public debts and contingent charges of this government, therefore we, the representatives of the freemen of the province of Pennsylvania, do earnestly desire that it may be enacted:

[Section I.] And be it enacted by Charles Gookin, Esquire, by the royal approbation Lieutenant-Governor under William Penn, Esquire, 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 levied and raised upon all estates, real and personal, of all and every person and persons within this province (the estate of the proprietary and lieutenant-governor only excepted; and also excepting household goods and implements used in trade and getting a livelihood, having a due regard to such as have a charge of children, the clear value of whose estates both real and personal amounts not to thirty pounds) the sum of one