

arise from the said ferry to Gloucester shall be appropriated to the service of the public workhouse now erected in the city of Philadelphia aforesaid, as the said justices shall order and direct.

[Section VI.] And be it further enacted, That all fines, forfeitures and penalties arising from this act shall be recovered in any court of record of this province, one-half whereof shall be to the use of the informer or prosecutor who shall sue for the same, and the other half thereof shall be appropriated as followeth: (That is to say) such fines, forfeitures and penalties as arise from the ferry to Cooper's to such public uses as the mayor and commonalty of the city of Philadelphia shall order and appoint; and such as arise from the ferry to Gloucester shall be paid to such person or persons as the said justices shall order and direct for the service of the public workhouse as aforesaid.

Passed August 18, 1727. Expired before being considered by the Crown for action. See the Act of Assembly passed May 30, 1780, Chapter 910.

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## CHAPTER CCXCVIII.

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### AN ACT FOR THE ESTABLISHING OF COURTS OF JUDICATURE IN THIS PROVINCE.

Whereas the late King Charles the Second by his royal charter and grant to William Penn, Esquire, of that tract of land called Pennsylvania, and for erecting the same into a province, did for himself, his heirs and successors, grant free, full and absolute power to the said William Penn and his heirs and to his and their deputies and lieutenants for the good and happy government of the said country, by and with the advice, assent and approbation of the freemen of the said country or the greater part of them or of their delegates or deputies in assembly, when and as often as need should require, to ordain, make and enact any laws whatsoever for the public state, peace

and safety of the said country or unto the private utility of particular persons according unto their best discretion, and likewise to do all and every thing and things which unto the complete establishment of justice, unto courts and tribunals, forms of judicature and manner of proceedings do belong; and by judges by the said William Penn, his heirs, their deputies and lieutenants, appointed to award process, hold pleas and determine in all the said courts and tribunals all actions, suits and causes whatsoever as well criminal as civil, personal, real and mixed: Provided the said laws so made and published be consonant to reason, and not repugnant or contrary, but as near as conveniently may be, agreeable to the laws, statutes and rights of the kingdom of England, saving and reserving to the said King Charles, his heirs and successors, the receiving, hearing and determining of the appeal and appeals of all or any person or persons touching any judgment to be there made or given.

And whereas by virtue and in pursuance of the said grant divers acts and ordinances have been made from time to time for the holding of courts of judicature and the administration of justice within this province, which by the increase of inhabitants and change of circumstances of the country seem necessary to be altered and amended:

[Section I.] Be it therefore enacted by the Honorable Patrick Gordon, Esquire, Governor of the Province of Pennsylvania, &c., 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 a court styled the general quarter-sessions of the peace and gaol delivery holden and kept four times in every year in each county of this province, viz.: At Philadelphia, for the county of Philadelphia, on the first second day of the week, called Monday, in the months called March, June, September and December; at Newtown, for the county of Bucks, on the eleventh day following (inclusive) in every of the same months; and at Chester, for the county of Chester, on the last third day of the week, called Tuesday, in the months called May, August, November and February.

And that there shall be a competent number of justices in every of the said counties nominated 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 shall and may hold the said general sessions of the peace and gaol delivery according to law and as fully and effectually as any justices of the peace, justices of assize and justices of oyer and terminer or of gaol delivery may or can do.

[Section II.] And be it further enacted by the authority aforesaid, That the said justices of the peace of the respective counties 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, in or out of sessions, to take all manner of recognizances and obligations as any justices of the peace of Great Britain may, can or usually do, all which said recognizances and obligations shall be made to the King and his 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 the said general sessions of the peace to be holden next after the taking thereof, 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 quarter-sessions of the peace and gaol delivery shall be certified before the justices of the supreme court of oyer and terminer at their next succeeding court 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 recognizance of the peace, behavior or appearance for any cause whatsoever, then the justices of the said court of quarter-sessions shall make a record of every such default or cause of forfeiture and issue writs of *scire facias* and all such other process as shall be needful for the recovery of the said forfeitures, all which forfeitures shall be levied by the proper officer and paid into the provincial treasury towards support of government.

Provided always, That the said courts of general quarter-sessions of the peace may be kept and continued for the space

of three days in the counties of Philadelphia, Bucks and Chester respectively at any of the said times hereinbefore appointed for the holding and keeping the said courts and sessions in each of the said counties of Philadelphia, Bucks and Chester in manner aforesaid.

Provided also, That nothing herein contained shall deprive or abridge the mayor, recorder and 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 into another county or town corporate, may be brought to justice:

[Section III.] Be it further enacted, That the said justices or any of them shall and may direct their writs or precepts under the seal of the proper county to which they belong to all or any of the sheriffs or other officers of the said counties or town 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 the said justices and every of them to issue forth subpoenas and other warrants under their respective hands and seals into any county or place of this province for summoning or bringing any person or persons to give evidence in and upon any matter or cause whatsoever now or hereafter examinable or in anywise triable by or before them or any of them, under such pains and penalties as subpoenas or warrants of that kind usually are or ought by law to be granted or awarded.

[Section IV.] 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 gaol delivery or any other courts of record within this province, it shall and may be lawful to and for the party or parties so aggrieved 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 to be granted, and made returnable to the said supreme court of this province.

Provided always, That when any writ or writs of error shall be granted upon any judgment given or to be given 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 to them or any of them to remove, send or certify unto 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 judgments or presentments, but only the tenor or transcript of the said record under their common seal. And after such judgments are reversed or affirmed in the said supreme court it shall and may be lawful for the mayor or recorder and aldermen and their successors to proceed to execution or otherwise as to justice shall appertain, according to law.

[Section V.] And be it further enacted by the authority aforesaid, That there shall be holden and kept at Philadelphia a court of record twice in every year: (That is to say) on the twenty-fourth day of September and the tenth day of the month called April, if the same days or either of them do not happen to be the Firstday of the week, and in such case the said court shall be held on the next day following, which said court shall be called and styled "The Supreme Court of Pennsylvania," and that there shall be three persons of known integrity and ability commissionated by the governor or his lieutenant for the time being by several distinct patents or commissions under the great seal of this province to be judges of the said courts, one of whom shall be distinguished in his commission by the name of chief-justice; and every of the said justices 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* and writs of error and all remedial writs of process returnable to the said court and grantable by the said judges by virtue of their office in pursuance of the powers and authorities hereby given them. And that the said judges or any two of them shall have full power to hold the said courts and therein to hear and determine all

causes, matters and things cognizable in the said court, and also to hear and determine all and all manner of pleas, plaints and causes which shall be removed or brought there from the respective general quarter-sessions of the peace to be held for the respective counties of Philadelphia, Bucks and Chester, as also for the city of Philadelphia, by writs of *certiorari* or writs of error, or from any other court of this province by virtue of any of the said writs after final judgment shall be given in the said courts, and to examine and correct all and all manner of errors of the justices and magistrates of this province in their judgment, process and proceedings in the said courts, 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 and neglects, favors, corruptions and defaults, of all or any of the justices of the peace, sheriffs, coroners, clerks and other officers within the said respective counties.

And also shall award process for levying all such fines, forfeitures and amercements which shall be lost, taxed and set in the said supreme courts and not paid to the uses they are or shall be appropriated.

And generally shall minister justice to all persons and exercise the jurisdictions and powers hereby granted them concerning all and singular the premises according to law as fully and amply to all intents and purposes whatsoever as the justices of the courts of King's bench and common pleas at Westminster or any of them may or can do upon writs of error and other remedial writs issuing out of the said court; saving to all and every person or persons, his, her or their heirs, executors and administrators, their right of appeal from the final sentence, judgment or decree of any court within this province to His Majesty in council or to such court or courts, judge or judges, as by our sovereign lord the King, his heirs or successors, shall be appointed in that part of Great Britain called England to receive, hear and judge of appeals from His Majesty's plantations.

Provided, The persons appealing shall, upon entering his or

their appeal in the court where the sentence, judgment or decree shall be given in this province, pay all the costs before that time expended in the prosecution or defending the said suit, and shall further enter into bond with two good and sufficient securities in double the sum recovered (in the said court) to the defendant in the appeal conditioned to prosecute the said appeal with effect within the space of eighteen months next after the entry of such appeal and to satisfy the judgment of the court from which he appeals, and further to pay all such costs and damages as shall be adjudged to him to pay in case a sentence, judgment or decree pass against the said appellant, or in case he, she or they fail to prosecute their appeal with effect; and execution shall be suspended until the final determination of such appeal unless good and sufficient security be given by the appellee to make ample restitution of all that the appellant shall have lost by means of such judgment or decree in case upon the determination of such appeal such decree or judgment should be reversed and restitution awarded to the appellant.

And that there shall be a fit person nominated by the judges and commissionated by the governor to be prothonotary or clerk of the said supreme court, who shall keep and duly attend his office in some convenient place in the city of Philadelphia, and may be suspended, punished or amoved by the said court for misdemeanors in his office.

[Section VI.] And be it further enacted, That all the said writs shall be granted of course and made in the name and style of the King, his heirs and successors, and shall bear test in the name of the chief-justice for the time being, but if he be plaintiff or defendant, in the name of one of the other justices, and shall be sealed with the judicial seal of the said court and made returnable to the next court after the date of such writ.

Provided always, That none of the judges of the said supreme court shall sit judicially in any of the said courts of common pleas, quarter-sessions or any other inferior court of this province.

[Section VII.] And be it further enacted by the authority aforesaid, That the said judges of the said supreme court or

any two of them shall have power and are hereby authorized and empowered from time to time to deliver the gaols of all persons which now are or shall hereafter be committed for treasons, murders and such other crimes as (by the laws of this province) now are or hereafter shall be made capital or felonies of death as aforesaid, and that for that end from time to time 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.

And also, That all manner of offenses already made or declared or hereafter to be made or declared to be capital or felonies of death by any law or act of assembly of this province, and done, perpetrated or committed or hereafter to be done, perpetrated or committed by any person or persons within the bounds and limits of the same province and without the certain and known bounds and limits of any of the counties now or hereafter erected in the [said] province, shall be from henceforth inquired of, heard and determined before the said judges by good and lawful men of the city and county of Philadelphia in like manner and form to all intents and purposes as if the said offenses and felonies of death had been done, perpetrated and committed within the said city or county of Philadelphia.

Provided always, That the fees due to the judges and officers of the said court for hearing any of the said capital offenses, for anything done there, shall be double the fees usually taken in the general quarter-sessions held in any of the said counties in this province, anything herein contained or in any other law of this province to the contrary notwithstanding.

Provided always, That to prevent the hardships some persons may be laid under by process issuing out of the said supreme court in civil causes and informations on penal statutes by color of or under pretense of some inseparable power belonging to the judges of the said court or by some pretense of authority of some former law of this province:

[Section VIII.] Be it further enacted by the authority aforesaid, That it shall not be lawful to and for the judges of the su-

preme court of this province or any of them to issue any original writ or process out of the said court in civil causes, except upon indictments found before them or removed thither from the courts of general quarter-sessions of the peace within this province, or for crimes made triable in the said supreme court only by the laws of this province, and for forfeitures, contempts and defaults incurred, made, done or committed in the said supreme court or against the authority of the same, any law, usage or custom to the contrary in anywise notwithstanding.

[Section IX.] Provided always, and be it further enacted, That no indictment found and now depending before the said judges in the supreme court, or removed from any of the courts of this province into the said court, or any other matter legally removed from any other court and now depending before the judges of the said court, shall be discontinued, but that the same may be heard, tried and determined before the said judges as fully as the same could have been heard, tried and determined before the making of this act, anything herein contained to the contrary in anywise notwithstanding.

[Section X.] And be it further enacted by the authority aforesaid, That a competent number of persons shall be commissionated by the governor or [his] lieutenant for the time being under the broad seal of this province, who shall hold and keep a court of record in every county of this province, which shall be styled and called the "County Court of Common Pleas," and shall be holden four times in every year at the place where the general quarter-sessions shall be respectively kept, viz.: at Philadelphia, for the county and city of Philadelphia, on the day called the first Wednesday after the day appointed for the quarter-sessions, to begin on there in the months called March, June, September and December; at Newtown, for the county of Bucks, on the eleventh day following (inclusive); and at Chester, for the county of Chester, on the day called the last Tuesday in the months called May, August, November and February, which said justices or any three of them (according to the tenor and direction of their commissions) shall hold pleas of assize, *scire facias*, replevins, informations and ac-

tions upon penal statutes, and hear and determine all and all manner of pleas, actions, suits and causes, civil, personal, real and mixed, according to the laws and constitutions of this province, as fully and amply to all intents and purposes as the justices of the King's bench, common pleas and exchequer in England or any of them may or can do.

[Section XI.] And be it further enacted by the authority aforesaid, That every of the said justices shall and are hereby empowered and authorized to grant under the seal of the respective counties replevins, writs of partition, writs of view and all other writs and process upon the said pleas and actions cognizable in the said respective courts as occasion may require.

[Section XII.] And be it further enacted, That the said justices of the said respective courts of common pleas shall and are hereby empowered to issue forth subpoenas, under their respective hands and seals, into any county or place of this province for summoning and bringing any person or persons to give evidence in and upon the trial of any matter or cause whatsoever depending before them or any of them, under such pains and penalties as by the rules of the common law and course and practice of the King's courts at Westminster are usually appointed.

[Section XIII.] And be it further enacted, That upon any judgment obtained in any of the said county courts of common pleas in this province and execution returned by the sheriff or coroner of the proper county where such judgment was obtained that the party is not to be found or hath no lands or tenements, goods or chattels in that county, and thereupon it is testified that the party 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 to make

return thereof to the county court of common pleas where such recovery is had or judgment given.

And if the sheriff or coroner (to whom such writ or writs shall be directed) shall refuse or neglect to execute or 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 the said amercements shall be truly and duly set according to the quality of the offense, and process shall issue out against the offenders for levying of such amercements as shall be unpaid, which said amercements shall be levied by the proper officer and paid into the provincial treasury towards support of government, as above directed.

[Section XIV.] And be it further enacted by the authority aforesaid, That if any defendant or defendants in any suit or action by reason of his or their sudden departure out of this province shall require a more speedy determination in such action or suit than can be obtained by the common or ordinary rules of proceeding in any of the said county courts of common pleas in this province, the said justices upon application made shall grant to such defendant or defendants special courts, and shall proceed to hear and determine the premises according to the course and practice of the said county courts of common pleas for the usual fees therein taken.

Provided always, That before such justices shall grant such special courts or proceed to hear and determine the premises the defendant shall give bail to the plaintiff's action by recognizance, according to the course and practice of the said county court of common pleas.

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

[Section XV.] Be it enacted, That the justices who give any interlocutory judgment shall (at the motion of the plaintiff or his attorney in the action where such judgment is given) make an order in the nature of a writ of inquiry to charge the jury attending at the same or 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 have con-

sidered thereof they shall forthwith return their inquisition under their hands and seals, whereupon the court may proceed to judgment as upon inquisitions of that kind returned by the sheriff.

[Section XVI.] And be it further enacted by the authority aforesaid, That there may be a competent number of persons of an honest disposition and learned in the law admitted by the justices of the said respective courts to practice as attorneys there, who shall behave themselves justly and faithfully in their practice, and before they are so admitted shall take the following qualification, viz.:

Thou shalt behave thyself in the office of attorney within the court according to the best of thy learning and ability and with all good fidelity, as well to the court as to the client. Thou shalt use no falsehood nor delay any person's cause for lucre or malice.

And if they misbehave themselves therein they shall suffer such penalties and suspensions as attorneys-at-law in Great Britain are liable to in such cases; by which attorneys actions may be entered and writs, process, declarations and other pleadings and records in all such actions and suits as they shall respectively be concerned to prosecute or defend from time to time may be drawn and with their names and proper hands signed; which said attorneys so admitted may practice in all the courts of this province without any further or other license or admittance.

And that the attorney for the plaintiff in every action shall file his warrant of attorney in the prothonotary's office the 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 until they file their warrants of attorney respectively.

Passed August 27, 1727. See Appendix VIII, Section I. Repealed by the King in Council, August 12, 1731.