

act for erecting a new gaol, workhouse and house of correction in the city of Philadelphia,"<sup>1</sup> passed on the twenty-sixth day of February, which was in the year of our Lord one thousand seven hundred and seventy-three; and so much of another act of assembly of the said late province, entitled "An act to enable Jeremiah Langhorne, William Biles, Joseph Kirkbride, Junior, Thomas Watson, practitioner in physic, and Abraham Chapman to build a new court house and prison in the county of Bucks,"<sup>2</sup> passed on the twentieth day of March, Anno Domini one thousand seven hundred and twenty-five, and so much of the several acts of assembly of the said late province by which the counties of Lancaster, York, Cumberland, Berks, Northampton, Bedford, Northumberland and Westmoreland were erected and established, and so much of an act of assembly of this commonwealth, entitled "An act for vesting the house and lots therein described in trustees for the use of the president of the supreme executive council of this state for the time being," passed on the eighteenth day of March last, and of any other act of assembly, which is hereby altered or supplied by or is repugnant to the provisions and directions of this act is hereby repealed and made void.

Passed February 28, 1780. See the Acts of Assembly passed March 18, 1782, Chapter 959; April 1, 1784, Chapter 1097; April 8, 1785, Chapter 1165; April 2, 1790, Chapter 1507; September 30, 1791; Chapter 1589; April 15, 1795, Chapter 1838. Recorded L. B. No. 1 page 330, &c.

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## CHAPTER DCCCLXXIX.

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### AN ACT FOR ERECTING AN HIGH COURT OF ERRORS AND APPEALS.

(Section I, P. L.) Whereas by the laws of the late province, now state, of Pennsylvania a very expensive, difficult and precarious remedy was provided for parties injured by erroneous judgments, sentences and decrees given or pronounced therein,

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<sup>1</sup> Passed February 26, 1763, Chapter 674.

<sup>2</sup> Passed March 20, 1725, Chapter 283.

by establishing an appeal from the final judgment, sentence or decree of any court within the said province to the king of Great Britain in council, or to such court or courts as by the said King, his heirs and successors should be appointed in Britain to hear and judge of appeals from the plantations, in many cases to the denial and in all to the great obstruction of justice:

(Section II, P. L.) And whereas the good people of this commonwealth, by their happy deliverance from their late dependent condition, and by becoming free and sovereign are released from this badge of slavery and have acquired the transcendent benefit of having justice administered to them at home and at moderate costs and charges:

(Section III, P. L.) And whereas it is requisite that the good people of this commonwealth, who have adopted the common law of England, should enjoy the full benefit thereof by the erection of a competent jurisdiction within this state for the hearing, determining and judging in the last instance upon complaints of error at common law; and also that a competent court of appeals should be provided within the same for reviewing, reconsidering and correcting the sentences and decrees of the court of admiralty other than in cases of capture upon the water in time of war from the enemies of the United States of America, and likewise the decrees and sentences of the several registers of wills and for granting administrations:

[Section I.] (Section IV, P. L.) Be it therefore enacted and it is hereby enacted by the Representatives of the Freemen of the Commonwealth of Pennsylvania in General Assembly met, and by the authority of the same, That when any final judgment shall be hereafter given [in the supreme court] in any suit or action, real, personal or mixed, or when any final decree or sentence shall be pronounced in the court of admiralty of this commonwealth other than in cases of capture as aforesaid, or when any final decree or sentence shall be pronounced by any register of wills and for granting administrations, the party or parties, his, her and their heirs, executors or administrators, against whom such judgment, decree or sentence shall be given, may sue forth, in the case of a complaint of error in the su-

preme court, a writ of error, according to the course of the common law, but not otherwise, under the less seal of the commonwealth, directed to the chief justice or other justice or justices of the said court, commanding him or them to cause the record, and all other things concerning the judgment complained of to be brought before the court hereinafter mentioned and constituted. And in case of an appeal brought from a definitive sentence or decree of the court of admiralty, or of any register of wills and for granting administrations, the appellant or appellants shall be allowed and shall have his, her or their appeal to the said court.

[Section II.] (Section V, P. L.) And be it further enacted by the authority aforesaid, That the president of the supreme executive council, the judges of the supreme court, the judge of the admiralty for the time being, together with three persons of known integrity and ability to be appointed and commissioned for seven years and removeable from office in the same manner as the justices of the supreme court now are, be and they are hereby constituted a court of record, by the name, style and title of the high court of errors and appeals; and the said high court of errors and appeals, or any four or more of them, shall have power and authority to examine all such errors as shall be assigned or found, in or upon any such judgment given in the supreme court, and thereupon to affirm or reverse the same judgment as the course of the common law and justice shall require, other than for errors to be assigned for want of form, in any writ, return, plaint, bill, declaration or other pleading, process, verdict or proceeding whatsoever; and that after the said judgment shall be affirmed or reversed the record and proceedings and all things concerning the same shall be remitted into the said supreme court, to the end that such further proceedings may be had thereupon as well for execution as otherwise as to justice shall appertain, and the said court of errors and appeals shall receive, hear and decide all such appeals from the court of admiralty, and the registers of wills and for granting administrations as aforesaid.

(Section VI, P. L.) Provided always, That such of the justices of the supreme court, and no other, or the judge of ad-

miralty, as the case may be, who shall have heard and determined any of the causes removed or brought by writ of error or by appeal into the said court of errors and appeals shall be excluded from sitting again judicially on the hearing of the same cause or controversy in the said court of errors and appeals. And to the end that writs of error may not be brought or appeals allowed as aforesaid for matters of small and frivolous value or for mere delay:

[Section III.] (Section VII, P. L.) Be it enacted by the authority aforesaid, That no such writ of error shall be granted nor any appeal be allowed as aforesaid, until the party or parties in error, appellant or appellants, his, her or their agent or attorney in fact shall file an affidavit or affirmation with the clerk of the said court attesting that the matter in controversy exceeds the value of four hundred bushels of wheat; and the plaintiff or plaintiffs in error or the appellant or appellants shall enter into a recognizance to the defendant or defendants in error or to the appellee or appellees, with two sufficient sureties in double the sum or double the value in dispute, conditioned to prosecute his, her or their writ of error or appeal with effect in the said court of errors and appeals; which said recognizance shall be taken in the proper court or before the register for the probate of wills and granting letters of administration, if the appeal is from his sentence, and subscribed by one of the judges or by the said register, and if the judgment or decree shall be thereupon affirmed or if the plaintiff or plaintiffs in error or appellant or appellants shall fail to prosecute his, her or their suit with effect, then to satisfy the condemnation money, together with damages, or otherwise abide the judgment in error or the decree in appeal, with double costs, but if the said judgment or decree shall be reversed, each party shall pay his, her and their own costs in the said court of errors and appeals. And until such security shall be given, the power, authority or proceedings of the said supreme court, court of admiralty or register, respectively, shall not be suspended.

[Section IV.] (Section VIII, P. L.) And be it further enacted by the authority aforesaid, That upon the hearing of any cause

litigated before the register of wills and for granting of administrations, the depositions of the several witnesses, examined therein shall be taken in writing, and made part of the proceeding in the cause; upon which the said court of errors and appeals may reverse the decree of the said register for any error arising either in fact or law or affirm the same according to the merits and justice of the case.

[Section V.] (Section IX, P. L.) Provided always, and be it further enacted by the authority aforesaid, That if the said register, upon a dispute upon fact[s] arising before him, shall send an issue into the court of common pleas of the county to try the said facts, which he shall do at the request of either party, and a verdict establishing the said facts be returned, the said facts shall not be re-examined on appeal; and that no appeal from the decree of the said register concerning the validity of a will or the right to administer shall stay the proceedings or prejudice the acts of any executor or administrator pending the same, provided the executor shall give sufficient security for the faithful execution of the will and testament to the register; but in case of refusal the said register is hereby directed to grant letters of administration during the dispute which shall suspend the power of such executor during that time.

[Section VI.] (Section X, P. L.) And be it further enacted by the authority aforesaid, That it shall be lawful for any party or parties who have heretofore appealed in any cause from the supreme court of the late province of Pennsylvania to the King of Great Britain in council, and upon which no judgment was had before the fourth day of July, in the year of our Lord one thousand seven hundred and seventy-six, to bring a new writ of error according to the common law and not otherwise before the said court of errors and appeals, and the said court is hereby empowered and enjoined to proceed therein to judgment, as in other causes made cognizable in said court by this act; provided security be first given and an affidavit or affirmation attesting that the value of the matter in dispute exceeds the sum in like case hereinbefore limited, be filed as aforesaid.

[Section VII.] (Section XI, P. L.) And be it further enacted

by the authority aforesaid, That the said court of errors and appeals shall sit in the city of Philadelphia at least twice in every year; that is to say, on the sixth day of April and twentieth day of September, and if either of the said days should happen to be on a Sunday then on the next day following, and if there be any causes depending before the said court shall have power to adjourn from time to time and to require and compel the attendance of sheriffs, coroners, constables and other ministerial officers as fully as any court of justice in this commonwealth can or may do; and the said court of errors and appeals may appoint a suitable person to be their clerk and register, and ascertain and allow reasonable and moderate fees to such clerk and register and to any other officer employed by the said court.

[Section VIII.] (Section XII, P. L.) Provided always and be it further enacted by the authority aforesaid, That no fine or common recovery, nor any judgment in any real, personal or mixed action, nor any appeal from the court of admiralty or register of wills and for granting administrations shall be avoided or reversed for any defect or error therein, unless the writ of error be commenced or the appeal brought and prosecuted with effect within twenty years after such fines levied, common recovery suffered, judgment signed or entered of record or decree be pronounced.

(Section XIII, P. L.) Provided nevertheless, That if any person who is or shall be entitled to any such writ of error, or appeal, as aforesaid, shall at the time of such title accrued, be within the age of twenty-one years, covert, non compos mentis, in prison or out of the limits of the United States of America, that then such person, his or her heirs, executors or administrators, notwithstanding the said twenty years be expired shall and may bring his, her and their writ of error or appeal for the reversing of any such fine, recovery or judgment so as the same be done within five years after his or her full age, discoverture, coming to sound mind, enlargement out of prison or return into some one of the United States of America but not afterwards nor otherwise.

[Section IX.] (Section XIV, P. L.) And be it further enacted

by the authority aforesaid, That the said judge of admiralty and every of the three persons to be appointed and associated with the president of the supreme executive council and judges of the supreme court, as judges of the said court of errors and appeals shall be entitled to the value of two bushels of wheat for each day they shall attend upon the business of the said court, to be estimated and paid according to the directions of the act, entitled "An act for the better support of certain officers of this state, and for ascertaining the specific fines and penalties which they may incur by neglect of duty,"<sup>1</sup> by an order on the state treasurer drawn in council and signed by the president or vice-president.

Passed February 28, 1780. See the note to the Act of Assembly passed May 22, 1722, Chapter 255; and the act of Assembly passed September 19, 1785, Chapter 1187. The Act in the text was repealed by the Act of Assembly passed April 13, 1791, Chapter 1575. Recorded L. B. No. 1, p. 332, &c.

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## CHAPTER DCCCLXXX.

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AN ACT FOR THE MORE EFFECTUAL SUPPLY AND HONORABLE REWARD OF THE PENNSYLVANIA TROOPS IN THE SERVICE OF THE UNITED STATES OF AMERICA.

(Section I, P. L.) Whereas the honorable the Congress of the United States did, on the fifteenth day of May, Anno Domini one thousand seven hundred and seventy-eight, resolve and provide in the words and manner following, viz.: "That all military officers commissioned by Congress, who now are, or hereafter may be, in the service of the United States, and shall continue therein during the war and do not now hold any office of profit, under the said states, or any of them, shall, after the conclusion of the war, be entitled to receive annually, for the term of seven years, if they shall live so long, one-half of the present pay of such officer, provided that no general officer of the cavalry, artillery or infantry shall be entitled

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<sup>1</sup> Passed November 27, 1779, Chapter 875.