

of February, in the year of our Lord one thousand seven hundred and seventy, shall be and it is hereby repealed and made void.

Passed March 4, 1780. See the note to the Act of Assembly passed February 24, 1770, Chapter 609; and the Act of Assembly passed March 7, 1797, Chapter 1925. Recorded L. B. No. 1, p. 350, &c.

CHAPTER DCCCLXXXVII.

AN ACT FOR REGULATING AND ESTABLISHING ADMIRALTY JURISDICTION.

(Section I, P. L.) Whereas it is necessary that due provision be made for the trial and determination of offenses, crimes, controversies and suits within the cognizance of the maritime law and not inquirable at common law:

[Section I.]. (Section II, 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 a person of known integrity and ability shall be appointed and commissioned by the supreme executive council of this commonwealth for and during the term of seven years, in case he shall so long behave well, by the name and style of a judge of the admiralty, which judge shall hold a court of admiralty and therein have cognizance of all controversies, suits and pleas of maritime jurisdiction, not cognizable at the common law; offenses and crimes, other than contempts against the said court only excepted, and thereupon shall pass sentence and decree according as the maritime law, the law of nations, and the laws of this commonwealth shall require.

[Section II.]. (Section III, P. L.) Provided always, and be it further enacted by the authority aforesaid, That in all cases of prize, capture or re-capture upon the water from enemies, or by way of reprisal, or from pirates, the same shall be tried, adjudged and determined, as well as to the question whether

prize or not, as to the claims of the parties interested or pretending to be interested in the same, by the law of nations and the acts and ordinances of the honorable the Congress of the United States of America, before the said judge, by witnesses according to the course of the civil law. And in all such cases of prize, capture, re-capture and seizure upon the water aforesaid, an appeal from the final decree of the said judge of admiralty shall lie and be allowed to such judges or court as the said Congress have appointed or may appoint for the hearing and determining of such appeals; such appeals to be brought and conducted in the manner and within the time directed and limited in and by the acts and ordinances aforesaid, security being first given in such sum of money as the said judge of admiralty shall deem sufficient, to prosecute such appeal to effect.

[Section III.] (Section IV, P. L.) And be it further enacted by the authority aforesaid, That the captain or commander of any ship or vessel of war, or prize master or other person having charge of any capture or re-capture, or other property seized upon the water as aforesaid who shall conduct or bring the same into port shall immediately deliver the same, without diminution, to the marshal of the said court of admiralty; and within three days after the arrival of such prize as aforesaid, shall exhibit, or cause to be exhibited, a libel, or bill in writing before the said judge, therein setting forth, in ample and particular manner the time and other circumstances of the seizing and taking the same, and of the service or employment that the ship or vessel so seized was in, at the time when such ship or vessel was taken or seized and the parties aiding therein to the best of his knowledge, and shall also, without delay or diminution, deliver, or cause to be delivered, to the register of the said court of admiralty upon the oath or affirmation of such person all books, documents, commissions, parchments, papers and other writings appertaining to or found on board any such ship or vessel, in order that the said judge may have the benefit of any evidence which may arise therefrom in forming his sentence.

[Section IV.] (Section V, P. L.) And be it further enacted

by the authority aforesaid, That if any person shall neglect or refuse to deliver up any such capture or seizure as aforesaid to the marshal of the said court of admiralty, or shall embezzle or keep back any part of [any] such capture, or shall withhold, embezzle or destroy any books, documents, commissions, papers, parchments or other writings appertaining to or found on board of any ship or vessel seized as a prize as aforesaid, such person so offending shall be liable to attachment and to fine or to fine and imprisonment at the discretion of the said judge as a contemner of the said court of admiralty, and, moreover, shall forfeit to the use of the commonwealth, all such offender's share or part of such capture, to be recovered by indictment; and the said judge shall, by order, stay, during the prosecution such share or part in the hands of the marshal, to the end that the same may be secured upon the conviction of such offender and paid to the treasurer of this state.

[Section V.] (Section VI, P. L.) And be it further enacted by the authority aforesaid, That immediately after any such libel, as aforesaid, shall be exhibited before the said judge, he shall direct the register of the said court of admiralty to give notice in some public newspaper to be published in the city of Philadelphia, of the day appointed for the trial of such prize, and the said register shall insert therein, if known, the name, size or burden and other description of the vessel so taken and brought into port and also the name and surname of the late master or commander of the same and of the port or place from whence such ship or vessel last sailed, and of the port or place for which such ship or vessel was destined, and in case of a recapture, he shall set forth by what ship or other vessel the same was first taken, to the end that all persons concerned may appear and show cause (if any there be) wherefore such capture or re-capture, goods, merchandise or other property should not be condemned and adjudged to the libellants.

(Section VII, P. L.) Provided always, That if it be made appear to the satisfaction of the said judge, that the cargo of any such ship or vessel seized as prize as aforesaid is damaged or consists of goods which in their nature are so perishable as not

to be kept till the trial be finished without great loss, that then and in such case the said judge shall nominate and appoint three judicious and indifferent persons of the city or county where the said goods may be, who shall carefully inspect and appraise the same, and report the condition thereof and deliver the said appraisement and report supported and attested by their oaths and affirmations to the said judge, whereupon the said judge, may order the marshal of the said court immediately to sell by public auction such part of said cargo as appears to the said judge to be likely to perish or be greatly endamaged by keeping as aforesaid. And the said marshall, having sold the same accordingly, shall retain the moneys thence arising in his hands till the trial be finished, except the charges upon such prize, together with the charges attending upon such inspection and appraisement, which shall be ascertained by the said judge.

[Section VI.] (Section VIII, P. L.) And be it further enacted by the authority aforesaid, That the execution of the decree of the said judge, in any case of capture, recapture or prize taken upon the water, from which an appeal to the said judges or court of appeal shall be entered, shall not be suspended or delayed by reason of such appeal, in case the party or parties appellant shall enter sufficient security, to be approved by the said judge in at least double the value of the prize or other subject of controversy, the same value to be estimated and appraised at the price at which the said prize might then be sold, for current money, for which purpose the said judge shall appoint three skillful and indifferent appraisers, who shall exactly number, measure or weigh the several articles of which such prize shall consist, and return a particular inventory and appraisement of the same, attested by the oaths or affirmations of the said appraisers, to the register of the said court, to be filed in his office, and the stipulation or security so given and entered in case of an appeal as aforesaid shall be considered and shall have effect as a statute staple, and may be sued for and recovered by original writ to be issued out of the supreme court or

other court of record, at the election of the party who shall have a right to institute such suit.

[Section VII.] (Section IX, P. L.) And be it further enacted by the authority aforesaid, That in case the said judge, upon the evidence produced to him, shall pronounce sentence of condemnation against any such ship or vessel or goods, merchandise or other property, captured or taken as prize, or recaptured or seized by way of reprisal, or from a pirate, he shall order the same to be immediately sold by public auction, to the best and highest bidder for the benefit of the captors, unless in the case of re-capture the former owner or owners in ten days after such sentence be pronounced, pay down the full salvage, together with all such costs and charges as shall be awarded thereupon. And the said marshal shall keep fair and exact accounts of the sales of all ships and other vessels, goods, merchandise and other property which shall be condemned in the said court of admiralty and sold by the said marshal as aforesaid, as soon afterwards as may be such account of sales shall be filed in the office of the register of the said court of admiralty, for the inspection and use of all persons who may be interested therein.

(Section X, P. L.) Provided always, That no negro or mulatto taken as prize upon the water shall be in any case exposed to public sale, but being appraised as is hereinbefore directed in other cases, shall be delivered to the captors or others having right to the same, at the appraised value, and if necessary by lot, and the value thereof equalized in money or goods to be delivered to the other party or parties entitled to share therein.

(Section XI, P. L.) Provided also, That nothing in this act contained which may contradict or interfere with the directions of an act assembly of this commonwealth, entitled "An act for the effectual suppression of public auctions and vendues, and to prohibit male persons capable or bearing arms from being peddlers and hawkers,"¹ passed on the twenty-sixth day of November last, shall have effect or be in force for and during the continuance of the said-recited act.

¹ Chapter 870.

(Section XII, P. L.) And whereas, sometimes seamen and others proceed to sea in ships and vessels of war without appointing agents to take and manage their several shares of the captures or prizes seized and taken upon the water by the ships or vessels to which they respectively belong. And whereas, such seamen and others may be absent, and owners, or part owners, of such ships and vessels of war may also be absent and have no agent or agents to take their shares or parts of such prizes when the marshal of the said court of admiralty may be ready to distribute such prizes as he is directed by this act:

[Section VIII.] (Section XIII, P. L.) Be it therefore enacted by the authority aforesaid, That whensoever the said marshal shall be ready to distribute any prize as aforesaid upon an advertisement of the same in some public newspaper in the city of Philadelphia, if an agent or agents duly authorized by the owner, seaman or other person for whom no agent shall appear and every of them, having a right to share therein, by being on board such ship or vessel at the time of capture or otherwise, shall not appear and make known his or their authority to act as an agent or agents for such absent persons, that in such case the said judge shall appoint and authorize some proper person or persons to be the agent or agents for any absent owner, seaman or other person for whom no agent shall appear for three days after such advertisement shall be published. And the agent or agents so to be appointed by the said judge, with any other persons properly entitled and authorized, whether in their own right or as agents (if such there be), shall take the said prize from the said marshal, as directed by this act and shall sell by private sale or otherwise dispose of the same, for the best advantage of the person or persons interested therein, and shall be accountable to them and every of them severally as if such agent or agents had been appointed by such owner, seaman or other person, and every agent who shall be appointed by the said judge, shall become bound to the commonwealth, with two different sureties, in a suitable sum, to be ascertained by the said judge, conditioned that he will truly account for and satisfy the person or persons for whom

he shall be appointed agent; and the said obligation shall be as available to such owner, seaman or other person as bonds given by sheriffs are to the parties injured by their misconduct.

[Section IX.] (Section XIV, P. L.) And be it further enacted by the authority aforesaid, That all unclaimed parts or shares in any prizes taken upon the water and condemned in the court of admiralty of this state remaining in the hands of any agent or agents shall, after the end of one year, be reckoned from the beginning of the distribution of any prize, which have been or shall be taken from the enemy, be vested in the contributors to the Pennsylvania Hospital, and shall be accounted for and paid to the use of the said corporation, the owners of such ship or vessel being previously satisfied for any advance they shall have made to any seaman or marine, subject, however, to the demand of the person who was entitled thereto, if made within three years after the condemnation of the prize.

[Section X.] (Section XV, P. L.) And be it further enacted by the authority aforesaid, That any ships or vessels, goods or other property taken [as] prize or re-taken belonging to foreigners, whether allies of the United States of America or neutrals, which have come, or may come, to the possession of the said marshal and who shall have no attorney-in-fact or agent duly authorized to take and receive from the said marshal such ships or other vessels or other property that the same, unless in case they be of a very perishable nature and too bulky to keep without great charges, shall remain in the custody of the said marshal, without sale for three months at least after the trial of the same shall be finished and the owners thereof and their said ships or other vessels, goods or other property shall be liable to the charges and expenses which may accrue by such delay or sale.

[Section XI.] (Section XVI, P. L.) And be it further enacted by the authority aforesaid, That the supreme executive council shall appoint and commission, for and during the pleasure of the said council, an able and upright person to be register of the said court of admiralty, and that the examinations of all witnesses in any of the causes which may come before the said court of admiralty, being taken by the said register, and at-

tested before the said judge, shall be filed in the office of the said register, such examinations to be taken *ex parte* after reasonable notice to the adverse party; and the attestations of the said register shall on all proper occasions be received as evidence in all courts of justice and elsewhere.

[Section XII.] (Section XVII, P. L.) And be it further enacted by the authority aforesaid, That the supreme executive council shall appoint and commission, for and during their pleasure, a person of skill and good reputation to be the marshal of the said court of admiralty, who, before he enters on his office, shall become bound to the president of the said council for the time being with two or more sureties to be approved by the said council in the value of forty thousand bushels of good merchantable wheat, each bushel thereof to weigh at least sixty pounds, which bond or obligation shall be drawn in like manner, with like condition and liable to like suit and use, and shall be recorded, as bonds entered into by sheriffs and their sureties ought to be by the laws of this commonwealth.

(Section XVIII, P. L.) And whereas the trial of pirates and other sea felons in the late British colonies, now the United States of America, hath been heretofore without a jury, and in a method much conformed to the civil law, the exercise of which jurisdiction in criminal cases was contrary to the spirit of the common law, although the legislature of England had, by a statute passed in the reign of King Henry the Eighth, entitled "For Pirates," relieved the subjects within the realm from this grievance:

(Section XIX, P. L.) And whereas the constitution of this state provideth that in all prosecutions for criminal offenses no man can be found guilty without the unanimous consent of a jury:

[Section XIII.] (Section XX, P. L.) Be it therefore enacted by the authority aforesaid, That all traitors, pirates, felons and criminals who shall offend upon the sea or within the admiralty jurisdiction, shall be enquired of, tried and judged by grand and petit juries, according to the course of the common law, in like manner as if the treason or felony or crime were

committed within one of the counties of this state. And the justices of the supreme court, or any two of them, and the judge of admiralty, are hereby constituted justices of oyer and terminer, and shall hold a court of oyer and terminer in the city of Philadelphia for the hearing and trying such offenders. And the said judge of admiralty, in the absence of the chief justice of the supreme court, shall preside in such court of oyer and terminer, and if any person, upon being arraigned before the said court of oyer and terminer, shall stand mute or shall not make direct answers such person shall be deemed to have pleaded not guilty and the trial shall proceed accordingly.

[Section XIV.] (Section XXI, P. L.) And be it enacted by the authority aforesaid, That if any person shall be feloniously stricken or poisoned at sea or out of this state, and shall die of the same in this state, the offenders and their aiders and abettors may be indicted, tried and adjudged for such felony in the court of oyer and terminer of this state where such person shall die before the ordinary justices of oyer and terminer and general gaol delivery, and if any person shall be feloniously stricken or poisoned in this state and shall die of the same at sea or out of Pennsylvania, the offenders and their aiders and abettors may be indicted, tried and adjudged for such felony before the court of oyer and terminer constituted by this act for the trial of crimes committed at sea.

[Section XV.] (Section XXII, P. L.) And be it further enacted by the authority aforesaid, That all and every the proceedings of the court of admiralty of this commonwealth shall be liable to the prohibition of the supreme court of judicature in like manner and with like effect as the prohibition of the court of king's bench in England in like case.

[Section XVI.] (Section XXIII, P. L.) And be it further enacted by the authority aforesaid, That an act of assembly, entitled "An act for establishing a court of admiralty,"¹ passed on the ninth day of September, which was in the year of our Lord one thousand seven hundred and seventy-eight, is hereby repealed, annulled and made void. Provided always, That the repeal of the said act shall not extend to stop or prevent the

¹Passed September 9, 1778, Chapter 811.

hearing or trial of any cause depending in the court of admiralty, or before the said commissioner of oyer and terminer, but the same may be proceeded on as by the said act is directed before the judge appointed and commissioned in pursuance of this act, the repeal thereof notwithstanding.

Passed March 8, 1780. See the Acts of Asembly passed September 22, 1780, Chapter 915; March 28, 1787, Chapter 1281; September 29, 1787, Chapter 1322; December 7, 1789, Chapter 1474. By the Constitution of the United States, Article III, Section II, (I) the judicial power of the United States is declared to extend to all cases of admiralty and maritime jurisdictions. Recorded L. B. No. 1, p. 353, &c.

CHAPTER DCCCLXXXVIII.

AN ACT TO RESTORE AND ASCERTAIN THE VALUE OF DIVERS FINES, PENALTIES AND FORFEITURES HEREINAFTER MENTIONED, WHICH MAY BE INCURRED BY THE BREACH OF CERTAIN ACTS OF ASSEMBLY OF THIS COMMONWEALTH.

(Section I, P. L.) Whereas divers fines, penalties and forfeitures which are limited not to exceed certain sums, and the specific fines, penalties and forfeitures, which were heretofore as well before the revolution as since provided, directed and established in and by certain acts of assembly still in force, in order to secure the observance of the same have, by reason of the great variation and rise in the prices of commodities become generally uncertain and very inadequate to the purposes for which they were intended and ordained, whereby many good and wholesome laws have been enervated and have lost their proper vigor and effect, to the great injury of the sober and quiet citizens and to the dishonor of the commonwealth:

For remedy whereof:

[Section I.] (Section II, P. L.) Be it 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 the several and respective fines,