

And for the more effectual detecting and punishing offenders against this act:

[Section X.] (Section XII, P. L.) Be it enacted by the authority aforesaid, That the constable of each respective township, city, borough or district which shall be bounded by or adjoin to any part of either of the said rivers, shall and he is hereby enjoined and required under the penalty of five pounds to be recovered and applied in manner last aforesaid carefully and diligently to inspect and view once at least in every fourteen days from the first day of August to the first day of December in every year, such parts of the said rivers as shall be adjoining his respective township, borough or district; and having any knowledge of any offenses against this act, he shall forthwith give information thereof to some justice of the peace who shall immediately issue his warrant to the overseers of the highways aforesaid, for the purposes aforesaid, and the said constable shall also present, on oath or affirmation every such offense to the justices of the court of quarter sessions of their respective counties, together with the name or names of such offender or offenders that he or they may be tried according to the directions of this act, which oath or affirmation the said justices are hereby required duly and carefully to administer.

Passed March 30, 1784. Recorded L. B. No. 2, p. 300, etc. See the Act of Assembly passed April 7, 1786, Chapter 1222..

CHAPTER MXCIII

AN ACT TO REMEDY THE DEFECTS OF THE SEVERAL ACTS OF ASSEMBLY HERETOFORE MADE FOR REGULATING THE ELECTIONS OF THE JUSTICES OF THE PEACE THROUGHOUT THIS STATE, AND TO ESTABLISH A PERMANENT MODE OF HOLDING SUCH ELECTIONS; AND TO AUTHORIZE THE JUSTICES OF THE PEACE OF THE CITY OF PHILADELPHIA TO HOLD THE COURTS OF RECORD OF THE SAID CITY.

(Section I, P. L.) Whereas in and by the act of assembly of this commonwealth which was passed on the fifth day of February, in the year of our Lord one thousand seven hundred, sev-

enty and seven, entitled "An act for directing the times and mode of electing justices of the peace for the city of Philadelphia, and the several and respective counties in this commonwealth, and for other purposes therein mentioned,"¹ the mode of choosing justices of the peace elect, within this state, and the number of them within each of the counties thereof were particularly set forth and ascertained; and the freeholders of the city of Philadelphia, in their several wards were enabled to choose within the same respectively, as districts for the purpose of the same act, and of this act, two justices of the peace elect, and the freeholders of the district of Southwark and of the townships of Moyamensing and Passyunk in the county of Philadelphia, jointly, as another of the districts for the purpose aforesaid, were enabled to choose four justices of the peace elect; and the freeholders of the township of the Northern Liberties of the same city, within the county aforesaid, were enabled to choose within the same township as another of the same district, four justices of the peace elect; and the freeholders of each county town of the then counties within state, not having a charter, enabling such town to elect burgesses, were enabled to choose three justices of the peace elect within the same; and that the freeholders of the rest of the county of Philadelphia to be divided and formed into twelve districts, and the freeholders of the county of Bucks to be divided and formed into thirteen districts, and the freeholders of the county of Chester, to be divided and formed into fifteen districts, and the freeholders of the county of Lancaster to be [divided and] formed into twenty-two districts, and the freeholders of the county of York to be divided and formed into eighteen districts, and the freeholders of the county of Berks to be divided and formed into twelve districts, and the freeholders of the county of Northampton to be divided and formed into sixteen districts, for the purpose aforesaid, and the freeholders of each townships then within the counties of Cumberland, Bedford, Northumberland and Westmoreland other than the county towns aforesaid, were enabled to choose within each of the same townships as

¹ Passed February 5, 1777, Chapter 739.

districts for the purpose [of the act] aforesaid and of this act two justices of the peace elect;

(Section II, P. L.) And whereas in and by the acts of assembly for erecting the counties of Washington and Fayette, respectively the townships within the same counties were declared to be districts severally for the purpose aforesaid, and the freeholders of each of the same districts were thereby enabled to choose two fit persons within every of them, as justices of the peace elect; and it was directed by the said acts of assembly, that the said several elections should be returned to the president in council, to the end, that one of the said justices elect, or two of them for each of the districts erected by or in pursuance of the act first before mentioned as the said district was entitled, might be commissioned as a justice or as justices of the peace for the proper county, according to the constitution of this commonwealth:

(Section III, P. L.) And whereas the commissioners and assessors, who at the time of passing the act first aforesaid, had been last elected to assess and levy the public taxes of the counties of Philadelphia, Bucks, Chester, Lancaster, York, Berks and Northampton were in and by the same act directed and enabled to meet at the court houses of their respective counties and thereto divide their several counties into districts as hereinbefore is enumerated and specified, and to appoint the places within each of the same districts, respectively, for holding of such elections:

(Section IV, P. L.) And whereas the commissioners and assessors aforesaid, have made the divisions of their several counties as directed in and by the act first hereinbefore mentioned; and justices of the peace elect have been chosen, and justices of the peace have been commissioned throughout the state, conformably to the same act, and to a supplement and to a further supplement thereto as directed by the constitution of this state; but inasmuch as the seven years for which many of the said justices of the peace [who were early] commissioned as aforesaid and who are still in office will shortly expire, and their commissions severally determine and no clear provision is made by any of the said acts of assembly for supplying the vacancies,

which will thereby happen, or for choosing justices of the peace elect in order to the nominating and commissioning other justices of the peace in the rooms and stead of such [of the said] justices whose commissions for seven years from the date of each commission respectively, shall from time to time expire or be otherwise determined and vacated:

(Section V, P. L.) And whereas it is proper that a certain and regular mode of holding the future elections of such justices of the peace elect, to supply the vacancies that have happened or may happen, by the expiration of the commission, death, resignation, removal out of the district, or removal from office for misconduct or upon the neglect or refusal of any person who shall be elected and commissioned as aforesaid, to take upon him the said office, or in any other case wherein any of the said justices shall be legally disabled or superseded:

[Section I.] (Section VI, 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 the several districts into which the city of Philadelphia, and the counties of Philadelphia, Bucks, Chester, Lancaster, York, [Berks] and Northampton have been divided by or under the authority of the act of assembly in the preamble hereto first recited, and the said county towns and the townships into which the counties of Cumberland, Bedford, Northumberland, Westmoreland, Washington and Fayette, respectively, are now divided, shall be districts for the purpose of this act, and shall have one justice of the peace or more justices of the peace for each of them, as herein before specified to be elected by the freeholders of such districts and commissioned by the president or vice-president in council as the constitution of this state hath provided and directed, and all vacancies which now are, or hereafter may be in justices of the peace of any ward, town, borough, township or district as aforesaid shall be filled and supplied by new elections as is herein after directed.

[Section II.] (Section VII, P. L.) And be it further enacted by the authority aforesaid, That in any case wherein any such vacancy has happened, or shall hereafter happen, in any of the

districts for the purpose of the act first aforesaid, and of this act, it shall be lawful for any justice of the peace of the proper county, dwelling near, and the same justice is hereby required upon application to him made by two or more of the freeholders of the ward, township, town or other district as aforesaid, wherein such vacancy shall be, to issue his precept directed to one of the constables of such district, or in the absence of such constable to one of the overseers of the poor residing within such district, authorizing and commanding such constable or overseer of the poor to hold an election by the freeholders of such district, of two or more justices of the peace elect respectively, as such district is entitled to, or as the vacancy may require, in order that the same may be filled and supplied; and the same justice shall in his said precept appoint the day and the hour of such day (not after two of the clock in the afternoon of the same day), for opening the said election, within twenty days from and after the date of such precept; and the said constable or overseer shall affix a notice in writing of the issuing [and design of] such precept, and of the time and place when and where such election is to be holden, at six or more of the most public places within the same district, in order that the freeholders of the same district may be informed thereof, such notices to be affixed as aforesaid at least ten days before the day, which shall be appointed for the holding of said election. And before the freeholders of such district shall proceed to the said election, they shall by the major vote of such of them as be present at the place and time for holding such election, elect one of their number to be an inspector and two others of their number to be assistants to the said constable or overseer of the poor, in holding of the said election, in judging of the qualifications of the electors and in making return of the said precept and of the persons who shall be then and there chosen justices elect, to the president in council; and when the election shall be so holden and made, the said constable or the said overseer and their assistants as aforesaid, shall forthwith cast up the poll and ascertain the persons, who shall be highest in votes, and shall immediately afterwards declare and publish the same, and certify under their hands and seals, respectively the names

of the persons elected, together with the said precept to the president in council, and shall deliver the same to the clerk of the peace for the county to be transmitted to the office of the secretary of the president and council, and the said clerk of the peace shall file a copy thereof with a list of the names of such electors as aforesaid, among the records of the county; and the president in council shall commission one-half of the persons who shall be so elected as justices of the peace for the county.

[Section III.] (Section VIII, P. L.) Provided always, and be it enacted by the authority aforesaid, That every such election shall be by ballot, and by freeholders duly qualified to elect, as in the case of the general annual electors of the several counties of this state; and if any complaint be made of fraud or undue election of any person returned or commissioned as aforesaid, the president in council shall hear and determine the same, and in case the said election be declared void, the president in council shall thereupon issue such precept as aforesaid, authorizing and requiring the said constable, or the said overseer and the said assistants to proceed to another election and to supply the said vacancy, to be holden and returned, in like manner, and liable to be set aside for like cause and to like effect, as the first election aforesaid.

(Section IX, P. L.) Provided nevertheless, That such complaint be lodged with the secretary of the president and council within two months after the holding of the election to which such complaint shall relate.

[Section IV.] (Section X, P. L.) And be it further enacted by the authority aforesaid, That the said assistant judges shall each of them before they proceed to such election take the following oath: That is to say,

“I, A. B., will faithfully assist the constable (or overseer of the poor) to whom the precept for holding this election is directed in performing the duties required of him by law, according to the best of my skill and judgment without partiality, favor or affection.”

And the said inspector in like manner shall take the following oath or affirmation, that is to say:

“I, A. B., will well and faithfully receive and cast up all the

votes of the freeholders of this district, who be duly qualified to elect, which shall be offered to me at this election, and I will refuse no vote from prejudice or ill-will nor receive any vote from favor or affection, but I will behave myself as an honest inspector during this election, according to the best of my skill and judgment."

And any justice of the peace who shall be present at such election (but in case no justice of the peace be then and there present, the said constable or the said overseer) shall openly and publicly administer such oaths or affirmations to the said assistant judges and to the said inspector.

(Section XI, P. L.) And whereas complaints may be made of fraud or undue election as aforesaid, in districts which be far distant from the seat of government and it may be difficult to bring the witnesses of such fraud or undue election to appear in person before the president in council whereby such abuses may not be proved and detected, nor justice obtained therein:

For remedy whereof:

[Section V.] (Section XII, P. L.) Be it enacted by the authority aforesaid, That the president in council, in any case of disputed election under this act before them depending, concerning any district for the purposes of this act, which shall be more than thirty miles distant from such seat or the place where the president and council shall be then assembled, may authorize three of the justices of the peace of the proper county dwelling near to the place where the dispute shall arise, to examine, or two of the said justices to examine upon oath or affirmation, according to law, any person or persons, who may be named to the president and council as material witnesses, as well on the part of the complainant or complainants as on the adverse part; and to take such examination in writing, and to certify the same under their hands and seals or the hands and seals of any two of them to the president and council.

(Section XIII, P. L.) Provided always, That the said justices shall not take in writing nor certify any such examination in the absence of the adverse party until they be satisfied by the oath or affirmation of one disinterested credible witness at the least, that such adverse party hath had reasonable notice

of the person or persons so to be examined, and of the time and place, when and where such examination be taken, in order that such party may be present thereat, and may have opportunity to cross examine such witness or witnesses.

(Section XIV, P. L.) And where by extending the settlements and by the increase of inhabitants within the western and northern frontier counties of this state, and of the counties of Lancaster, Cumberland and Berks, the good order and peace of the said counties may require, that some of the larger districts formed therein for the purposes of this act should be divided or subdivided:

[Section VI.] (Section XV, P. L.) Be it therefore enacted by the authority aforesaid, That the president in council upon the certificate of the court of quarter sessions of the county, that such division is become proper and will be useful, may three months after filing the same with the secretary of the president and council, make an order for such division, and thereupon the freeholders of such new and additional district and districts shall be entitled to choose two justices elect, as is before directed in each of the districts established by this act, and the president and council shall commission one justice of the peace within the proper county, out of the persons so chosen and returned to them, as in other cases.

[Section VII.] (Section XVI, P. L.) And be it further enacted by the authority aforesaid, That the act of assembly first aforesaid passed on the fifth day of February, one thousand seven¹ hundred and seventy-seven and the supplement thereto, passed on the fifteenth day of March, in the same year² and the further supplement thereto, passed on the thirty-first day of August, one thousand seven hundred and seventy-eight³ and every matter and thing therein contained shall be and the same are hereby repealed:

[Section VIII.] (Section XVII, P. L.) And be it further enacted by the authority aforesaid, That the act of assembly for erecting the county of Washington, passed on the twenty-eighth

¹ Passed February 5, 1777, Chapter 739.

² Passed March 5, 1777, Chapter 749.

³ Passed August 31, 1778, Chapter 805.

day of March, one thousand seven hundred and eighty-one¹ and the act of assembly for erecting the county of Fayette, passed on the twenty-sixth day of September, one thousand seven hundred and eighty-three² so far as the same relate to the mode of electing justices of the peace elect, and no farther shall be and the same are hereby repealed and made void.

[Section IX.] (Section XVIII, P. L.) And be it further enacted by the authority aforesaid, That the court of record of the city of Philadelphia, shall hereafter be holden by the justices of the peace elected within and commissioned for the said city, on the same days and with equal and like authority and jurisdiction, as the same has been heretofore holden, and the act of assembly, entitled "An act authorizing the president and council to appoint judges of the city court, and for other purposes therein mentioned,"³ passed on the twenty-first day of March, one thousand seven hundred and seventy-seven so far as the same relates to the judges of the same court, and no further is hereby repealed and made void, and the commissions of the said judges and every of them are hereby vacated and annulled.

[Section X.] (Section XIX, P. L.) And be it further enacted by the authority aforesaid, That the several justices of the city of Philadelphia and of the several counties within this state on neglecting to attend on the several days and times appointed by law for the holding of their several courts shall forfeit and pay the fine of thirty shillings for each day that they shall so neglect to attend, recoverable agreeable to an act of the late province of Pennsylvania, entitled "An act for the better attendance of the justices on the several courts of judicature within this province and territories,"⁴ passed in the twelfth year of the reign of King William the Third one-half for the informer, and the other half for the poor of the city, town, borough or township in which such court shall be held.

[Section XI.] (Section XX, P. L.) And be it further enacted by the authority aforesaid, That each and every process dis-

¹ Passed March 28, 1781, Chapter 931.

² Passed September 26, 1783, Chapter 1056.

³ Passed March 21, 1777, Chapter 754.

⁴ Passed November 27, 1700, Chapter 34.

continued by the expiration of the commissions of the justices of either of the courts within this state who may have held their respective courts since the expiration of such commissions, shall be and they are hereby continued and no writ of error or other procedure shall be effectual in the law to defeat any act, authority or jurisdiction exercised or done by such justices in their respective courts on account of the expiration of such commissions.

Passed March 31, 1784. Recorded L. B. No. 2, p. 306, etc. See the Acts of Assembly passed September 13, 1785, Chapter 1177; March 4, 1786, Chapter 1205.

CHAPTER MXCIV.

AN ACT FOR OPENING THE LAND OFFICE FOR GRANTING AND DISPOSING OF THE UNAPPROPRIATED LANDS WITHIN THIS STATE.

(Section I, P. L.) Whereas the estates of the late proprietaries of Pennsylvania were by a law passed the twenty-seventh day of November, in the year one thousand seven hundred and seventy-nine¹ vested in this commonwealth:

And whereas by a subsequent law passed the ninth day of April, one thousand seven hundred and eighty-one, the land office was opened for the completing all such titles as had commenced before the tenth day of December, one thousand seven hundred and seventy-six, and inasmuch as it is just that all the citizens of this state holding lands should be placed on the same footing, with respect to their titles and the legal demands of government; and the time being now come when it appears necessary not only to increase the population of this state but to enable government to draw every possible advantage from the estates so vested in them:

[Section I.] (Section II, P. L.) Be it therefore enacted and it is hereby enacted by the Representatives of the Freemen of the

¹ Passed November 27, 1779, Chapter 874.