

CHAPTER MCXXXIII.

AN ACT TO GIVE THE BENEFIT OF TRIAL BY JURY TO THE PUBLIC OFFICERS OF THIS STATE AND TO OTHER PERSONS WHO SHALL BE PROCEEDED AGAINST IN A SUMMARY MANNER BY THE COMPTROLLER-GENERAL OF THIS STATE.

(Section I, P. L.) Whereas the act of general assembly of this commonwealth, entitled "An act for methodising the department of accounts of the commonwealth and for the more effectual settlement of the same,"¹ which was passed on the thirteenth day of April, in the year of our Lord one thousand seven hundred and eighty and two, directing and empowering the comptroller-general of the state to liquidate, adjust and settle according to law and equity all accounts between this state and any officer of the same and every other person or persons (except as is therein excepted) and authorizing the said officer to compel divers persons who were possessed of moneys or effects of the commonwealth to exhibit their several accounts in order that the same accounts might be settled as aforesaid and directing the said comptroller-general to transmit the settlement which he should make of any such account, together with the vouchers thereunto belonging to the supreme executive council, who, if satisfied with the justice of the same should by warrant upon the treasurer of the state direct payment of any balance which may appear to be thereupon due to the party entitled to receive the same and in cases wherein balances shall appear as aforesaid to be due to the commonwealth by such accountants or others respectively to proceed by a summary mode to recover and levy the same to the use of the commonwealth. And whereas upon experience it hath been found that the summary powers aforesaid without any opportunity of re-hearing or re-examining the settlements, balances, or sums, declared and pronounced to be due and payable as aforesaid have not in all cases proved satisfactory to the persons interested in or affected

¹ Passed April 13, 1782, Chapter 970.

by the aforesaid proceedings of the comptroller-general and it would much conduce to the relief of such persons and also greatly strengthen the said officer in the performance of his duty in the premises if the awards by him made touching the premises severally might be revised and in case of mistake in point of fact or error in law the same might be corrected.

(Section II, P. L.) And whereas it will be agreeable to the constitution of this state which hath declared, that "trial by jury shall be as heretofore," that persons conceiving themselves to be aggrieved by the proceedings of the said comptroller-general should be allowed to have trial of the facts by a jury and questions of law arising thereupon determined in a court of record. And whereas application hath been made to this house by the comptroller-general for the purpose,

Therefore;

[Section I.] (Section III, P. L.) Be it enacted by the Representatives of the Freemen of the Commonwealth of Pennsylvania in General Assembly met, and by the authority of the same, That from and after the passing of this act in every case where the comptroller-general shall settle an account in pursuance of the said recited act of assembly and transmit such settlement of account to the supreme executive council as aforesaid for their approbation and if the party whose account shall be thus settled and transmitted be dissatisfied therewith, it shall and may be lawful for such party within one month after notice given to him, her or them, by the said comptroller-general that the settlement of his, her or their account is approved of by the supreme executive council but not afterwards to appeal from such settlement or award of said comptroller-general against such person or persons to the supreme court, which appeal shall accordingly be allowed by the supreme executive council provided the said party enter sufficient security with one of the justices of the supreme court or before the president of the court of common pleas of the county of Philadelphia within ten days next after such appeal to prosecute such appeal with effect and to pay all costs and charges which the supreme court shall award and also pay any sum of money which shall appear by the judgment of the said court to be due from

him, her or them to the commonwealth or in default thereof to surrender her or himself or themselves prisoner or prisoners to the sheriff of the county.

[Section II.] (Section IV, P. L.) Provided nevertheless and be it enacted by the authority aforesaid, That where any proceedings shall be had against any person or persons who upon summons and demand made in pursuance of the act aforesaid shall have refused or neglected to exhibit his, her or their accounts to the said comptroller-general as by the said act is directed such person or persons shall not be allowed any appeal from the award of the said comptroller-general but the same shall be final.

[Section III.] (Section V, P. L.) And be it further enacted by the authority aforesaid, That the supreme court upon any such appeal being lodged as aforesaid shall direct such forms of proceeding and such issues to be tried as shall appear to the court most proper and expediting to do justice therein and in case it be necessary the said court may direct the party to declare against the attorney-general who shall appear and plead thereto in behalf of the commonwealth, but the court shall not allow of any plea to a declaration filed by the attorney-general upon any matter which shall come before the said court in pursuance of this act other than the general issue unless the same be verified by the affidavit of the defendant or defendants and no demurrer shall be allowed to any such declaration for want of pursuing the usual forms in such cases, but it shall be sufficient in all actions upon the case or upon account to allege that the defendant or defendants was or were indebted to the commonwealth of Pennsylvania for money had and received to the use of the said commonwealth and that payment thereof hath not been made.

[Section IV.] (Section VI, P. L.) And be it further enacted by the authority aforesaid, That if the supreme executive council be dissatisfied with the settlement of any account as aforesaid by the comptroller general in pursuance of any act or be of opinion that a legal discussion of the same will tend to a furtherance of justice, That it shall and may be lawful for the supreme executive council to direct the attorney general to in-

stitute a suit against the party with whose account they may be dissatisfied as aforesaid, in the supreme court by writ of *capias ad respon deudum*, wherein like proceedings shall be had as in civil actions instituted in the courts of common pleas of the colonies of this state.

[Section V.] (Section VII, P. L.) And be it further enacted by the authority aforesaid, That wherever any appeal shall be made as aforesaid to the said supreme court and security entered in the manner before directed or where the supreme executive council shall direct a suit to be instituted as aforesaid in the said supreme court for the purpose of a re-settlement of any account in the said supreme court that then and in every such case the supreme executive council shall send to the said supreme court a transcript of the whole account in controversy settled by the said comptroller-general and approved or rejected by them within the two first days of the next term after the said appeal shall be made and that then in case it shall appear by the transcript of the said settlement of accounts by the said comptroller-general that the said party is indebted to the commonwealth, the attorney-general shall file a declaration against the said appellant instanter for money had and received by him or her to the use of the commonwealth to which the party shall plead the general issue without any imparlance being allowed and issue being immediately joined upon the same the said court may award a *venire* returnable in the same term or at a future term in their discretion, commanding the sheriff to summon a jury for the trial of the said issue on such day as the court shall direct which jury shall be liable to like penalties for non-attendance as if they had been summoned ten days before hand agreeable to former acts of assembly and upon a full investigation by the court and jury of the merits of the case if a verdict be found and confirmed in favor of the commonwealth against the said party for any sum of money in arrear and due by the said party to the commonwealth the same shall be final and conclusive and execution shall issue accordingly as in cases between party and party and no appeal or writ of error shall lie upon the said judgment, but if on such trial a balance shall be found by the jury to be due from the

commonwealth to the party whose accounts shall have been settled and the court shall confirm the verdict then the justices of the supreme court shall certify the same to the supreme executive council with the amount of the costs which shall be taken and considered as the balance justly due to the party who shall grant such order for the payment thereof on the public treasury in such manner as by the said recited act is directed on settlement of a public account by the comptroller-general being transmitted to them and their being satisfied therewith.

(Section VIII, P. L.) And whereas it will be expensive and may be difficult upon the trial of any suit, action or issue in the supreme court as allowed or directed by this act to obtain such testimony from distant places within this state as may be necessary to come at the truth of the facts which shall be alleged:

[Section VI.] (Section IX, P. L.) Be it therefore enacted by the authority aforesaid, That where it shall be necessary to have the testimony of witnesses residing in this state but without the counties of Philadelphia, Bucks, Chester or Montgomery the court upon motion may by rule of court order that the depositions of witnesses be taken and that the same shall be admitted as evidence as is usual in the case of witnesses who are unable to travel, provided the party applying for the same pay all the costs and charges thereof, or in case the supreme court should be of opinion that the trial ought to be held in the county where the cause of action hath arisen the said supreme court may in their discretion refer the same to be tried at nisi prius or direct such issue to be tried in the court of common pleas of such county and such court of common pleas is hereby authorized to preside at such trial accordingly and thereupon to certify the verdict which shall be given by the jury to the said supreme court that judgment may be entered thereon.

(Section X, P. L.) And whereas by the act aforesaid authority was given to the comptroller-general to re-examine and settle all accounts which have been formerly settled by the auditors or commissioners for settling public accounts or committees of the general assembly and in case any material error should be discovered therein to call upon the proper persons which au-

thority hath enabled the said comptroller-general to recover to the use of the commonwealth divers sums of money:

[Section VII.] (Section XI, P. L.) Be it therefore enacted by the authority aforesaid, That the said comptroller-general is hereby authorized to review and re-settle any account which he himself hath settled or shall settle and which shall not be appealed from or upon which no issue or issues shall have been tried as aforesaid and if he shall find any moneys to have been wrongfully awarded or paid or shall discover other or further sums of money unaccounted for to proceed anew thereupon to do justice to the commonwealth or to the party as the case may be and his award in such case shall be of like effect as in the original settlements of public accounts herein before mentioned, provided such error be discovered within one year from the passing of the act or in the case of accounts hereafter settled within one year from and after the award of the said officer in any case which shall be laid before the supreme executive council after which times respectively the settlements and awards aforesaid shall not be again opened or questioned but the party, his heirs, executors or administrators shall be forever quieted touching the same.

[Section VIII.] (Section XII, P. L.) And be it further enacted by the authority aforesaid, That the settlement of any public account by the comptroller-general and confirmation thereof by the supreme executive council whereby any balance or sum of money shall be found due from any person to the commonwealth shall be deemed and adjudged to be a lien on all the real estate of such person throughout this state in the same manner as if judgment had been given in favor of the commonwealth against such person for such debt in the supreme court and if after an appeal from the said settlement of account by or award of the said comptroller-general and confirmation thereof by the supreme executive council the said settlement shall be confirmed, the said supreme court shall award interest thereon from the date of the confirmation of the said settlement of account by the supreme executive council and costs to be paid by the appellant.

[Section IX.] (Section XIII, P. L.) Provided always and be it enacted by the authority aforesaid, That in any action instituted in pursuance of this act or upon any issue formed between the commonwealth and any person or persons for whom or against whom the said comptroller-general shall have awarded balances of account or sums of money as aforesaid the court may with the consent of the attorney-general and party as is usual in such cases appoint referees or auditors as the case may require to settle the said accounts and report to the court whose report if confirmed by the court shall have the like effect and there shall be the like proceedings as in the case of a verdict of a jury and judgment given thereon accordingly as aforesaid.

Passed February 13, 1785. Recorded L. B. No. 2, p. 413, etc. See the Act of Assembly passed August 26, 1786, Chapter 1230.

CHAPTER MCXXXIV.

AN ACT TO REPEAL AN ACT OF ASSEMBLY, ENTITLED "AN ACT TO VEST IN ISAAC AUSTIN A CERTAIN MESSUAGE, WHARF, FERRY AND FERRY LANDING, SITUATE ON THE NORTH SIDE OF MULBERRY STREET, AT THE EASTERNMOST EXTREMITY THEREOF, IN THE CITY OF PHILADELPHIA, LATE THE PROPERTY OF WILLIAM AUSTIN, ATTAINTED OF HIGH TREASON,"¹ AND TO RESTORE THE POSSESSION OF THE REAL ESTATE THEREIN MENTIONED TO GEORGE ADAM BAKER.

(Section I, P. L.) Whereas an act of assembly, entitled "An act to vest in Isaac Austin a certain messuage, wharf, ferry and ferry landing, situated on the north side of Mulberry street at the easternmost extremity thereof in the city of Philadelphia late the property of William Austin attainted of high treason,¹ passed on the sixth day of August last by which for reasons therein set forth the said messuage, wharf, ferry and ferry-landing in the said act described late the estate of William Austin an attainted traitor were declared to be vested, granted, con-

¹ Passed August 6, 1784, Chapter 1103.