

CHAPTER MDXVI.

AN ACT TO REFORM THE PENAL LAWS OF THE STATE.

(Section I, P. L.) Whereas by the thirty-eighth section of the second chapter of the constitution of this state it is declared, "That the penal laws as heretofore used should be reformed by the legislature as soon as may be and punishments made in some cases less sanguinary and in general more proportionate to the crimes;" and by the thirty-ninth section "That to deter more effectually from the commission of crimes by continued visible punishment of long duration and to make sanguinary punishments less necessary houses ought to be provided for punishing by hard labor those who shall be convicted of crimes not capital wherein the criminal shall be employed for the benefit of the public or for reparation of injuries done to private persons." And whereas the laws heretofore made for the purpose of carrying the said provisions of the constitution into effect have in some degree failed of success from the exposure of the offenders employed at hard labor to public view and from the communication with each other not being sufficiently restrained within the places of confinement, and it is hoped that the addition of unremitted solitude to laborious employment as far as it can be effected will contribute as much to reform as to deter:

[Section 1.] (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 the pains and penalties hereinafter mentioned shall be inflicted upon the several offenders who shall from and after the passing of this act commit and be legally convicted of any of the offences hereinafter enumerated and specified, in lieu of the pains and penalties which by law have been heretofore inflicted; that is to say, every person convicted of robbery, burglary, sodomy or buggery or as accessory thereto before the fact shall forfeit to the

commonwealth all and singular the lands and tenements, goods and chattels whereof he or she was seized or possessed at the time the crime was committed and at any time afterwards until conviction and be sentenced to undergo a servitude of any term or time at the discretion of the court passing the sentence not exceeding ten years in the public gaol or house of correction of the county or city in which the offence shall have been committed and be kept at such labor and fed and clothed in such manner as is herein after directed.

[Section II.] Provided always and be it further enacted by the authority aforesaid, That no person accused of [any of] the aforesaid crimes shall be admitted to bail but by the judges of the supreme court or some or one of them nor shall he or she be tried but in the supreme court or in a court of oyer and terminer or general jail delivery held in and for the county wherein the offence shall have been committed and that peremptory challenges shall be allowed in all such cases wherein they have been heretofore allowed by law but no attainder hereafter shall work corruption of blood in any case nor extend to the disinherison or prejudice of any person or persons other than the offender.

[Section III.] (Section IV, P. L.) And be it further enacted by the authority aforesaid, That every person convicted of horse-stealing or as accessory thereto before the fact shall restore the horse, mare or gelding stolen to the owner or owners thereof or shall pay to him, her or them the full value thereof and also pay the like value to the commonwealth, and moreover undergo a servitude for any term not exceeding seven years in the discretion of the court before which the conviction shall be, and shall be confined, kept to hard labor, fed and clothed in manner hereinafter mentioned. Every person convicted of simple larceny to the value of twenty shillings and upwards or as accessory thereto before the fact shall restore the goods or chattels so stolen to the right owner or owners thereof or shall pay to him, her or them the full value thereof or of so much thereof as shall not be restored, and moreover shall forfeit and pay to the commonwealth the like value of the goods and chattels

stolen and also undergo a servitude for any term of years not exceeding three at the discretion of the court before which the conviction shall be, and shall be confined, kept to hard labor, fed and clothed in manner hereinafter directed.

And whereas by the ninth section of the first chapter of the constitution it is declared, "That in all prosecutions for criminal offences a man has a right to be heard by himself and his counsel to demand the cause and nature of his accusation, to be confronted with the witnesses, to call for evidence in his favor and a speedy public trial by an impartial jury of the county, without the unanimous consent of which jury he cannot be found guilty." Since which declaration it is not proper that persons accused of small or petty larcenies should be tried and convicted before two magistrates or justices of the peace without the intervention of a jury.

[Section IV.] (Section V, P. L.) Be it therefore enacted by the authority aforesaid, That the act of assembly entitled "An act for the trial and punishment of larceny under five shillings"¹ be and the same is hereby repealed and [that] if any person or persons shall hereafter feloniously steal, take and carry away any goods or chattels under the value of twenty shillings, the same order and course of trial shall be had and observed as for other simple larcenies and he, she or they being there legally convicted shall be deemed guilty of petty larceny and shall restore the goods and chattels so stolen or pay the full value thereof to the owner or owners thereof and also forfeit and pay the like value to the commonwealth and be further sentenced to undergo a servitude for a term not exceeding one year in the discretion of the court before which such conviction shall be, and be confined, kept to hard labor, clothed and fed in manner as herein after directed. And every person convicted of bigamy or of being an accessory after the fact in any felony or of receiving stolen goods knowing them to have been stolen or of any other offence not capital for which by the laws in force before the act entitled "An act to amend the penal

¹ Passed February 24, 1720, Chapter 243.

laws of this state”¹ burning in the hand, cutting off the ears, nailing the ear or ears to the pillory, placing in and upon the pillory, whipping or imprisonment for life is or may be inflicted, shall instead of such parts of the punishment be fined and sentenced to undergo in the like manner and be confined, kept to hard labor fed and clothed as is hereinafter directed for any term not exceeding two years which the court before whom such conviction shall be may and shall in their discretion think adapted to the nature and heinousness of the offence.

[Section V.] (Section V, P. L.) And be it further enacted by the authority aforesaid, That robbery or larceny of obligations or bonds, bills obligatory, bills of exchange, promissory notes for the payment of money, lottery tickets, paper bills of credit, certificates granted by or under the authority of this commonwealth or of all or any of the United States of America shall be punished in the same manner as robbery or larceny of any goods or chattels. And whereas by the eighth section of the act of assembly entitled “An act for the advancement of justice and more certain administration thereof”² it is enacted that if any woman shall endeavor privately to conceal the death of her child which by being born alive should by the law be deemed a bastard so that it may not come to light whether it was born alive or not and be convicted thereof shall suffer death as in case of murder “except such mother can make proof by one witness at the least that the child whose death was by her so intended to be concealed was born dead” whereby the bare concealment of the death is almost conclusive evidence of the child’s being murdered by the mother or by her procurement.

[Section VI.] (Section VI, P. L.) Be it therefore declared and enacted by the authority aforesaid, That from and after the publication of this act the constrained presumption that the child whose death is concealed was therefore murdered by the mother shall not be sufficient evidence to convict the party indicted without probable presumptive proof is given that the child was born alive.

¹ Passed September 15, 1786, Chapter 1241.

² Passed May 31, 1712, Chapter 286.

[Section VII.] (Section VII, P. L.) And be it further enacted by the authority aforesaid, That every other felony or misdemeanor, or offence whatsoever not specially provided for by this act may and shall be punished as heretofore.

[Section VII.] (Section VIII, P. L.) Be it enacted by the authority aforesaid, That the commissioners for the county of Philadelphia with the approbation of the mayor and two of the aldermen of the city of Philadelphia and two of the justices of the court of the quarter sessions for the county of Philadelphia shall as soon as conveniently may be cause a suitable number of cells to be constructed in the yard of the gaol of the said county each of which cells shall be six feet in width, eight feet in length and nine feet in height and shall be constructed with brick or stone upon such plan as will best prevent danger from fire and the said cells shall be separated from the common yard by walls of such height as without unnecessary exclusion of air and light will prevent all external communication for the purpose of confining therein the more hardened and atrocious offenders who by virtue of the act entitled "An act for amending the penal laws of this state"⁴ have been sentenced to hard labor for a term of years, or who shall be sentenced thereto by virtue of this act.

[Section IX.] (Section IX, P. L.) Be it enacted by the authority aforesaid, That for the purpose of defraying a proportionable part of the expense of erecting such cells and walls the president and supreme executive council shall be and they are hereby authorized to draw orders on the state treasurer for the sum of five hundred pounds to be paid out of the funds especially appropriated for claims and improvements when the same shall be sufficiently productive and for defraying the residue of the expense it shall be lawful for the commissioners of the said county or a majority of them to assess, levy and collect within the said county so much money as they with the concurrence and approbation of the said mayor, aldermen and justices shall judge necessary, Provided, The same does not exceed the sum of one thousand pounds.

[Section X.] (Section X, P. L.) Be it enacted by the authority aforesaid, That the said cells shall be and are hereby de-

clared to be part of the gaol of the city and county of Philadelphia and the residue of the said gaol shall be appropriated to the purposes of confining as well such male convicts sentenced to hard labor as cannot be accommodated in the said cells as female convicts sentenced in like manner, persons convicted of capital crimes, vagrants and disorderly persons committed as such and persons charged with misdemeanors only, all which persons are hereby required to be kept separate and apart from each other, as much as the convenience of the building will admit and to be subject to the visitation and superintendence of the inspectors hereinafter appointed.

[Section XI.] (Section XI, P. L.) Be it further enacted by the authority aforesaid, That it shall be lawful for the mayor or any alderman of the city of Philadelphia and any justice of the peace of the said county to commit any vagrant or idle and disorderly person (being thereof legally convicted before him as by law is directed) to the said gaol to be kept at hard labor for any term not exceeding one month any law of this state to the contrary notwithstanding.

[Section XII.] (Section XII, P. L.) Be it enacted by the authority aforesaid, That in order to prevent the introduction of contagious disorders every person who shall be ordered to hard labor in said gaol shall be separately lodged, washed and cleaned and shall continue in such separate lodging until it shall be certified by some physician that he or she is fit to be received among the other prisoners and if such person be a convict the clothes in which he or she shall then be clothed shall either be burnt or at the discretion of two of the said inspectors be baked, fumigated and carefully laid by until the expiration of the term for which such offender shall be sentenced to hard labor to be then returned to him or her.

[Section XIII.] (Section XIII, P. L.) Be it enacted by the authority aforesaid, That all such convicts shall at the public expense of such county during the term of their confinement be clothed in habits of coarse materials uniform in color and make and distinguishing them from the good citizens of this commonwealth, and the males shall have their heads and beards close shaven at least once a week and all such offenders

shall during the said term be sustained upon bread, Indian meal or other inferior food, at the discretion of said inspectors and shall be allowed one meal of coarse meat in each week and shall be kept as far as may be consistent with their sex, age, health and ability to labor of the hardest and most servile kind in which the work is least liable to be spoiled by ignorance, neglect or obstinacy and where the materials are not easily embezzled or destroyed, and if the work to be performed is of such a nature as may require previous instruction, proper persons for that purpose to whom a suitable allowance shall be made shall be provided by order of any two of the inspectors hereafter named, during which labor the said offenders shall be kept separate and apart from each other if the nature of their several employments will admit thereof and where the nature of such employment requires two or more to work together the keeper of the said gaol or one of his deputies shall if possible be constantly present.

[Section XIV.] (Section XIV, P. L.) Be it enacted by the authority aforesaid, That such offenders unless prevented by ill health shall be employed in work every day in the year except Sundays and the hours of work each day shall be as many as the season of the year with an interval of half an hour for breakfast and an hour for dinner will permit, but not exceeding eight hours in the months of November, December and January, nine hours, in the months of February and October and ten hours in the rest of the year and when such hours of work are passed the working tools, implements and materials or such of them as will admit of daily removal shall be removed to places proper for their safe custody until the hour of labor shall return.

[Section XV.] (Section XV, P. L.) Be it enacted by the authority aforesaid, That the keeper of the said gaol shall from time to time with the approbation of any two of the inspectors hereafter mentioned provide a sufficient quantity of stock and materials, working tools and implements for such offenders for the expense of which the said inspectors or any two of them shall be and they are hereby authorized to draw orders to be countersigned by the commissioners of the county on the

treasurer of the county if need shall be specifying in such orders the quantity and nature of the materials, tools or implements wanted, which orders the said treasurer is hereby required to discharge out of the county stock, for which materials, tools and implements when received the said keeper shall be accountable, and the said keeper shall with the approbation of any two of the said inspectors have power to make contracts with any person whatever for the clothing, diet and all other necessaries for the maintenance and support of such convicts and for the implements and materials of any kind of manufacture, trade or labor in which such convicts shall be employed for the sale of such goods, wares and merchandise as shall be there wrought and manufactured and the said keeper shall cause all accounts concerning the maintenance of such convicts and other prisoners to be entered regularly in a book or books to be kept for that purpose and shall also keep separate accounts of the stock and materials so wrought, manufactured, sold and disposed of and the moneys for which the same shall be sold and when sold and to whom in books to be provided for those purposes, all which books and accounts shall be at all times open for the examination of the said inspectors and shall be regularly laid before them at their quarterly or other meetings as hereinafter is directed for their approbation and allowance.

[Section XVI.] (Section XVI, P. L.) Be it enacted by the authority aforesaid, That if the said inspectors at their quarterly or other meetings shall suspect any fraudulent or improper charges or any omissions in any such accounts they may examine upon oath or affirmation the said keeper or any of his deputies, servants or assistants or any person of whom any necessaries, stock, materials or other things have been purchased for the use of the said gaol or any persons to whom any stock or materials wrought or manufactured therein have been sold or any of the offenders confined in such gaol or any other person or persons concerning any of the articles contained in such accounts or any omission thereout and in case any fraud shall appear in such accounts the particulars thereof shall be

reported by the said inspectors in writing to the mayor of the said city for the purposes hereinafter mentioned.

[Section XVII.] (Section XVIII, P. L.) Be it enacted by the authority aforesaid, That in order to encourage industry as an evidence of reformation separate accounts shall be opened in the said books for all convicts sentenced to hard labor for six months and upward in which such convicts shall be charged with the expenses of clothing and subsistence and such proportionable part of the expenses of the raw materials upon which they shall be employed as the inspectors at their quarterly or other meetings shall think just and shall be credited with the sum or sums from time to time received by reason of their labor and if the same shall be found to exceed the said expenses one half of said excess shall be laid out in decent raiment for such convicts at their discharge or otherwise applied to their use and benefit as the said inspectors shall upon such occasions direct and if such offender at the end or other determination of his term of confinement shall labor under any acute or dangerous distemper he shall not be discharged unless at his own request until he can be safely discharged.

[Section XVIII.] (Section XVIII, P. L.) Be it enacted by the authority aforesaid, That no person whatever except the keeper, his deputies, servants or assistants, the said inspectors, officers and ministers of justice, counsellors or attorneys at law employed by a prisoner, ministers of the gospel or persons producing a written license signed by two of the said inspectors shall be permitted to enter within the walls where such offenders shall be confined and that the doors of all the lodging rooms and cells in the said gaol shall be locked and all lights therein extinguished at the hour of nine and one or more watchmen shall patrol the said gaol at least twice in every hour from that time until the return of the time of labor in the morning of the next day.

[Section XIX.] (Section XIX, P. L.) Be it enacted by the authority aforesaid, That the walls of the cells and apartments in the said gaol shall be whitewashed with lime and water at least twice in every year and the floors of the said cells and apartments shall be washed once every week or oftener if the

said inspectors shall so direct by one or more of the said prisoners in rotation who at the discretion of the said keeper shall have an extra allowance of diet for so doing and the said prisoners shall be allowed to walk and air themselves for such stated time as their health may require and the said keeper shall permit and if proper employment can be found such prisoners may also be permitted with the approbation of two of the said inspectors to work in the yard provided such airing and working in the yard be in the presence or within the view of the said keeper or his deputies or assistants.

[Section XX.] (Section XX, P. L.) Be it enacted by the authority aforesaid, That one or more of the apartments in the second story of the said gaol and at the extreme end of the west wing shall be fitted up as an infirmary and in case any such offender being sick shall upon examination of a physician be found to require it he or she shall be removed to the infirmary and his or her name shall be entered in a book to be kept for that purpose and when such physician shall report to the said keeper that such offender is in a proper condition to quit the infirmary and return to his or her employment such report shall be entered by the said keeper in a book to be kept for that purpose and the said keeper shall order him or her back to his or her former labor so far as the same shall be consistent with his or her state of health and the said mayor, aldermen and justices shall from time to time appoint a physician to attend at said gaol.

[Section XXI.] (Section XXI, P. L.) Be it enacted by the authority aforesaid, That the keeper of the said gaol shall have power to punish all such prisoners guilty of assaults within the said gaol when no dangerous wound or bruise is given, profane cursing and swearing, indecent behavior, idleness or negligence in work or wilful mismanagement of it or of disobedience to the orders and regulations hereinafter directed to be made by confining such offenders in the dark cells or dungeons of the said gaol and by keeping them upon bread and water only for any term not exceeding two days and if any such prisoner shall be guilty of any offense within the said gaol which the said keeper is not hereby authorized to punish or for which

he shall think the said punishment is not sufficient by reason of the enormity of the offense he shall report the same to two of the said inspectors who if upon proper inquiry they shall think fit shall certify the nature and circumstances of such offense with the name of the offender to the mayor of the said city and the mayor shall thereupon order such offenses to be punished by moderate whipping or repeated whippings not exceeding thirteen lashes each or by close confinement in the said dark cells or dungeons with bread and water only for sustenance for any time not exceeding six days or by all the said punishments.

[Section XXII.] (Section XXII, P. L.) Be it enacted by the authority aforesaid, That it shall be lawful for the mayor and two aldermen of the said city and two of the justices of the peace of the said county on the first day of May annually to appoint a suitable person to be keeper of the said gaol who shall however be liable to be removed by the mayor, aldermen and justices aforesaid when occasion may require in which case another shall from time to time be appointed in like manner who shall receive as full compensation for his services and in lieu of all fees and gratuities by reason or under color of the said office so much per annum as the said mayor, aldermen and justices at the time of such appointment shall direct to be paid in quarterly payments by orders drawn on the treasurer of the said county by said mayor and also five per centum on the sales of all articles manufactured by the said criminals and such keeper shall have power with the approbation of the mayor, aldermen and justices aforesaid, to appoint a suitable number of deputies and assistants at such reasonable allowances as the mayor, aldermen and justices aforesaid shall think just which allowances shall be paid quarterly in like manner and before any such gaoler shall exercise any part of the said office he shall give bond to the treasurer of the county with two sufficient sureties to be approved by the said mayor in the sum of five hundred pounds upon condition that he, his deputies and assistants shall well and faithfully perform the trusts and duties in them reposed, which bond the due execution thereof being proved before and certified by any of the alder-

men of the said city shall be recorded in the office of the recorder of deeds for the county of Philadelphia and copies thereof exemplified by the said recorder of deeds shall be legal evidence in all courts of law in any suit against such gaoler or his sureties.

[Section XXIII.] (Section XXIII, P. L.) Be it enacted by the authority aforesaid, That it shall be lawful for the said mayor, aldermen and justices aforesaid on the first Monday in May next to appoint twelve inspectors, six of whom shall be in office until the first Monday in November next and six until the first Monday in May following, and so from time to time six inspectors shall be appointed in manner aforesaid on the first Mondays in May and November annually, and if any person so appointed not having a reasonable excuse to be approved of by the said mayor, aldermen and justices shall refuse to serve in the said office he shall forfeit and pay the sum of ten pounds to be recovered by action of debt as debts of like value are recoverable by the laws of this commonwealth, the one half thereof to the use of the person suing, the other half to be paid to the treasurer of the said county to be applied to the purposes hereinbefore mentioned.

[Section XXIV.] (Section XXIV, P. L.) Be it enacted by the authority aforesaid, That the said inspectors, seven of whom shall be a quorum, shall meet once in three months, in an apartment to be provided for that purpose in the said gaol and may be especially convened by the two acting inspectors when occasion may require, and they shall at their first meeting appoint two of their members to be acting inspectors who shall continue such for such time as shall be directed by the said inspectors or a majority of them when met together. And the acting inspectors shall attend at the said gaol at least once in each week and shall examine into and inspect the management of the said gaol and the conduct of the said keeper and his deputies so far as respects the said offenders employed at hard labor and the directions of this act and shall do and perform the several matters and things hereinbefore directed by them to be performed.

[Section XXV.] (Section XXV, P. L.) Be it further enacted

by the authority aforesaid, That the board of inspectors at their quarterly or other meeting shall make such further orders and regulations for the purpose of carrying this act into execution as shall be approved of by the mayor and recorder of the said city and such orders and regulations shall be hung up in at least six of the most conspicuous places in the said gaol and if the said keeper or any of his deputies or assistants shall obstruct or resist the said inspectors or any of them in the exercise of the powers and duties vested in them by this act such person shall forfeit and pay the sum of twenty pounds to be recovered as aforesaid and shall moreover be liable to be removed in manner aforesaid from his respective office or employment in the said gaol.

[Section XXVI.] (Section XXVI, P. L.) Be it further enacted by the authority aforesaid, That the present house of correction in the city of Philadelphia shall be reserved for the exclusive reception and confinement of debtors and persons committed to secure their appearance as witnesses in criminal prosecutions and not charged with any misdemeanor or higher offense, which witnesses if bound in recognizances for their appearance in favor of the prosecution shall be allowed the sum of six pence per diem to be paid out of the county stock, and the commissioners of the said county are hereby authorized to make such alterations in the same not exceeding the sum of sixty pounds as shall be necessary to accommodate all such prisoners and to distinguish the said house of correction by a proper title henceforward it shall be called and known by the name of "The Debtors' Apartment."

[Section XXVII.] (Section XXVII, P. L.) Be it further enacted by the authority aforesaid, That the keepers of the said gaol and of the said house of correction respectively shall forthwith exchange the several prisoners in their respective custody conformable to the true intent and meaning of this act and shall be and are hereby indemnified for all such prisoners as shall be safely delivered into proper custody pursuant to the directions of this act:

And whereas it may not at present be practicable to introduce all the above mentioned regulations into each of the

counties of this state although it is necessary that an uniformity of punishment should as much as possible prevail in all:

[Section XXVIII.] (Section XXVIII, P. L.) Be it enacted by the authority aforesaid, That the malefactors sentenced to hard labor as aforesaid in the several counties of this state other than the county of Philadelphia shall be employed in the several gaols and work houses in the respective counties in such hard and servile labor and fed and clothed in such manner as is hereinbefore directed. And the sheriff of the proper county to whom the said malefactors shall be committed in execution of their sentence shall from time to time with the approbation of the justices of the court of quarter sessions of the proper county in open court appoint so many keepers of the said malefactors as shall be necessary, whose wages shall be ascertained and allowed by the said court and paid by the treasurer of the county out of the moneys in his hands raised for the use of the said county by a warrant drawn by the said sheriff and at least one of the commissioners of the proper county and that the duty of the said keepers shall be to superintend and direct their labors, manage and attend to their clothing, diet and lodging and take care that they be safely kept and the better to effect this purpose they shall have authority to confine in close durance apart from all society all those who shall refuse to labor, be idle or guilty of any trespass and during such confinement to withhold from them all sustenance except bread and water, and also to put iron yokes around their necks, chains upon their leg or legs or otherwise restrain in irons such as shall be incorrigible or irreclaimable without such severity.

[Section XXIX.] (Section XXIX, P. L.) Be it enacted by the authority aforesaid, That the court of quarter sessions of any such county shall have power either ex officio or upon information against any such keeper for partiality or cruelty to call before them such keeper together with the material witnesses and inquire into his conduct and if it shall appear that he hath been guilty of gross partiality or cruelty it shall and may be lawful for the said court to suspend or remove him, and any of the judges of the supreme court when upon the cir-

cuit in such county either on their own motion or on complaint made by any other may take original cognizance of the misbehavior of any keeper and remove him from office if they see cause and in case of suspension or removal of all or any of the said keepers either by the justices of the quarter sessions or the judges of the supreme court the sheriff of the proper county with the approbation of the justices of the quarter sessions of the same county shall and he is hereby authorized and directed to appoint another keeper or keepers in the room of such as shall have been so suspended or removed.

[Section XXX.] (Section XXX, P. L.) Be it further enacted by the authority aforesaid, That the keepers of the gaols and workhouses or houses of correction in such counties shall once every three months or oftener if required furnish the commissioners of their respective counties with a complete calendar or list of all persons committed to their respective custody under sentence of such servitude, together with the names of their crimes, the term of their servitude, in what court condemned, the ages and the description of the persons of such as shall appear to be too old and infirm or otherwise incapable to undergo hard labor out of the gaols or work houses, and the said commissioners shall at the charge of the proper county provide the clothing and the food hereinbefore directed for them as also such articles and materials of labor and manufacture as shall be most suitable for the employment of all those who are capable of labor or manufacture and deliver the same to the said gaoler or workhouse keeper, taking a receipt therefor; and that the gaoler or workhouse keeper shall render an account quarterly or oftener if required to the commissioners of the work done by the said malefactors and dispose of the same in such manner as the commissioners shall direct and the said commissioners are hereby authorized from time to time to draw orders or give their warrants on the treasurer of the proper county for the advance of such sums as they shall think reasonable and necessary for carrying this act into execution and all expenses and charges incurred or to be incurred by virtue of this act shall be levied and raised as other county charges are and be accounted for in like manner excepting the said sum of five

hundred pounds directed by this act to be paid out of the treasury of the state towards erecting the said cells in the yard of the gaol of the county of Philadelphia.

[Section XXXI.] (Section XXXI, P. L.) Be it enacted by the authority aforesaid, That the said keepers of any of the gaols, and houses of correction within this commonwealth, their deputies and assistants in case any of the said offenders shall escape from confinement without the knowledge or consent of the said keepers, deputies or assistants shall forfeit and pay the sum of ten pounds to be recovered and applied in manner aforesaid. Provided, That nothing in this act contained shall be deemed or taken to extend to escapes voluntarily suffered by any such keepers of the said gaols or workhouses.

[Section XXXII.] (Section XXXII, P. L.) Be it enacted by the authority aforesaid, That if any such offender sentenced to hard labor shall escape, he or she shall on conviction thereof suffer such additional confinement at hard labor agreeably to the directions of this act and shall also suffer such additional corporal punishment not extending to life or limb as the court in which such offender shall have been convicted shall adjudge and direct. And if any such offender shall after his or her escape be guilty of any offense for which he or she would have been sentenced to death by the laws in force before the passing of the act entitled "An act for amending the penal laws of this state"⁵ he or she shall suffer death as if the said act or this act had not been made.

[Section XXXIII.] (Section XXXIII, P. L.) Be it enacted by the authority aforesaid, That any such offenders who have been or shall be pardoned for the offenses or crimes of which he or she hath been or shall be convicted in pursuance of the said act or of this act, provided such offense was by any law in force before the passing of the said act made capital and who shall be convicted of a second offense of the like nature shall suffer death on such conviction without the benefit of clergy and any constable who shall take up and convey to gaol any convict who shall escape from his confinement shall be allowed mileage at the same rate as constables are commonly allowed to be paid by the treasurer of the proper county.

[Section XXXIV.] (Section XXXIV, P. L.) Be it enacted by the authority aforesaid, That any felon convicted in any county in this state other than the county of Philadelphia of any felony or felonies for which he or she shall be sentenced to hard labor for the space of twelve months or upwards may at the discretion of the court in which such felon shall be convicted within three months after such conviction be removed at the expense of the said county under safe and secure conduct to the gaol in the said county of Philadelphia and therein be confined, fed, clothed and employed at hard labor as is hereinbefore directed for the remaining part of the time for which by such sentence he or she shall be liable to imprisonment, and the commissioners of the said county of Philadelphia upon the application of the said inspectors shall have authority from time to time to draw orders upon the treasurer of the county from which such felon shall have been so removed for the expenses of feeding and clothing such felon, if the labor of such felon shall not be sufficient to pay the same, which orders the treasurer of such county shall accept and pay.

[Section XXXV.] (Section XXXV, P. L.) Be it enacted by the authority aforesaid, That if any gaoler or other person whatever shall introduce into or give away, barter or sell within any gaol or house of correction in the said city or any of the counties of this state any spirituous or fermented liquors excepting only such as the gaoler or keeper of such gaol or house of correction shall make use of in his own family or such as may be required for any prisoner in a state of ill health and for such purpose prescribed by an attending physician and delivered into the hands of such physician or other person appointed to receive them, such person shall forfeit and pay the sum of five pounds to be recovered as debts of like value may be recovered by the laws of this state, one moiety thereof to the use of the person suing, the other moiety to be paid to the said inspectors for the purposes in this act contained.

[Section XXXVI.] (Section XXXVI, P. L.) Be it enacted by the authority aforesaid, That the act entitled "An act for amending the penal laws of this state"¹ and the act entitled

¹ See Ante.

“An act to amend an act entitled ‘An act for amending the penal laws of this state’”¹ shall be and they are hereby repealed.

[Section XXXVII.] (Section XXXVII, P. L.) Be it enacted by the authority aforesaid, That this act shall be in force for the term of five years and from thence to the end of the next session of the general assembly and no longer.

[Section XXXVIII.] (Section XXXVIII, P. L.) And be it further enacted by the authority aforesaid, That the force and operation of the act hereinbefore mentioned entitled “An act for amending the penal laws of this state”² shall notwithstanding the said act is herein repealed remain valid and effectual as to all persons convicted and sentenced to confinement, servitude and hard labor conformably to the true intent and meaning of the said act and of this act.

Passed April 5, 1790. Recorded L. B. No. 4, p. 105. See the Acts of Assembly passed September 23, 1791, Chapter 1513; April 4, 1792, Chapter 1636; April 22, 1794, Chapter 1777; April 18, 1795, Chapter 1861; March 20, 1797, Chapter 1929; April 4, 1799, Chapter 2051.

Sections 1, 2, 3, 4, 5, 6, 7, 32 and 33 repealed by the Act of Assembly passed March 31, 1860. Chapter 376. P. L. of 1860, p. 452.

CHAPTER MDXVII.

AN ACT FOR THE PAYMENT OF THE CLAIM OF TURNBULL, MARMIE AND COMPANY.

(Section I, P. L.) Whereas it appears to this house that Messrs. Turnbull, Marmie and Company late contractors for a part of the continental army had on the first day of June one thousand seven hundred and eighty-seven a warrant drawn by the board of treasury of the United States on Thomas Smith, Esquire, continental loan officer, for the sum of three thousand

¹ Passed March 27, 1789, Chapter 1409.

² Ante.