

which was by law the stated time for holding said courts. And whereas as doubts are entertained whether such failure of opening and holding said courts doth not operate as a discontinuance of all suits, process and proceedings pending therein. Therefore:

[Section I.] (Section I, P. L.) Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania, in General Assembly met, and it is hereby enacted by the authority of the same, That all suits, process and proceedings, which were pending in the courts of general quarter sessions of the peace and common pleas of the county of Montgomery, which by law ought to have been holden on the second Monday of February, in the year of our Lord one thousand seven hundred and ninety-nine, be, and they are hereby, revived, and the same proceedings may be had at the same courts in all suits and process aforesaid, and in all things relating to the same, as by law might have been had at the said courts, respectively, in which the same were pending, or to which the same were returnable.

Passed March 20, 1799. Recorded L. B. No. 6, p. 357.

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## CHAPTER MMXXXII.

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### AN ACT TO ENABLE THE JUSTICES OF THE SUPREME COURT TO HOLD CIRCUIT COURTS WITHIN THIS COMMONWEALTH.

[Section I.] (Section I, P. L.) Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania, in General Assembly met, and it is hereby enacted by the authority of the same, That instead of the courts of *nisi prius*, as now held, a court, styled a circuit court, shall be held after the end of the next December term of the supreme court of this commonwealth, by the justices of the same court, or one or more of them, in the several counties of this commonwealth, except the county of Philadelphia, at such times and places as the said justices shall direct and appoint, having due regard to

the convenience of the people, and so as to interfere as little as may be with the courts of common pleas and courts of quarter sessions of the peace in the said several counties.

[Section II.] (Section II, P. L.) And be it further enacted by the authority aforesaid, That the said justices of the supreme court, sitting in banc, shall, at and during the next December term of the said supreme court, direct and appoint the several times and places of holding the said circuit courts in the succeeding spring or summer; and at and during their sitting in banc in March term following, direct and appoint the several times and places of holding the said circuit courts in the succeeding autumn or winter, and in like manner, at the several subsequent December and March terms, respectively, direct and appoint the times and places of holding the said several circuit courts, and shall forthwith cause publication to be made in two of the newspapers of the city of Philadelphia, of the several times and places of holding the said courts, respectively.

[Section III.] (Section III, P. L.) And be it further enacted by the authority aforesaid, That, from and after the last day of the next December term of the said supreme court, the said justices at the circuit court shall have full power and authority, by virtue of this act, when and often as there shall be occasion, to allow and take cognizance of appeals to the said circuit courts from the register's and orphans' courts in the said several counties, except the county of Philadelphia, and to issue writs of *certiorari*, *habeas corpus*, and all other remedial and other writs and process, grantable by the said justices by virtue of their offices, excepting writs of error and *certiorari* after judgments, orders or decrees given or obtained, and have the same made returnable into the offices of the clerks of the said circuit courts in the said counties, respectively, to which the said writs and process shall be issued as aforesaid; and that each of the said circuit courts shall have a public seal, and all writs of *certiorari*, *habeas corpus*, and all other remedial and other writs and process, from the said several circuit courts shall, in the usual form, be made out and issued by the said clerk of [the] circuit courts in their respective counties, and sealed with the seal of such

court, and tested in the name of the chief justice or the judge presiding at and signed by the clerk of the same court; and that [the] third Mondays in March, first Mondays of September, and second Mondays in December, in every year after the last day of next December term as aforesaid, shall be general *teste* and return days in the said circuit courts, at which all writs and process shall be tested and made returnable into the offices of the clerks of the said several circuit courts, respectively, which said *teste* and return days shall be available in law in like manner, and have the same effect, to all intents and purposes, as if the said circuit courts had been by law appointed to be held and regularly opened on the said third Mondays in March, first Mondays in September, and second Mondays in December. And in order that writs and process may be issued out of the said circuit courts, respectively, immediately after the end of the said December term.

[Section IV.] It is hereby enacted, That the last day of same December term shall be [used] as the first *teste* day, and the third Monday in March following as the return day, of said circuit courts, with like effect and operation as the several *teste* and return days hereinbefore appointed are declared to have: Provided always nevertheless, That every day of the said circuit courts shall be good return days of process for summoning and obliging witnesses to appear and give testimony in said court, and summoning and enforcing the appearance of jurors to try issues therein, punishing contempts by attachments, and such other writs and process as the said justices shall deem necessary for the advancement of justice to be made returnable in the said circuit courts.

[Section V.] (Section IV, P. L.) And be it further enacted by the authority aforesaid, That the judges of the supreme court, or any one or more of them, while holding any circuit court, shall have power to give judgment, pass decrees, and award execution, and, generally, have, use and exercise similar power in any cause or suit had before them, and in all cases wherein jurisdiction is given by this act, in as ample manner as if sitting in banc, and shall have power to try any capital or other criminal case which shall have been removed into the said circuit court, in the manner which now is, or hereafter may be,

directed by law, though not sitting as a court of oyer and terminer, upon any indictment which may have been found at any county court of oyer and terminer or sessions of the peace, and without any new indictment, and upon conviction of the crimes, misdemeanors, or offences, charged in any such indictment, may, at such court, proceed to pass sentence, assess fines, forfeit recognizances, and pronounce final judgment and award execution, as fully and amply as the supreme court now may or can do when sitting in banc; and upon the removal of any such indictments, in the manner directed by law, the same, with all the proceedings thereon, shall be transmitted and filed with the clerk of the circuit court, as in civil cases, that the said judges at their next circuit court may proceed thereon. Provided always, That if either of the parties to any suit removed from the common pleas, the register's or orphans' court, shall be dissatisfied with the judgment or decision of the said circuit courts, on any demurrer, special verdict, case stated, point reserved for the consideration of the court on the trial, motion in arrest of judgment, or for new trial, or to set aside a judgment, discontinuance, or *non pros*, that then, and in such case, the party so dissatisfied with the judgment of the said circuit court, and appealing from the same to the said supreme court, shall obtain from the clerk of the circuit court of the respective county, a record of all the proceedings, and file the same with the prothonotary of the supreme court before the next term, and in failure thereof, judgment shall be confirmed and execution awarded, in the same manner as if such appeal had not been made; but no such appeal shall be available, unless the counsel for the said appellant shall state in writing his reasons for said appeal, and subscribe his name to the same, certifying his belief that the same are sufficient in law to obtain a decision in favor of his client, and are not made for the purpose of delay; and after hearing and determination in the said supreme court, in any of the cases aforesaid, the said supreme court shall order the records aforesaid, with the decision and determination thereon written and duly certified, to be remitted to the said circuit courts, respectively, on payment of the fees incurred in the said supreme court, and

the same decision and determination shall be duly carried into execution and effect by the said several circuit courts.

[Section VI.] (Section V, P. L.) And be it further enacted by the authority aforesaid, That the record itself, and not barely a transcript thereof, shall be hereafter removed, by writ of *habeas corpus cum causa*, in like manner as the same might be removable by writ of *certiorari*, and that as well in the supreme court as in the circuit courts aforesaid; but no writ of removal shall be allowable after the cause is one term at issue below, but the pleadings of the same may be altered or amended, according to such rules and regulations as are now in force in the supreme court, or as the judges of the said court may hereafter make, for the purpose of carrying this act into execution.

[Section VII.] (Section VI, P. L.) And be it further enacted by the authority aforesaid, That all recognizances of special bail, or other recognizances, together with the writs, pleadings, rules, docket entires and records, and also all recognizances to answer to any criminal charge, or to give evidence, shall be removed and sent up by virtue of the said writs of *certiorari* or *habeas corpus*, and shall be sued or prosecuted upon, and be of the same force and effect, when removed into the said circuit court for the respective county, as the same might or could have been in the courts to which the said writs of *certiorari* or *habeas corpus* were directed, and that all appearances and commitments to the sheriff's custody of the person of the party in the said courts, to which the said writs of *certiorari* shall be directed and issued as aforesaid, shall be considered as operating in the said circuit courts, in the same manner as if such commitments had been by the said circuit courts.

[Section VIII.] (Section VII, P. L.) And be it further enacted by the authority aforesaid, That the prothonotaries of the several courts of common pleas in this state, except in the county of Philadelphia, shall perform the duties of clerks of the said several circuit courts in their respective counties, and shall have like powers in and for their respective counties to take bail, administer oaths and affirmations in conducting the said busi-

ness, to enter confessions of judgment, and, in general, to do any other act or thing as clerk of their said circuit courts as the prothonotary of the said supreme court may or can do by virtue of his office; and whenever the judges of the supreme court shall hold any court of oyer and terminer and general gaol delivery in any county of this commonwealth, the said prothonotaries of the courts of common pleas shall be clerks of oyer and terminer, held by the justices of the supreme court in their respective counties, by virtue of their offices aforesaid.

[Section IX.] (Section VIII, P. L.) And be it further enacted by the authority aforesaid, That the clerks, attorneys, sheriffs, criers and other officers of the said circuit courts, and the jurors and witnesses attending the same, shall be entitled to receive the like emoluments, fees and compensations, for their services, as the like officers and persons attending the courts where the said suits originated are now entitled to for similar services.

[Section X.] (Section IX, P. L.) And be it further enacted by the authority aforesaid, That the justices of the said circuit courts may appoint proper persons to take the depositions of witnesses in said courts, on oath or affirmation, and to reduce their testimony to writing, agreeably to rules to be made by the said courts for that purpose, also in cases where the said courts are by law authorized to determine on facts, to examine into the same, and make report to the said courts, for which they shall be entitled to a reasonable compensation, to be allowed by the said courts.

[Section XI.] (Section X, P. L.) And be it further enacted by the authority aforesaid, That when any lands, tenements or hereditaments, happen to be sold by virtue of any testatum executions, or other writs grounded thereon, issued either by the said supreme or circuit courts, it shall and may be lawful for the sheriff who sells the same, to acknowledge the same before the justices of the said circuit courts, in the county where the lands lie or are situated, or in the courts whence the executions respectively issued, but not elsewhere, any law to the contrary thereof in anywise notwithstanding.

[Section XII.] (Section XI, P. L.) And be it further enacted by the authority aforesaid, That the prothonotary of the supreme court, between the next December term and the March term following, be, and he is hereby, empowered and directed to purchase dockets for each of the said circuit courts, and to employ a clerk, under his direction, to make out a docket for each of the said circuit courts, containing a statement of all actions then pending and undetermined in the said supreme court, (excepting writs of error and other cases remaining before the said supreme court for their decision in matters of law) and that the said prothonotary shall have the said circuit court dockets, together with the records, declarations, and other papers respecting the said actions and suits, then pending and undetermined as aforesaid, ready to be delivered to the respective clerks of the said circuit courts, by the first day of the said March term; and the said actions and suits, pending and undetermined as aforesaid, and transferred as aforesaid by the prothonotary of the supreme court to the circuit court docket, shall be considered as depending in the said circuit courts, respectively, from the expiration of the said next December term, and proceeded on in like manner with respect to the demands, and also the fees incurred in the supreme court, as if the same had been originally commenced in the said circuit courts; the price paid for the said circuit court dockets, and the wages of the clerk employed as aforesaid, to be repaid to the prothonotary of the said supreme court by the said clerks of the said circuit courts, respectively, and reimbursed by their respective counties.

[Section XIII.] (Section XII, P. L.) And be it further enacted by the authority aforesaid, That in all actions or suits in the said supreme court, where judgments shall have been rendered, or decrees passed, before or during the said December term next, and in all cases then depending before the said supreme court for their decision [on] law points, the records, dockets, declarations, and other papers respecting the same, shall be and remain in the custody of the prothonotary of the supreme court, and be proceeded on in the said supreme court by execution, or otherwise, as to justice shall appertain; and nothing contained in this act shall be construed to prevent the said jus-

tices from holding courts of *nisi prius*, and doing other business for the county of Philadelphia, as fully, to all intents and purposes, as if this act had not been made; but their power of sustaining appeals directly to the said supreme court from the orphans' or register's courts, or of issuing writs of *certiorari*, or *habeas corpus cum causa*, to the courts in any other counties, except the county of Philadelphia, returnable into the said supreme court, shall, after the end of the said December term next be wholly superseded.

[Section XIV.] (Section XIII, P. L.) And be it further enacted by the authority aforesaid, That the justices of the supreme court, or a majority of them, from time to time, as occasion shall require, may establish and declare what rules for the better conducting and expediting the business of the said circuit courts shall be considered as of course, and what rules are discretionary, according to the circumstances of the case, and grantable only on motion; and the several attorneys shall have the power of directing the prothonotaries of the several circuit courts to enter on their dockets such rules as shall be of course, according to the said regulations, without any application to the court for that purpose; and that the justices of the said supreme court, either in banc at Philadelphia, or at the said circuit courts, respectively, shall, on application made to them, have full power to enforce the due execution and returns of writs and process, and make and enforce such rules and orders respecting the said actions or suits, which shall be depending in the said several circuit courts, as they shall see fit; and a certificate of the prothonotary of the said supreme court, under seal, of the same rules and orders, shall be filed and entered on the dockets of the said several circuit courts, and have the same validity and effect, as if made in the said circuit courts respectively.

[Section XV.] (Section XIV, P. L. ) And be it further enacted by the authority aforesaid, That, from and after the last day of December term next, no judgment rendered, either in the said supreme court or any of the said circuit courts, shall be a lien on real estates, excepting in the county in which such judgment shall be rendered, and that every *testatum* execution shall be a lien upon lands and tenements, only from the time of the



delivery thereof to the sheriff, who is directed to endorse the precise time of receiving the same, and shall certify forthwith a transcript thereof, together with the day and time of such *testatum* execution coming to his hands, in and to the office of the clerk of the circuit court for the county wherein such lands and tenements shall be, unless the same lands shall be in the county of Philadelphia, in which case such transcript shall be returned into the office of the prothonotary of the supreme court, and shall also make the return of the said writ and endorsement to the office of the court from whence the writ issues.

Passed March 20, 1799. Recorded L. B. No. 6, p. 358.

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### CHAPTER MMXXXIII.

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AN ACT TO CONTINUE AN ACT, ENTITLED, "AN ACT TO REVIVE THE INCORPORATION OF THE SUBSCRIBERS TO THE BANK OF NORTH AMERICA."

[Section I.] (Section I, P. L.) Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania, in General Assembly met, and it is hereby enacted by the authority of the same, That the act, entitled, "An act to revive the incorporation of the subscribers to the bank of North America," passed the seventeenth day of March, in the year of our Lord one thousand seven hundred and eighty-seven<sup>1</sup> be continued in full force and virtue, in all its parts, for the term of fourteen years from and after the seventeenth day of March, one thousand eight hundred and one, as fully and effectually as if this present period of its extension were a part of the act above recited, and from thence until the end of the sessions of the general assembly of Pennsylvania thence next following.

Passed March 20, 1799. Recorded L. B. No. 6, p. 356.

<sup>1</sup>Chapter 1278.