

CHAPTER CCLV.

AN ACT FOR ESTABLISHING COURTS OF JUDICATURE IN THIS PROVINCE.

Whereas the late King Charles the Second, by his royal charter and grant to William Penn, Esquire, of that tract of land called Pennsylvania, and for erecting the same into a province, did, for himself, his heirs and successors, grant free, full and absolute power to the said William Penn, and his heirs, and to his and their deputies and lieutenants, for the good and happy government of the said country, by and with the advice, assent and approbation of the freemen of the said country, or of the greater part of them, or of their delegates or deputies, in assembly, when and as often as need should require, to ordain, make and enact any laws whatsoever for the public state, peace and safety of the said country, or unto the private utility of particular persons, unto their best discretion; and likewise to do all and everything and things which unto the complete establishment of justice, unto courts and tribunals, forms of judicature, and manner of proceedings do belong. And, by judges, by the said William Penn, his heirs, their deputies and lieutenants, appointed, to award process, hold pleas, and determine in all the said courts and tribunals all actions, suits and causes whatsoever, as well criminal as civil, personal, real and mixed. Provided the said laws so made and published be consonant to reason, and not repugnant or contrary, but as near as convenient may be agreeable to the laws, statutes and rights of the kingdom of England; saving and reserving to the said King Charles, his heirs and successors, the receiving, hearing and determining of the appeal and appeals of all or any person or persons, touching any judgment to be there made or given:

And whereas, by virtue and in pursuance of the said grant, divers acts and ordinances have been made, from time to time, for the holding of courts, and the administration of justice within this province, which, by the increase of inhabitants and

change of circumstances of the country, seem necessary to be altered and amended:

[Section I.] Be it therefore enacted by Sir William Keith, Baronet, Governor of the Province of Pennsylvania, &c., by and with the advice and consent of the freemen of the said Province in General Assembly met, and by the authority of the same, That there shall be a court styled the general quarter-sessions of the peace and gaol delivery, holden and kept four times in every year in each county of this province, viz., at Philadelphia, for the county of Philadelphia, on the first second day of the week, called Monday, in the months called March, June, September and December; at Bristol, for the county of Bucks, on the eleventh day following (inclusive) in every of the same months; and at Chester, for the county of Chester, on the last third day of the week, called Tuesday, in the months called May, August, November and February.

And that there shall be a competent number of justices in every of the said counties, nominated and authorized by the governor or lieutenant-governor for the time being, by commission, under the broad seal of this province; which said justices, or any three of them, shall and may hold the said general sessions of the peace and gaol delivery according to law, and as fully and effectually as any justice of the peace, justices of the assize, justices of oyer and terminer, or of gaol delivery, may or can do.

[Section II.] And be it further enacted, That the said justices of the peace, or any three of them may, pursuant to their said commissions, hold special and private sessions, when and as often as occasion shall require; and that the said justices, and every of them, shall have full power and authority, in or out of sessions, to take all manner of recognizances and obligations, as any justices of the peace of Great Britain may, can, or usually do; all which said recognizances and obligations shall be made to the King [and] his successors. And all recognizances for the peace, behavior, or for appearance, which shall be taken by any of the said justices out of sessions, shall be certified into their said general sessions of the peace, to be holden next after the taking thereof. And every recognizance taken before any

of them, for suspicions of any manner of felony, or other crime, not triable in the said court of quarter-sessions of the peace and gaol delivery, shall be certified before the said justices of the supreme court of oyer and terminer, at their next succeeding court, to be holden next after the taking thereof, without concealment, detaining or embezzling of the same. But in case any person or persons shall forfeit his or their recognizances of the peace, behavior or appearance, for any cause whatsoever, then the said recognizance so forfeited, with the record of the default, or cause of forfeiture, shall be sent and certified without delay, by the justices of the peace, into the said supreme court, as the case may require, that thence process may issue against the said parties, according to law. All which forfeitures shall be levied by the proper officers, and go to the governor for support of government.

[Section III.] And be it further enacted, That all fines and amercements which shall be laid before the justices of the said courts of general quarter-sessions of the peace and gaol delivery, shall be taxed, affeered, and set duly and truly, according to the quality of the offense, without partiality or affection, and shall be yearly estreated by the clerks of the said courts respectively into the said supreme court, to the intent that process may be awarded to the sheriff of every county, as the case may require, for levying such of their fines and amercements as shall be unpaid, to the uses for which they are or shall be appropriated.

Provided always, That the said courts of the general quarter-sessions of the peace may be kept and continued for the space of three days in the county of Philadelphia, at any of the times hereinbefore appointed to hold and keep the same courts and sessions there; and for the space of two days in either of the said counties of Bucks and Chester respectively, at any of the said times hereinbefore appointed to hold and keep the said courts and sessions there, in manner aforesaid.

Provided also, That nothing herein contained shall deprive or abridge the mayor, recorder and aldermen, of the city of Philadelphia, of any powers, privileges, jurisdictions or franchises, granted them by charter or the laws of this province.

And to the end that persons indicted or outlawed for felonies, or other offenses, in one county or town corporate, who dwell, remove or be received in[to] another county or town corporate, may be brought to justice:

[Section IV.] Be it further enacted, That the said justices, or any of them, shall and may direct their writs or precepts to all or any the sheriffs or other officers of the said counties or towns corporate within this province, where need shall be, to take such persons indicted or outlawed. And that it shall and may be lawful to and for the said justices, and every of them, to issue forth subpoenas and other warrants, under their respective hands and seal of the county, into any county or place of this province, for summoning or bringing any person or persons to give evidence in and upon any matter or cause whatsoever, now or hereafter examinable, or in anyways triable by or before them, or any of them, under such pains and penalties as subpoenas, or warrants of that kind usually are or ought by law to be granted or awarded.

[Section V.] And be it further enacted by the authority aforesaid, That if any person or persons shall find him or themselves aggrieved with the judgment of any of the said courts of general quarter-sessions of the peace and gaol delivery, or any other courts of record within this province, it shall and may be lawful to and for the party or parties so aggrieved to have his or their writ or writs of error, which shall be granted them of course, in manner as other writs of error are to be granted, and made returnable to the said supreme court of this province.

Provided always, That when any writ of error shall be granted upon any judgment given or to be given for the said city of Philadelphia, the mayor, recorder and aldermen of the said city of Philadelphia, and their successors, or any of them, shall not be compelled upon any of the said writs, or any other writ or writs directed to them or any of them, to remove, send or certify into the said supreme court, or elsewhere, any of the indictments or presentments taken or to be taken before them, or the record of the judgments and proceedings upon [any] such indictments or presentments, but only the tenors or transcripts of the said records under their common seal. And after such

judgments are reversed or affirmed, or causes lawfully removed from the said city courts are tried in the said supreme courts, it shall and may be lawful for the mayor, recorder and aldermen, and their successors, to proceed to execution or otherwise, as shall appertain according to law.

[Section VI.] And be it further enacted by the authority aforesaid, That there shall be holden and kept at Philadelphia a court of record twice in every year: (That is to say) on the twenty-fourth day of September and the tenth day of April, if the same days, or either, do not happen to be the First day of the week, and in such case the said court shall be held on the next day following; which said court shall be called and styled the supreme court of Pennsylvania. And that there shall be three persons of known integrity and ability, commissioned by the governor, or his lieutenant for the time being, by several distinct patents or commissions, under the great seal of this province, to be judges of the said court, one of whom shall be distinguished in his commission by the name of chief-justice. And every of the said justices shall have full power and authority, by virtue of this act, when and as often as there may be occasion, to issue forth writs of *habeas corpus*, *certiorari* and writs of error, and all remedial and other writs and process, returnable to the said court, and grantable by the said judges by virtue of their office, in pursuance of the powers and authorities hereby given them.

Provided always, That upon [any] issue joined in the said supreme court, such issue shall be tried in the county from whence the cause was removed, before the judges aforesaid, or any two of them, who are hereby empowered and required, if occasion require, to go the circuit twice in every year, into the respective counties of Chester and Bucks, to try such issues in fact as shall be depending in the said supreme court, and removed out of either of the counties aforesaid: (That is to say) in the county of Bucks on the fourteenth day of April and the twenty-eighth day of September, and in the county of Chester on the eighteenth day of April and the second day of October, in every year; when and where they may try all issues, joined or to be joined, in the same superior

court, and to do generally all those things that shall be necessary for the trial of any issue, as fully as justices of *nisi prius* in England may or can do.

And that the said judges, or any two of them, shall have full power to hold the said court, and therein to hear and determine all causes, matters and things, cognizable in the said court, and also to hear and determine all and all manner of pleas, plaints and causes, which shall be removed or brought there from the respective [general] quarter-sessions of the peace and courts of common pleas, to be held for the respective counties of Philadelphia, Chester and Bucks, as also for the city of Philadelphia, or from any other court of this province, by virtue of any of the said writs. And to examine and correct all and all manner of errors of the justices and magistrates of this province, in their judgments, process and proceedings in the said courts, as well as in all pleas of the Crown, as in all pleas real, personal and mixed; and thereupon to reverse or affirm the said judgments, as the law doth or shall direct. And also to examine, correct and punish the contempts, omissions and neglects, favors, corruptions and defaults, of all or any of the justices of the peace, sheriffs, coroners, clerks and other officers within the said respective counties. And also shall award process for levying, as well of such fines, forfeitures and amercements, as shall be estreated into the said supreme court, as of the fines, forfeitures and amercements, which shall be lost, taxed and set there, and not paid to the uses they are or shall be appropriated.

And generally shall minister justice to all persons, and exercise the jurisdictions and powers hereby granted concerning all and singular the premises according to law, as fully and amply, to all intents and purposes whatsoever, as the justices of the court of King's Bench, common pleas and exchequer at Westminster, or any of them, may or can do.

Saving to all and every person and persons, his, her or their heirs, executors and administrators, their right of appeal from the final sentence, judgment or decree of any court within this province, to His Majesty in council, or to such court or courts, judge or judges, as by our Sovereign Lord the King, his heirs or

successors, shall be appointed in Britain, to receive, hear and judge of appeals from His Majesty's plantations.

Provided, The person appealing shall, upon entering his appeal in the court where the sentence, judgment or decree shall be given in this province, pay all the costs before that time expended in the prosecution, or defending the said suit; and shall further enter into bond, with two good and sufficient securities in the sum of three hundred pounds, to the defendant in the appeal, conditioned to prosecute the said appeal with effect within the space of eighteen months after the entry of such appeal, and to satisfy the judgment of the court from which he appeals; and further, to pay all such costs and damages as shall be adjudged to him to pay, in case a sentence, judgment or decree, pass against the said appellant, or in case he, she or they fail to prosecute their appeal with effect.

And that there shall be a fit person nominated by the judges, and commissioned by the governor to be prothonotary or clerk of the said supreme court, who shall keep and duly attend his office at some convenient place in the city of Philadelphia, and may be suspended, punished or removed by the said court for misdemeanors in his office.

[Section VII.] And be it further enacted, That all the said writs shall be granted of course, and made in the name and style of the King, his heirs and successors, and shall bear teste in the name of the chief-justice for the time being; but if he be plaintiff or defendant, in the name of one of the other justices, and shall be sealed with the judicial seal of the said court, and made returnable to the next court after the date of such writs.

Provided always, That none of the judges of the said supreme or provincial court shall sit judicially in any of the said courts of common pleas, quarter-sessions, or any other inferior court in this province.

[Section VIII.] And be it further enacted by the authority aforesaid, That the said judges of the supreme court shall have power and are hereby authorized and empowered, from time to time, to deliver the goals of all persons which now are or hereafter shall be committed for treasons, murders, and such

other crimes as (by the laws of this province) now are or hereafter shall be made capital or felonies of death as aforesaid. And for that end from time to time to issue forth such necessary precepts and process, and force obedience thereto, as justices of assize, justices of oyer and terminer, and of gaol delivery, may or can do in the realm of Great Britain.

And also, That all manner of offenses already made or declared or hereafter to be made or declared to be capital or felonies of death, by any law or act of assembly of this province, and done, perpetrated or committed, or hereafter to be done, perpetrated or committed, by any person or persons within the bounds and limits of the same province, and without the certain and known bounds and limits of any of the counties now or hereafter erected in the said province, shall be from henceforth inquired of and determined, before the said judges, by good and lawful men of the city and county of Philadelphia, in like manner and form, to all intents and purposes, as if the said offenses and felonies of death had been done, perpetrated and committed within the said city or county of Philadelphia.

Provided always, That the fees due to the judges and officers of the said court, for hearing and determining any of the said capital offenses for anything done there, shall be double the fees usually taken in the general quarter-sessions held in any of the said counties in this province, anything herein or in any other law to the contrary notwithstanding.

[Section IX.] And be it further enacted by the authority aforesaid, That a competent number of persons shall be commissioned by the governor or his lieutenant, under the broad seal of this province, who shall hold and keep a court of record in every county, which shall be styled and called the county court of common pleas, and shall be holden four times in every year at the places where the general quarter-sessions shall be respectively kept, viz., at Philadelphia, for the county and city of Philadelphia, on the day called the first Wednesday after the day appointed for the quarter-sessions to begin on there, in the months called March, June, September and December; at Bristol, for the county of Bucks, on the eleventh day following (inclusive); and at Chester, for the county of Ches-

ter, on the day called the last Tuesday in the months called May, August, November and February: which said justices, or any three of them (according to the tenor and direction of their commissions), shall hold pleas of assizes, *scire facias*, replevins, and hear and determine all and all manner of pleas, actions, suits and causes, civil, personal, real and mixed, according to the laws and constitutions of this province.

[Section X.] And be it further enacted by the authority aforesaid, That every of the said justices shall and are hereby empowered to grant, under the seal of the respective counties, replevins, writs of partition, writs of view, and all other writs and process upon the said pleas and actions, cognizable in the said respective courts, as occasion may require.

[Section XI.] And be it further enacted, That the said justices of the said respective courts shall and are hereby empowered to issue forth subpoenas under their respective hands and seal of the counties into any court or place of this province, for summoning or bringing any person or persons to give evidence in or upon the trial of any matter or cause whatsoever depending before them, or any of them, under such pains and penalties as, by the rules of the common law and course and practice of the King's courts at Westminster, are usually appointed.

[Section XII.] And be it further enacted, That upon any judgment obtained in any of the said courts of this province, and execution returned by the sheriff or coroner of the proper county where such judgment was obtained, that the party is not to be found, or hath no lands or tenements, goods or chattels, in that county, and thereupon it is testified, that the party skulks, or lies hid, or hath lands, tenements, goods or chattels in another county of this province, it shall and may be lawful to and for the court that issued out such execution, to grant, and they are hereby required to grant an alias execution, with a *testatum*, directed to the sheriff or coroner of the county or place where such person lies hid, or where his lands or effects are, commanding him to execute the same according to the tenor of such writ or writs, and make return thereof to the court of common pleas where such recovery is had or judgment

given. And if the sheriff or coroner (to whom such writ or writs shall be directed) shall refuse or neglect to execute and return the same accordingly, he shall be amerced in the court where he ought to return it, and be liable to the action of the party grieved. And the said amercements shall be truly and duly set, according to the quality of the offense, and estreated by the prothonotaries of the respective courts of common pleas of this province into the next succeeding supreme [or provincial] court in course, that thence process may issue out against the offenders for levying of such fines and amercements as shall be unpaid, to the uses for which they are or shall be appropriated.

[Section XIII.] And be it further enacted by the authority aforesaid, That if any defendant or defendants in any suit or action, by reason of his or their sudden departure out of this province, shall require a more speedy determination in such action or suit than can be obtained by the common or ordinary rules of procedure in any of the said courts of common pleas in this province, the said justices, upon application to them made, shall grant to such defendant or defendants special courts, and shall proceed to hear and determine the premises, according to the course and practice of the said courts of common pleas, and for the usual fees therein taken.

Provided always, That before the said justices shall grant such special court, or proceed to hear and determine the premises, the defendant shall give bail to the plaintiff's action by recognizance, according to the course and practice of the said court of common pleas.

And to prevent the excessive charges that have of late arisen upon executing writs of inquiry of damages:

[Section XIV.] Be it enacted, That the justices who give any interlocutory judgment shall (at the motion of the plaintiff or his attorney in the action where such judgment is given) make an order, in the nature of a writ of inquiry, to charge the jury attending at the same or next court, after such judgment is given, to inquire of the damages and costs sustained by the plaintiff in such action; which inquiry shall be made, and evidence given in open court; and after the inquest con-

sider thereof, they shall forthwith return their inquisition under their hands and seals; whereupon the court may proceed to judgment, as upon inquisitions of that kind returned by the sheriff.

[Section XV.] And be it further enacted by the authority aforesaid, That there may be a competent number of persons of an honest disposition, and learned in the law, admitted by the justices of the said respective courts, to practice as attorneys there; who shall behave themselves justly and faithfully in their practice. And if they misbehave themselves therein, they shall suffer such penalties and suspensions as attorneys at law in Great Britain are liable to in such cases; by which attorneys actions may be entered and writs, process, declarations and other pleadings and records, in all such actions and suits, as they shall respectively be concerned to prosecute or defend from time to time, may be drawn, and with their names and proper hands signed; which said attorneys so admitted may practice in all the courts of this province, without any further or other license or admittance. And that the attorney for the plaintiff in every action shall file his warrant of attorney in the prothonotary's office the same court he declares. And the attorney for the defendant shall file his warrant of attorney the same court he appears. And if they neglect so to do, they shall have no fee allowed them in the bill or costs, nor be suffered to speak in the cause, until they file their warrants respectively.

Passed May 22, 1722. Apparently never considered by the Crown, but allowed to become a law by lapse of time in accordance with the proprietary charter. See Appendix V. Section I, and the Acts of Assembly passed March 2, 1723-24, Chapter 263; March 30, 1723-24, Chapter 270; March 20, 1724-25, Chapter 285; August 27, 1727, Chapter 298; May 10, 1729, Chapter 306; February 14, 1729-30, Chapter 315; November 27, 1731, Chapter 327; August 19, 1749, Chapter 377; (the two acts of) January 27, 1749-50, Chapters 380, 384; (the two acts of) March 11, 1752, Chapters 392, 393; (the two acts of) August 22, 1752, Chapters 398, 399; September 29, 1759, Chapter 450; March 4, 1763, Chapter 494; March 23, 1764, Chapter 510; February 21, 1767, Chapter 556; May 20, 1767, Chapter 560; March 9, 1771, Chapter 629; (the four acts of) March 21, 1772, Chapters 644, 645, 654, 669; February 26, 1773, Chapter 678; January 22, 1774, Chapter 693; also the Constitution of 1776; also the acts of Assembly passed January 28, 1777, Chapter 737; February 5, 1777, Chapter 739; March 21, 1777, Chapter 754; December 20, 1777, Chap-

ter 769; (the two acts of) January 2, 1778, Chapters 776, 777; March 6, 1778, Chapter 784; March 23, 1778, Chapter 789; April 1, 1778, Chapter 798; August 19, 1778, Chapter 801; August 31, 1778, Chapter 805; September 9, 1778, Chapter 811; April 3, 1779, Chapter 837; February 28, 1780, Chapter 879; March 8, 1780, Chapter 887; March 18, 1780, Chapter 899; September 22, 1780, Chapter 915; March 28, 1781, Chapter 931; April 3, 1781, Chapter 935; April 10, 1781, Chapter 942; April 10, 1782, Chapter 966; April 15, 1782, Chapter 982; March 21, 1783, Chapter 1023; September 26, 1783, Chapter 1056; December 9, 1783, Chapter 1062; March 27, 1784, Chapter 1088; March 31, 1784, Chapter 1093; September 9, 1784, Chapter 1107; February 8, 1785, Chapter 1126; (the two acts of) February 18, 1785, Chapters 1132, 1133; March 4, 1785, Chapter 1136; March 19, 1785, Chapter 1138; March 25, 1785, Chapter 1142; March 26, 1785, Chapter 1145; April 5, 1785, Chapter 1161; April 8, 1785, Chapter 1163; September 16, 1785, Chapter 1183; September 19, 1785, Chapter 1187; March 4, 1786, Chapter 1205; March 28, 1786, Chapter 1221; (the two acts of) September 25, 1786, Chapters 1244, 1246; (the two acts of) February 28, 1787, Chapters 1261, 1263; March 15, 1787, Chapter 1275; March 28, 1787, Chapter 1281; September 20, 1787, Chapter 1311; (the two acts of) September 29, 1787, Chapters 1316, 1322; February 27, 1788, Chapter 1329; September 24, 1788, Chapter 1359; March 11, 1789, Chapter 1394; (the three acts of) March 27, 1789, Chapters 1411, 1412, 1413; September 7, 1789, Chapter 1427; September 17, 1789, Chapter 1435; September 19, 1789, Chapter 1436; September 26, 1789, Chapter 1443; September 28, 1789, Chapter 1445; December 5, 1789, Chapter 1472; December 7, 1789, Chapter 1474; March 27, 1790, Chapter 1496; April 8, 1791, Chapter 1555; for repeal of sections 1, 2, 3, 4, 6, 8, 9, 10 and 19 by act passed March 31, 1860, P. L. 427. See also the Act of Assembly passed March 27, 1712-13, Chapter 197 and note thereto for the organization of Orphans' courts; and the Act of Assembly passed May 31, 1718, Chapter 236 and note thereto for certain powers and duties of the courts in relation to crimes and criminal procedure; the articles of confederation and constitution of the United States and the acts of Congress relating to admiralty jurisdiction.

For the reorganization of the courts after the revolution see constitution of 1790 and Act of Assembly passed April 13, 1791, Chapter 1575, and for legislation subsequent to Chapter 1575, see note to that chapter.

Note.—This act was held to have been supplied (Bradford's Laws, 1728, p. 206) by the act of August 27, 1727, Chapter 298. In repealing the latter, in 1731; the crown seems to have overlooked the fact that its action revived this act; and although it became dormant three months before the time limited by the charter for its consideration had expired, the question of the crown's power to act upon it does not seem to have ever been raised.