

John Merritt,

M

MARY POWERS

Daniel McKee

3
18
18

John D. ...

Almond 1795
L A W S

OF THE) *January*

S T A T E

O F

DELAWARE,

FROM THE FOURTEENTH DAY OF OCTOBER, ONE THOUSAND SEVEN
HUNDRED, TO THE EIGHTH DAY OF AUGUST, ONE
THOUSAND SEVEN HUNDRED AND NINETY-SEVEN.

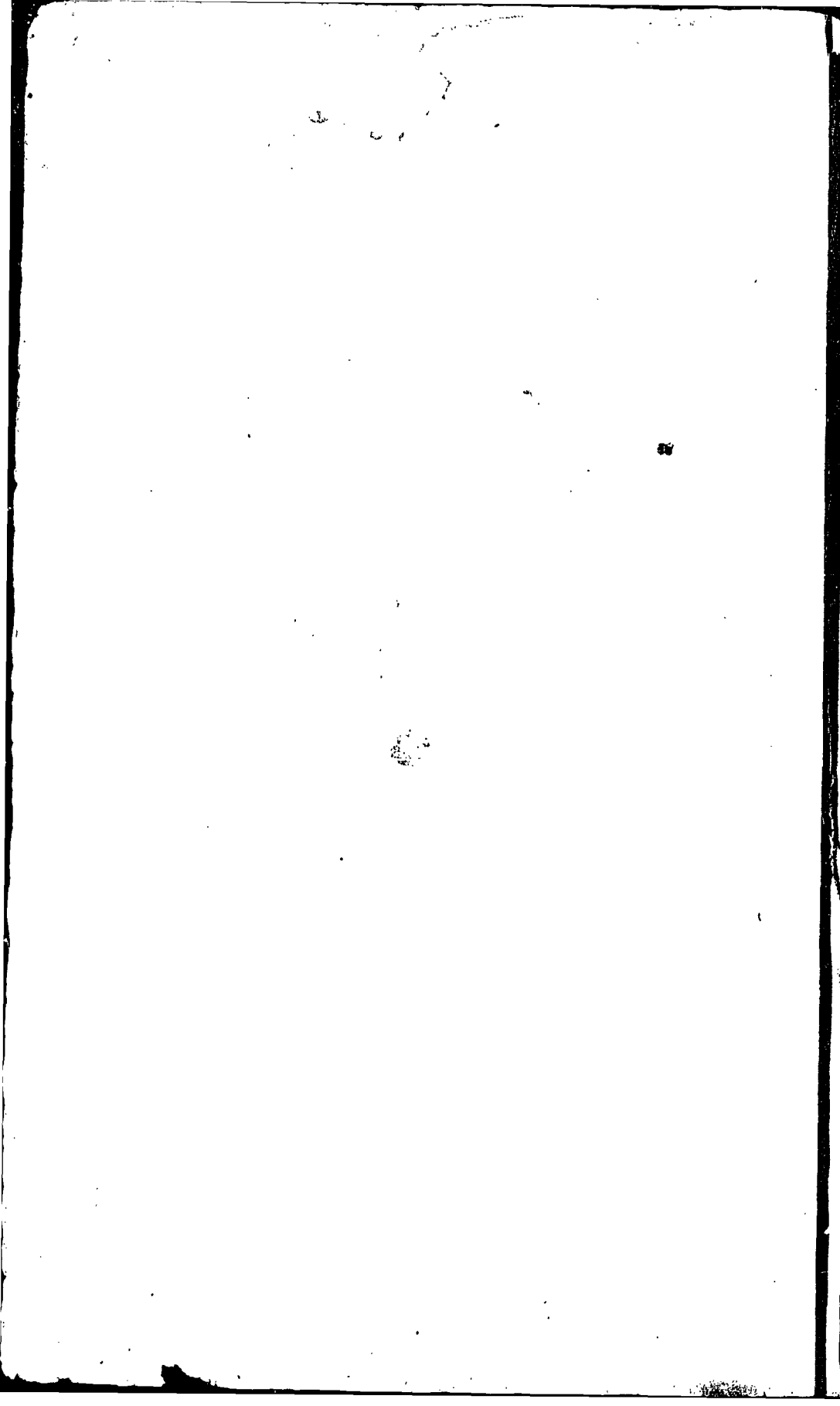
IN TWO VOLUMES.

VOLUME I.

Published by Authority.

NEW-CASTLE:
PRINTED BY SAMUEL AND JOHN ADAMS.

M, DCC, XCVII.



J. Madison

T H E
C O N S T I T U T I O N
O F T H E
United States of America.

J. Madison

WE the People of the United States, in order to form a more perfect Union, establish Justice, ensure domestic Tranquility, provide for the common Defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, DO ORDAIN AND ESTABLISH this CONSTITUTION for the UNITED STATES of AMERICA.

A R T I C L E I.

SECTION 1. **A**LL Legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives. Legislative power.

SECT. 2. The House of Representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the State Legislature. Of the House of Representatives.

No person shall be a Representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen. Qualification of the members.

Representatives and direct taxes shall be apportioned among the several states which may be included

ed within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each state shall have at least one Representative; and until such enumeration shall be made, the state of New-Hampshire shall be entitled to chuse three; Massachusetts eight; Rhode-Island and Providence Plantations one; Connecticut five; New-York six; New-Jersey four; Pennsylvania eight; Delaware one; Maryland six; Virginia ten; North-Carolina five; South-Carolina five; and Georgia three.

Future ratio of Representation.

Present ratio.

Of vacancies.

Of officers, and power of impeachment.

Of the Senate.

Of classing the Senators.

Qualification of Senators.

When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

The House of Representatives shall chuse their Speaker and other officers; and shall have the sole power of impeachment.

SECT. 3. The Senate of the United States shall be composed of two Senators from each state, chosen by the Legislature thereof, for six years; and each Senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the Legislature of any state, the executive thereof may make temporary appointments until the next meeting of the Legislature, which shall then fill such vacancies.

No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not when elected

electd, be an inhabitant of that state for which he shall be chosen.

The Vice-President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided. Of the Vice-President.

The Senate shall chuse their other officers, and also a President *pro tempore* in the absence of the Vice-President, or when he shall exercise the office of President of the United States. Of the officers of the Senate.

The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside: and no person shall be convicted, without the concurrence of two-thirds of the members present. Of the power to try impeachments.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honour, trust or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

SECT. 4. The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each state by the Legislature thereof: but the Congress may at any time by law make or alter such regulations, except as to the places of chusing Senators. Of elections.

The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day. Of the meeting of Congress.

SECT. 5. Each House shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each House may provide. Of the powers of the Houses respectively.

Each House may determine the rules of its proceedings; punish its members for disorderly behaviour, and with the concurrence of two-thirds, expel a member.

Each

Of the publica-
tion of the jour-
nals.

Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either House on any question, shall, at the desire of one-fifth of those present, be entered on the journal.

Of adjourn-
ment.

Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

Compensations
and privileges.

SECT. 6. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place.

Exclusion from
certain offices,
and disqualifica-
tion by office.

No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either House during his continuance in office.

Of revenue bills.

SECT. 7. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

Form of pro-
ceeding in pas-
sing bills.

Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his objections, to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration, two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House, it shall become a law. But in all such cases the votes of both Houses shall

shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each House respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

Every order, resolution or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be re-passed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

Orders, Resolutions, or Votes.

SECT. 8. The Congress shall have power—

General powers of Congress,

To lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States:

To borrow money on the credit of the United States:

To regulate commerce with foreign nations, and among the several states, and with the Indian tribes:

To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States:

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures:

To provide for the punishment of counterfeiting the securities and current coin of the United States:

To establish post-offices and post-roads:

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries:

To constitute tribunals inferior to the Supreme Court:

To

To define and punish piracies and felonies committed on the high seas, and offences against the law of nations :

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water :

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years :

To provide and maintain a navy :

To make rules for the government and regulation of the land and naval forces :

To provide for calling forth the militia to execute the laws of the union, suppress insurrections, and repel invasions :

To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress :

Exclusive Jurisdiction of Congress.

To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may by cession of particular states, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the Legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings: And

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

Restrictions on the powers of Congress.

SECT. 9. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding Ten Dollars for each person.

The privilege of the writ of *habeas corpus* shall not be

be suspended, unless when in cases of rebellion or invasion the public safety may require it.

No bill of attainder or *ex post facto* law shall be passed.

No capitation, or other direct tax shall be laid, unless in proportion to the *census* or enumeration herein before directed to be taken.

No tax or duty shall be laid on articles exported from any state. No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another; nor shall vessels bound to, or from, one state, be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States: And no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state.

SECT. 10. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility.

Restrictions on the powers of the several States.

No state shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and controul of the Congress. No state shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless

less actually invaded, or in such imminent danger as will not admit of delay.

A R T I C L E H.

Of the Executive
power

SECT. I. The Executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and together with the Vice-President, chosen for the same term, be elected as follows :

of the mode
of Election,

Each state shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the state may be entitled in the Congress : but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

and proceedings
therein.

The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each ; which list they shall sign and certify, and transmit, sealed, to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed ; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately chuse by ballot one of them for President ; and if no person have a majority, then from the five highest on the list the said House shall in like manner chuse the President. But in chusing the President, the votes shall be taken by states, the representation from each state having one vote ; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the President, the person
having

having the greatest number of votes of the electors shall be the Vice-President. But if there should remain two or more who have equal votes, the Senate shall chuse from them by ballot the Vice-President.

The Congress may determine the time of chusing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

Qualifications of the President

In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President, and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President, and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

Provision in case of his death, &c.

The President shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

President's compensation.

Before he enter on the execution of his office, he shall take the following oath or affirmation:

“ I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect and defend the constitution of the United States.”

His oath.

SECT. 2. The President shall be Commander in Chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in

General powers of the President.

each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law. But the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

Further powers
and duties

SECT. 3. He shall from time to time give to the Congress information of the state of the union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may on extraordinary occasions, convene both Houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors, and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

Of Impeach-
ment.

SECT. 4. The President, Vice-President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes or misdemeanors.

A R T I C L E III.

Of the judicial
power.

SECT. 1. The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior

ferior courts as the Congress may from time to time ordain and establish. The judges, both of the Supreme and Inferior Court, shall hold their offices during good behaviour, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

SECT. 2. The judicial power shall extend to all cases, Its extent. in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be party; to controversies between two or more states, between a state and citizens of another state, between citizens of different states, between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make. Of original and appellate jurisdiction.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed. Of trial by jury.

SECT. 3. Treason against the United States, shall Of treason. consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

ARTICLE

ARTICLE IV.

Of records, &c. SECT. 1. Full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

Of citizenship. SECT. 2. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

Of fugitive criminals, A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

and persons held to service. No person held to service or labour in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labour, but shall be delivered up on claim of the party to whom such service or labour may be due.

Of new states. SECT. 3. New states may be admitted by the Congress into this union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the Legislatures of the states concerned, as well as of the Congress.

Of the territory of the United States. The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and, nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

Form of Republican government guaranteed. SECT. 4. The United States shall guarantee to every state in this union a republican form of government, and shall protect each of them against invasion; and on application of the Legislature, or of the executive (when the Legislature cannot be convened) against domestic violence.

ARTICLE

A R T I C L E V.

The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this constitution, or, on the application of the Legislatures of two-thirds of the several states, shall call a Convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the Legislatures of three-fourths of the several states, or by Conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress: *Provided*, That no amendment which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the Senate.

Of amendments
to the constitution.

A R T I C L E VI.

All debts contracted, and engagements entered into, before the adoption of this constitution, shall be as valid against the United States, under this constitution, as under the confederation.

Of former
debts.

This constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding.

Force of the
constitution,
laws and treaties.

The Senators and Representatives before mentioned, and the members of the several State Legislatures, and all executive and judicial officers, both of the United States, and of the several states, shall be bound by oath or affirmation, to support this constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

Of a political
test.

Of a religious
test.

ARTICLE

ARTICLE VII.

Of the ratifica-
tion of the con-
stitution.

The ratification of the Conventions of nine states, shall be sufficient for the establishment of this constitution between the states so ratifying the same.

DONE in Convention, by the unanimous consent of the states present, the seventeenth day of September, in the year of our Lord One Thousand Seven Hundred and Eighty-seven, and of the Independence of the United States of America the Twelfth. In witness whereof we have hereunto subscribed our Names.

GEORGE WASHINGTON, *President,*

And Deputy from VIRGINIA.

NEW-HAMPSHIRE,	{ John Langdon, Nicholas Gilman.
MASSACHUSETTS,	{ Nathaniel Gorham, Rufus King.
CONNECTICUT,	{ William Samuel Johnson, Roger Sherman.
NEW-YORK,	{ Alexander Hamilton. William Livingston,
NEW-JERSEY,	{ David Brearly, William Patterfon, Jonathan Dayton. Benjamin Franklin, Thomas Mifflin, Robert Morris, George Clymer, Thomas Fitzsimons, Jared Ingerfol, James Wilson, Gouverneur Morris. George Read, Gunning Bedford, junior,
DELAWARE,	{ John Dickinson, Richard Bassett, Jacob Broom.
MARYLAND,	{ James M ^c Henry, Daniel of St. Thomas Jenifer, Daniel Carrol.

VIRGINIA, } John Blair,
 } James Madison, junior,
 } William Blount,
 NORTH-CAROLINA, } Richard Dobbs Spaight,
 } Hugh Williamson,
 } John Rutledge,
 SOUTH-CAROLINA, } Charles Cotesworth Pinckney,
 } Charles Pinckney,
 } Pierce Butler,
 GEORGIA, } William Few,
 } Abraham Baldwin.

Attest. WILLIAM JACKSON, *Secretary.*

In Convention

Monday, September 17th, 1787:

P R E S E N T,

The States of NEW-HAMPSHIRE, MASSACHUSETTS, CONNECTICUT, Mr. *Hamilton* from NEW-YORK, NEW-JERSEY, PENNSYLVANIA, DELAWARE, MARYLAND, VIRGINIA, NORTH-CAROLINA, SOUTH-CAROLINA and GEORGIA :

RESOLVED,

THAT the preceding constitution be laid before the United States in Congress assembled, and that it is the opinion of this Convention, that it should afterwards be submitted to a Convention of Delegates, chosen in each state by the people thereof, under the recommendation of its Legislature, for their assent and ratification; and that each Convention assenting to, and ratifying the same, should give notice thereof to the United States in Congress assembled.

RESOLVED, That it is the opinion of this Convention, that as soon as the Conventions of nine states shall have ratified this constitution, the United States in Congress assembled should fix a day on which electors should be appointed by the states which shall have ratified

ratified the same, and a day on which the electors should assemble to vote for the President, and the time and place for commencing proceedings under this constitution. That after such publication the electors should be appointed, and the Senators and Representatives elected. That the electors should meet on the day fixed for the election of the President, and should transmit their votes certified, signed, sealed and directed, as the constitution requires, to the Secretary of the United States in Congress assembled, that the Senators and Representatives should convene at the time and place assigned; that the Senators should appoint a president of the Senate, for the sole purpose of receiving, opening and counting the votes for President: and, that after he shall be chosen, the Congress, together with the President, should, without delay, proceed to execute this constitution.

By the unanimous order of the Convention,

GEORGE WASHINGTON, *President.*

WILLIAM JACKSON, *Secretary.*

In Convention,

September 17th, 1787.

SIR,

WE have now the honour to submit to the consideration of the United States in Congress assembled, that constitution which has appeared to us the most adviseable.

The friends of our country have long seen and desired, that the power of making war, peace and treaties, that of levying money and regulating commerce, and the correspondent executive and judicial authorities should be fully and effectually vested in the general government of the Union: But the impropriety of delegating such extensive trust to one body of men

men is evident. Hence results the necessity of a different organization.

It is obviously impracticable in the federal government of these States, to secure the rights of independent sovereignty to each, and yet provide for the interest and safety of all. Individuals entering into society, must give up a share of liberty to preserve the rest. The magnitude of the sacrifice must depend as well on situation and circumstance, as on the object to be obtained. It is at all times difficult to draw with precision the line between those rights which must be surrendered, and those which may be reserved; and on the present occasion this difficulty was increased by a difference among the several states as to their situation, extent, habits, and particular interests.

In all our deliberations, on this subject, we kept steadily in our view, that which appears to us the greatest interest of every true American, the consolidation of our union, in which is involved our prosperity, felicity, safety, perhaps our national existence. This important consideration, seriously and deeply impressed on our minds, led each state in the Convention to be less rigid on points of inferior magnitude, than might have been otherwise expected; and thus the constitution, which we now present, is the result of a spirit of amity, and of that mutual deference, and concession which the peculiarity of our political situation rendered indispensable.

That it will meet the full and entire approbation of every state is not perhaps to be expected; but each will doubtless consider, that had her interest been alone consulted, the consequences might have been particularly disagreeable or injurious to others; that it is liable to as few exceptions as could reasonably have been expected we hope and believe; that it may promote the lasting welfare of that country so dear to us all, and secure her freedom and happiness, is our most ardent wish.

*With great respect, we have the honour to be, Sir,
Your Excellency's most obedient and humble servants.*

GEORGE WASHINGTON, *President*

By unanimous order of the Convention.

His Excellency the PRESIDENT of CONGRESS.

The United States in Congress
Assembled

Friday, September 28th, 1787.

P R E S E N T,

NEW-HAMPSHIRE, MASSACHUSETTS, CONNECTICUT,
NEW-YORK, NEW-JERSEY, PENNSYLVANIA, DE-
LAWARE, VIRGINIA, NORTH-CAROLINA, SOUTH-
CAROLINA, and GEORGIA, and from MARYLAND,
Mr. Rofs.

Congress having received the report of the Conven-
tion lately Assembled in Philadelphia,

RESOLVED UNANIMOUSLY,

That the said report, with the resolutions and let-
ter accompanying the same, be transmitted to the fe-
veral Legislatures, in order to be submitted to a Con-
vention of Delegates, chosen in each state by the peo-
ple thereof, in conformity to the resolves of the Con-
vention made and provided in that case.

CHARLES THOMPSON, Secretary.

☞ *The Constitution of the United States was unanimously
ratified, on behalf of the State of Delaware, then
the DELAWARE STATE, by the Convention thereof, on
the seventh day of December, 1787.*

CONGRESS

CONGRESS OF THE UNITED STATES, BEGUN
AND HELD AT THE CITY OF NEW-YORK, ON
WEDNESDAY, THE FOURTH OF MARCH, ONE
THOUSAND SEVEN HUNDRED AND EIGHTY-NINE.

The Conventions of a number of the states having at the time of their adopting the Constitution expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added: And as extending the ground of public confidence in the government will best insure the beneficent ends of its institution—

RESOLVED, by the Senate and House of Representatives of the United States of America in Congress assembled, two thirds of both Houses concurring, That the following articles be proposed to the Legislatures of the several states, as amendments to the Constitution of the United States, all or any of which articles, when ratified by three-fourths of the said Legislatures, to be valid to all intents and purposes, as part of the said constitution, viz.

ARTICLES in addition to, and amendment of, the CONSTITUTION OF THE UNITED STATES OF AMERICA, proposed by Congress, and ratified by the Legislatures of the several states, pursuant to the fifth article of the original constitution.

Article the First.

After the first enumeration required by the first article of the constitution, there shall be one Representative for every thirty thousand, until the number shall amount to one hundred, after which the proportion shall be so regulated by Congress, that there shall be not less than one hundred Representatives, nor less than one Representative for every forty thousand persons, until the number of Representatives shall amount to two hundred; after which the proportion shall be so regulated by Congress, that there shall not be less than two hundred Representatives,

nor

nor more than one Representative for every fifty thousand persons.

Article the Second.

Of the compensation of members of Congress.

No law varying the compensation for the services of the Senators and Representatives shall take effect, until an election of Representatives shall have intervened.

Article the Third.

Of the rights of conscience, freedom of the press, &c

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Article the Fourth.

Of the right to bear arms.

A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

Article the Fifth

Of quartering soldiers.

No soldier shall in time of peace be quartered in any house without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

Article the Sixth

Of security from searches, seizures and general warrants.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Article the Seventh.

Of indictments, punishments, &c.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in

in the land or naval forces, or in the militia when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case, to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use without just compensation.

Article the Eighth.

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

Of the rights of the accused in criminal cases.

Article the Ninth.

In suits at common law, where the value in controversy shall exceed Twenty Dollars, the right of trial by jury shall be preserved, and no fact, tried by a jury, shall be otherwise, re-examined in any court of the United States, than according to the rules of the common law.

Of trial in civil cases.

Article the Tenth.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Of bail, fines, &c.

Article the Eleventh.

The enumeration in the constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Of rights reserved.

Article the Twelfth.

The powers not delegated to the United States by the

powers reserved.

the constitution, nor prohibited by it to the states, are referred to the states respectively, or to the people.

FREDERICK AUGUSTUS MUHLENBERG,
Speaker of the House of Representatives.

JOHN ADAMS, *Vice-President of the United States,
and President of the Senate.*

ATTEST. { JOHN BECKLEY, *Clerk of the House of
Representatives.*
{ SAMUEL A. OTIS, *Secretary of the Senate.*

All the preceding amendments, proposed by Congress, except the first, were ratified, on behalf of the State of Delaware, then the DELAWARE STATE, by resolutions of the two Houses of the General Assembly, passed the twenty-eighth day of January, 1790.

Third Congress of the United States:

AT THE FIRST SESSION,

Begun and held at the City of Philadelphia, in the State of Pennsylvania, on Monday the second of December, One Thousand Seven Hundred and Ninety-three.

RESOLVED, by the Senate and House of Representatives of the United States of America in Congress assembled, two-thirds of both Houses concurring, That the following article be proposed to the Legislatures of the several states, as an amendment to the Constitution of the United States; which when ratified by three fourths of the said Legislatures shall be valid as part of the said constitution, viz.

Restriction on
the judicial
power.

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced

commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

FREDERICK AUGUSTUS MUHLENBERG,
Speaker of the House of Representatives.

JOHN ADAMS, *Vice-President of the United States,*
and President of the Senate.

ATTEST. { JOHN BECKLEY, *Clerk of the House of*
Representatives.
SAMUEL A. OTIS, *Secretary of the Senate.*

✶ The above amendment, proposed by Congress, was ratified, on behalf of the State of Delaware, by an Act of the General Assembly, passed the 22d January 1795, Chap 68.

THE

CONSTITUTION

OF THE

State of Delaware.

WE, the People, hereby ordain and establish this Constitution of Government for the STATE OF DELAWARE.

Of the rights of men, the origin of power, and the end of government.

THROUGH divine goodness, all men have by nature, the rights of worshipping and serving their Creator according to the dictates of their consciences, of enjoying and defending life and liberty, of acquiring and protecting reputation and property, and in general of attaining objects suitable to their condition, without injury by one to another; and as these rights are essential to their welfare, for the due exercise thereof, power is inherent in them; and therefore all just authority in the institutions of political society is derived from the people, and established with their consent, to advance their happiness: and they may for this end, as circumstances require, from time to time alter their constitution of government:

A R T I C L E I.

Of the rights of conscience.

SECTION I. Although it is the duty of all men frequently to assemble together for the public worship of the Author of the universe; and piety and morality, on which the prosperity of communities depends, are thereby promoted; yet no man shall or ought to be compelled to attend any religious worship, to contribute to the erection

erection or support of any place of worship, or to the maintenance of any ministry, against his own free will and consent; and no power shall or ought to be vested in or assumed by any magistrate, that shall in any case interfere with, or in any manner control the rights of conscience, in the free exercise of religious worship, nor a preference given by law to any religious societies, denominations, or modes of worship.

SECT. 2. No religious test shall be required as a qualification to any office, or public trust, under this state. Of religious test.

SECT. 3. All elections shall be free and equal. Of elections.

SECT. 4. Trial by jury shall be as heretofore. Of trial by jury.

SECT. 5. The press shall be free to every citizen, who undertakes to examine the official conduct of men acting in a public capacity; and any citizen may print on any subject, being responsible for the abuse of that liberty. In prosecutions for publications, investigating the proceedings of officers, or where the matter published is proper for public information, the truth thereof may be given in evidence: And in all indictments for libels the jury may determine the facts and the law, as in other cases. Of the liberty of the press.

SECT. 6. The people shall be secure in their persons, houses, papers, and possessions, from unreasonable searches and seizures; and no warrant to search any place, or to seize any person or things, shall issue without describing them as particularly as may be; nor then, unless there be probable cause supported by oath or affirmation. Of security from searches and seizures.

SECT. 7. In all criminal prosecutions, the accused hath a right to be heard by himself and his counsel, to be plainly and fully informed of the nature and cause of the accusation against him, to meet the witnesses in their examination face to face, to have compulsory process in due time, on application by himself, his friends or counsel, for obtaining witnesses in his favour, and a speedy and public trial by an impartial jury: He shall not be compelled to give evidence against himself; nor shall be deprived of life, liberty, or property, unless by the judgment of his peers, or the law of the land. Of the rights of the accused in criminal prosecution..

SECT. 8. No person shall for any indictable offence

Of informations,
&c.

fence be proceeded against criminally by information, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger; and no person shall be for the same offence twice put in jeopardy of life or limb; nor shall any man's property be taken or applied to public use, without the consent of his Representatives, and without compensation being made.

Of courts of
justice.

SECT. 9. All courts shall be open; and every man for an injury done him in his reputation, person, moveable or immoveable possessions, shall have remedy by the due course of law, and justice administered according to the very right of the cause, and the law of the land, without sale, denial, or unreasonable delay or expense; and every action shall be tried in the county in which it shall be commenced, unless when the judges of the court in which the cause is to be tried, shall determine that an impartial trial therefore cannot be had in that county. Suits may be brought against the state, according to such regulations as shall be made by law.

Of suspending
laws.

SECT. 10. No power of suspending laws shall be exercised, but by authority of the Legislature.

Of bail, fines,
&c.

SECT. 11. Excessive bail shall not be required, nor excessive fines imposed, nor cruel punishments inflicted; And in the construction of gaols, a proper regard shall be had to the health of prisoners.

Of prisoners.

SECT. 12. All prisoners shall be bailable by sufficient sureties, unless for capital offences when the proof is positive or the presumption great; and when persons are confined on accusation for such offences, their friends and counsel may at proper seasons have access to them.

Of the Habeas
Corpus.

SECT. 13. The privilege of the writ of *Habeas Corpus* shall not be suspended, unless when in cases of rebellion or invasion, the public safety may require it.

Of oyer and
terminer.

SECT. 14. No commission of Oyer and Terminer or goal delivery shall be issued.

Of attainder.
Felo de se, and
deodand.

SECT. 15. No attainder shall work corruption of blood, nor except during the life of the offender, forfeiture of estate. The estates of those who destroy their own lives shall descend or vest as in case of natural death,

death, and if any person be killed by accident, no forfeiture shall be thereby incurred.

SECT. 16. Although disobedience to laws by a part of the people, upon suggestions of impolicy or injustice in them, tends by immediate effect and the influence of example, not only to endanger the public welfare and safety, but also in governments of a republican form, contravenes the social principles of such governments, founded on common consent for common good; yet the citizens have a right in an orderly manner to meet together, and to apply to persons intrusted with the powers of government, for redress of grievances or other proper purposes, by petition, remonstrance, or address.

Of the right to assemble, petition, &c.

SECT. 17. No standing army shall be kept up without the consent of the Legislature; and the military shall, in all cases, and at all times, be in strict subordination to the civil power.

Of the military

SECT. 18. No soldier shall in time of peace be quartered in any house without the consent of the owner; nor in time of war, but by a civil magistrate, in a manner to be prescribed by law.

Of quartering troops.

SECT. 19. No hereditary distinction shall be granted, nor any office created or exercised, the appointment to which shall be for a longer term than during good behaviour; and no person holding any office under this state, shall accept of any office, or title of any kind whatever, from any King, Prince, or foreign state.

Of titles and offices.

We declare that every thing in this article is reserved out of the general powers of government here-in-after mentioned.

Reservation

A R T I C L E II.

SECT. 1. The Legislative power of this state shall be vested in a General Assembly, which shall consist of a Senate and House of Representatives.

Of the Legislative power.

SECT. 2. The Representatives shall be chosen annually by the citizens residing in the several counties respectively, on the first Tuesday of October.

Election of Representatives.

No

Their qualifica-
tions.

No person shall be a Representative who shall not have attained to the age of twenty-four years, and have a freehold in the county in which he shall be chosen, have been a citizen and inhabitant of the state three years next preceding the first meeting of the Legislature after his election, and the last year of that term an inhabitant of the county in which he shall be chosen, unless he shall have been absent on the public business of the United States or of this state.

Number.

There shall be seven Representatives chosen in each county, until a greater number of Representatives shall by the General Assembly be judged necessary; and then, two-thirds of each branch of the Legislature concurring, they may by law make provision for increasing their number.

Election of Sen-
ators.

SECT. 3. The Senators shall be chosen for three years by the citizens residing in the several counties respectively, having right to vote for Representatives, at the same time when they shall vote for Representatives, in the same manner, and at the same places.

Their qualifica-
tions.

No person shall be a Senator who shall not have attained to the age of twenty-seven years, and have in the county in which he shall be chosen, a freehold estate in two hundred acres of land, or an estate in real and personal property, or in either, of the value of One Thousand Pounds at least, and have been a citizen and inhabitant of the state three years next preceding the first meeting of the Legislature after his election, and the last year of that term an inhabitant of the county in which he shall be chosen, unless he shall have been absent on the public business of the United States or of this state.

Number.

There shall be three Senators chosen in each county. When a greater number of Senators shall by the General Assembly be judged necessary, two-thirds of each branch concurring, they may by law make provision for increasing their number; but the number of Senators shall never be greater than one-half, nor less than one-third of the number of Representatives.

Of classing the
Senators.

Immediately after the Senators shall be assembled in consequence of the first election, the Senators residing in each county shall be divided by lot into three classes.

classes. The seats of the Senators of the first class shall be vacated at the expiration of the first year; of the second class at the expiration of the second year; and of the third class at the expiration of the third year; so that one third may be chosen every year.

SECT. 4. The General Assembly shall meet on the first Tuesday of January in every year, unless sooner convened by the Governor. Meeting of the General Assembly.

SECT. 5. Each House shall choose its Speaker and other officers; and also each House, whose Speaker shall exercise the office of Governor, may choose a Speaker *pro tempore*. Of the officers of each House.

SECT. 6. Each House shall judge of the elections, returns, and qualifications of its own members; and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and shall be authorized to compel the attendance of absent members, in such manner; and under such penalties, as shall be deemed expedient. Powers of each House.

SECT. 7. Each House may determine the rules of its proceedings, punish any of its members for disorderly behaviour, and with the concurrence of two-thirds, expel a member; and shall have all other powers necessary for a branch of the Legislature of a free and independent state. Of censure and expulsion.

SECT. 8. Each House shall keep a journal of its proceedings, and publish them immediately after every session, except such parts as may require secrecy; and the yeas and nays of the members on any question, shall at the desire of any member, be entered on the journal. Of journals.

SECT. 9. The doors of each House, and of committees of the whole, shall be open, unless when the business is such as ought to be kept secret. The doors to be open.

SECT. 10. Neither House shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting. Of adjournments.

SECT. 11. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the state; but, no law varying the compensation shall take effect, Of the compensation and privileges of members.

effect, till an objection of Representatives shall have intervened. They shall in all cases, except treason, felony, or breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place.

Disqualification
of members.

SECT. 12. No Senator nor Representative shall, during the time for which he shall have been elected, be appointed to any civil office under this state, which shall have been created, or the emoluments of which shall have been increased during such time. No person concerned in any army or navy contract, no member of Congress, nor any person holding any office under this state, or the United States, except the attorney-general, officers usually appointed by the courts of justice respectively, attorneys at law, and officers in the militia, holding no disqualifying office, shall, during his continuance in Congress or in office, be a Senator or Representative.

Of vacancies.

SECT. 13. When vacancies happen in either House, writs of election shall be issued by the Speakers respectively, or in cases of necessity, in such other manner as shall be provided for by law; and the persons thereupon chosen shall hold their seats as long as those in whose stead they are elected might have done, if such vacancies had not happened.

Of revenue
bills.

SECT. 14. All bills for raising revenue shall originate in the House of Representatives; but, the Senate may propose alterations as on other bills; and no bill, from the operation of which, when passed into a law, revenue may incidentally arise, shall be accounted a bill for raising revenue; nor shall any matter or clause whatever, not immediately relating to and necessary for raising revenue, be in any manner blended with, or annexed to, a bill for raising revenue.

Of the treasury.

SECT. 15. No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published annually.

ARTICLE III.

SECT. 1. The supreme executive powers of this state shall be vested in a Governor. Of the executive power.

SECT. 2. The Governor shall be chosen on the first Tuesday of October, by the citizens of the state having right to vote for Representatives, in the counties where they respectively reside, at the places where they shall vote for Representatives. Of the election of the Governor.

The returns of every election for Governor shall be sealed up, and immediately delivered by the returning officers of the several counties to the Speaker of the Senate, or in case of his death, to the Speaker of the House of Representatives, who shall keep the same until a Speaker of the Senate shall be appointed, to whom they shall be immediately delivered after his appointment, who shall open and publish the same in the presence of the members of both Houses of the Legislature. Duplicates of the said returns shall also be immediately lodged with the Prothonotary of each county. The person having the highest number of votes shall be Governor: But, if two or more shall be equal in the highest number of votes, the members of the two Houses shall, by joint ballot, choose one of them to be Governor; and if upon such ballot, two or more of them shall still be equal and highest in votes, the Speaker of the Senate shall have an additional casting vote.

Contested elections of a Governor shall be determined by a joint committee, consisting of one-third of all the members of each branch of the Legislature, to be selected by ballot of the Houses respectively: Every person of the committee shall take an oath or affirmation, that in determining the said election, he will faithfully discharge the trust reposed in him; and the committee shall always sit with open doors.

SECT. 3. The Governor shall hold his office during three years from the third Tuesday of January next ensuing his election; and shall not be capable of holding it longer than three in any term of six years. His continuance in office.

SECT. 4. He shall be at least thirty years of age, and have been a citizen and inhabitant of the United His qualifications.

States

States twelve years next before the first meeting of the Legislature after his election, and the last six of that term an inhabitant of this state, unless he shall have been absent on the public business of the United States or of this state.

Persons disqualified to be Governor.

SECT. 5. No member of Congress, nor person holding any office under the United States or this state, shall exercise the office of Governor.

Of his compensation.

SECT. 6. The Governor shall at stated times receive for his services an adequate salary, to be fixed by law, which shall be neither increased nor diminished during the period for which he shall have been elected.

His military power.

SECT. 7. He shall be Commander in Chief of the army and navy of this state, and of the militia; except when they shall be called into the service of the United States.

His general powers.

SECT. 8. He shall appoint all officers whose offices are established by this constitution or shall be established by law, and whose appointments are not hereinafter otherwise provided for; but no person shall be appointed to an office within a county, who shall not have a right to vote for Representatives, and have been an inhabitant therein one year next before his appointment, nor hold the office longer than he continues to reside in the county. No member of Congress, nor any person holding or exercising any office under the United States, shall at the same time hold or exercise the office of judge, treasurer, attorney-general, secretary, clerk of the Supreme Court, prothonotary, register for the probate of wills and granting letters of administration, recorder, sheriff, or any office under this state with a salary by law annexed to it, or any other office which the Legislature shall declare incompatible with offices or appointments under the United States. No person shall hold more than one of the following offices at the same time, to wit, treasurer, attorney-general, clerk of the Supreme Court, prothonotary, register, or sheriff. All commissions shall be in the name of the state, shall be sealed with the great seal, and be signed and tested by the Governor.

Persons disqualified to hold certain offices.

Of pardons, &c.

SECT. 9. He shall have power to remit fines and forfeitures; and to grant reprieves and pardons, except in cases of impeachment.

SECT.

SECT. 10. He may require information in writing from the officers in the executive department, upon any subject relating to the duties of their respective offices.

Of obtaining information.

SECT. 11. He shall from time to time give to the General Assembly information of affairs concerning the state; and recommend to their consideration such measures as he shall judge expedient.

Of giving information to the Legislature.

SECT. 12. He may on extraordinary occasions convene the General Assembly; and in case of disagreement between the two Houses with respect to the time of adjournment, adjourn them to such time as he shall think proper, not exceeding three months.

Of convening and adjourning the two Houses.

SECT. 13. He shall take care that the laws be faithfully executed.

SECT. 14. On the death or resignation of the Governor, or his removal from office on impeachment, or for inability, the Speaker of the Senate at that time shall exercise the office of Governor, until a new Governor shall be duly qualified; and on the death or resignation of the Speaker of the Senate, the Speaker of the House of Representatives at that time shall exercise the office, until it be regularly vested in a new Governor. If the trial of a contested election shall continue longer than until the third Tuesday of January next ensuing the election of a Governor; the Governor of the last year, or the Speaker of the Senate, or of the House of Representatives, who may then be in the exercise of the executive authority, shall continue therein until a determination of such contested election. The Governor shall not be removed from his office for inability, but with the concurrence of two-thirds of all the members of each branch of the Legislature.

Who shall exercise the office of Governor, in case of his death, &c.

SECT. 15. A Secretary shall be appointed and commissioned during the Governor's continuance in office, if he shall so long behave himself well. He shall keep a fair register of all the official acts and proceedings of the Governor; and shall, when required by either branch of the Legislature, lay the same, and all papers, minutes, and vouchers, relative thereto, before them; and shall perform such other duties as

Of the Secretary.

shall be enjoined him by law. He shall have a compensation for his services to be fixed by law.

A R T I C L E IV.

Of elections.

SECT. 1. All elections of Governor, Senators, and Representatives, shall be by ballot; and in such elections every white free man of the age of twenty-one years, having resided in the state two years next before the election, and within that time paid a state or county tax, which shall have been assessed at least six months before the election, shall enjoy the right of an elector; and the sons of persons so qualified, shall between the ages of twenty-one and twenty-two years, be entitled to vote, although they shall not have paid taxes.

SECT. 2. Electors shall in all cases except treason, felony, or breach of the peace, be privileged from arrest during their attendance at elections, and in going to, and returning from them.

A R T I C L E V.

Of impeachment.

SECT. 1. The House of Representatives shall have the sole power of impeaching; but two-thirds of all the members must concur in an impeachment. All impeachments shall be tried by the Senate, and when sitting for that purpose, the Senators shall be upon oath or affirmation to do justice according to the evidence. No person shall be convicted without the concurrence of two-thirds of all the Senators.

SECT. 2. The Governor, and all other civil officers under this state, shall be liable to impeachment for treason, bribery, or any high crime or misdemeanor in office. Judgment in such cases shall not extend further than to removal from office, and disqualification to hold any office of honor, trust or profit under this state; but the party convicted shall nevertheless be subject to indictment, trial, judgment and punishment according to law,

Of treason.

SECT. 4. Treason against this state shall consist only in levying war against it, or in adhering to the enemies of the government, giving them aid and comfort.

fort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.

A R T I C L E VI.

SECT. 1. The Judicial Power of this state shall be vested in a Court of Chancery, a Supreme Court, and Courts of Oyer and Terminer and General Gaol delivery, in a Court of Common Pleas, and in an Orphans Court, Register's Court, and a Court of Quarter Sessions of the Peace for each county, in Justices of the Peace, and in such other courts as the Legislature, two-thirds of all the members of each branch concurring; may from time to time establish.

Of the judicial power.

SECT. 2. The Chancellor, and the Judges of the Supreme Court and of the Court of Common Pleas, shall hold their offices during good behaviour; but for any reasonable cause which shall not be a sufficient ground for an impeachment, the Governor may in his discretion remove any of them, on the address of two thirds of all the members of each branch of the Legislature. They shall at stated times receive for their services adequate salaries, to be fixed by law, which shall not be diminished during their continuance in office, and shall be payable quarterly to their respective orders upon the Treasurer, out of any monies in the treasury; but they shall hold no other office of profit, nor receive any fees or perquisites, except such fees as shall be fixed by law for business to be done out of court.

Of the chancellor and judges

SECT. 3. The Judges of the Supreme Court shall be not fewer than three, nor more than four, one of whom shall be Chief Justice. There shall be a Judge residing in each county. The jurisdiction of this court shall extend over the state. The judges shall by virtue of their offices, be Justices of Oyer and Terminer and General Gaol delivery in the several counties. Any two of the judges may act as if all were present.

Of the Supreme Court.

SECT. 4. The Judges of the Court of Common Pleas shall be not fewer than three, nor more than four, one of whom shall be Chief Justice. There shall

Of the Court of Common Pleas.

shall be a judge residing in each county. The jurisdiction of this court shall extend over the state. Any two of the judges may act as if all were present.

Of the writ of Habeas Corpus.

SECT. 5. The Chancellor, or any Judge of the Supreme Court or of the Court of Common Pleas, shall issue the writ of *Habeas Corpus* in vacation time and out of term, when duly applied for, which shall be immediately obeyed.

Of the acknowledgment of deeds.

SECT. 6. Any Judge of the Supreme Court or of the Court of Common Pleas may, unless the Legislature shall otherwise provide by law, out of court, take the acknowledgment of deeds; and the same being thereon certified, under his hand, such deeds shall be recorded and have the same effect as if acknowledged in open court.

Of amendments in pleadings before judgment

SECT. 7. In civil causes when pending, the Supreme Court and Court of Common Pleas shall have the power before judgment, of directing upon such terms as they shall deem reasonable, amendments in pleadings and legal proceedings, so that by error in any of them, the determination of causes, according to their real merits, shall not be hindered; and also of directing the examination of witnesses that are aged, very infirm, or going out of the state, upon interrogatories *De bene esse*, to be read in evidence, in case of the death or departure of the witnesses before the trial, or inability by reason of age, sickness, bodily infirmity or imprisonment, then to attend; and also the power of obtaining evidence from places not within the state.

and obtaining evidence.

Of original jurisdiction.

SECT. 8. Suits may originate in the Supreme Court or Court of Common Pleas.

Of the powers of a single judge.

SECT. 9. One Judge of the Supreme Court or of the Court of Common Pleas may, if the other judges come not, open and adjourn the court, and may also make the necessary rules preparatory respectively to the trial or argument of causes.

Of bringing money into court.

SECT. 10. At any time pending an action for debt or damages, the defendant may bring into court a sum of money for discharging the same and the costs then accrued, and the plaintiff not accepting thereof, it shall be delivered for his use to the Clerk or Prothonotary of the court; and if upon the final decision of the cause, the plaintiff shall not recover a greater sum

sum than that so paid into court for him, he shall not recover any costs accruing after such payment, except where the plaintiff is an executor or administrator.

SECT. 11. By the death of any party, no suit in chancery or at law, where the cause of action survives, shall abate; but, until the Legislature shall otherwise provide, suggestion of such death being entered of record, the executor or administrator of a deceased petitioner or plaintiff may prosecute the said suit; and if a respondent or defendant dies, the executor or administrator being duly served with a *Scire Facias*, thirty days before the return thereof, shall be considered as a party to the suit, in the same manner as if he had voluntarily made himself a party; and in any of those cases, the court shall pass a decree, or render judgment, for or against executors or administrators, as to right appertains. But where an executor or administrator of a deceased respondent or defendant becomes a party, the court, upon motion, shall grant such a continuance of the cause as to the judges shall appear proper.

Of the abatement of suits.

SECT. 12. Whenever a person, not being an executor or administrator, appeals from a decree of the Chancellor or applies for a writ of error, such appeal or writ shall be no stay of proceeding in the chancery, or the court to which the writ issues, unless the appellant or plaintiff in error shall give sufficient security, to be approved respectively by the Chancellor, or by a judge of the court from which the writ issues, that the appellant or plaintiff in error shall prosecute respectively his appeal or writ to effect, and pay the condemnation money and all costs, or otherwise abide the decree in appeal or the judgment in error, if he fail to make his plea good.

Of security upon appeals or writs of error.

SECT. 13. No writ of error shall be brought upon any judgment heretofore confessed, entered or rendered, but within five years from this time; nor upon any judgment hereafter to be confessed, entered or rendered, but within five years after the confessing, entering, or rendering thereof, unless the person entitled to such writ be an infant, *feme covert*, *non compos mentis*, or a prisoner, and then within five years exclusive of the time of such disability.

Limitation in bringing writs of error.

SECT. 14

Of the Court of
Chancery.

SECT. 14. The equity jurisdiction heretofore exercised by the Judges of the Court of Common Pleas, shall be separated from the common law jurisdiction, and vested in a Chancellor, who shall hold Courts of Chancery in the several counties of this state. In cases of equity jurisdiction, where the Chancellor is interested, the cognizance thereof shall belong to the Court of Common Pleas, with an appeal to the High Court of Errors and Appeals.

Of the Orphans
Court.

SECT. 15. The Judges of the Court of Common Pleas, or any two of them, shall compose the Orphans Court of each county, and may exercise the equity jurisdiction heretofore exercised by the Orphans Courts, except as to the adjusting and settling executors, administrators and guardians accounts; in which cases they shall have an appellate jurisdiction from the sentence or decree of the Register. This court may issue process throughout the state, to compel the attendance of witnesses. Appeals may be made from the Orphans Court, in cases where that court has original jurisdiction, to the Supreme Court, whose decision shall be final.

Of the settle-
ment of the ac-
counts of exe-
cutors, &c.

SECT. 16. An executor, administrator, or guardian, shall file every account with the Register for the county, who shall as soon as conveniently may be, carefully examine the particulars with the proofs thereof, in the presence of such executor, administrator, or guardian, and shall adjust and settle the same, according to the very right of the matter, and the law of the land; which account so settled, shall remain in his office for inspection; and the executor, administrator, or guardian, shall within three months after such settlement, give due notice in writing to all persons entitled to shares of the estate, or to their guardians respectively, if residing within the state, that the account is lodged in the said office for inspection; and the Judges of the Orphans Court shall hear the exceptions of any persons concerned, if any be made, and thereupon allow no demand whatever against the estate of the deceased, unless upon consideration of all circumstances, they shall be fully convinced that the same is therewith justly chargeable.

SECT.

SECT. 17. The Registers of the several counties shall respectively hold the Register's Court in each county. Upon the litigation of a cause, the depositions of the witnesses examined, shall be taken at large in writing, and make part of the proceedings in the cause. This court may issue process throughout the state, to compel the attendance of witnesses. Appeals may be made from a Register's Court to the Supreme Court, whose decisions shall be final. In cases where a Register is interested in questions concerning the probate of wills, the granting letters of administration, or executors, administrators, or guardians accounts, the cognizance thereof shall belong to the Orphans Court, with an appeal to the Sepreme Court, whose decision shall be final.

Of the Register's Court,

SECT. 18. The Prothonotaries of the Court of Common Pleas may issue process as heretofore, take recognizances of bail, and sign confessions of judgment; and the Clerks of the Supreme Court shall have the like powers. No judgment in the Supreme Court or Court of Common Pleas held for one county, shall bind lands or tenements in another, until a *Testatum Fieri Facias* being issued, shall be entered of record in the office of the Prothonotary of the county wherein the lands or tenements are situated.

Of process bail, &c.

Of judgments.

SECT. 19. The Judges of the Court of Common Pleas shall, by virtue of their offices, compose the Courts of General Quarter Sessions of the Peace and Gaol Delivery within the several counties. Any two of the said judges shall be a quorum.

Of the Court of General Quarter Sessions.

SECT. 20. The Governor shall appoint a competent number of persons to the office of Justice of the Peace, not exceeding twelve in each county, until two-thirds of both Houses of the Legislature shall by law direct an addition to the number, who shall be commissioned for seven years, if so long they shall behave themselves well; but may be removed by the Governor within that time on conviction of misbehaviour in office, or on the address of both Houses of the Legislature.

Of justices of the peace.

SECT. 21. The style in all process and public acts shall be, THE STATE OF DELAWARE. Prosecutions shall

Style of process, &c.

shall

shall be carried on in the name of the state, and shall conclude *against the peace and dignity of the state.*

A R T I C L E VII.

Of the high
Court of Errors
and Appeals.

SECTION 1. There shall be a court, styled, *The High Court of Errors and Appeals*, which shall consist of the Chancellor and of the Judges of the Supreme Court and Court of Common Pleas. Any four of the judges of this court may proceed on business; but any smaller number may open and adjourn the court. If any of them has rendered judgment or passed a decree in any cause before removal, he shall not sit judicially upon the hearing of the same in this court, but may assign the reasons upon which such judgment was rendered, or such decree passed. The Chancellor shall preside, except when he cannot sit judicially; and in such cases, or in his absence, the Chief Justice of the Supreme Court; but if he is so disqualified or absent, then the Chief Justice of the Court of Common Pleas shall preside; and if he is so disqualified or absent, then the next eldest Judge according to priority in date of commissions, if present, and not disqualified as aforesaid, shall preside. This court shall have power to issue writs of error to the Supreme Court, and to the Court of Common Pleas, and to receive and determine appeals from interlocutory or final orders or decrees of the Chancellor. Errors shall be assigned, and causes of appeal exhibited in writing speedily, and citations duly served on adverse parties.

SECT. 2. Upon the reversal of a judgment of the Supreme Court, or of the Court of Common Pleas, or a decree of the Chancellor, this court shall respectively render such judgment, or pass such decree, as the Supreme Court, or the Court of Common Pleas, or the Chancellor ought to have rendered or passed, except where the reversal is in favour of the plaintiff, or petitioner in the original suit, and the damages to be assessed, or the matters to be decreed, are uncertain: In any of which cases, the cause shall be remanded, in order to a final decision.

SECT. 3. The Judges of this court may issue all
process

process proper for bringing records fully before them, and for carrying their determinations into execution.

A R T I C L E VIII.

SECTION 1. The members of the Senate and House of Representatives, the Chancellor, the Judges of the Supreme Court, and the Court of Common Pleas, and the Attorney General, shall by virtue of their offices, be conservators of the peace throughout the state; and the Treasurer, Secretary, Clerks of the Supreme Court, Prothonotaries, Registers, Recorders, Sheriffs, and Coroners, shall, by virtue of their offices, be conservators thereof, within the counties respectively in which they reside.

Of conservators of the peace.

SECT. 2. The Representative, and when there shall be more than one, the Representatives of the people of this state in Congress, shall be voted for at the same places where Representatives in the State Legislature are voted for, and in the same manner.

Of the election of Representatives in Congress.

SECT. 3. The State Treasurer shall be appointed annually by the House of Representatives with the concurrence of the Senate. No person, who hath served in the office of State Treasurer, shall be eligible to a seat in either House of the Legislature, until he shall have made a final settlement of his accounts as Treasurer, and discharged the balance, if any thereon due.

Of the appointment of State Treasurer.

SECT. 4. Two persons for the office of Sheriff and two for the office of Coroner, shall be chosen by the citizens residing in each county, and having right to vote for Representatives, at the time and places of election of Representatives, one of whom for each office respectively, shall be appointed by the Governor. They shall hold their offices for three years, if so long they shall behave themselves well, and until successors be duly qualified; but no person shall be twice appointed Sheriff, upon election by the citizens, in any term of six years. The Governor shall fill vacancies in these offices by new appointments to continue unto the next general election, and until successors shall be chosen and duly qualified. The

Of Sheriffs and Coroners.

Legislature, two-thirds of each branch concurring, may when it shall be judged expedient, vest the appointment of Sheriffs and Coroners in the Governor; but no person shall be twice appointed Sheriff in any term of six years.

Continuance of officers in office.

SECT. 5. The Attorney General, Clerks of the Supreme Court, Prothonotaries, Registers, Clerks of the Orphans Courts and of the Peace, shall respectively be commissioned for five years, if so long they shall behave themselves well; but may be removed by the Governor within that time, on conviction of misbehaviour in office, or on the address of both Houses of the Legislature. Prothonotaries, Clerks of the Supreme Court, of the Orphans Courts, Registers, Records, and Sheriffs, shall keep their offices in the town or place in each county, in which the Supreme Court and the Court of Common Pleas are usually held.

Of the appointment of inferior officers.

SECT. 6. Attornies at law, all inferior officers in the treasury department, election officers, officers relating to taxes, to the poor, and to high-ways, constables and hundred officers, shall be appointed in such manner as is or may be directed by law.

Of salaries and fees.

SECT. 7. All salaries and fees annexed to offices shall be moderate; and no officer shall receive any fees whatever, without giving to the person who pays, a receipt for them, if required, therein specifying every particular and the charge for it.

Of costs.

SECT. 8. No costs shall be paid by a person accused on a bill being returned ignoramus; nor on acquittal by a jury, unless a majority of the judges present at the trial certify, that there was probable cause for the prosecution.

Of the rights of corporate bodies.

SECT. 9. The rights, privileges, immunities, and estates of religious societies and corporate bodies, shall remain as if the constitution of this state had not been altered. No clergyman or preacher of the

Exclusion of the clergy.

gospel, of any denomination, shall be capable of holding any civil office in this state, or of being a member of either branch of the Legislature, while he continues in the exercise of the pastoral or clerical functions.

Of the laws in force.

SECT. 10. All the laws of this state, existing at the

the time of making this constitution, and not inconsistent with it, shall remain in force, unless they shall be altered by future laws; and all actions and prosecutions now pending, shall proceed as if this constitution had not been made.

SECT. 11: This constitution shall be prefixed to every edition of the laws made by direction of the Legislature.

SECT. 12. The Legislature shall, as soon as conveniently may be, provide by law, for ascertaining what statutes, and parts of statutes, shall continue to be in force within this state; for reducing them, and all acts of the General Assembly, into such order, and publishing them in such manner, that thereby the knowledge of them may be generally diffused; for choosing inspectors and judges of elections, and regulating the same in such manner, as shall most effectually guard the rights of the citizens entitled to vote; for better securing personal liberty, and easily and speedily redressing all wrongful restraints thereof; for more certainly obtaining returns of impartial juries; for dividing lands and tenements in sales by Sheriffs, where they will bear a division, into as many parcels as may be without spoiling the whole, and for advertising and making the sales in such manner, and at such times, and places, as may render them most beneficial to all persons concerned; and for establishing schools, and promoting arts and sciences.

Special duties assigned to the Legislature.

A R T I C L E IX.

Members of the General Assembly, and all officers executive and judicial, shall be bound by oath or affirmation, to support the constitution of this state, and to perform the duties of their respective offices with fidelity.

Of the political test and oath of office.

A R T I C L E X.

The General Assembly, whenever two-thirds of each House shall deem it necessary, may with the approbation

Of amendments to this constitution.

Of calling a
Convention.

probation of the Governor, propose amendments to this constitution, and at least three, and not more than six months before the next general election of Representatives, duly publish them in print for the consideration of the people; and if three-fourths of each branch of the Legislature shall after such an election, and before another, ratify the said amendments, they shall be valid to all intents and purposes, as parts of this constitution. No Convention shall be called but by the authority of the people; and an unexceptionable mode of making their sense known, will be for them at a general election of Representatives, to vote also by ballot *for* or *against* a Convention, as they shall severally choose to do; and if thereupon it shall appear, that a majority of all the citizens in the state having right to vote for Representatives, have voted for a Convention, the General Assembly shall accordingly at their next sessions call a Convention, to consist of at least as many members as there are in both Houses of the Legislature, to be chosen in the same manner, at the same places, and at the same time that Representatives are, by the citizens entitled to vote for Representatives, on due notice given for one month, and to meet within three months after they shall be elected.

SCHEDULE.

SCHEDULE.

THAT no inconveniencies may arise from the alterations of the Constitution of this State, and in order to carry the same into complete operation, it is hereby declared and ordained:

I. That the President, or in case of his death, inability, or absence from the state, the Speaker of the Legislative council at that time, and in case of his death, inability, or absence from the state, the Speaker of the House of Assembly at that time, shall respectively, with the Privy Council, exercise the Executive Authority of this state until the third Tuesday in January next. If the death, inability, or absence of the President, shall happen after the first Tuesday of next October, and before the first Tuesday of next January, then the Executive Authority shall devolve upon the person who was Speaker of the Council at the next preceding session of the General Assembly; and in case of his death, inability, or absence, upon the person who was Speaker of the House of Assembly at the said next preceding session.

Provision for the exercise of the Executive Authority.

II. That all persons holding offices to which, under this constitution, appointments are to be made by the Governor, shall continue in the exercise of the duties of their respective offices until the first Tuesday of October, one thousand seven hundred and ninety-three, unless their commissions shall sooner expire by their own limitations, or the said offices shall become vacant by death or resignation, and no longer, unless re-appointed and commissioned by the Governor.

Continuance of officers, and

III. That justice shall be administered in the several counties of this state, until the period last mentioned, by the same justices, in the same courts, and in the same manner as heretofore.

Administration of justice, pro tempore.

IV. That the Sheriffs elected at October next shall hold

Election of Sheriffs.

hold their respective commissions two years, and no longer, from that time, or until new Sheriffs are elected and appointed; and such persons shall not be again eligible until the expiration of three years after their commissions cease.

Governor, Senators and Representatives.

V. That the elections of Governor, Senators, and Representatives, shall be conducted by the same persons, and in the same manner, as is prescribed by the election laws of this state, concerning the election of members of the Council and of the House of Assembly; and the returns thereof shall be made respectively to the person exercising the Executive Authority; to the Senate, and to the House of Representatives.

VI. The first meeting of the Legislature under this Constitution shall be at the town of Dover.

Done, in Convention, the Twelfth day of June, in the Year of our Lord One Thousand Seven Hundred and Ninety Two, and of the Independence of the United States of America, the Sixteenth. In Testimony whereof, we have hereunto subscribed our Names.

THOMAS MONTGOMERY, President.

*John Dickinson,
Robert Armstrong,
Edward Roche,
William Johnson,
Robert Haughey,
George Monro,
Robert Coram,
Kensley Johns,
Nicholas Ridgely,
John Clayton,
Thomas White,
Manlove Emerson,*

*James Morris,
Richard Bassett,
Benjamin Dill,
Henry Molliston,
Andrew Barratt,
Isaac Cooper,
George Mitchell,
John W. Batson,
Rhoads Shankland,
Isaac Beauchamp,
Daniel Polk.*

(ATTEST.)

JAMES BOOTH, Secretary.

LAWS

L A W S

O F T H E

State of Delaware.

AT A GENERAL ASSEMBLY, BEGUN AT *NEW-CAS-
TLE*, THE FOURTEENTH DAY OF OCTOBER, AND
CONTINUED BY ADJOURNMENT UNTIL THE TWEN-
TY-SEVENTH DAY OF NOVEMBER, IN THE
TWELFTH YEAR OF THE REIGN OF KING WILLIAM,
AND IN THE YEAR OF OUR LORD ONE THOUSAND
SEVEN HUNDRED. ON WHICH DAY THE FOLLOW-
ING ACTS WERE PASSED BY WILLIAM PENN, esq;
PROPRIETARY AND GOVERNOR IN CHIEF OF THE
PROVINCE OF PENNSYLVANIA AND TERRITORIES,
&c. THAT IS TO SAY,

C H A P. I. a.

An ACT for the fitting of the Orphans Court.
Supplied. See after chap. xxx. a.

CHAP.
I.
1700.

C H A P. II. a.

An ACT against buying land of the natives

BE it enacted by the Proprietary and Governor, by and
with the advice and consent of the freemen of this
province and territories, in General Assembly met, and by
the authority of the same, That if any person shall pre-
sume to buy any land of the natives, within the limits
of this province and territories, without leave from
the proprietary thereof, every such bargain and
purchase shall be void and of none effect. CHAP.

C H A P.
III.

1700.

C H A P. III. a.

An ACT about the recording of deeds. Repealed. See after, in chap. xi---and the act there, after repealed by the act of 15 Geo. II. chap. lxxxiii. a. sect. 13.

C H A P. IV. a.

An ACT about binding to the peace.

One justice may
bind to peace.

BE it enacted, &c. That whosoever shall threaten the person of another, to wound, kill or destroy him, or do him any harm in person or estate, and the person so threatened shall appear before a justice of the peace, and attest, that he believes that by such threatening he is in danger to be hurt in body or estate; such person so threatening as aforesaid, shall be bound over, with one sufficient surety, to appear at the next sessions or county court, to be holden for the county where such offence was committed, to be proceeded against according to law; and, in the mean time, to be of his good behaviour, and keep peace towards all the king's subjects.

C H A P. V. a.

An ACT for naturalization.

Preamble.

FORASMUCH as the just encouragement of the inhabitants of this province and territories, is likely to be an effectual way for the improvement thereof; and since some of the people that live therein, and are likely to come thereinto, are foreigners, and not freemen, according to the acceptation of the laws of England, the consequences of which may prove very detrimental to them in their estates and traffic, and injurious to the prosperity of this province and territories:

SECTION

SECTION 1. *BE it therefore enacted by the Proprietary and Governor, by and with the advice and consent of the freemen of the said province and territories, in General Assembly met, and by the authority of the same,* That it shall and may be lawful for the Proprietary and Governor, and his heirs, or his or their Lieutenant and Governor for the time being, by a public instrument under his or their broad seal, to declare any alien, aliens or foreigners, being already settled or inhabiting within this government, or that shall hereafter come to settle, plant, or reside therein, having first made and given his or their solemn engagement or declaration to be true and faithful to the King as Sovereign, and to the Proprietary and Governor of this province and territories, according to the laws and usages thereof, before the Governor for the time being, to be to all intents and purposes fully and completely naturalized, and the persons so approved of and named in such instrument or instruments as aforesaid, shall, by virtue of this act, have and enjoy to them and their heirs the same rights and immunities of and unto the laws and privileges of this government, as fully and amply as any other of the King's natural born subjects have or enjoy within the same, any former law, act, ordinance, custom or usage to the contrary in any wise notwithstanding.

SECT. 2. And to the end such letters or instruments under the broad seal of this province, as aforesaid, may be obtained without any great difficulty or charge, *Be it further enacted,* That the Governor shall have and receive for the same, Twenty Shillings from every person already settled and residing within this government that shall take out such instrument, and Thirty Shillings from every alien or foreigner that shall come to settle under this government, and no more; and the Secretary shall have Six Shillings, and the keeper of the great seal Six Shillings, for each and every such public instrument, granted as aforesaid.

SECT. 3. *Provided* that nothing in this act contained shall be construed to enable or give power or privilege to any foreigner to do or execute any matter or thing which by any act of Parliament in England, concerning the King's plantations, he is disabled to do or execute.

CHAP.
III.

1766.

Governor may
grant an instru-
ment of natura-
lization.Governor's fee
for naturaliza-
tion.

C H A P.

V.

1700.

Former foreign
inhabitants all
naturalized.

SECT. 4. *Provided always, and be it further enacted by the authority aforesaid, That all Swedes, Dutch, and other foreigners, who were settled in this province or territories before the date of the King's letters patents to the Proprietary and Governor, shall be deemed, and by this act are declared, to be fully and completely naturalized, and shall by virtue thereof have and enjoy to them and their heirs the same rights and immunities of and unto the laws and privileges of this government, as any other foreigners may or can enjoy by virtue of this act, anything herein to the contrary notwithstanding. (a)*

C H A P. VI. a.

An ACT for ascertaining the descent of lands, and better disposition of the estate of persons dying intestate. Repealed, and supplied by an act with a similar title, passed in 1706. See after chap. 15. a.

C H A P. VII. a.

An ACT confirming devises of lands, and validity of nuncupative wills. Repealed by Queen Ann, in council, 7th February, 1705, re-enacted with some alterations. See after chap. 18. a. See appendix.

C H A P. VIII. a.

An ACT empowering widows and administrators to sell so much of the lands of intestates as may be sufficient to clear their debts. Repealed. See this act in the appendix.

C H A P. IX. a.

An ACT for taking lands in execution for payment of debts. See appendix. CHAP.

(a) See a supplementary act hereto passed the 11th June, 1788. chap. 174. b.

C H A P. X. a.

C H A P.

X.

1700.

An ACT for the effectual establishment and confirmation of the freeholders of this province and territories, their heirs and assigns, in their lands and tenements. See appendix.

C H A P. XI. a.

An ACT about acknowledging and recording deeds. Repealed.

C H A P. XII. a.

1704.

An ACT about seven years possession.

BE it enacted by the honorable John Evans, esq. (a) with her Majesty's royal approbation Lieutenant Governor of the counties of New-Castle, Kent, and Sussex, on Delaware, and province of Pennsylvania, by and with the advice and consent of the freemen of the said counties, in General Assembly met, and by the authority of the same, That seven years quiet possession of lands within this her Majesty's government, shall give an unquestionable title to the possessor thereof, except in cases of infants, married women, lunatics, and persons beyond the seas,

Provided nevertheless, That this act shall in no wise extend to persons who shall possess any estate for years, life, or entail. (b)

CHAP.

(a) John Evans, esq. began his government in February, 1703—4. and continued until February, 1708—9.

(b) See after, in the act of the 7 George II. chap. 60. a. sect. 4. A recital of this act and its use.

An ACT about Attornies and Solicitors.

Preamble.

FOR preventing abuses and irregularities in all and every the courts within this her Majesty's government, and that all Attornies and Solicitors practising therein may be duly qualified to execute and perform the trust in them reposed :

Qualifications of
an Attorney or
Solicitor.

SECTION I. *BE it enacted by the honorable John Evans, esq. with her Majesty's royal approbation, Lieutenant Governor of the counties of New-Castle, Kent, and Suffex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the freemen of the said counties, in General Assembly met, and by the authority of the same,* That before any Attorney, Solicitor, or other person whatsoever, shall be admitted to plead for any reward or fee in any of the courts of this her Majesty's government, such Attorney, Solicitor, or other person as aforesaid, shall take the oaths, and repeat and subscribe the declaration prescribed by act of Parliament in England; (a) and shall take the oath hereafter mentioned, (b) viz. *You shall do no falsehood or deceit, nor consent to any to be done, in this court, to your knowledge; and if you know of any to be done, you shall give knowledge thereof to the Chief Justice, or any other the justices of this court, that it may be reformed; You shall delay no man for lucre or malice, having reasonable fees first allowed you for the same: You shall plead no foreign plea, nor sue any foreign suits, unlawfully, to the hurt of any man, but such as shall (according to your judgment) stand with the order of the law and your own conscience: You shall not wittingly or willingly sue, or procure to be sued, any false suits, nor give aid or consent to the same, on pain of being expelled from this court for ever. And further, You shall truly use and demean yourself in the office of an attorney within this court, according to your learning and discretion.*

SO HELP YOU GOD.
SECT.

(a) This provision repealed in chap. 2. b. sect. 26. February 22, 1777. supplied in the constitution of June, 1792, article 17.

(b) See after, in chap. 54. sect. 26, 27. other qualifications prescribed.

SECT. 2. *And be it further enacted by the authority aforesaid,* That in case the Attorney General shall not duly attend to do and perform his duty at every quarter sessions, or other general court or courts, in all and every, or any of the respective counties, within this government, wherein her Majesty's business is depending, or her interest therein concerned; and in which, by law or custom, he ought to attend, or shall neglect to appoint a sufficient deputy in such his absence to be allowed and approved of by the court, he shall be fined at the discretion of such court wherein he shall so neglect his duty as aforesaid, in any sum not exceeding Five Pounds: And in case of his neglect, refusal, or delay, as aforesaid, the Judges or Justices of such respective court as aforesaid, shall have power, and are hereby impowered, to appoint any other person, or persons, to prosecute and perform such business then depending, in the absence of such Attorney General as aforesaid, any law, custom or usage to the contrary thereof in any wise notwithstanding.

C H A P.
III.

Attorney General to be fined for neglect of duty.

C H A P. XIV. a.

An ACT for regulating weights and measures.

SECTION I. **B**E it enacted by the honorable John Evans, esq. with her Majesty's royal approbation Lieutenant Governor of the counties of New-Castle, Kent, and Sussex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the freemen of the said counties, in General Assembly met, and by the authority of the same, That in each county of this her Majesty's government, there shall be had and obtained within two years after the making of this law, at the charge of each county, to be paid out of the county levies, standards of brass for weights and measures, according to the Queen's standards for the exchequer; which standards shall remain with such officer in the counties aforesaid, as shall be from time to time appointed by the county court in each respective county of this government: And every weight, according

Standard of weights and measures to be provided.

C H A P.
XV.

Weights and
measures to be
marked.

Penalty.

Weights, &c.
to be tried once
a year.

Officer's fees.

Standard half
bushel to be pro-
cured from Phi-
ladelphia,

Beer to be sold
by beer measure.

according to its standard, and every measure, as bushel, half bushel, pecks, gallons, pottles, quarts and pints, shall be made just weights and measures, and marked by him that shall keep the standards; and that no person within this government shall presume to buy or sell by any weights or measures not sealed or marked in form aforesaid, and made just according to the standards aforesaid, by the officer in whose possession the standards remain, on penalty of forfeiting Five Shillings to the prosecutor, being convicted by one Justice of the Peace of the unjustness of his weights and measures; and that once a year at least, the said officer, with the Grand Jury, or the major part of them, and, for want of a Grand Jury, with such as shall be appointed and allowed by the respective county courts aforesaid for assistants; shall try the weights and measures in the counties aforesaid; and those weights or measures which are defective, shall be seized by the said officer and assistants; which said officer for his fees, for his making each bushel, half bushel and peck, just measure, and marking the same that is large enough when brought to his hands, shall have Ten Pence, and for every less measure Three Pence, for every yard Three Pence, for every hundred and half hundred weight being made just and marked, Three Pence, for every less weight One Penny, and if the weights and measures be made just before they be brought to him, then to have but half the fees aforesaid, for marking the same. And if the said officer shall refuse to do any thing that is enjoined by this law, for the fees appointed, and be duly convicted thereof, shall forfeit Five Pounds, to the use of the Governor for the time being. That a true measure or standard be taken from the brass half bushel in the town of Philadelphia, and bushel and a peck proportionable; and all less measures and weights coming from England, being duly sealed in London, or other measures agreeable therewith, shall be accounted and allowed to be good by the aforesaid officers, until the said standards shall be had and obtained.

SECT. 2. *And be it further enacted by the authority aforesaid,* That no person shall sell beer or ale by retail but by beer measure, according to the standard of England.

CHAP.

C H A P. XV. a.

C H A P.
XV.

1706.

An ACT for ascertaining the descent of lands, and better disposition of the estate of persons dying intestate. Repealed, and supplied by an act, intituled, an act for the better settling intestates' estates, passed in October, 1721. See after chap. 31. a. See appendix.

C H A P. XVI. a.

An ACT for preventing clandestine marriages. Repealed by an act, intituled, an act to regulate marriages, passed June 11. 1788. chap. 176. b. and that repeal continued by an act with a similar title, passed January 29, 1790, chap. 211. b.

C H A P. XVII. a

An ACT for keeping a registry in religious societies.

BE it enacted by the honorable John Evans, esq. by and with her Majesty's royal approbation Lieutenant Governor of the counties of New-Castle, Kent, and Sussex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the freemen of the said counties, in General Assembly met, and by the authority of the same, That the registry now kept, or which shall hereafter be kept by any religious society in their respective meeting book, or books, of any marriage, birth, or burial, within this her Majesty's government, shall be held good and authentic, and shall be allowed of upon all occasions whatsoever. (a)

CHAP.

(a) By an act regulating marriages, passed January 29, 1790. chap. 211. b. Ministers &c. solemnizing marriages are to keep registers of the same.

C H A P.
XVIII.

1706.

C H A P. XVIII. a.

An ACT confirming devises of lands, and the validity of nuncupative wills. Repealed by an act, intituled, an act concerning written and nuncupative wills, passed 30th of October, 1753. 27. Geo. III. chap. 145. a. See appendix.

C H A P. XIX. a.

An ACT obliging the officers of this government to give security.

Preamble.

NOTHING being more just nor reasonable, than that those, who by virtue of any public office in this government enjoy profit and trust, should for the respective offices to the respective counties give good and lawful security :

Officers to give security to the Justices, &c.

SECTION I. *BE it therefore enacted by the honourable Charles Gookin, esq. (a) by and with her Majesty's royal approbation Lieutenant Governor of the counties of New-Castle, Kent, and Sussex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the freemen in Assembly met, and by the authority of the same,* That all person and persons who, by virtue of any commission, possess and enjoy any post or office of profit or trust within this her Majesty's government, shall at the next quarter sessions within their respective counties, after publication hereof, give security to the Justices of the Peace for the time being, or to the Treasurer of the said county, for their respective offices; and that all person or persons who shall hereafter hold or enjoy any post of profit or trust, shall at the next quarter sessions to be held for their respective counties, after the receipt of his or their commission, give to the Justices of the Peace, or to the Treasurer

(a) Charles Gookin, esq. began his government in February, 1708—9, and continued till May 31, 1717.

C H A P .
XIX.

On penalty of
forfeiting their
offices, &c.

Treasurer of the said county, security as above-said; (a) and any person or persons in any post or commission, refusing to give security as above ordained, shall for such contempt forfeit his said post or office, and is hereby debarred from enjoying and possessing the same, or any other post, within this government, for the space of three years.

SECT. 2. *Provided always, and it is hereby enacted,* That the Justices of the Peace, or Treasurer for the respective counties, to whom the said securities shall be given, shall not, nor are hereby empowered, to take more than Five Hundred Pounds current money, nor less than Three Hundred Pounds money aforesaid, for any of the said officers security, which shall be by recognizance with one good surety.

Security not to
exceed 500 l
nor be less than
300 l.

SECT. 3. *Provided always,* That all officers within this government, who have already given security, are not comprehended within this act.

SECT. 4. *Provided also,* That nothing in this act mentioned, shall extend to any other officers, except Register, Recorder, Clerk, Treasurer, and High Sheriff. (b)

What officers
are to give secu-
rity.

C H A P . XX. a.

An ACT ascertaining the North and West bounds of the county of New-Castle.

WHEREAS several inhabitants of this county have, by the pretence of a circular line run to adjust the twelve miles of the county of New-Castle, separated

VOL. I.

I

separated

(a) See after in the "Act for establishing Orphans Courts," passed in 1721, chap. 30. a. sect. 12. It is declared for whose use such securities shall be, and the manner in which suits thereon shall be proceeded in.

(b) For other provisions as to the Recorder, see after in chap. 83. a. sect. 12: and as to the Treasurer in chap. 102. a. sect. 12. and in chap. 13. a. The foregoing act so far as it relates to the securities to be given by Sheriffs, was first repealed by "An act for the obliging Sheriffs within this government to give sufficient securities for the faithful execution of their trust," passed, October 31, 1767, 7 George III. chap. 189; and that repeal continued by "An act directing the manner and form of securities to be given by Sheriffs for the due execution of their trust," and prescribing a time for their returns on writs of fieri facias," passed June

C H A P.
XX.

separated and withdrawn themselves from the duties, offices, and taxes of this county; and have, by virtue of running of the said line, for which there was neither warrant nor law, associated to, and done the duty of, the neighbouring county, to the great damage of the county of New-Castle: For further prevention of like practice,

SECTION 1. *BE it enacted by the honourable Charles Gookin, esq. by and with her Majesty's royal approbation Lieutenant Governor of the counties of New-Castle, Kent, and Suffex, upon Delaware, and province of Pennsylvania, and by and with the advice and consent of the Representatives of this government, in General Assembly met, and by the authority of the same, That no person or persons whatsoever, living or inhabiting within the bounds which were accounted the bounds of the county of New-Castle at and before any division made by virtue of said line, or any person, or persons, whose name or names stand inrolled as taxables of the county of New-Castle, and living within the limits of the said county; shall, under pretence of the said division line, refuse, deny, or neglect, to act in every part as a member of the said county.*

SECT. 2. *And all Sheriffs, Constables, and other officers, are hereby impowered to summons, seize, or apprehend, the persons living as above-said, as well as any other member of this county, for such reasons as others may be seized or taken; and in case of any refusal, denial, or neglect of the said inhabitants, under any pretence whatsoever (except what shall be allowed by the Justices of the county of New-Castle, in open court sitting) then either to apprehend the delinquents, or distrain on their goods, as the law for other delinquents of this government, directs.*

CHAP.

11, 1788. chap. 178. See also "An act requiring Sheriffs to give security," passed June 17, 1793. chap. 32. c.

C H A P . XXI. a.

C H A P .
XXI.

An ACT for annual elections of Coroners and Sheriffs,
within this government.

WHEREAS by virtue of a charter of privileges, Preamble.
granted by the honourable William Penn,
esq. Proprietary and Governor of the counties of
New-Castle, Kent, and Suffex, on Delaware, and
province of Pennsylvania, amongst other privileges
there granted, a triennial election of Sheriffs for this
government, is one; *And whereas*, for the better re-
gulation of this government, the Representatives, in
Assembly met, have power by the said charter to al-
ter any clause thereof;

SECTION 1. *BE it therefore enacted, by the honourable*
Charles Gookin, esq. by and with her Majesty's royal ap-
probation, Lieutenant Governor of the counties of New-
Castle, Kent, and Suffex; on Delaware, and province of
Pennsylvania, by and with the consent and advice of the
Representatives of this government, in Assembly met, and
by the authority of the same, That there shall be yearly,
and every year, on the first day of October, after the
choice of the Representatives of each county, an
election for Coroners and Sheriffs; (a) and that two
persons for each of the offices, in each county, shall
be chose, of whom the Governor in six days after such
choice, shall nominate one to officiate in each office.
And in case the Governor does not nominate in the
time aforesaid, then the person first chose, by the
country, to act in the said offices as fully, to all intents
and purposes, as if nominated and commissioned.

Election of
Sheriffs and
Coroners ap-
pointed.

SECT. 2. *And be it further enacted by the authority*
aforesaid, That if any person chose to be a Repre-
sentative in Assembly, shall on the same day be chose
to act in any of the above-said offices, it shall and may
be lawful, and is hereby declared to be in the power of
the said party which of the said choices he will ap-
prove,

(a) By the constitution of the State of Delaware, ratified in Convention of the
aid State, June 12, 1792, in article 2, sect. 2, 3, and in article 8, sect. 4. The first
Tuesday in October, in each year thereafter, is the time appointed for holding such
election.

C H A P.
XXI.

prove, any law, usuage, or custom, to the contrary notwithstanding. *Provided always*, That such nomination or commission be in nine days entered in writing in the Prothonotary's office of each respective county of this government. (b)

1719.

C H A P. XXII. a.

An ACT for the advancement of Justice, and more certain administration thereof.

WHEREAS the common law is justly esteemed to be the birth-right of English subjects, and ought to be regarded in this government as the safest rule of our conduct; and whereas acts of Parliament have been adjudged not to extend to these plantations, except when they are particularly named in the body of such acts; and forasmuch as some persons have been encouraged to transgress certain statutes against capital crimes, and other enormities, because those statutes have not been hitherto fully extended to this government; and also, that his Majesty's good subjects, the inhabitants thereof, have not yet been so happy as to obtain the royal confirmation of any law for the better establishment of their constitution and government: For the preventing therefore any failure for the future, in that behalf, may it please the Governor that it may be enacted.

Tria's of high
treasur.

SECTION 2. *And BE it enacted by William Keith, esq. (a) by and with his Majesty's approbation and appointment, Lieutenant, and Governor of the counties of New-Castle, Kent, and Suffex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the freemen of the said counties, in General Assembly met, and by the authority of the same, That all inquests and trials of high treason shall be according*

to

(b) See after an act for regulating elections, &c. Anno. 1733, 7 George II. chap. 61. s. and divers after provisions. And also, chap. 65. a. 13 George II. an act limiting the time of the Sheriffs's holding their offices and preventing bribery, &c. in their elections.

(a) William Keith, esq. began his government May 31, 1717, and continued until June 22, 1726.

to due order and course of common law, observing the directions of the statute-laws of Great Britain, relating to the trials, proceedings, and judgments in such cases.

C H A P.
XXII.

1719.

SECT. 3. *And be it further enacted*, That the enquiries and trials of all petty treasons, misprisions of treasons, murders, manslaughters, homicides, and all such other crimes and misprisions, as by this act, or any other act of Assembly of this government, are or shall be made capital, or felony of death, which have been or shall be done, committed, perpetrated, or happen within this government, shall be as by this act is directed. (b)

Trial of petty treason, &c.

SECT. 4. *And whereas* the several crimes declared by this act to be felonies of death, are by the course of the laws of that part of Great Britain called England, to be enquired of, and tried by justices, juries, and witnesses upon their oaths; but forasmuch as many of the inhabitants of this government are such, who for conscience sake cannot take an oath in any case, yet, without their assistance, justice cannot be well administered, and too great a burthen will fall upon the other inhabitants; *Be it therefore enacted by the authority aforesaid*, That all and all manner of crimes and offences, matters and causes whatsoever, to be enquired of, heard, tried and determined by virtue of this or any other law of this government, or otherwise, shall and may be enquired of, heard, tried and determined (c) by judges, justices, inquests, and witnesses, qualifying themselves according to their conscientious persuasions respectively, either by taking a corporal oath, (d) or by taking the solemn affirmation allowed by act of Parliament to those called Quakers in Great Britain; which affirmation of such persons as conscientiously refuse to take an oath, shall be accounted and deemed in the law to have the full effect of an oath, in any case whatsoever in this government. And that all such persons as shall be convicted of falsely and corruptly affirming or declaring any matter

All crimes to be tried upon oath or affirmation.

Affirmation to have the effect of an oath.

False affirmation to be punished as perjury.

(b) See after a supplementary act hereto declaring more particularly the manner of trial and punishment of such like crimes and offences, passed 15 Geo. II. chap. 84. a.

(c) See also chap. 50. r. (d) See after also in chap. 22. a. passed March 29, 1775. provisions for taking an oath by holding up the right hand, &c.

C H A P.
XXII.

1719.

Challenges to
be allowed to
prisoners, &c.

Witnesses coa-
victed of perjury
shall be punish-
ed accordingly.

Persons standing
mute, &c. suf-
fer as felons con-
vict, &c.

Justices to give
judgment ac-
cordingly.

ter or thing, which, if the same had been upon oath, would by law amount to wilful and corrupt perjury, shall incur the same penalties, forfeitures and disabilities, as persons convicted of wilful perjury do incur by the laws of Great Britain. And that upon all trials of the said capital crimes, lawful challenges shall be allowed, and learned council assigned to the prisoners, and shall have process to compel witnesses to appear for them upon any of the said trials; but before such witnesses shall be admitted to depose or give any manner of evidence, they shall first take an oath or affirmation to say the truth, the whole truth, and nothing but the truth, in such manner as the witnesses for the King are by the laws of this government obliged to do; and if convicted of any wilful perjury in such evidence, shall suffer all the punishments, penalties, forfeitures and disabilities, which by any of the laws and statutes of Great Britain are or may be inflicted upon such persons convicted of wilful perjury.^(e) But if any of the said prisoners shall upon their arraignment for any of the said crimes, stand mute, or not answer directly, or shall peremptorily challenge above the number of twenty persons returned to serve of the jury, he or they so offending shall suffer as a felon convict, and shall lose the benefit of the clergy, and of this act, in the same manner as he or they should have done if they had been indicted, arraigned, and found guilty, if it appear to the justices, before whom such felons be arraigned, by evidence given before them, or by examination, that the same felonies, whereon they are so arraigned, had been such felonies, by reason whereof they should have lost the benefit of their clergy. And when any person or persons shall be so, as aforesaid, convicted or attainted of any of the said crimes, they shall suffer as the laws of Great Britain now do or hereafter shall direct and require in such cases respectively. And it shall and may be lawful for the justices of the court, where any of the said attainders or convictions shall happen, to give and pronounce such judgment or sentence against the persons so attainted or convicted, as their crimes respectively

(e) See after in sect. 26.

tively require, according to the manner, form and direction of the laws of that part of Great Britain called England, in the like cases, (f) and thereupon to award and order execution to be done accordingly.

C H A P.
XXII.
1719.

SECT. 5. *And be it further enacted by the authority aforesaid,* That if any person or persons shall commit sodomy; or buggery, or rape, or robbery, which robbery is done by assaulting another on or near the highway, putting in fear, and taking from his person money or other goods, to any value whatsoever; (g) he or they so offending, or committing any of the said crimes within this government, their counsellors, aiders, comforters and abettors being convicted thereof, as above-said; shall suffer as felons, according to the tenor, direction, form and effect of the several statutes in such cases respectively made and provided in Great Britain; any act or law of this government to the contrary in any wise notwithstanding.

Persons convict
of Sodomy, &c.
shall suffer as fe-
lons.

SECT. 6. *And be it further enacted by the Authority aforesaid,* That if any woman shall be delivered of any issue of her body, male or female, which being born alive, should by the law be deemed a bastard, and that she endeavours privately, either by drowning, or secret burying thereof; or any other way, by herself, or the procuring of others, so to conceal the death thereof as it may not come to light, whether it were born alive or not, but be concealed; in every such case the mother so offending, being convicted thereof, according to the usual course of proceeding in capital crimes within this government, 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. (b) And if any person or persons shall counsel, advise or direct such woman to kill the child she goes with, and, after she is delivered of such child, she kills it, every such person so advising or directing, shall

Women con-
cealing the death
of their bastards
to be deemed
murderers.

(f) As to petit treason, the same judgment to be as in any other felony of death, by an act passed June 5, 1787, chap. 158, b.

(g) So of bestiality. See after in chap. 84. a.

(b) This clause repealed by an act passed June 5, 1779. chap. 45. a. sect. 6.

C H A P.
XXII.

1719.

The statute a-
gainst stabbing
extended here.

shall be deemed accessory to such murder, and shall have the same punishment as the principal shall have.

SECT. 7. *And be it further enacted by the authority aforesaid,* That the statute against stabbing, made in the first year of the reign of King James the first, chapter the eighth, intituled, "An act to take away the benefit of the clergy for some kind of manslaughter;" shall be duly observed and put in execution in this government, and be of like force and effect as if the same act were here repeated and enacted: But that all such persons as shall happen to be present and aiding to the stabbing another, which by the said act is made murder, shall not be deemed principals, but accessories to such stabbing.

Persons con-
victed of cutting
out or disabling
the tongue, &c.
shall suffer as fel-
lons.

SECT. 8. *And be it further enacted by the authority aforesaid,* That if any person or persons on purpose, and of malice fore-thought, and by lying in wait, shall unlawfully cut out, or disable the tongue, put out an eye, slit the nose, cut off the nose or lip, or cut off or disable any limbs or members of any of the King's subjects, with intention in so doing to maim or disfigure in any of the manners before-mentioned, such his Majesty's subjects; that then and there in every such case the person or persons so offending, their counsellors, aiders and abettors, knowing of and privy to the offence as aforesaid, shall suffer death, as in cases of felony, without benefit of the clergy.

The statute a-
gainst conjura-
tion, &c. extend-
ed.

SECT. 9. *And be it further enacted by the authority aforesaid,* That another statute, made in the first year of the reign of King James the first, chapter the twelfth, intituled, "An act against conjuration, witchcraft, and dealing with evil and wicked spirits," shall be duly put in execution in this government, and of like force and effect, as if the same were here repeated and enacted. (i)

Burglary how to
be punished.

SECT. 10. *And be it further enacted by the authority aforesaid,* That if any person or persons shall be so, as aforesaid, convicted of burglary, which is a breaking and entering into the dwelling-house of another in the night time,

(i) This clause repealed by the said act of June 5, 1779, chap. 45. b. sect. 5; but in sect. 4. provision made for punishing pretenders thereto.

time, with an intent to kill some reasonable creature, or to commit some other felony within the same house, whether the felonious intent be executed or not, he or they so offending within this government, being convicted thereof as aforesaid, shall suffer death, without benefit of clergy; any law of this government to the contrary notwithstanding.

CHAP.
XXII.
1719.

SECT. 11. *And if any person or persons shall be so, as aforesaid, convicted of maliciously and voluntarily burning the dwelling-house, barn, stable, or out-house of another, having corn or hay therein, he or they so offending within this government, shall suffer death; any law of this government to the contrary notwithstanding.*

Burning of
houses.

SECT. 12. *And be it further enacted by the authority aforesaid, That if any principal offender in any capital crime, which by the laws of this government for the time being is made felony of death, shall be convicted of any such felony, or shall stand mute, or peremptorily challenge above the number of twenty persons returned to serve of the jury; it shall and may be lawful to proceed against any accessory, either before or after the fact, in the same manner as if such principal felon had been attainted thereof, notwithstanding any such principal felon shall be admitted to the benefit of his clergy, pardoned, or otherwise delivered, before attainder; and every such accessory shall suffer the same punishment, if he or she be convicted, or stand mute, or peremptorily challenge above the number of twenty persons returned to serve of the jury, as he or she should have suffered if the principal had been attainted.*

Accessaries to
capital crimes
how to be pro-
ceeded against.

SECT. 13. *And be it further enacted by the authority aforesaid, That if any person or persons shall receive, harbour or conceal any of the said robbers or burglars, felons or thieves, or shall receive or buy any goods or chattles that shall be feloniously taken or stolen by any such robbers or burglars, felons or thieves, knowing the same to be stolen, (k) and being so, as aforesaid, convicted of either of the said offences;*

Persons conceal-
ing robbers, bur-
glars, &c. to be
burnt in the
hand.

VOL. I.

K

if

(k) See in chap. 90. a. sect. 9.

CHAP.
XXII.
1719.

if he or they pray to have the benefit of this act in lieu of clergy, judgment of death shall not be given against them upon such conviction, nor execution awarded upon any outlawry for such offence, but they shall be burnt in their hands, in manner as herein after directed.

Accessaries to be punished by fine, &c. if the principal cannot be taken.

SECT. 14. *Provided always*, That if any such principal robber or burglar, felon or thief, cannot be taken, so as to be prosecuted and convicted for any such offence, nevertheless it shall be lawful to prosecute and punish every such person and persons, buying or receiving any goods stolen by any such principal felon, knowing the same to be stolen, as for a misdemeanor, to be punished by fine and imprisonment, or other such corporal punishment, as the court shall think fit to inflict, although the principal felon be not before convict of the said felony; which punishment shall exempt the offender from being punished as accessory, if such principal felon shall be afterwards taken and convicted.

If persons indicted do not appear, *capias* shall be awarded.

SECT. 15. *And be it further enacted by the authority aforesaid*, That if any person or persons who have been indicted or appealed, or hereafter shall be indicted or appealed for any of the said crimes, did not, or will not appear to answer such indictment or appeal, the justices before whom the same hath been, or shall be taken, shall award a writ, called *capias*, against every such offender, directed to the Sheriff of the county where the party indicted or appealed are by such indictment or appeal supposed to be conversant or inhabit, returnable before the justices of that court, where such party is or shall be so indicted or appealed at the Supreme or Provincial Court next after the taking such indictment or appeal; by which writ of *capias* the same Sheriff shall be commanded to take the body of him or them so indicted or appealed, if he or they can be found in his bailiwick; and if he or they cannot be found, the Sheriff shall make proclamation in every Court of Quarter Sessions, which shall be held for the said county where the said party indicted or appealed is supposed to inhabit or be conversant as aforesaid; That he or they, being so indicted or appealed, shall appear before the said Justices at the said Supreme

The Sheriff to make proclamation,

That the offender appear, &c.

Supreme Court, on the day of the return of the said writ of *capias*, to answer our Lord the King, or to the party, of the treason, felony or trespass, whereof he or they are so indicted or appealed. Which writ shall be delivered to the said Sheriff or Sheriffs three months before the return thereof; after which writ of *capias* so served and returned, if he who is so indicted or appealed, comes not at the said day of return of the said *capias*, and yield his body to the Sheriff, he shall be by the Justices of the said Supreme Court pronounced outlawed and attainted of the crime, whereof he is so indicted or appealed as aforesaid; and from that time shall forfeit and lose all his lands and tenements, goods and chattles. Which forfeiture, and all other forfeitures expressed or implied by the judgments to be given upon the said capital offences mentioned in this act, after such criminals just debts, and the reasonable charges of their maintenance in prison, are deducted, shall go one half to the Governor for the time being, (1) towards support of this government, and for defraying the charges of prosecution, trial, and execution of such criminals; and the other half, or residue thereof, shall go to such criminal's wife and children equally: But if he leaves no wife or children, then to the next of his kindred, not descending lower than the second degree, to be claimed within three years after the death of such criminals; otherwise the same shall go to the Governor, as aforesaid; any law or usage to the contrary notwithstanding.

Forfeitures.

SECT. 16. *Provided always, and be it further enacted,* That where any person or persons charged, committed to prison, or convicted of any of the said capital crimes, being justly indebted to any other person or persons; he or they so indebted may be arrested, or their goods and chattles attached, to answer the suits of their respective creditors; who, making due proof that the debts or sums demanded are really and without fraud due, shall recover judgment for the same, and executions may be awarded against the lands, goods,

Criminals to answer for their debts.

(1) This moiety to go to the use of the state by the act passed February 22, 1777; chap. 6. sect. 5.

C H A P.
XXII.

1719.
Breakers of pri-
sons.

Such as by law
have benefit of
clergy, to have
the benefit of
this act,

and without
reading be as
clerks convict,
and burnt in the
hand.

Justices may
commit them to
some house of
correction, &c.

goods and chattles of such defendants, as is usual in other cases.

SECT. 17. *Provided also*, That he or they who shall happen to break prison, shall not have judgment of life or member for breaking of prison only; except the cause for which he or they were taken and imprisoned, did require such judgment, had he been convict according to law.

SECT. 18. *And be it further enacted by the authority aforesaid*, That if any person be convicted of any such felony as is hereby made capital, for which he ought by the laws of Great Britain to have the benefit of his clergy, and shall pray to have the benefit of this act; he shall not be required to read, but without any reading shall be allowed, taken and reputed to be, and punished as a clerk convict, and burnt, if for murder, with an M upon the brawn of the left thumb, and if for any other felony, with a T in the same place of the thumb; which marks are to be made by the Goaler in open court, as is usual in Great Britain; which shall be effectual to all intents and purposes, and be as advantageous to him, as if he had read as a clerk; any law or usage to the contrary notwithstanding.

SECT. 19. *And that the said justices, before whom such offender or offenders shall be tried and convicted, shall also at their discretion award and give judgment, that such offender and offenders shall be committed to some house of correction, or public work-house, (m) within the county, hundred or place, where such conviction shall be, there to remain, and be kept without bail or mainprize for such time as such justices shall then judge and award, not less than six months, and not exceeding two years, to be accounted from the time of such conviction, and an entry thereof shall be made of record, pursuant to such judgment and award; and such offender and offenders to be judged and awarded to remain and be kept in such house of correction or public work-house, shall be there*

(m) The several prisons in the respective counties to be used as work-houses until others be provided. See the act of 4 George II, chap. 58: Also chap. 146. a. passed October 30, 1753.

there set at work, and kept at hard labour, for and during such time as shall be so adjudged and awarded: And in case such person or persons shall refuse or neglect to work and labour, as they ought to do, the master or keeper of such house of correction or public work-house respectively, is hereby required to give such persons such due correction as shall be fit and necessary in that behalf.

C H A P.
XXII.
1719.

SECT. 20. *And be it further enacted by the authority aforesaid,* That in case any such offender or offenders shall, after such judgment given, escape out of prison, or out of such public work-house or house of correction, as he, she, or they, shall be committed unto, as aforesaid; such person or persons being afterwards retaken, shall be brought before one or more of the Provincial Judges, or before two or more of the Justices of the Peace, of such county, hundred or place, where such offender or offenders shall be so retaken, which judge or justices are hereby required to commit such offender and offenders to some house of correction, or public work-house, within such county, hundred or place, where he, she, or they, shall be so retaken, there to remain without bail or mainprize, for any time, not less than twelve months, and not exceeding four years, to be accounted from the time of such retaking, and there be set at work, and kept at hard labour, and receive such due correction as aforesaid.

If they escape, and be retaken, to be kept longer.

SECT. 21. *And in case any master or keeper of any house of correction, or public work-house, shall neglect to do his duty, as above directed; any Judge or Justice of Goal Delivery, upon complaint, and due proof thereof, upon the oath or affirmation of one or more witnesses to him made, shall be, and is hereby impowered to remove such person from his said office.*

The master of such house neglecting his duty shall be removed. See chap. 146. a. sect. 6.

SECT. 22. *And be it further enacted by the authority aforesaid,* That where a man being convicted of any felony for which he may demand the benefit of his clergy; if a woman be convicted for the same, or like offence, upon her prayer to have the benefit of this act, judgment of death shall not be given against her upon such conviction, or execution, awarded upon any outlawry for such offence, but shall suffer

Women convicted of Felony, &c.

C H A P.
XXII.
1719.

suffer the same punishment as a man should suffer, that has the benefit of his clergy allowed him in the like case, *That is to say*, Shall be burnt in the hand, in manner aforesaid, and further to be kept in prison for such time as the justices in their discretion shall think fit, so as the same do not exceed one year.

No person to have the benefit of this act more than once.

SECT. 23. *But* if any man or woman, who have once had the benefit of this act, as aforesaid, and shall be again convicted of any other felony, hereby made capital or felony of death, for which a man might have the benefit of his clergy; every such man and woman shall be, and are hereby totally excluded from having any benefit or advantage of this act, but shall suffer pains of death, as in cases where the benefit of clergy is by law taken away.

Felonies committed in one county, and accessaries in another, &c.

SECT. 24. *And be it further enacted by the authority aforesaid*, That where any murder or felony hath been or hereafter shall be committed in one county of this government, and one or more persons shall be accessory or accessaries to any such murder or felony in another county; that then an indictment found or taken against any such accessory or accessaries, upon the circumstance of such matters before Justices of the Peace, or other justices or commissioners to enquire of felonies in the county where such offences of accessory or accessaries in any manner have been, or shall be committed or done, shall be as good and effectual in law, as if the said principal offence had been committed or done within the same county where the indictment against such accessory hath been, or shall be found.

Justices to certify, whether such principal be convicted, &c.

SECT. 25. *And be it further enacted*, That the Justices of the said Supreme Court, or two of them, upon suit to them made, shall write to the keepers of the records, where such principal is or shall be hereafter attainted or convicted, to certify them, whether such principal be attainted, convicted, or otherwise discharged of such principal felony; who upon such writing to them, or any of them directed, shall make sufficient certificate in writing, under their seal or seals, to the said justices, whether such principal be attainted, convicted, or otherwise discharged or not: And after they, who have the custody of such records,

cords, do certify that such principal is attainted, convicted, or otherwise discharged of such offence by the law; then the Justices of Goal Delivery, or Oyer and Terminer, shall proceed upon every such accessary in the county where he or they became accessary, in such manner and form as if both the said principal offence and accessary had been committed and done in the same county where the offence of accessary was or shall be committed or done. *And* that every such accessary, and other offenders above expressed, shall answer upon their arraignments, and receive such trial, judgment, order and execution, and suffer such forfeitures, pains and penalties, as is usual in other cases of felony; and as the statute, made in the second and third year of King Edward the sixth, chapter the twenty-fourth, entituled, *An act for the trial of murders and felonies committed in several counties*, doth direct in such cases; which statute shall be observed in this government, any law or usage to the contrary notwithstanding.

C. H. A. P.
XXII.
1719.

Accessaries how
to be judged.

SECT. 26. *And be it further enacted by the authority* *aforsaid*, That every person who shall unlawfully and corruptly procure any witness to commit wilful and corrupt perjury in any matter or cause depending in suit and variance in any of the Courts of Judicature within this government, or shall unlawfully and corruptly procure and suborn any witness to testify upon oath or affirmation, in any matter, cause or thing whatsoever; such offender shall forfeit the sum of Forty Pounds, one half thereof to the Governor, for the support of this government, and the other half to the party grieved: But for want of lands, goods or chattles, to satisfy the said Forty Pounds, every such offender being convicted or attainted of perjury or subornation *aforsaid*, shall for his said offence suffer imprisonment by the space of six months, without bail, and stand on the pillory the space of one whole hour, in some market or public place, where the offence was committed; and shall suffer all the other punishments, penalties, forfeitures and disabilities, which are inflicted upon such offenders by any law or statute of Great Britain. *And* that the statute, made in the fifth year of Queen Elizabeth, chapter the ninth,

Subornation of
perjury.

Penalty.

Imprisonment,
pillory.

C H A P.
XXII.

1719.

ninth, entitled, *An act for punishment of such persons as shall procure or commit any wilful perjury*, shall be observed in this government, and be duly put in execution, as well against those that shall falsify their affirmations, as those who shall falsify their oaths, or be convicted of subornation of perjury.

Justices of Goal
Delivery may
give judgment of
death against
persons repriv-
ed.

SECT. 27. *And be it further enacted by the authority aforesaid*, That in all cases where any person or persons have been, or shall be found guilty of any of the said crimes for which judgment of death should or may ensue, and shall be reprivied to prison, without judgment at that time given him, her or them, so found guilty; that those who now are, or hereafter shall be, assigned justices, or deliver the goal; where any such guilty persons shall remain, are hereby empowered and authorized to give judgment of death, and award execution against such persons so found guilty and reprivied, as the said justices before whom such person or persons was or were found guilty, might have done before such reprivie. *And that no*

No process to be
discontinued by
reason of any
new commissions
or alterations of
Magistrates, &c.

Nor by the death
or removal of
the Governor,
&c.

manner of process or suit made, sued or had before any of the King's Justices of the Supreme or Provincial Court, Goal Delivery, Oyer and Terminer, Justices of the Peace, or other of the King's Commissioners in this government, shall in any wise be discontinued by making and publishing of any new commission or association, or by altering the names of the Justices of the said Supreme Court, Goal Delivery, Oyer and Terminer, Justices of the Peace, or other the King's Commissioners; but that the new Justices of the Supreme Court, Goal Delivery, and of the Peace, and other Commissioners, may proceed in every respect, as if the old commissions and justices and commissioners had still remained and continued unaltered. *And that no process, pleas, suits, actions, or proceedings whatsoever, which now are, or at any time hereafter shall be commenced, sued, brought or depending before any of the said Justices of the Supreme Court, Justices of the Courts of Common Pleas, or other the King's Justices, Commissioners or Magistrates in this government, shall be discontinued or put without day, by reason of the death or removal of the Lieutenant Governor of this government, or by the*

the death, new commission, or not coming of the said justices or commissioners, or any of them; but shall stand good and effectual in law, to all intents and purposes, notwithstanding the death or removal of the said Governor, or of the death, new commission, association, or not coming of the said justices, or any of them.

C H A P .

XXII.

1719.

SECT. 28. *And be it further enacted by the authority aforesaid,* That in case of any officer being a Quaker, that notwithstanding he be such, yet any oath at the request of the said officer, taken before any magistrate, shall be deemed equal and full to the purpose, as if administered by the said officer, any law or usage to the contrary notwithstanding.

Oath administered at the request of a Quaker officer, &c.

SECT. 29. *Provided always, and be it further enacted by the authority aforesaid,* That no indictment, presentment or inquisition; or any process whatsoever now depending in any court within this government, for any of the crimes or offences mentioned in this act, shall be discontinued, abated or quashed for or by reason of this act, or any thing therein contained; but that the judges and justices of the respective courts within this government shall proceed to hear, try and determine the said offences in such indictments, presentments and inquisitions, mentioned to be committed against any act or acts of Assembly of this government, as were in force at the time of finding, making or taking the said indictments, presentments and inquisitions, and thereupon to give judgment, and award executions, according to the directions of the said respective acts of Assembly, upon which the said indictments, presentments or inquisitions are founded, as if the same act or acts of Assembly were by a special clause in this act continued for that purpose; any thing herein contained to the contrary notwithstanding.

No judgment &c. now depending, shall be discontinued.

C H A P.
XXIII.

C H A P. XXIII. a.

An ACT to encourage the building of good Mills in this government. A supplement hereto passed in October 1760, Chap. 172. and both repealed by a new law, passed November 6, 1773. chap. 221. a. See appendix.

C H A P. XXIV. a.

An ACT appointing persons to lay out two hundred acres of land in lots adjoining to the Court-House of the county of Kent, and to dispose of the same to the use of the public.

Preamble.

NOTHING being of more consequence to a country than the improvement thereof by the addition of tradesmen, and others, in such measure as may not be of great expence to the new settlers;

Benjamin Shurmer, &c. empowered to lay out into lots a tract of land in the town of Dover.

SECTION I. BE it therefore enacted by the honorable William Keith, esq. by his Majesty's royal approbation Lieutenant-Governor of the counties of New-Castle, Kent, and Suffex, on Delaware, and province of Pennsylvania, by and with the advice and consent of the freemen of the said counties, in General Assembly met, and by the authority of the same, That it shall and may be lawful, and it is hereby made lawful for Benjamin Shurmer, William Brinkloe, and Richard Richardson, or any two of them, to survey and lay out into lots a certain tract of land in the county of Kent, adjoining to the Court-House of said county, and purchased by the people thereof, and commonly called the town of Dover, in such measures and proportions as to them shall seem meet and convenient, and the said lots so surveyed and laid out, as aforesaid, to dispose of and sell to such persons as are willing to purchase and buy; and further, that it shall and may be lawful, and is hereby made lawful for the persons a-bovementioned, to grant, execute and perform deed or deeds, conveyance or conveyances, bargains or sales,

sales, for the said lot or lots, to any such person or persons as shall purchase the same; which said deeds, conveyances, bargains or sales, shall be good and valid in law to the parties purchasing, to them, their heirs and assigns for ever.

C H A P.
XXIV.

SECT. 2. *And be it further enacted by the authority aforesaid,* That the above-mentioned Benjamin Shurmer, William Brinkloe, and Richard Richardson, or any two of them, may and are hereby impowered to sue for, ask, levy and recover every such sum, or sums of money, as shall arise due from the sale of the said lot or lots.

And to recover
the money for
said lots.

SECT. 3. *And be it further enacted,* That the said Benjamin Shurmer, William Brinkloe, and Richard Richardson, shall and are hereby made liable, upon all demands hereafter, to render an account of money or monies received on account of the aforesaid lots, to any person or persons whom the Justices of the Peace for the time being, and Grand Jury of said county, shall appoint; whose receipt shall discharge the said above-mentioned persons from any farther demand: And the said Benjamin Shurmer, William Brinkloe, and Richard Richardson, are hereby allowed, and it may be lawful for them to reserve for themselves out of the monies so as aforesaid to be received, every such part or proportion of the same, as by them, and any other three persons, whom the Court and Grand Jury shall nominate for the said purpose, shall agree upon and think fit.

And render an
account of the
money received,
&c.

SECT. 4. *Provided always, and it is hereby meant and intended,* That the said survey and allotment, and laying out, shall be finished and compleated at or before the tenth day of March next.

CHAP.

CHAP.
XXV.

CHAP. XXV. a.

An ACT obliging all non-residenters within this government, to give security to the Prothonotaries of these counties, before any writ can issue from the said offices, for the payment of the costs.

No Prothonotary, &c. to grant a writ to a non-residenter without security, &c.

SECTION 1. **B**E it enacted by the honorable William Keith, esq. by and with his Majesty's royal approbation Lieutenant Governor of the counties of New-Castle, Kent, and Sussex, on Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the said counties, in General Assembly met, and by the authority of the same, That no Prothonotary or Clerk of any county of this government, shall grant or issue any writ to any person whatsoever, who is not an inhabitant within this his Majesty's government, without causing and obliging every such person first to give security for the costs and charges that may accrue by such writ or action; which said security shall be by a substantial inhabitant of that county where such action is commenced.

Attornies suing out process for a non-residenter without security shall be answerable for costs, &c.

SECT. 2. *And be it further enacted by the authority aforesaid,* That every Attorney who sues out any process for any person not an inhabitant, and who has not given security as aforesaid, shall be liable and made answerable for the costs and charges of the said action to such Prothonotary where the said office is kept.

And the Prothonotary, &c. issuing writs without security shall be liable for costs.

SECT. 3. *And be it further enacted by the authority aforesaid,* That every Prothonotary, or Clerk, who issues out any writ without such security as above-mentioned, shall be liable for the charges and costs himself; any law, custom or usage to the contrary in any wise notwithstanding.

CHAP,

C H A P. XXVI. a.

C H A P.
XXVI.

An ACT for obliging the Sheriff, Clerk, and Register of wills and testaments for the county of Sussex, to reside in the town of Lewes in the said county. By an act passed January 29, 1791, chap. 222, b. sect. 4, 5; the officers above-said are to reside at the new Court-House, by the said act directed to be built; as also by a supplement thereto passed, October 26, 1791. chap. 237. b.

C H A P. XXVII. a.

1721.

An ACT directing the priority of payment of the debts of persons dying within this government.

WHEREAS it often happens, that many persons residing within this his Majesty's government, having visible estates within the same, do not only require and gain considerable credits from the inhabitants thereof, but also, upon the death of such persons, they are found oftentimes to be indebted to persons that live and reside in other of his Majesty's plantations in America, by bills, bonds, judgments, or otherwise, made by the parties deceased, whereby it often falls out, that the aforesaid inhabitants that formerly trusted such persons, are defrauded and deprived of their just debts contracted as aforesaid; for the prevention of which for the future,

SECT. 1. Be it enacted by his excellency Sir William Keith, Baronet, &c. and by and with the advice and consent of the freemen, &c. That where debts are due by any persons whatsoever to any the inhabitants of this government, in all courts within the same, priority of judgment and execution for debts due from any person whatsoever shall be allowed to the inhabitants of this government; and that no foreign debt shall be paid by any executor or administrator, till the debts due to the inhabitants of this government be first secured and paid, on penalty to pay the creditors of this

Preamble.
Debts to inhabitants of this government to have preference, &c.

C H A P.
XXVII.

1721.

Letters of ad-
ministration not
granted in this
government to
be filed, &c.

this government as far as the assets in such executor's or administrator's hands would reach before such foreign debts were paid: *Provided* that the demand be made within six months after the death of such debtor; any law, act, custom or usage to the contrary hereof in any wise notwithstanding.

SECT. 2. *And be it further enacted*, That when any person shall die having *Bona Notabilia* in several counties of this government, and in the province of Pennsylvania, or elsewhere; and when any person not residing in this government, who shall for that purpose obtain letters of administration of the Governor, or any other person out of this government, and the deceased being indebted to any of the inhabitants of this government for a debt contracted within the same, to the value of Twenty Pounds; *Be it enacted*, that such administrator, before he be capable of obtaining any judgment against any inhabitants of this government, by virtue of such letters of administration, in any Court of Record within this government, he shall be obliged to file such letters of administration by whomsoever the same be granted out of this government, with some of the Registers, or proper officers in this government, and shall enter into bond with sufficient sureties, who have visible estates in the government, with condition to pay and satisfy all such debts as were owing by the said intestate at the time of his or her death to any person residing in this government, as far forth as the effects or estate of the intestate within this government will extend. To the end that executors and administrators may know how to demean and govern themselves in the just discharge of the debts of the deceased in due order of law; *Be it enacted*, That the same shall be paid and satisfied in manner following, *That is to say*, First Funeral expences, which are to be regulated according to the circumstances of the deceased's estate. Secondly, Debts due to the crown, and to the proprietary. Thirdly, Debts due by judgment, obtained in the life time of the party deceased. Fourthly, Debts due by recognizances, and for rent. Fifthly, Debts due by obligation. Sixthly, Debts due by bill. Seventhly, Servants and workmens wages. Eighthly, Accounts of merchants and others. And every

Order of pay-
ment of the
debts of persons
deceased.

every executor or administrator that shall pay any debts in other order than herein is directed; he having sufficient notice of a debt of greater dignity due from his testator, or intestate, so as he may be able to plead the same in bar of a debt of a lesser dignity, that then in such case he shall answer such debt to which the priority is given by the law, out of his own estate; if he have no effects of the party deceased; and that all other laws of this government, relating to the priority of payment of the debts of persons deceased, and of persons being indebted to the inhabitants of this government, are hereby rendered null and of no force or effect.

C H A P.

XXVIII.

1721.

C H A P. XXVIII. a.

An ACT for the better confirmation of the owners of lands and inhabitants of this government in their just rights and possessions. (a)

WHEREAS divers laws have been enacted in this government, that made all lands and tenements (without any regard to the fee-simple, or other tenures by which they are held) as liable to pay debts as chattels, and be taken and sold upon executions, or by decrees in courts of equity, or to be sold by such executors as had no power by their testators wills for so doing, and in certain cases to be sold by administrators, as also to be divided, allotted and distributed amongst the children of intestates; in pursuance of which laws, divers lands, tenements and hereditaments in this government have been sold, delivered, affeſſed, allotted or distributed accordingly: Now to the end that these sales, deliveries, assignments and allotments, or distributions, may have effect according to the tenor and true meaning of the said laws, and that the possessors and owners of the said lands and hereditaments

Preamble.

(a) See a supplementary act hereto, 7 George II. chap. 60. a: and a further supplement passed April 12, 1773, chap. 218, a.

C H A P.
XXVII.

1721.

Letters of ad-
ministration not
granted in this
government to
be filed, &c.

this government as far as the assets in such executor's or administrator's hands would reach before such foreign debts were paid; *Provided* that the demand be made within six months after the death of such debtor; any law, act, custom or usage to the contrary hereof in any wise notwithstanding.

SECT. 2. *And be it further enacted*, That when any person shall die having *Bona Notabilia* in several counties of this government, and in the province of Pennsylvania, or elsewhere; and when any person not residing in this government, who shall for that purpose obtain letters of administration of the Governor, or any other person out of this government, and the deceased being indebted to any of the inhabitants of this government for a debt contracted within the same, to the value of Twenty Pounds; *Be it enacted*, that such administrator, before he be capable of obtaining any judgment against any inhabitants of this government, by virtue of such letters of administration, in any Court of Record within this government, he shall be obliged to file such letters of administration by whomsoever the same be granted out of this government, with some of the Registers, or proper officers in this government, and shall enter into bond with sufficient sureties, who have visible estates in the government, with condition to pay and satisfy all such debts as were owing by the said intestate at the time of his or her death to any person residing in this government, as far forth as the effects or estate of the intestate within this government will extend. To the end that executors and administrators may know how to demean and govern themselves in the just discharge of the debts of the deceased in due order of law; *Be it enacted*, That the same shall be paid and satisfied in manner following, *That is to say*, First Funeral expences, which are to be regulated according to the circumstances of the deceased's estate. Secondly, Debts due to the crown, and to the proprietary. Thirdly, Debts due by judgment, obtained in the life time of the party deceased. Fourthly, Debts due by recognizances, and for rent. Fifthly, Debts due by obligation. Sixthly, Debts due by bill. Seventhly, Servants and workmens wages. Eighthly, Accounts of merchants and others. And every

Order of pay-
ment of the
debts of persons
deceased.

every executor or administrator that shall pay any debts in other order than herein is directed; he having sufficient notice of a debt of greater dignity due from his testator, or intestate, so as he may be able to plead the same in bar of a debt of a lesser dignity, that then in such case he shall answer such debt to which the priority is given by the law, out of his own estate, if he have no effects of the party deceased; and that all other laws of this government, relating to the priority of payment of the debts of persons deceased, and of persons being indebted to the inhabitants of this government, are hereby rendered null and of no force or effect.

C H A P.
XXVIII.

1721.

C H A P. XXVIII. a.

An ACT for the better confirmation of the owners of lands and inhabitants of this government in their just rights and possessions. (a)

WHEREAS divers laws have been enacted in this government, that made all lands and tenements (without any regard to the fee-simple, or other tenures by which they are held) as liable to pay debts as chattels, and be taken and sold upon executions, or by decrees in courts of equity, or to be sold by such executors as had no power by their testators wills for so doing, and in certain cases to be sold by administrators, as also to be divided, allotted and distributed amongst the children of intestates; in pursuance of which laws, divers lands, tenements and hereditaments in this government have been sold, delivered, assented, allotted or distributed accordingly: Now to the end that these sales, deliveries, assignments and allotments, or distributions, may have effect according to the tenor and true meaning of the said laws, and that the possessors and owners of the said lands and hereditaments

Preamble.

(a) See a supplementary act hereto, 7 George II. chap. 60. a: and a further supplement passed April 24, 1773, chap. 218, a.

C H A P.

XXVIII.

1721.

What sales, &c.
are declared
good and avail-
able in law.

reditaments so sold, delivered, assigned and distributed, and their heirs and successors, may quietly have, hold and enjoy the same;

SECTION I. *BE it enacted, &c.* That all and singular the bargains and sales, being made *bona fide*, and for valuable consideration, as also all assignments, grants and allotments, or distributions, made to any person or persons whatsoever, of any lands, tenements, or hereditaments, made in this government, according to the tenor and direction, or the true intent and meaning of the said laws in those cases made and provided, before the first day of December, in the year one thousand seven hundred and twenty-one; are hereby declared to be good and effectual, and shall stand, and be taken, deemed and adjudged good, sure and available in law, against all persons whatsoever, according to the tenor and effect of the same bargains, sales, assignments, grants, allotments or distributions; and that every person or persons, bodies politic and corporate, their heirs and successors, and all claiming by, from, or under them, or any of them, for and according to their and every of their several estates and interests, of, in and to the said lands, tenements and hereditaments, with their appurtenances, so as aforesaid sold, delivered, assigned or allotted, shall and may quietly or peaceably have, hold and enjoy the same lands, tenements, hereditaments, and premises, and every part thereof, against all and every person and persons, their heirs and assigns, having, claiming, or pretending to have, any estate, right, title, interest, claim or demand whatsoever, of, in or to the same: *Saving nevertheless* to all and every person and persons, bodies politic and corporate (others than to the person or persons for payment of whose debts, and maintenance of whose widows and children, any of the said lands, tenements, hereditaments, have been sold, delivered, or conveyed as aforesaid, and his and their heirs, and others than to the heirs at law of the said intestates, or any claiming under them, who attempt to avoid or annul the said divisions, allotments or distributions, which have been made of the said intestates lands and hereditaments amongst their children, by virtue or in pursuance of the said laws)

laws) all such actions, estates, possessions, rights, titles, interests, rents, profits and demands, as they, or any of them, have, shall, may or ought to have of, in, or to all or any of the said lands, tenements and hereditaments, or any part thereof, in such manner and form as if this act had never been made; so that they do pursue their said rights, titles, claims, and interest, by way of action, or lawful entry, before the first day of October, which will be in the year of our Lord one thousand seven hundred and twenty-two.

Provided always, That all and every the children of intestates, to or amongst whom any lands, tenements and hereditaments have been allotted or distributed by virtue of the said laws, and all and every person and persons to whom any parts or purports of lands, tenements or hereditaments have, as aforesaid, been, or hereafter shall be sold or delivered upon executions, shall hold and enjoy their said respective parts, purports or allotments in severalty, or as tenants in common, and not as joint-tenants.

SECT. 2 *Whereas* divers persons, living out of this government, are and have been owners of lands within the same, such persons have usually appointed attornies to sell and dispose thereof: To the end therefore that those who have so purchased, and their heirs or assigns for ever hereafter to be secured in their titles and estates, *Be it enacted, &c.* That all sales of lands, tenements, and hereditaments formerly made by any Attornies or Agents who have been appointed by any person or persons who had right so to do, and especially giving them power or directions therein to sell or convey land, are and shall be deemed and adjudged good and effectual in law, to all intents, constructions and purposes whatsoever, as fully as if the said owners of such lands had by their own deeds, bargains and sales, actually and really sold and conveyed the same; and all and singular the lands, tenements and hereditaments sold and conveyed as aforesaid, shall be and remain to such purchasers respectively, their heirs and assigns, for ever, as they were or ought to have been to the owner or owners of such lands or premises so employing his or their attornies and agents, as aforesaid.

C H A P.
XXVIII.

Lands divided
amongst children
of intestates,
and those sold
upon executions,
to be held in
common tenan-
cy.

Sales, &c.
which have
been made by
attornies, are
adjudged good.

C H A P.
XXVIII.

Bonds, &c.
proved before
any magistrate,
are good in law.

SECT. 3. *And be it further enacted, &c.* That all and every bonds, specialties, letters of attorney, and other powers in writing, which shall be produced in any court, or before any magistrate in this government, the execution whereof being proved by two or more of the witnesses thereunto before any Mayor or Chief Magistrate or Officer of the towns or places where such bonds, letters of attorney, or other writings, are or shall be made or executed, and accordingly certified under the common or public seal of the towns or places where the said bonds, letters of attorney, or other writings, are so proved respectively; shall be taken and adjudged as sufficient in law, as if the witnesses therein named had been present, and such certification shall be sufficient evidence to the court and jury for the proof thereof.

Sales of lands,
&c. made by
letters of attorney
expressly
giving power,
&c. shall be
good, &c.

SECT. 4. *And be it further enacted, &c.* That all sales or conveyances of lands, tenements or hereditaments, which shall hereafter be made by virtue of any letters or powers of attorney or agency, duly executed, which do or shall expressly give power to sell lands or other estates, and be certified to have been proved as aforesaid, or shall be proved in this government before any Court of Common Pleas within this government, by one or more of the witnesses thereto; (b) shall be good and effectual in law, to all intents, constructions and purposes whatsoever, as if the said constituent or constituents had by their own deeds, bargains and sales, actually and really sold and conveyed the same.

SECT. 5. *Provided always,* That no sale of lands, tenements and hereditaments, made by virtue of such power or powers of attorney or agency as aforesaid, shall be good and effectual, unless such sale be made and executed while such power is in force; and all such powers shall be accounted, deemed and taken to be in force, until the attorney or agent shall have due notice of a countermand, revocation, or death of the constituent.

CHAP.

(b) See after in chap. 83. a. sect. 3. 15 George II. and the act of 25 George II. chap. 127. a. further provision made.

C H A P. XXIX. a.

C H A P.
XXIX.

8 Geo. I.

An ACT for keeping in good repair the Dykes and Sluices belonging to the marsh on the North end of the town of New-Castle, lately in the tenure and occupation of John Donaldson, Robert French, and Richard Halliwell, esquires; deceased. Private. Repealed and supplied.

C H A P. XXX. a.

An ACT for establishing Orphans Courts.

WHEREAS several matters of great importance Preamble: are directed to be done by the Orphans Courts of this government; but upon perusal of the law directing the doing thereof, the same appears to be very deficient, and divers orphans and persons concerned for them, or entrusted with their estates, labour under great inconveniences:

SECTION I. *BE it therefore enacted by the honorable Sir William Keith, Baronet, with his Majesty's royal approbation Governour of the province of Pennsylvania, and counties of New-Castle, Kent, and Sussex, on Delaware, and by and with the advice and consent of the freemen of the said counties in General Assembly met, and by the authority of the same, That the Justices (a) of the Court of General Quarter-Sessions of the Peace in each county of this government, or so many of them as are or shall be from time to time enabled* Justices of Quarter-Sessions to hold the Orphans Court.

(a) By the 12th section of the system of government as framed and adopted by the Delaware State in 1776, &c. four persons under the title of Justices of the Courts of Common Pleas and Orphans Courts for each county, were to be appointed by joint ballot of the President and General Assembly in lieu of the Justices of the Court of General Quarter-Sessions of the Peace in each county (as above) which regulation accordingly took place and continued until the first Tuesday in October, in the year one thousand seven hundred and ninety-three, the time limited for the commencement of the judicial power, as established in article 6, of the constitution of the State of Delaware, ratified in convention of the State, the 12th day of June, 1792—for which see said article, sects. 1, 15, and also sects. 2, 3, of the schedule thereto.

C H A P.

XXX.

and may award
process, &c.

enabled to hold those courts, shall have full power, and are hereby impowered, in the same week that they are or shall be by law directed to hold the same courts, or at such other times as they shall see occasion, to hold and keep a Court of Record in each of the said counties, which shall be stiled, *The Orphans Court*; and to award process, and cause to come before them all and every such person and persons, who as guardians, trustees, tutors, executors, administrators, or otherwise, are or shall be entrusted with, or any wise accountable for, any lands, tenements, goods, chattels, or estate belonging, or which shall belong to any orphans, or any persons under age, and cause them to make and exhibit, within a reasonable time, true and perfect inventories and accounts ^(b) of the said estates, and to cause and oblige the Register, or such person or persons as for the time being shall have the power of probate of wills, and granting letters of administration in this government, or their deputies, upon application made in that behalf, to bring or transmit into the Orphans Court true copies or duplicates of all such bonds, inventories, accounts, actings and proceedings whatsoever, now or hereafter remaining or being in the respective offices or elsewhere within the limits of their authority, as do or shall concern or relate to the said estates, or any of them, and to order the payment of such reasonable fees for the said copies, and for all other charges, trouble and attendance, which any officer or other person shall necessarily be put upon in the execution of this act, as they shall think equitable and just; and if upon hearing or examination thereof, it appears to the justices of the said court, that any of the said officers have misbehaved themselves to the prejudice of any minor, or any concerned for them as aforesaid, the said justices are hereby required to certify the same accordingly, which shall be good evidence for the party grieved to recover his damages
at

^(b) By the 16th sect. of article 6, of the constitution of 1792, executors, administrators and guardians are to file their respective accounts with the Register, and after adjust and settle the same before him; and the Justices of Orphans Court to hear exceptions thereto, if any be made by those concerned.

at common law. And where any letter of administration shall be granted, and no bond with sureties given, as the law in that case requires, such letters of administration shall be and are hereby declared to be void, and of none effect; and that the officer or person that grants the same, and his sureties, shall be, *ipso facto*, liable to pay all such damages as shall accrue to any such person or persons, by occasion of granting such administration; and the party to whom the same shall be so granted, may be sued as executor in his own wrong, and shall be so taken and deemed in any suit to be brought against him for or by reason of his said administration. Or if, upon such examination, it appears that any of the said officers have not taken sufficient sureties where the administrators may not be of ability to answer or make good the value of what the decedent's estate doth or shall amount to; then the said Justices of the Orphans Court are hereby empowered and required to call all such administrators to give better security to the Register by bonds, in manner and form as the law prescribes, and under such penalties, and with such sureties as the said justices, after they have heard the objections of creditors or persons concerned (if any such be made to the court) shall approve of. And if it appears that any of the said administrators have imbezzled, wasted or misapplied, or suffered so to be, any part of the decedent's estates, or shall neglect or refuse to give bonds with sureties as aforesaid, then, and in every such case, the said justices shall forthwith, by their sentence, revoke or repeal the letters of administration granted them, and thereupon the said Register, or other person then empowered to grant administration as aforesaid, where such occasion happens, are hereby required to grant letters of administration to such person or persons (having right thereto) as will give bonds in manner and form aforesaid, who may have their actions of trover or detinue for such goods or chattels as came to the possession of the former administrators, and shall be detained, wasted, imbezzled or misapplied by any of them, and no satisfaction made for the same.

C H A P.
XXX.

Letters of administration without giving bond, are void.

If security given by administrators be not sufficient, they shall give better.

In case of imbezzlement or refusal of sufficient surety, &c. letters of administration may be revoked, and granted to others, &c.

SECT.

C H A P.
XXX.

In case minors
estates be, in
danger by exe-
cutors, &c. the
Orphans Court
shall cause such
to give security.

SECT. 2. *And be it further enacted*, That when any complaint is made to any of the said justices, that an executrix having minors of her own, or being concerned for others, is married, or like to be espoused to another husband, without securing the minors portions or estates; or that an executor or other person having the care and trust of minors estates, is like to prove insolvent, or shall refuse or neglect to exhibit true and perfect inventories, or give full and just accounts of the said estates, come to their hands or knowledge; then, and in every such case, the same justices are hereby required forthwith to call an Orphans Court, who shall cause all and every such executors and trustees, as also such guardians (c) or tutors of orphans or minors, as have been formerly appointed, or shall at any time hereafter be appointed by the said court, to give security to the orphans or minors, by mortgage or bonds, in such sums, and with such sureties, as the said court shall think reasonable, conditioned for the performance of their respective trusts, and for the true payment or delivery to and for the use and behoof of such orphans as they are concerned for (or such as shall legally represent them) the legacies, portions, shares and dividends of estates, real and personal, belonging to such orphans or minors, so far as they have assets, as also for their maintenance and education, as the said court shall think fit to order for the benefit and advantage of such orphans, as is usual in such cases.

Minors money
may be put out
to interest,

SECT. 3. *And be it further enacted*, That any of the said executors, administrators, guardians or trustees, may, by the leave and direction of the Orphans Court, put out their minors money to interest, upon such security as the said court shall allow of; and if such security so taken *bona fide*, and without fraud, shall happen to prove insufficient, it shall be the minors loss: But if no person, who may be willing to take the said money at interest (with such security) can be found by the persons so as aforesaid concerned for the minors, nor by any others, then the said executors, guardians,

(c) See chap. 186. a. sect. 7, 8, 9. Further and other provision as to guardians giving bonds for minors estates coming to their hands.

guardians, administrators or trustees; shall in such cases be responsible for the principal money only, until it can be put out at interest as aforesaid.

CHAP.
XXX.

SECT. 4. *Provided always,* That the day of payment of the money so to be put out to interest, at any one time, shall not exceed twelve months from the date of the obligation or other security given for the same, and so *loties quoties*, when and so often as the said money shall be paid or come to the hands of the said executors, guardians or trustees:

Not exceeding
twelve months
at one time.

SECT. 5. *Provided also,* That no executors, administrators or guardians, shall be liable to pay interest, but for the surplusage of the decedent's estate, remaining in their hands or powers, and belonging to the minors, when the accounts of their administration are or ought to be settled and adjusted before the Orphans Court or Register respectively.

SECT. 6. *And be it further enacted,* That the Justices of the said Orphans Court, in the said respective counties, shall by virtue of this act have full power and authority to exercise all the powers, authorities and jurisdictions granted or mentioned, or intended to be granted to the Orphans Court, in and by a law of this government, entitled; *An act for the better settling intestates estates*; and to do, execute and perform all such matters and things as the Orphans Court in the said act mentioned, might or ought to have done or performed, according to the true intent and meaning thereof; with power also to admit orphans or minors, when and as often as there may be occasion to make choice of guardians or tutors, and to appoint guardians next friends, or tutors over such as the court shall judge too young, or incapable, according to the rules of the common law, to make choice themselves; (d) and at the instance and request of the said executors, administrators, guardians or tutors, to order and direct the binding or putting out of minors apprentices to trades, husbandry, or other employments, as shall be thought fit; (e) and that all guardians and prochein amies, which shall be appointed by any of the said

Farther authority
of the Or-
phans Court.

(d) All such guardians to give bonds with surety, &c. as in chap. 186. a. sect 7, 8, 9.
(e) See after in chap. 77. a. sect. 3, 13 Geo. 11.

C H A P.
XXX.

said Orphans Courts, shall be allowed and received without further admittance to prosecute and defend all actions and suits relating to the orphans or minors, as the cause may require, in any court or courts of this government.

Persons summoned, and not appearing, &c. may be punished by imprisonment, &c.

SECT. 7. *And* if any person or persons, being duly summoned to appear in any of the said Orphans Courts ten days before the time appointed for their appearance, shall make default, the justices may send their attachments for contempts, and may force obedience to their warrants, sentence or orders, concerning any matter or thing cognizable in the same courts, by imprisonment of body, or sequestration of lands or goods, as fully as any court of equity may or can do.

Persons aggrieved may appeal to the Supreme Court, by the act in chap. 222. a. sect. 5. So by the constitution of June, 1792. article 6. sect. 15.

SECT. 8. *Provided always*, That if any person or persons shall be aggrieved with any definitive sentence or judgment of the said Orphans Court, it shall be lawful for them, to appeal from the same to the Governor for the time being, in equity, which appeal, upon security given, as is usual in such cases, shall be granted accordingly.

Discharges for money, &c. by executors, are binding to the orphans.

SECT. 9. *And* if any of the said executors, administrators, guardians or trustees, did or shall receive and give discharges for any sums of money, debts, rents or duties belonging to any orphan or minor, for whom they were or are entrusted; it is hereby declared and enacted, that all such discharges or receipts shall be binding to and upon the orphan or minor, when he or she attains to full age, and shall be most effectual in law to discharge the person or persons that take the same. And when any of the said minors attain to full age, and the person or persons so as aforesaid entrusted or concerned for them, having rendered their accounts to the Orphans Court, according to the direction of this and the said other acts, and paid the minors their full due; then such minors shall acknowledge satisfaction in the said court: But in case any of them refuse so to do, then the said court shall certify how the said persons concerned have accounted and paid, which shall be a sufficient discharge to the guardians or tutors, and to the trustees, executors or administrators, who shall so account and

Bonds how to be cancelled.

pay;

pay ; and thereupon all bonds entered into for payment of such orphans portions, shall be delivered up and cancelled.

CHAP.
XXX.

SECT. 10. *Provided always, and be it further enacted,* That none of the said Orphans Courts shall have any power to order or commit the tuition or guardianship of any orphans or minors, or to bind them apprentices to any person or persons of a religious persuasion, that shall be different from what the parents of such orphan or minor professed at the time of their decease, or against the minor's own mind or inclination, so far as he or she has discretion and capacity to express and signify the same, or to persons that are not of good repute, so as others of good credit and the same persuasion may or can be found.

What persons may have the charge of orphans or minors.

SECT. 11. *Provided also,* That the justices of the said courts, and all others, concerned in the execution of this act, shall have due regard to the direction of all last wills and testaments, and to the true intent and meaning of the testators, in all matters and things that shall be brought before them concerning the same.

Due regard to be had to wills, &c.

SECT. 12. *And be it further enacted,* That all such bonds or obligations as are by this act, or by any other law of this government, directed and required to be given to the Governor, and all such bonds as by any law are directed to be given by the Register (f) or by any other officers or persons in office whatsoever in this government, for the due execution of his or their respective offices or employments, *are hereby declared* to be to, and for the use of, and in trust for the person or persons concerned ; and that the benefit thereof shall be extended, from time to time, for the relief and advantage of the party grieved by the mis-feazance or non-feazance of the officers that did or shall give the same : And that when any of the said bonds shall be put in suit, and judgment thereupon obtained, the judgment shall remain in the same nature the bonds were, (g) and that no execution issue

Bonds directed to be given by any law, &c. to be for the use of the persons concerned, &c.

VOL. I.

N

OUT

(f) See before in chap. 19. a.

(g) As to suits and proceedings on the securities given by Sheriffs, see chap. 32. c. p. 194. passed June 17, 1793.

C H A P.
XXX.

Clerks of courts,
&c. required to
give copies of
such bonds, &c.

out thereupon, before the party grieved shall by writ of *scire facias* summon the person or persons, against whom the said judgment is obtained, to appear and shew cause why execution shall not issue upon the said judgment; and if the party grieved shall prove what damages he sustained, and thereupon a verdict be found for him, the Court of Common Pleas (where such suit is) shall award execution for so much as the jury shall then find, with costs, and no more. And the former judgment is hereby declared still to remain cautionary, for the satisfaction of such others as shall legally prove themselves damnified, and recover their damages in the manner aforesaid: And the said Clerks of the Courts of Common Pleas, and all others, in whose hands the said bonds shall be deposited or lodged, are hereby required to give any person injured, that requests the same, a true copy of any of the said bonds, paying Three Shillings for the same, and to produce the original in court upon any trial that shall be had for the breach of any of them, if required by the court: And if the person in whose hands the said bonds shall be lodged or come, shall refuse or delay to give copies thereof, and produce the original in court as aforesaid, he or they shall forfeit and pay to the party grieved, treble damages, to be recovered against the officer that hath such bonds, or his sureties, by action of debt, bill, plaint, or information, in any court of this government, where no *essoign*, protection, or wager of law, or any more than one *imparlance*, shall be allowed.

C H A P. XXXI. a.

An ACT for the better settling intestates Estates. Repealed in November 1742. See after in 2d. chap. 101. a and for both these acts see the appendix.

CHAP.

C H A P. XXXII. a.

C H A P.
XXXII.

An ACT impowering Timothy Hanson, esq. Attorney to Rebecca Kearney, administratrix of Philip Kearney, esq. deceased, to convey and make over unto Messrs. Benjamin Shurmar, John Hall, Hugh Durborow, and Andrew Caldwell, several tracts or parcels of land in the county of Kent, on Delaware.

WHEREAS it doth appear to the House of Representatives, in Assembly met, That Philip Kearney, deceased, did, by deed of conveyance, in his lifetime, purchase from John Roe, of Queen Ann's county, in Maryland, planter, several tracts or parcels of land, situate, lying, and being in the county of Kent, on Delaware, specified and mentioned in the said deed, bearing date the first day of March, annoque domini 1720; And whereas the said Philip did by indenture, or instrument of writing, under his hand and seal, bearing equal date with the above-mentioned deed of conveyance, as it appears to this House, acknowledge and declare for himself, his heirs, executors, and administrators, that the above-named deed of conveyance of the lands therein mentioned, from the said Roe to him the said Kearney, were *bona fide*, and purely in trust, and for the use and behoof of Benjamin Shurmar, John Hall, Hugh Durborow, jun. and Andrew Caldwell, and their heirs and assigns, for ever; and did further, in the said indented instrument of writing, covenant and oblige himself, his heirs, executors and administrators, that he, upon division of the said tracts or parcels of land, by the above-named parties amongst themselves made, would, at the cost and expence of the respective parties, execute deeds according to the division so made. Now, whereas the abovesaid Philip Kearney died before the execution of the deeds according to the said agreement, and his heir being of the age of seven years old only, so that the said Benjamin Shurmar, Hugh Durborow, John Hall, and Andrew Caldwell, will for the want of a performance of the same be prevented in the use of the said land,

and

C H A P.
XXXII.

and otherwise much damnified: To the end therefore that the said Benjamin Shurmar, John Hall, Hugh Durborow, and Andrew Caldwell, and every of them, may be legally put into the possession of what appears in all equity and good conscience to appertain of right to them, and every of them; we pray that it may be enacted,

Timothy Han-
son, &c. im-
powered to con-
vey lots, &c.

SECT. 2. *And be it enacted by his excellency sir William Keith, Baronet, Governor of the counties of New-Castle, Kent, and Sussex, upon Delaware, &c. by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same, That Timothy Hanson, esq. Attorney to Rebecca Kearney, administratrix to the said Philip Kearney, deceased, shall and is hereby empowered to execute, acknowledge, and make over unto the respective parties above-named, their heirs and assigns, for ever, according to the division of the said parties agreed upon, the respective lots and parts of the said purchased lands from the said Roe conveyed to the said Kearney, in trust as abovesaid, firm and good deeds of conveyance, in fee-simple, which said deeds shall be, and are hereby declared to be as firm, good and valid in law, to all intents, ends, and purposes, as if made, executed, and acknowledged, by the said Philip Kearney in his life-time; any law, custom or usage to the contrary notwithstanding.*

C H A P. XXXIII. a.

An ACT for reducing the interest of money from eight to six per cent. per annum.

No person shall
take above 6 l.
for forbearance
of 100 l. one
year.

SECTION 1. *BE it enacted by sir William Keith, Baronet, Governor of New-Castle, Kent, and Sussex counties, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same, That no person shall, directly or indirectly, for any bonds or contracts to be made after the publication of this act,*
take

take for the loan or use of money, or any other commodities, above the value of Six Pounds, for the forbearance of One Hundred Pounds, or the value thereof, for one year, and so proportionably for a greater or lesser sum ; any law, custom or usage to the contrary notwithstanding.

C H A P.
XXXIII.

SECT. 2. *And be it further enacted,* That if any person or persons whatsoever, do or shall (after the publication of this act) receive or take more than Six Pounds per cent. per annum, on any such bond or contract as aforesaid ; upon conviction thereof, the person or persons so offending shall forfeit the money, and other things lent, the one-half thereof to the governor, for the support of government, and the other half to the person who shall sue for the same, by action of debt, bill, plaint or information, in any Court of Record within this government, wherein no es-
soign, protection or wager of law, nor any more than one imparlance, shall be allowed. Penalty.

C H A P. XXXIV. a.

An ACT for cutting a new mouth for the creek called the Murtherkill, in Kent county, into the bay of Delaware. Obsolete.

C H A P. XXXV. a.

An ACT repealing some clauses in the act for emitting Six Thousand Pounds, &c.

C H A P. XXXVI. a.

An ACT empowering the magistrates of New-Castle county to view and direct the removal of obstructions to the fishery of Brandywine. Repealed by an act passed October, 1760. See chap. 171. a.

CHAP.

CHAP.
XXXVII.

C H A P. XXXVII. a.

An ACT to prevent sickly vessels coming into this government.

WHEREAS it hath been found, by sad experience, that the coming and arrival of sickly vessels at the ports and towns of this government, and the landing of their passengers and goods before they have lain some time to be purified, hath proved very detrimental to the health of the inhabitants;

BE it enacted by the honorable Patrick Gordon, esq. (a) Lieutenant Governor of the counties of New-Castle, Kent, and Sussex, upon Delaware, and of the province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, and by the authority of the same, That from and after the publication hereof, no vessel coming from any unhealthy or sickly place, or having any sick persons on board whatsoever, shall come nearer than one mile to any of the towns, ports, or plantations, within this government, without bills of health, or shall presume to bring to shore such vessel, nor to land any of the passengers, or their goods, (b) at any of the said ports or places, until such time as they shall be viewed by persons to be appointed for that purpose, and obtain a licence for their landing from the Governor, or from any two Justices of the Peace of the county where such vessel or passengers shall come or land, under the penalty of One Hundred Pounds, to be paid by the master of such ship or vessel for every such offence, to the use of the Governor (c) to be recovered by action of debt, bill, plaint, or information, in any Court of Record within this government, wherein no effoign, protection, or wager of law, shall be allowed, nor any more than one imparlance.

CHAP.

(a) Patrick Gordon, esq. began his government June 22, 1726, and continued until August 5, 1736.

(b) See after in chap. 66, a. sects. 5, 10, 12.

(c) To be for the use of the state by an act passed February 22, 1777. chap. 6, sect. 13.

C H A P. XXXVIII. a.

C H A P.
XXXVIII.

An ACT to oblige witnesses, being legally summoned, to give evidence.

BE it enacted by the honorable Patrick Gordon, esq. Lieutenant Governor of the counties of New-Castle, Kent, and Sussex, upon Delaware, and of the province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same, That if any person or persons, summoned or required by any process whatsoever, or order of any court, or magistrate, or other officer whatsoever within this government, lawfully authorized to issue forth the same, to give his, her, or their evidence, upon any matter or difference whatsoever, shall refuse or neglect to give attendance, according to the directions of the said order, summons, or command, such person or persons so refusing (not being prevented by sickness, or some unavoidable accident) shall pay to the party or parties wronged or injured thereby, all such damages as he or they shall sustain by reason thereof, to be recovered in any Court of Record within this government, by action of debt, bill, plaint, or information, wherein no escoign, protection, or wager of law, shall be allowed, and shall further be liable to be fined by the Justices of the Quarter Sessions of the Peace in any sum not exceeding Forty Shillings, for such their contempt.

C H A P. XXXIX. a.

An ACT about determining debts under Forty Shillings. Supplied. See after in chap. 73. a.

CHAP.

CHAP.
XL.

C H A P. XL. a.

An ACT concerning bills of exchange.

BE it enacted by the honorable Patrick Gordon, esq. Lieutenant Governor, of the counties of New-Castle, Kent, and Suffex, upon Delaware, and of the province of Pennsylvania, by and with the advice and consent of the Representatives of the said counties, in General Assembly met, and by the authority of the same, That if any person or persons within this government, shall draw or indorse any bill or bills of exchange upon any person or persons in England, or other parts of Europe, or beyond the seas, and the same be returned back unpaid, with a legal protest, the drawer thereof, and all others concerned, shall pay and discharge the contents of the said bill or bills, together with Twenty Pounds per cent. advance for the damage thereof, and so proportionable for a greater or less sum, in the same specie as the same bill or bills were drawn, or current money of this government equivalent to that which was first paid to the drawer or indorser.

C H A P. XLI. a.

An ACT against removing land-marks.

FOR the greater security and certainty of boundaries of lands,
BE it enacted, by the honorable Patrick Gordon, esq. Lieutenant Governor of the counties of New-Castle, Kent, and Suffex, upon Delaware, and of the province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same, That no person or persons whatsoever within this government, shall cut, fall, alter or remove, any certain bounded tree, or other allowed land-mark, or shall survey

survey any land, or mark any tree as a corner-tree, or a line-tree, upon any land not belonging to the party so doing, without lawful authority, under the penalty of any sum not exceeding Fifty Pounds, and not less than Ten Pounds; to the use of the party wronged, to be recovered in any Court of Judicature within this government; by bill, plaint, or information, wherein no essoign, protection, or wager of law, shall be allowed, nor any more than one imparlance:

CHAP.
XLI.

C H A P. XLII. a.

An ACT against wears across creeks and rivers.

TO the end that all persons inhabiting in or near any creek or river in this government, may enjoy all privileges and advantages that from them are to be reaped;

BE it enacted by the honorable Patrick Gordon, esq. Lieutenant Governor of the counties of New-Castle, Kent, and Sussex, upon Delaware, and of the province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, and by the authority of the same, That whosoever shall make any wear or wears, or set any nets from one side to the other of the channel of any creek or river within this government; being thereof convicted, by the view of one Justice of the Peace, or by the testimony of one credible witness, shall for every such offence pay Ten Shillings, and the wear or wears shall be destroyed by order of the justice before whom the complaint shall be heard.

Penalty on
making wears,
&c.

Provided, That nothing in this act extend to restrain the making of wears over mill-datts or races, nor to such as make wears on their own lands, so, as that they in either of these cases shall not be injurious to others.

And be it further enacted, That no wear or wears shall be made on the South side of Lewes Creek, in

C H A P.
XLII.

Suffex county, under the penalty of Ten Shillings, and the wear to be destroyed by the order of any justice of the said county.

C H A P. XLIII. a.

An ACT for the trial of Negroes.

Two justices and
six freeholders
impowered to
try all offences
committed by
Negroes, &c.

SECTION I. **B**E it enacted by the honorable Patrick Gordon, esq. Lieutenant Governor of the counties of New-Castle, Kent, and Suffex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same, That from and after the publication of this act, it shall and may be lawful for two Justices of the Peace of this government, who shall be particularly commissioned by the Governor for that service within the respective counties thereof, and six of the most substantial freeholders of the neighbourhood, (a) to hear, examine, try and determine all such offences committed by any Negro or Mulatto slaves within this government, which said freeholders shall be by warrant, under the hands and seals of the respective justices, commissioned as aforesaid, directed to some Constable of the said county, be summoned to appear at such time and place as the said justices shall appoint, which said freeholders the said justices shall solemnly swear or attest well and truly to give their assistance and judgment together with the said justices, upon the trial of such Negroes or Mulattoes; which freeholders, or any four of them, being qualified as aforesaid, shall hold a court at the Court-House in the said respective counties where the crime is committed, for the hearing, trying, determining and convicting

(a) So much of this act as gives power to the two justices and six freeholders to try, determine and convict any slave for a crime punishable with death, is repealed by an act passed February 3d, 1789, chap. 194. b, and trial there directed to be by jury in the Court of General Quarter-Sessions of the Peace for the several counties; the expence of trial to be paid by the county, in sects. 3, 4.

victing of such Negro or Negroes, or Mulatto slaves, as shall be before them charged or accused of committing any murder, manslaughter, buggery, burglary, robbery, rape, attempts of rape, or any other high and heinous offences, committed, acted or done in any the respective counties within this government, as aforesaid.

C H A P.
XLIII.

SECT. 2. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for the said court of justices and freeholders as aforesaid, to examine, try, hear, judge, determine, convict, acquit or condemn, according to their evidence, any Negro or Negroes, or Mulatto slaves, for any the crimes or offences aforesaid, or any other high or capital offences, upon due proof to them made, to pronounce such judgment or sentence as is agreeable to law, and the nature of the offence, and to order execution of the said judgment or sentence accordingly, or otherwise to acquit, free and discharge such Negro or Negroes, or Mulatto slaves, in case the evidence shall not be sufficient for a conviction therein.

Who may acquit or condemn, according to their evidence, and order execution, &c.

SECT. 3. *And be it further enacted,* That upon the conviction of any Negro or Mulatto slave, belonging to any of the inhabitants of this government, for any capital cause for which the party convicted shall suffer death, the said justices and freeholders, before whom they were convicted, shall immediately value the said slave or slaves, and in case the Negro or Mulatto slave shall be put to death, that the two-thirds of the appraised value of such slave so executed, shall be paid to the master or owner of such slave by the County Treasurer out of the public levy, to be raised in the same manner as the county levies.

Slaves condemned to death, to be valued, and two thirds of the value paid to the master, &c.

SECT. 4. *And be it further enacted by the authority aforesaid,* That where such Negro or Negroes, or Mulatto slaves shall be convicted, and such judgment or sentence shall be pronounced by the respective justices and freeholders as aforesaid, and a warrant by them, or any four of them, one of which to be one that sat upon the trial, signed, sealed and delivered to the High Sheriff of the county where the fact was committed, for the execution of such Negro or Mulatto, the same shall be duly executed, or caused to be
duly

Sheriff to cause the sentence to be executed.

C H A P.
XLIII.

Penalty on justices or freeholders neglecting their duty herein.

Punishment of slaves attempting to commit rapes;

or convicted of stealing, &c.

Punishment of slaves presuming to carry arms, &c.

Punishment of Negroes meeting in companies.

duly executed by the said Sheriff, according to the directions of such warrant, on pain of being disabled to act any longer in that post or office; and if any of the said justices or freeholders neglect or refuse to do their duty herein, they shall be liable to be fined by the justices at their next Court of General Quarter Sessions of the same to be held for the said county, in any sum not exceeding Five Pounds, for the use of the Governor towards the support of government, to be levied by distress and sale of the goods and chattels of such justices or freeholders so refusing as aforesaid.

SECT. 5. *And be it further enacted by the authority aforesaid,* That if any Negro or Mulatto slave within this government, shall attempt to commit a rape on a white woman or maid, they shall be tried in manner aforesaid, and shall be punished by standing four hours in the pillory at the Court-House on some court day, with both his ears nailed to the pillory, and before he be taken down from the same, shall have both his ears cut off close to his head. And if any Negro or Mulatto slave shall be convicted before two Justices of the Peace in this government, of stealing, or fraudulently taking or carrying away any goods, living or dead, the master or owner of such Negro or Mulatto slave, if such goods shall not be found, shall make satisfaction to the party wronged, and pay all costs, to be levied by distress and sale of the said master's or owner's goods and chattels, and the Negro or Mulatto, so offending, to be whipped as the said justices shall adjudge and appoint.

SECT. 6. *And be it further enacted by the authority aforesaid,* That if any Negro or Mulatto slave shall presume to carry any guns, swords, pistols, fowling-pieces, clubs, or other arms and weapons whatsoever, without his master's special licence for the same, and be convicted thereof before a Magistrate, he shall be whipt with twenty-one lashes, upon his bare back.

SECT. 7. *And be it further enacted by the authority aforesaid,* That if any Negroes, above the number of six in one company, not belonging to one owner, shall meet together, and upon no lawful business of their masters or owners, and being convicted thereof, by the

the

the view of one Justice of the Peace, or the testimony of one credible witness, such Negro or Negroes so offending shall be publicly whipped at the discretion of one Justice of the Peace, not exceeding twenty-one lashes, each Negro.

C H A P.
XLIII.

C H A P. XLIV. a.

An ACT against adultery and fornication. (a)

FOR the preservation of virtue and chastity among the people of this government, and to prevent the heinous sins of adultery and fornication.

SECTION 1. *BE it enacted by the honorable Patrick Gordon, esq. Lieutenant Governor of the counties of Newcastle, Kent, and Sussex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same,* That whosoever shall commit adultery, and be thereof legally convicted, shall forfeit and pay the sum of Fifty Pounds, one moiety thereof to the use of the Governor for the support of government, and the other moiety to the use of the poor of the county where the same is committed, or otherwise to be publicly whipt with twenty-one lashes on his or her back, well laid on, at the common whipping post, at the election of the party convicted.

Penalty of committing adultery.

SECT. 2. *Provided always,* That the testimony of either of the parties concerned in committing the adultery, shall not be sufficient to convict the other, without further evidence, that shall at least amount to violent presumption.

SECT. 3. *And be it further enacted by the authority aforesaid,* That if any person shall commit fornication, and be thereof legally convicted, such person or persons shall receive twenty-one lashes on his or her bare back, well

Penalties on fornicators.

(a) See an act supplementary hereto passed February 9th, 1796, chap. 108. c. whereby many of the provisions in this act are repealed and supplied.

C H A P.
XLIV.

What shall be
proof.

Any woman
bearing a bas-
tard child, to
be punished in
the county
where the child
is born, &c.

Penalty on per-
sons entertain-
ing unmarried
women with
child.

Woman-ser-
vant having
a bastard child,
shall serve, &c.

well laid on, at the common whipping-post, or other-
wise shall pay to the proprietor or Governor to-
wards the support of government, the sum of Three
Pounds, at the election of the party so committed as
aforesaid. And any single or unmarried woman having
a child born of her body, the same shall be sufficient
proof to convict her of fornication, without the charges
of presentment or indictment; and the man charg-
ed by such woman to be the father of such child,
shall be the reputed father, and she persisting in her
said charge in the time of her extremity and labour, and
afterwards in open court, upon the trial of such per-
son so charged, the same shall be given in evidence,
in order to convict such person of fornication.

SECT. 4. *And be it further enacted by the authority
aforesaid,* That if any unmarried woman, or any wo-
man who cannot make proof of her having a husband,
absenting herself from the place where she usually lived,
shall come into any county within this government,
and there bear a child, she shall be liable to be punish-
ed in the county where the said child shall be born,
as she should or ought to have been had the child been
there begotten; and if any such unmarried woman
shall be with child in any county within this govern-
ment, and shall go out of the same, and bear such
bastard child in any other place, and afterwards re-
turn into the county from whence she went with the
said child, within one year, without receiving any
punishment for her fornication, she shall be punished
as if such bastard child had been begotten and born
in such county into which she shall return as aforesaid.
And if any person or persons within this government,
shall knowingly entertain or shelter any such unmar-
ried woman being with child coming into this govern-
ment, without giving notice thereof unto some Justice
of the Peace within three days after her coming into
his or her house; such person or persons being legally
convicted thereof, shall forfeit Five Pounds for every
such offence, to the use of the government, as aforesaid.

SECT. 5. *And be it further enacted by the authority
aforesaid,* That if any woman-servant shall bear a
bastard child within the time of her servitude, in re-
gard of the loss and trouble her master and mistress
must

must sustain thereby, and of the maintenance of the child until it shall be nine months old, in case no father can be found of ability sufficient to maintain such child, she shall serve one whole year after her time by indenture or covenant is expired, and pay all such costs and charges as shall happen or arise by reason of any prosecution to be had against her for such offence.

CHAP.
XLIV.

SECT. 6. *And whereas* sundry vagrant persons do frequently come into this government, and pretending to be man and wife, without a legal certification of their being married persons, and as such cohabit together; *Be it enacted by the authority aforesaid,* That all persons coming into this government as man and wife, without giving some sufficient satisfaction within ten days after such their coming, to some Justice of the Peace for the county into which they come, if thereto required, of their being married, they shall be deemed and taken to be fornicators, and shall forfeit or be punished accordingly.

Vagrant persons pretending to be man and wife how to be proceeded with.

SECT. 7. *And be it further enacted,* That whosoever shall after the end of this Sessions of Assembly, directly or indirectly, entertain, provide for, or cause to be entertained or provided for, any lewd woman or women; or that shall frequent her or their company, after that admonition be given by the Justices of the Court of Quarter-Sessions, or any two of them, of the said county where such person shall inhabit, shall be judged a fornicator or adulterer, as the case shall require, and shall suffer such penalties as by the laws of this government is appointed for such offence.

Persons providing for, or entertaining lewd women, to be deemed fornicators, &c.

SECT. 8. *And for the ascertaining what shall be accounted a lewd woman,* *Be it enacted by the authority aforesaid,* That the Justices of the Peace aforesaid, or any two of them, before any admonition by them or any of them given in manner aforesaid, shall give or cause notice to be given to any person or persons by them, or any two of them, suspected of lewdness or incontinency, and being or residing within their respective counties, to appear at the next Court of Quarter-Sessions to be held for the said county, and on the appearance of such person or persons, to acquaint them of the suspicion that is had of them, and

Notice to be given before admonition, &c.

CHAP.
XLIV.

to hear what reasonable excuse such persons shall offer why they ought not to be proceeded against as fornicators or adulterers, as the case may be: And in case the person or persons having such notice given them, and the same proved by affidavit, do not appear, or if appearing do not acquit themselves of the cause of such suspicion, in such manner as the justices of the said Quarter-Sessions shall approve; then it shall and may be lawful for such justices, or any two of them, and they are hereby required to admonish such person or persons according to the direction afore-mentioned; which admonition, together with proof of the cohabitation of the parties so admonished, or their frequenting each other's company after admonition given, shall be sufficient in any Court of Record within this government, to convict the persons so cohabiting or frequenting each others company after admonition given, as aforesaid, of fornication or adultery, as the case may happen, and subject them to the penalties afore-mentioned; any law of this government to the contrary notwithstanding.

Penalty on
white women
that shall have
Mulatto chil-
dren, &c.

SECT. 9. *And be it further enacted by the authority aforesaid,* That if any white woman within this government, shall bear a bastard child begotten by a Negro or Mulatto man, such child shall be put out to servitude, (b) and shall serve such person or persons as the County Court shall see fit, or order and appoint, to and for the use, benefit and advantage of the county wherein such child shall happen to be born, as aforesaid, until he or she attain to the age of thirty-one years: And that the mother of such child shall forfeit and pay the sum of Ten Pounds to the Governor, for the support of government, and be publicly whipt with thirty-nine stripes on her bare back, well laid on, at the common whipping-post, and stand in the pillory the space of two hours; and if a servant, and incapable of paying the said fine of Ten Pounds, she shall in lieu of and satisfaction of the said fine, be adjudg-

(b) The first part of this clause, for the putting out such child to servitude, repealed by an act, passed January 23, 1795, chap. 71. c. and by the supplementary act hereto, chap. 108. c. sect. 7. all fines, forfeitures, and corporal punishments for bastardy and fornication are done away.

ed to serve her said master, mistress, or such other person, after her servitude, and the time allowed by the court to her master or mistress for their lōss and trouble is expired, as the justices before whom she is or shall be convict or convicted, shall think fit, for any term not exceeding five years; and that the Negro or Mulatto man, after conviction thereof, shall be publicly whipt with thirty-nine lashes on his bare back, and stand in the pillory for the space of two hours, with one ear nailed thereunto, and cropped off.

C H A P.
XLIV.

Punishment of
the Negro, &c.

SECT. 10. *And be it further enacted by the authority aforesaid,* That if any white man shall be legally convicted of committing fornication with a Negro or Mulatto woman, such white man shall forfeit and pay the sum of Twenty Pounds, and be publicly whipt with twenty-one lashes, well laid on, at the common whipping-post.

Penalty on
white men
committing for-
nication with
Negro women,
&c.

C H A P. XLV. a.

An ACT to prevent swine running at large in the town of Dover. Repealed and supplied. See after, chap. 210. a. passed June 13, 1772.

C H A P. XLVI. a.

An ACT for taking lands in execution for payment of debts.

TO the end that no creditors may be defrauded of their just debts due to them from the persons who have sufficient real, if not personal, estates, to satisfy the same,

See chap. 9. a.
chap. 28. a.
sect. 1.

SECTION 1. *BE it enacted by the honorable Patrick Gordon, esq. Lieutenant Governor of the counties of New-Castle, Kent, and Sussex, upon Delaware, and of the province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said*

Where personal
estate is defici-
ent, lands, &c.
may be sold, &c.

CHAP.
XLVI.

counties, in General Assembly met, and by the authority of the same, That all such lands, tenements, or hereditaments whatsoever, within this government, where no sufficient personal estate can be found, shall be liable to be seized and sold upon judgment and execution obtained. (a)

Unless the rent of such lands, &c. will within 7 years pay the debt and costs, &c.

SECT. 2. *Provided always*, That it shall not be lawful for any Sheriff or other officer, by virtue of any executions, or of any writ or writs thereupon, to sell or expose to sale any such lands, tenements, or hereditaments in this government, which shall or may yield yearly rents and profits beyond all reprises, sufficient within the space of seven years, to satisfy or pay such debts or damages, with the costs of suit; but that all those lands, tenements and hereditaments, shall by virtue of the writ or writs of execution, be delivered to the party obtaining the same, until the debt and damages be levied by a reasonable extent, in the same method and manner as lands are delivered upon Writs of *elegit* in England.

How the Sheriff is to proceed, in case the rents, &c. will not pay, &c.

SECT. 3. *Provided nevertheless*, That if the clear profits of such lands or tenements shall not be found, by the valuation of two judicious and substantial freeholders, upon their oaths or affirmations, to be sufficient within seven years, to satisfy the debt and damages in such executions, or if before the extent be out, any other debt or damages shall be recovered against the same debtor or defendant, his heirs, executors or administrators, which, with what remains due upon that extent, cannot all be satisfied out of the yearly profits of the lands and tenements so extended within seven years; then, and in every such case, the Sheriff or other officer shall accordingly certify the same upon the return of such executions, whereupon Writs or Writs of *venditioni exponas* shall issue forth, to sell such lands or tenements for and towards satisfaction of what shall so remain due upon such extent, as also towards satisfaction of all the rest of the said debts or damages.

(a) See after in chap. 60. a. sect. 1, 7 Geo. II.

ges, in manner as is herein after directed concerning the sale of other lands. (b)

CHAP.
XLVI.

SECT. 4. And be it further enacted by the authority aforesaid, That it shall and may be lawful for the Sheriff or other officer, by a Writ of *levari facias*, to seize all lands in execution which are unimproved, and all such lands and tenements which yield no yearly profit, and thereupon, with all convenient speed, either with or without any Writ of *venditioni exponas*, to make public sale thereof for the most they will yield, and pay the price or value of the same to the party towards satisfaction of his debt, damages and costs: But before any such sale be made, the Sheriff, or other officer shall cause so many writings to be made upon parchment or good paper, as the debtor or defendant shall reasonably desire or request, or so many without such request as may be sufficient to signify and give notice of such sales or vendues, and of the day and hour when, and the place where, the same will be, and what lands and tenements are to be so sold, and where they lie, which notice shall be given to the defendant, and the said parchments or papers fixt by the Sheriff or other officer in the most public place of each hundred in the county where the land lies, at least ten days before sale, and upon such sale the Sheriff or other officer shall make return thereof indorsed or annexed to the said *levari facias*, and give the buyer a deed duly executed and acknowledged in court for what is sold, as has been heretofore used upon the Sheriff's sale of lands: But in case the said lands and hereditaments so to be exposed, cannot be sold, then the officer shall make return upon the writ, That he exposed such lands or tenements to sale, and the same remained in his hands unsold for want of buyers; which return shall not make the officer liable to answer the debt or damages contained in such writ, but a Writ called *liberari facias*, shall forthwith be awarded and directed to the proper officer, commanding him to deliver to the party such part

Levari facias.

Ten days notice of sale to be given.

The Sheriff to give the buyer a deed, &c.

Liberari facias.

or

(b) See the act passed October 28, 1788, chap. 189, b. to whom this writ may be directed.

C H A P.
LXVI.

Lands, &c. fall-
ing short, execu-
tion may be had
for the residue,
&c.

or parts of those lands, tenements, or hereditaments, as shall satisfy his debt, damages and interest, from the time of the judgment given, with costs of suit, according to the valuation of twelve men, to hold to him as his free-tenement in satisfaction of his debt, damages and costs, or so much thereof as those lands, by the valuation of twelve men as aforesaid, shall amount unto; and if it fall short, the party may afterwards have execution for the residue, against the defendant's body, lands or goods, as the laws of this government shall direct and appoint from time to time concerning other executions; all which said lands, tenements, hereditaments and premises, so as aforesaid, to be sold or delivered by the Sheriff or officer aforesaid, with all their appurtenances, shall and may be quietly and peaceably held and enjoyed by the person or persons, or bodies politic, to whom the same shall be sold or delivered, and by his and their heirs, successors or assigns, as fully and amply, and for such estate and estates, and under such rents and services, as he or they, for whose debt or duty the same shall be so sold or delivered, might, could or ought to do at or before the taking thereof in execution.

Mortgagee in
default of pay-
ment, may af-
ter one year
sue forth a writ
of scire facias,
&c.

SECT. 5. *And* forasmuch as divers persons have mortgaged their lands and tenements in this government for securing the payment of monies, and some of them have died before the time of payment, and left others to succeed them that have proved insolvent, and others have neglected to pay the mortgage-money, and so mortgages are become no effectual security, considering how low the annual profits of tenements and improved lands are here, and the discouragement which the mortgagees meet with, by reason of the equity of redemption remaining in the mortgagers; *Be it therefore enacted by the authority aforesaid,* That when default or defaults have been or shall be made or suffered by any mortgager or mortgagers of any lands, tenements, or other hereditaments within this government, or by his, her, or their heirs, executors, administrators or assigns, of or in payment of the mortgage-money, or performance of the condition or conditions which they or any of them should have paid.

paid or performed; or ought to pay or perform, in such manner and form, and according to the purport, tenor and effect of the respective proviso's, conditions or covenants comprized in their deeds of mortgage or defeazance, and at the days, times and places in the same deeds respectively mentioned and contained; (c) that in every such case it shall and may be lawful to and for the mortgagee or mortgagees, and him, her, or them that grant the deeds of defeazance, and his, her or their heirs, executors, administrators and assigns, at any time, after the expiration of twelve months next ensuing, the last day whereon the said mortgage-money ought to be paid, or other conditions performed as aforesaid, to sue forth a Writ or Writs of *scire facias*, which the Clerk of the Court of Common Pleas for the county where the said mortgaged lands or hereditaments lie or be, is hereby required and impowered to make out and dispatch, directed to the proper officer, requiring him by honest and lawful men of the neighbourhood, to make known to the mortgager or mortgagers, his, her or their heirs, executors or administrators, that he or they be and appear before the said court or courts, to shew, if any thing he, she or they have to say wherefore the said mortgaged premises ought not to be seized and taken in execution for payment of the said mortgage-money, with interest, or to satisfy the damages which the plaintiff in such *scire facias* shall upon the record suggest for the breach of non-performance of the said conditions; and if the defendant in such *scire facias* appears, he or they may plead satisfaction or payment of part or all the mortgage-money, or any other lawful plea, in avoidance of the deed or deeds, as the case may require. But if the defendants in such *scire facias* will not appear at the day whereon the said writ shall be made returnable, then definitive judgment therein, as well as all other judgments to be given upon such *scire facias*, shall be entered, that the plaintiff in such *scire facias* shall have execution
by

(c) See after in chap. 83, a. sect. 7, 15 Geo. II. that no mortgage shall be good unless acknowledged, or proved and recorded within twelve months after the date, and in sect. 9. defeazances, &c. to be null and void for a like neglect.

C. H. A. P.
LXVI.

Lands, &c. falling short, execution may be had for the residue, &c.

Mortgagee in default of payment, may after one year sue forth a writ of scire facias, &c.

or parts of those lands, tenements, or hereditaments, as shall satisfy his debt, damages and interest, from the time of the judgment given, with costs of suit, according to the valuation of twelve men, to hold to him as his free-tenement in satisfaction of his debt, damages and costs, or so much thereof as those lands, by the valuation of twelve men as aforesaid, shall amount unto; and if it fall short, the party may afterwards have execution for the residue, against the defendant's body, lands or goods, as the laws of this government shall direct and appoint from time to time concerning other executions; all which said lands, tenements, hereditaments and premises, so as aforesaid, to be sold or delivered by the Sheriff or officer aforesaid, with all their appurtenances, shall and may be quietly and peaceably held and enjoyed by the person or persons, or bodies politic, to whom the same shall be sold or delivered, and by his and their heirs, successors or assigns, as fully and amply, and for such estate and estates, and under such rents and services, as he or they, for whose debt or duty the same shall be so sold or delivered, might, could or ought to do at or before the taking thereof in execution.

SECT. 5. *And* forasmuch as divers persons have mortgaged their lands and tenements in this government for securing the payment of monies, and some of them have died before the time of payment, and left others to succeed them that have proved insolvent, and others have neglected to pay the mortgage-money, and so mortgages are become no effectual security, considering how low the annual profits of tenements and improved lands are here, and the discouragement which the mortgagees meet with, by reason of the equity of redemption remaining in the mortgagers; *Be it therefore enacted by the authority aforesaid.* That when default or defaults have been or shall be made or suffered by any mortgager or mortgagers of any lands, tenements, or other hereditaments within this government, or by his, her, or their heirs, executors, administrators or assigns, of or in payment of the mortgage-money, or performance of the condition or conditions which they or any of them should have paid

paid or performed, or ought to pay or perform, in such manner and form, and according to the purport, tenor and effect of the respective proviso's, conditions or covenants comprized in their deeds of mortgage or defeazance, and at the days, times and places in the same deeds respectively mentioned and contained; (c) that in every such case it shall and may be lawful to and for the mortgagee or mortgagees, and him, her, or them that grant the deeds of defeazance, and his, her or their heirs, executors, administrators and assigns, at any time, after the expiration of twelve months next ensuing, the last day whereon the said mortgage-money ought to be paid, or other conditions performed as aforesaid, to sue forth a Writ or Writs of *scire facias*, which the Clerk of the Court of Common Pleas for the county where the said mortgaged lands or hereditaments lie or be, is hereby required and impowered to make out and dispatch; directed to the proper officer, requiring him by honest and lawful men of the neighbourhood, to make known to the mortgager or mortgagers, his, her or their heirs, executors or administrators, that he or they be and appear before the said court or courts, to shew, if any thing he, she or they have to say wherefore the said mortgaged premises ought not to be seized and taken in execution for payment of the said mortgage-money, with interest, or to satisfy the damages which the plaintiff in such *scire facias* shall upon the record suggest for the breach of non-performance of the said conditions; and if the defendant in such *scire facias* appears, he or they may plead satisfaction or payment of part or all the mortgage-money, or any other lawful plea, in avoidance of the deed or deeds, as the case may require. But if the defendants in such *scire facias* will not appear at the day whereon the said writ shall be made returnable, then definitive judgment therein, as well as all other judgments to be given upon such *scire facias*, shall be entered, that the plaintiff in such *scire facias* shall have execution
by

(c) See after in chap. 83, a. sect. 7, 15 Geo. II. that no mortgage shall be good unless acknowledged, or proved and recorded within twelve months after the date, and in sect. 9. defeazances, &c. to be null and void for a like neglect.

C H A P.
LXVI.

And take out execution, and expose the mortgaged premises to sale, &c.

by *levari facias*, directed to the proper officer, by virtue whereof the said mortgaged premises shall be taken in execution, and exposed to sale, and upon sale conveyed to the buyer or buyers thereof, and the principal money and interest, with all costs and charges, rendered to the mortgagee or creditor; but for want of buyers, to be delivered to the mortgagee or creditor, in manner and form as is herein before directed, concerning other lands and hereditaments to be sold and delivered upon executions for other debts or damages. And when the said lands and hereditaments shall be so sold or delivered, as aforesaid, the person or persons to whom they shall be so sold or delivered, shall and may hold and enjoy the same, with their appurtenances, for such estate or estates, as they were sold or delivered, clearly, discharged and freed from all equity and benefit of redemption, and all other incumbrances made and suffered by the mortgagers, their heirs or assigns; and such sales shall be available in law, and the respective vendees, mortgagees, or creditors, their heirs and assigns, shall hold and enjoy the same, freed and discharged as aforesaid. But before such sales shall be made, notice shall be given in writing, in manner and form as is herein above directed concerning the sales of lands upon executions, any law or usage to the contrary notwithstanding.

which sales shall be available in law, &c.

Overplus of the money arising on sale of lands, &c. to be returned to the defendant.

SECT. 6. *Provided also, and be it further enacted by the authority aforesaid,* That when any of the said lands, tenements or hereditaments, which by the direction and authority of this act are to be sold for payment of debts and damages in manner aforesaid, shall be sold for more than will satisfy the same debts or damages, and reasonable costs; then the Sheriff, or other officer, who shall make the sale, must render the overplus to the debtor or defendants; and then, and not before, the said officers shall be discharged thereof upon record in the same court where he shall make return of his proceedings concerning the said sales.

Such sale not to create any further estate than, &c.

SECT. 7. *Provided also,* That no sale or delivery which shall be made by virtue of this act, shall be extended to create any further term or estate to the vendees,

vendees, mortgagees or creditors, than the lands or hereditaments so sold or delivered, shall appear to be mortgaged for by the said respective mortgages or defeazable deeds.

C H A P.
LXVI.

SECT. 8. *Provided also*, That if any of the said judgments which do or shall warrant the awarding of the said writs of execution, whereupon any lands, tenements or hereditaments have been or shall be sold, shall at any time hereafter be reversed for any error or errors, then, and in every such case, none of the said lands, tenements, or hereditaments, so as aforesaid taken or sold, or to be taken or sold upon executions, nor any part thereof, shall be restored, nor the Sheriff's sale or delivery thereof avoided, but restitution in such cases only of the money or price for which such lands were or shall be sold.

Lands, &c. to
fold, not to be
restored on re-
version of judg-
ment, &c.

See after in
chap. 60. a.
sect. 7, 10.
7 Geo. 11.

SECT. 9. *And be it further enacted by the authority aforesaid*, That if any Sheriff or other officer, who have sold, or hereafter shall, by virtue of any Writ or Writs of execution, *venditioni exponas*, or *liberari facias*, sell or deliver any lands, tenements, or hereditaments, within this government, to any person, and shall happen to die, or be removed from his office, before he executes a deed or deeds for perfecting and completing the title of the purchaser to the lands or tenements by him sold, that then it shall and may be lawful, as well for the purchaser as the creditor, at whose suit such lands and tenements were taken in execution, to represent the truth of the case to the Justices of the Court of Common Pleas, to be held for the county where the lands lie: And if it shall appear to the said courts, by the records and proceedings of the said courts, that the lands and tenements have been taken and sold in manner directed by the laws of this government, and that the officer who sold the same, is dead or removed from his office, and no lawful deed executed for conveying the same to the purchaser, it shall and may be lawful for the justices of the said courts; and they are hereby required, in such cases, to cause an order of court to be made, thereby commanding and authorising the present Sheriff or Coroner, upon payment of the consideration money for which such lands and tenements were sold by the former officer, to execute such

Proceeding in
case the Sheriff
die or be remov-
ed before a title
is made.

C H A P.
XLVI.

such lawful deed or deeds, and to do all other lawful acts for the conveying or delivering over the said lands and tenements to the purchaser or creditor, as the officer who sold the same, could or ought to have done by virtue of the said writ or writs, or by any law of this government; (d) and such sale or sales, so made by virtue of any such order of court, shall be available in law, and the respective vendees, mortgagees, or creditors, their heirs and assigns, shall hold and enjoy the same, freed and discharged as aforesaid.

C H A P. XLVII. a.

An ACT for appraisement of goods taken in execution. Repealed by "An act for regulating and establishing fees." 9 Geo. III. chap. 204. a. in sect. 39. See also an act with a like title, passed June 15, 1793, chap. 27. c. sect. 32. for a repetition of repeal.

C H A P. XLVIII. a.

An ACT against jurors absenting themselves, being lawfully summoned to attend the several Courts of Judicature within this government.

BE it enacted by the honorable Patrick Gordon, esq. Lieutenant Governor of the counties of New-Castle, Kent, and Sussex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same, That all persons, freemen within this government, being duly and legally summoned to appear

(d) See the act passed October 28, 1788, chap. 189. b. in what case such proceeding as directed in this section is dispensed with,

pear at any court established by law, at least ten days before the holding such court, to serve upon any jury, or any inquest, and shall neglect or refuse to give their attendance, shall be fined by the respective court where they were summoned to attend, in any sum not exceeding Twenty Shillings each court, for the use of the poor of the county where such offender shall be convicted, unless at the next succeeding court they shall render a reasonable excuse for such their absence, to be allowed of by the judges or justices then present; and that all Grand Jury-Men, summoned as aforesaid, shall serve the space of one whole year, notwithstanding their being sworn at each respective court to attend that present service only. And in case a sufficient number, so summoned, shall not appear, the Sheriff shall have power to return such other freeholders of that county as he shall judge fit for that present service, to make up the said number, although it be in time of court; and any person so summoned, and refusing to serve accordingly, shall forfeit the sum of Twenty Shillings, for the use of the poor, as above directed. (a)

C H A P.
XLVIII.

Fine on jurors
not attending.

Grand Jurymen
to serve one
year.

A sufficient
number not ap-
pearing, Sheriff
may return o-
thers, &c.

C H A P. XLIX. a.

An ACT for assigning bills and specialties.

FOR the encouragement of trade and commerce,

SECTION I. BE it enacted by the honorable Patrick Gordon, esq. Lieutenant Governor of the counties of New-Castle, Kent, and Sussex; upon Delaware, and of the province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same, That all bonds, specialties, and notes in writing, made,

Bonds, specialties, notes, &c. may be assigned, &c.

VOL. I.

Q

or

(a) See after chap. 94. a. 15 Geo. II. "An act directing and empowering the several Sheriffs within this government to summon a sufficient number of freeholders to serve as jurors in the several counties thereof." Also, "An act for more certainly obtaining returns of juries and their better regulation," passed Feb. 2, 1793. chap. 8. c.

C. H. A. P.
XLIX.

or to be made payable to any person or persons, his, her or their order or assigns; for any sum of money, may by the person or persons, to whom the same is or are made payable, be assigned, indorsed, or made over to any other person or persons, who will accept the same; and that such assignee or indorsee, their executors, administrators or assigns, may again, at their pleasure, assign, indorse, or make over the same bonds, specialties or notes, to any other, and so *toties quoties* as any person shall be willing to accept of the same.

Assignees may
assign again;

And sue in their
own name.

SECT. 2. And that such assignee or assignees, indorsee or indorsees, their executors or administrators, may in their own name or names sue for and recover the sums of money contained in any bonds, specialties or notes so assigned, indorsed, or made over, for his or their own use or uses, and at their own costs and charges, in like manner as the person or persons to whom the same were at first made payable, might or could have done.

Assignment how
to be made, &c.

SECT. 3. *Provided always*, That all assignments to be made of any bonds or specialties, shall be under the hand and seal of the assigner, and at least before two credible witnesses; and that it shall not be in the power of the assigners or indorsers, their executors or administrators, to release or discharge any of the debts or sums of money due by the said bonds, specialties or notes, after the date of such assignment; and that no release, receipt, or discharge from the assigner, his executors or administrators, made after the date of such assignment, shall be available to the obliger, or the persons from whom the money was owing, his, her, or their executors or administrators.

C H A P. L. a.

C H A P.

L.

An ACT of privilege to a freeman.

BE it enacted by the honorable Patrick Gordon, esq. Lieutenant Governor of the counties of New-Castle, Kent, and Sussex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same, That no freeman within this government shall be taken or imprisoned, or disseized of his freehold or liberties, or be outlawed or exiled, or otherways hurt, damnified or destroyed, nor to be tried or condemned but by the lawful judgment of his twelve equals, or by the laws of England, and of this government.

C H A P. LI. a.

An ACT against riots, routs, and unlawful assemblies.

BE it enacted by the honorable Patrick Gordon, esq. Lieutenant Governor of the counties of New-Castle, Kent, and Sussex, upon Delaware, and of the province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same, That if any persons, to the number of three, or upwards, meet together within this government, with clubs, staves, or other hurtful weapons, to the terror of any of the peaceable people or inhabitants of the same, and shall commit, or attempt to commit, violence or injury upon the person or goods of any of the said inhabitants, they and every of them shall be reputed and punished as rioters, and the act of terror or violence, or attempt to do violence, shall be accounted and deemed a riot; and such persons, so offending, as likewise all other riotous and unlawful assemblies, shall be adjudged and punished according to the laws

What shall be deemed a riot.

C H A P.
XLIX.

or to be made payable to any person or persons, his, her or their order or assigns; for any sum of money, may by the person or persons, to whom the same is or are made payable, be assigned, indorsed, or made over to any other person or persons, who will accept the same; and that such assignee or indorsee, their executors, administrators or assigns, may again, at their pleasure, assign, indorse, or make over the same bonds, specialties or notes, to any other, and so *toties quoties* as any person shall be willing to accept of the same.

Assignees may
assign again;

And sue in their
own name.

SECT. 2. And that such assignee or assignees, indorsee or indorsees, their executors or administrators, may in their own name or names sue for and recover the sums of money contained in any bonds, specialties or notes so assigned, indorsed, or made over, for his or their own use or uses, and at their own costs and charges, in like manner as the person or persons to whom the same were at first made payable, might or could have done.

Assignment how
to be made, &c.

SECT. 3. *Provided always*, That all assignments to be made of any bonds or specialties, shall be under the hand and seal of the assigner, and at least before two credible witnesses; and that it shall not be in the power of the assigners or indorsers, their executors or administrators, to release or discharge any of the debts or sums of money due by the said bonds, specialties or notes, after the date of such assignment; and that no release, receipt, or discharge from the assigner, his executors or administrators, made after the date of such assignment, shall be available to the obliger, or the persons from whom the money was owing, his, her, or their executors or administrators.

C H A P. L. a.

C H A P.
L.*An ACT of privilege to a freeman.*

BE it enacted by the honorable Patrick Gordon, esq. Lieutenant Governor of the counties of New-Castle, Kent, and Sussex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same, That no freeman within this government shall be taken or imprisoned, or disseized of his freehold or liberties, or be outlawed or exiled, or otherways hurt, damned or destroyed, nor to be tried or condemned but by the lawful judgment of his twelve equals, or by the laws of England, and of this government.

C H A P. LI. a.

An ACT against riots, routs, and unlawful assemblies.

BE it enacted by the honorable Patrick Gordon, esq. Lieutenant Governor of the counties of New-Castle, Kent, and Sussex, upon Delaware, and of the province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same, That if any persons, to the number of three, or upwards, meet together within this government, with clubs, staves, or other hurtful weapons, to the terror of any of the peaceable people or inhabitants of the same, and shall commit, or attempt to commit, violence or injury upon the person or goods of any of the said inhabitants, they and every of them shall be reputed and punished as rioters, and the act of terror or violence, or attempt to do violence, shall be accounted and deemed a riot; and such persons, so offending, as likewise all other riotous and unlawful assemblies, shall be adjudged and punished according to the laws

What shall be
deemed a riot.

C H A P.
LI.

Riotous sports,
Revels, &c. how
punished.

laws and statutes of Great Britain against riots and unlawful assemblies. And whosoever shall introduce into this government any riotous and unlawful sports and games, as prizes, stage-plays, masks or revels, and shall practise the same, and be lawfully convicted thereof, such person or persons shall for every such offence be reputed breakers of the peace, and shall forfeit and pay Twenty Shillings, or suffer ten days imprisonment at hard labour in the house of correction.

C H A P. LII. a.

An ACT against speaking in derogation of courts.

Penalties on
speaking in de-
rogation, &c.

Rudeness or
misdemeanor
in court how pu-
nished.

BE it enacted, by the honorable Patrick Gordon, esq. Lieutenant Governor of the counties of New-Castle, Kent, and Sussex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same, That if any person or persons at any time or times hereafter, shall write or speak any thing in derogation of any sentence or judgment given in any Court of Record within this government; by saying, such sentence or judgment was given corruptly, partially or unjustly, and being thereof legally convicted, shall forfeit for such offence any sum not exceeding Five Pounds, one half to the informer, and the other to the Governor for the support of government; and in case any person or persons shall commit any rudeness, or be guilty of any misdemeanour in the said courts, during the sitting thereof, such person, so offending, shall be fined, at the discretion of the said court, in any sum not exceeding Five Pounds, for the uses aforesaid.

CHAP.

C H A P. LIII. a.

C H A P.
LIII.

An ACT against defacers of charters, and counterfeiting hands and seals.

WHEREAS the security of titles and property in a great measure depends on the safety and certainty of writing and records,

BE it enacted by the honorable Patrick Gordon, esq. Lieutenant Governor of the counties of New-Castle, Kent, and Sussex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same, That whosoever shall counterfeit the hand and seal, or hand or seal of any person, with an intent to defraud or hurt another, or shall counterfeit any public seal, or forge, deface, corrupt or embezzle any charters, gifts, grants, bonds, bills, wills, conveyances, or contracts, or shall deface or falsify any inrollments, registry, or record, within this government, and shall be thereof legally convicted, shall suffer the like pains and penalties as by the laws of that part of Great Britain called England, is provided against such offences, for the time being.

Punishment of counterfeiting, forging, &c.

C H A P. LIV. a.

An ACT for the establishing courts of law and equity within this government.

SECTION I. *BE it enacted by the honorable Patrick Gordon, esq. Lieutenant Governor, of the counties of New-Castle, Kent, and Sussex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same, That there shall be a court, stiled, The General Quarter Sessions of the Peace and Goal Delivery, holden and kept four times in every year in each county of this government, (viz.)*

Courts of Quarter Sessions to be held four times a year in each county.

at

C H A P.
LIV.

The Governor
to commissionate
justices for that
purpose.

Which justices
may hold speci-
al Sessions,

and take recog-
nizance out of
sessions;

which shall be
certified into the
next Quarter
Sessions, &c.

at New-Castle, for the county of New-Castle, on the third Tuesday in the months called February, May, August and November. At Dover, for the county of Kent, on the second Tuesday in every of the same months. And at Lewes-Town, for the county of Suffex, on the first Tuesday in every of the said months. 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 government; which said justices, or any three of them, shall and may hold the said General Sessions of the Peace and Goal Delivery, according to law, and as fully and effectually as any Justices of the Peace, Justices of the Assize, and Justices of Oyer and Terminer, or of Goal Delivery, may or can do. (a)

SECT. 2. *And be it further enacted by the authority aforesaid,* That the said Justices of the Peace of the respective counties, 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 to the King, (b) as any Justices of the Peace of Great Britain may or can, or usually do; and all recognizances for the peace, behaviour or appearances, 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 their 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 Goal Delivery, shall

(a) For the alterations made in this clause, See an act passed February 22, 1777. chap. 5. b. sect. 5. article 6. sect. 1. 19. of the constitution of "The State of Delaware adopted in June 1792." "An act to regulate the courts of this state" passed June 14, 1793. chap. 19. c. and an act to alter and amend the same last act, chap. 61. c. passed February 7, 1794.

(b) But now in the name of "the State of Delaware," by sect. 21, of article 6. of the constitution aforesaid, of June 1792, and an act of February 22, 1777. chap. 2. b. sect. 3.

shall be certified before the Justices of the Supreme Court of Oyer and Terminer, at their next succeeding court to be holden next after the taking thereof; (c) without concealment, detainment or imbezzeling of the same: But in case any person or persons shall forfeit his or their recognizance of the peace, behaviour or appearance, for any cause whatsoever, then the Justices of the said Court of Quarter Sessions, shall make a record of every such default or cause of forfeiture, and issue Writs of *scire facias*, and all such other process as shall be needful for the recovery of the said forfeitures.

G H A P.
LIV.

SECT. 3. *Provided always*, That the said Courts of General Quarter Sessions of the Peace, may be kept and continued for the space of three days in the counties of New-Castle, Kent, and Sussex, aforesaid, respectively, at any of the said times herein before appointed for the holding and keeping of the said courts and sessions in each of the said counties.

Quarter Sessions
may continue
three days in
each county:

SECT. 4. *And to the end* that persons indicted or outlawed for felonies or other offences in one county or town corporate, who dwell, remove, or be received into another county or town corporate, may be brought to justice, *Be it further enacted*, That the said justices, or any of them, shall and may direct their writs or precepts, under the seal of the proper county to which they belong, to all or any of the Sheriffs or other officers of the said counties or towns corporate within this government, 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 *subpœna's* and other warrants, under their respective hands and seals, into any county or place of this government, 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 any wise triable before them, or any of them, under such pains and penalties

Writs under the
proper seal of
one county, may
be directed to
the officers of
another county,
&c.

Subpœna's to
be issued for
summoning evi-
dence.

(c) See the act to regulate the courts in this state, chap. 19. c. sect. 5. passed June 14, 1793. and the act to alter and amend the same. chap. 61. c. sect. 4. passed February 7. 1794.

C H A P.
LIV.

Persons aggrieved may have Writs of Error, &c.

penalties as by *subpœna's* or warrants of that kind usually are or ought by law to be granted or awarded.

SECT. 5. *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 Goal Delivery, or any other Courts of Record within this government, 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, *(d)* which shall be granted them of course, in manner as other Writs of Error, to be granted and made returnable to the said Supreme Court of this government. *(e)*

Supreme Courts to be held twice a year in each county. Repealed and supplied in Chap. 167. Post.

SECT. 6. *And be it further enacted by the authority aforesaid,* That there shall be holden and kept a Court of Record twice in every year, in each of the counties of this government, that is to say, on the fifth day of October, and on the twenty-first day of April at New-Castle, for the county of New-Castle; and on the ninth day of October and the twenty-fifth day of April at Dover, for the county of Kent; and on the thirteenth day of October and the twenty-ninth day of April at the town of Lewes, for the county of Suffex; and if the same days, or either of them, happen to be the first day of the week, then, in such case, the said courts shall be held on the next days following, which said court shall be called and stiled the Supreme Court of the counties of New-Castle, Kent, and Suffex, upon Delaware; 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.

By three judges to be commissioned by the Governor, &c.

(d) By the act to regulate the courts in this state, chap. 19. c. sect. 8. passed June 14, 1793, No such Writ or Writs of Error lie to the Court of General Quarter Sessions and Goal Delivery, for removal of any indictment to be found or pending, &c, therein, except for capital offences, after the first Tuesday in October then next. And by the same act, sect. 7. No such Writ or Writs of Error lie to the Court of Common Pleas, in actions commenced thereafter the time aforesaid.

(e) The nine following sections of this act, solely relate to the establishing a Supreme Court within this government, then stiled that of the counties of New-Castle, Kent, and Suffex, on Delaware, after the Delaware State, but now "The State of Delaware," which were all repealed and supplied by "An act for the better regulation of the Supreme Court within this government," Chap. 167. a. passed April 28, 1766

missions under the great seal of this government, to be judges of the said courts, 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 Writs or 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.

C H A P.
LIV.

Who have power to issue Writs of Habeas Corpus, &c.

And to hear and determine causes, &c. Repealed and supplied in chap. 167. a. post.

SECT. 7. And that the said judges, or any two of them, shall have full power to hold the said courts, 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, complaints and causes in law or equity, which shall be removed or brought there from the respective General Quarter Sessions of the Peace, to be held for the respective counties of New-Castle, Kent, and Suffex, by Writs of *Certiorari*, Writs of Error or Appeal, or from any other court of law or equity of this government, by virtue of any of the said writs or appeal, after final judgment or decree shall be given in the said courts, and to examine and correct all and all manner of errors of the justices and magistrates of this government, in their judgment, process and proceedings, in the said courts, as well in all pleas of the crown, as in all pleas real, personal, and mixt, and suits in equity, and thereupon to reverse or affirm the said judgments or decrees, as the law doth or shall direct, and shall be appealable to equity, and also to examine, correct, and punish the contempts, omissions and neglects, favours, 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 all such fines, forfeitures and amerciaments, which shall be left, taxed and set in the said Supreme Courts, 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 them, concerning all and singular the

And to correct the errors of justices, punish the faults of officers, award process for levying fines, &c.

CHAP.
LIV.

and generally
minister justice
as in the King's
bench in Great
Britain.
Saving to all
persons their
right of appeal.

premises, according to law, as fully and amply to all intents and purposes whatsoever, as the Justices of the Courts of King's Bench and Common Pleas at Westminster, or any of them, may or can do upon Writs of Error, and other remedial writs issuing out of the said courts; saving to all and every person or 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 government, to his Majesty in council, or to such court or courts, judge or judges, as by our Lord the King, his heirs or successors, shall be appointed in that part of Great Britain called England, to receive, hear, and judge of appeals from his Majesty's plantations.

Appellant to give
bond, &c.

SECT. 8. *Provided*, The persons appealing, shall, upon entering his or their appeal in the court where the sentence, judgment or decree shall be given, in this government, 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 double the sum recovered (in the said court) to the defendant in the appeal, conditioned to prosecute the said appeal with effect within the space of eighteen months next after the entry of such appeal, and to satisfy the judgment of the court from whence 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 execution shall be suspended until the final determination of such appeals, unless good and sufficient security be given by the appellee, to make ample restitution of all that the appellant shall have lost by means of such judgment or decree, in case, upon the determination of such appeal, such decree or judgment should be reversed, and restitution awarded to the appellant.

Repealed and
supplied in chap.
167. a. post.

Execution to be
suspended, &c.
unless the ap-
pellee give secu-
rity, &c.

Stile of the
writs.
Repealed and
supplied in chap.
167. a. post.

SECT. 9. *And be it further enacted*, That all the said writs shall be granted of course, and made in the name and stile of the King, his heirs and successors, and shall bear test in the name of the Chief Justice
for

for the time being, but if he be the plaintiff or defendant, in the name of one of the other justices, and shall be sealed with the judicial seal of the said court, signed by one of the judges, and made returnable to the next court after the date of such writ.

SECT. 10. *Provided always,* That none of the Judges of the said Supreme Court, shall sit judicially in any of the said Courts of Common Pleas, Quarter Sessions, or any other inferior court of this government.

No Judge of the Supreme Court shall sit in inferior courts. Repealed and supplied in chap. 167. a. post.

SECT. 11. *And be it further enacted by the authority aforesaid,* That the said Judges of the said Supreme Court, or any two of them, shall have power, and are hereby authorized and impowered, from time to time, when there shall be occasion, to deliver the goals, of all persons which now are, or shall hereafter be committed for treasons, murders, and such other crimes as by the laws of this government 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 thereunto, as Justices of Assize, Justices of Oyer and Terminer and Goal Delivery, may or can do in the realm of Great Britain.

The said judges to deliver goals, &c. Repealed and supplied in chap. 167. a.

SECT. 12. *Provided always,* That the fees due to the judges and officers of the said court, for hearing any of the said capital offences, for any thing done there, shall be double the fees usually taken in the General Quarter Sessions held in any of the said counties in this government; any thing herein contained, or in any other law of this government, to the contrary notwithstanding.

Fees in the Supreme Court to be double, &c. Repealed and supplied in chap. 167. a.

SECT. 13. *Provided always, and be it further enacted,* That no cause removed from any of the other courts of this government into the said Supreme Court, or any other matter legally removed from any other court, and now depending before the judges of the said court, shall be discontinued, but that the same may be heard, tried, and determined before the said judges, as fully as the same could have been heard, tried, and determined before the making of this act; any thing herein contained to the contrary in any wise notwithstanding.

No cause now depending before the Judges of the Supreme Court shall be discontinued, &c. Repealed and supplied in chap. 167. a.

SECT.

C H A P.
LIV.

Notice to be given the judges when there shall be any causes, &c.
Repealed and supplied in chap. 107. a.

SECT. 14. *Provided always,* That nothing herein contained, shall oblige the Judges of the Supreme Court, nor any of them, to go their circuit, or hold a court in any county of this government, but when there shall be some cause removed from some inferior courts by Writ of Error, *Habeas Corpus*, *Certiorari* or Appeal, or some other matter or cause cognizable by them, which shall require their coming, whereof the Clerks of the respective counties from whence such cause or causes shall be removed, shall give notice to each of the judges, after any such Writ of Error, *Habeas Corpus*, *Certiorari* or Appeal shall be made or brought, at least fourteen days before the time of holding the said Supreme Court; and that the said judges, upon notice given them, shall cause the Sheriff of the respective county where such Supreme Court is to be held, forthwith to warn the Justices, Coroners and Constables to give their attendance at the said Supreme Court, to be held according to the directions of this act.

Justices to be commissioned to hold Courts of Common Pleas four times a year in each county;

SECT. 15. *And be it further enacted by the authority aforesaid,* That a competent number of persons shall be commissioned by the Governor, or his Lieutenant for the time being, under the broad seal of this government, who shall hold and keep a Court of Record in every county of this government, which shall be stiled and called, *The County Court of Common Pleas*, and shall be holden four times in every year, at the times and places where the General Quarter Sessions of the Peace are directed, and shall be respectively kept in the said counties, (that is to say) at New-Castle, for the county of New-Castle, on the third Tuesday of February, May, August and November; And at Dover, for the county of Kent, on the second Tuesday in every of the same months; And at Lewes, for the county of Sussex, on the first Tuesday in every of the said months; which justices, or any three of them (according to the tenor and direction of their commissions) shall hold Pleas of Assize, *scire facias*, replevins, informations and actions upon penal statutes, and hear and determine all and all manner of pleas, actions, suits and causes, civil, real, personal and mixt, according to the

the laws and constitutions of this government, as fully and amply to all intents and purposes, as the Justices of the King's Bench, Common Pleas, and Exchequer in England, or any of them, may or can do. (f)

C H A P.
LIV.

SECT. 16. *And be it further enacted by the authority* Who are im-
powered to is-
sue subpoena's
&c. *aforsaid,* That every of the said justices shall, and are hereby empowered, to issue forth *subpœna's* under their respective hands and seals into any county or place of this government, for summoning and bringing any person or persons to give evidence in and 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.

SECT. 17. *And be it further enacted by the authority* And to grant
special courts. *aforsaid,* That if any defendant or defendants in any suit or action, by reason of his or their sudden departure out of this government, shall require a more speedy determination in such action or suit, than can be obtained by the common or ordinary rules of proceeding in any of the said county courts of Common Pleas in this government, the said justices, upon application 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 said county courts of Common Pleas, for the usual fees therein taken.

SECT. 18. *Provided always,* That before such justices shall grant such special courts, 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 County Courts of Common Pleas. The defendant
to give bail, &c.

SECT. 19. *And to prevent the excessive charges* Writs of enqui-
ry how to be
executed. *that have sometimes arisen upon executing writs of enquiry*

(f) For the existing alterations in this clause, see the constitution of "The State of Delaware," of June 1792, in article 6. The act to regulate the courts of this State, chap. 19. c. passed June 14, 1793. And the act to alter and amend the same, chap. 61. c. passed February 7, 1794, and for additional powers, see "An act for marking and bounding of lands," chap. 117. c. passed Feb. 10, 1796.

C H A P.
LIV.

enquiry for damages, *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 the judgment is given) make an order in the nature of a writ of enquiry, to charge the jury attending at the same or next court after such judgment is given, to enquire of the damages and costs sustained by the plaintiff in such action, which enquiry shall be made and evidence given in open court, and after the inquest have considered 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 Sheriffs.

Testatum Executions may be awarded where needful.

SECT. 20. *And be it further enacted by the authority aforesaid*, That it shall and may be lawful to and for the Justices of the said respective Courts of Common-Pleas within this government, to award a *Testatum Execution* in all cases where the same is needful, and is or ought to be done by the practice and course of the laws of England, and to amerce the Sheriffs or other officers neglecting or refusing to execute and make return of such writ or writs, according to the direction of the said writs.

Courts of Equity to be held 4 times a year.

SECT. 21. *And be it further enacted by the authority aforesaid*, That there shall be a Court of Equity, held by the Justices of the said respective County Courts of Common Pleas four times a year at the respective places, and near the said times as the said Courts of Common Pleas are held in every county of this government; (g) and that the Prothonotary of the Common Pleas shall be the Register of the said Courts of Equity in every county; which said justices, or any three of them, within the limits of their commissions and authorities to them appointed as is aforesaid, shall have full power, and are hereby impowered and authorized, to hear and decree all such matters and

Prothonotary of the Common Pleas to be Register.

Power of the Court of Equity.

(g) By the constitution of the state of Delaware of June 1792, in article 6. sect. 14. The equity jurisdiction aforesaid, is separated from the common law courts, and vested in a Chancellor, with an exception in cases wherein he is interested. — For the time of holding such Court of Chancery, see the act to regulate the courts in this state, chap. 19. c. passed June 14, 1793. — An act passed February 7, 1794. chap. 61. c. Act. 2, and another act passed February 7, 1795. chap. 79. c.

and causes of equity as shall come before them in the said courts, where the proceedings shall be as heretofore by bill and answer, with such other pleadings as are necessary in Chancery Courts, and proper in these parts, with power also for the said Justices of the respective courts of equity, to issue forth all manner of *Subpœna's*, and all other process as may be needful to oblige and force defendants to answer suits there, as also to award commissions for taking answers and examining witnesses, (b) and to grant injunctions for staying suits in law, and stopping wastes, as there may be occasion, observing, as near as may be, the rules and practice of the High Court of Chancery in Great Britain, with powers to make orders and award all manner of process, and do all other things necessary for bringing causes to hearing, and to force obedience to their decrees in equity, which may be by imprisonment of bodies, or sequestration of lands, and admit bills of reviver, as the case may require.

SECT. 22. *And* if any defendant or defendants in any suit, which shall be commenced against them in one of the said counties, shall, after he or they are served with a *subpœna*, or other process, remove into any other county of this government, all process necessary to bring such defendants to answer, and all commissions for taking of their answers and examining witnesses, with all other process necessary to bring such causes to a hearing, shall and may be awarded out of the court where those causes or suits shall be first commenced, into any other county of this government, as the case may require.

Cases in which process may be awarded out of Courts of Equity into other Counties.

SECT. 23. *Provided always*, That no *subpœna's*, or other process for appearance, shall issue out of any of the said courts of equity, till the bill is filed with the proper officer, except bill for injunctions to stay wastes or suits at law.

Before subpœna's or process for appearance issue, bill to be filed, &c.

SECT. 24. *Provided also* That if any person or persons

(b) See the act of the 26 Geo. II. post. chap. 144. a. giving this court a power in a summary method, to perpetuate the testimony of witnesses relating to the bounds of lands. See also an act passed February 2, 1793. chap. 3. vesting in the court of Chancery the care of idiots and lunatics.

C H A P.
LIV.

Persons ag-
grieved, may
appeal to the
Supreme Court,
&c.

sons shall find themselves aggrieved with any decree or sentence made or given by the said justices in equity, it shall and may be lawful to and for him or them so grieved, forthwith to appeal or have recourse to the Judges of the Supreme Court, (1) to set forth his or their case by petition, bill or plaint, so as the sum adjudged to be paid by such decree, amount to Ten Pounds, or upwards, and so as he or they, so appealing, first pay down the court charges, and either satisfy the decree or sentence so given, or deposit with the justices the sum awarded, or give sufficient security to prosecute the said appeal, and to pay all costs and damages that shall be awarded against him or them; and then, albeit the party appealing be imprisoned upon that decree or sentence, he shall be enlarged; and that such appeals shall supersede all other process upon the decree or sentence appealed from, till the same be heard, tried or dismissed in the said Supreme Court.

Matters deter-
minable by
common law
not to be heard
in Courts of
Equity.

SECT. 25. *Provided also*, That nothing herein contained shall give the said justices any power or authority to hear, decree or determine in equity, any matter, cause or thing, wherein sufficient remedy may be had in any other court or before any other magistrate or judicature in this government, either by the rules of the common law, or according to the tenor and directions of the laws of this government, but that when matters determinable at common law shall be brought before them in equity, they shall refer or remit the parties to the common law; and when matters of fact shall happen to arise upon their examination or hearing of the matters and causes to be heard and determined in the said court, then, and in every such case, they shall order the matter of fact to issue and trial at the Court of Common Pleas for the proper county where the fact ariseth, before they proceed to sentence or decree in the said Court of Equity.

When matters
of fact arise,
they are to be
tried in the
Courts of Com-
mon Pleas.

SECT. 26. *And be it further enacted by the authority
aforesaid,*

(1) By the constitution of June 1792, aforesaid, an appeal from the Court of Chancery, as therein established, is given to "The High Court of Errors and Appeals," constituted in article 7, of the same system.

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 Attornies there, who shall behave themselves justly and faithfully in their practice, and before they are so admitted, shall take the following qualification, (*viz.*) (*k*)

C H A P.
LIV.

Attornies how
to be admitted,
&c.

THOU shalt behave thyself in the Office of an Attorney within the court according to the best of thy learning and ability, and with all good fidelity as well to the court as to the client: Thou shalt use no falsehood, nor delay any person's cause through lucre or malice.

The qualification.

SECT. 27. *And if they misbehave themselves therein, they shall suffer such penalties and suspensions as Attornies at Law in Great Britain are liable to in such cases. By which Attornies 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 Attornies, so admitted, may practice in all the courts of this government, without any further or other licence or admittance.*

Penalty on mis-
behaviour.

Business of At-
tornies.

SECT. 28. *Provided always, That no person, not being an inhabitant of this government, or of the province of Pennsylvania, shall be permitted to plead in any court or courts within this government, without licence first obtained from the Governor for the time being, by the recommendation of the Justices of one of the County Courts of this government; unless such lawyer or lawyers shall obtain the court's leave, and pay to the said court, for the use of the Governor, the sum of Fifty Shillings for each court he shall so plead, until licensed.*

Non-resident
Attornies shall
not plead with-
out a licence
from the Go-
vernor, or pay-
ing 50 s. per
court.

C H A P.
LV.

13 Geo. I.

C H A P. LV. a.

An ACT for the further securing the administration of the government. Supplied and rendered void, first by the system of government as framed for this state in 1776, and after by the constitution of the State of Delaware, of June, 1792.

C H A P. LVI. a.

9 Geo. I.

An ACT for keeping in good repair the dykes and sluices belonging to the marsh on the South-west end of the town of New-Castle, commonly called, the town-marsh. Obsolete. The whole of which marsh became the property of one person anno 1766, and hath since continued to be owned by a single person.

C H A P. LVII. a.

4 Geo. II.

An ACT for the keeping in good repair the dyke and sluices belonging to the marshes at Swanwick, in the tenor and occupation of Jehu Curtis, Adam Hay, executor of John Silsby, Cornelius Kettle, and Samuel Eves. Private. Supplied, see chap. 136. b.

C H A P. LVIII. a.

4 Geo. II.

An ACT for bailing prisoners, and about imprisonments.

BE it enacted by the honorable Patrick Gordon, esq. by the royal approbation Governour of the counties of New-Castle, Kent, and Sussex, upon Delaware, and province of Pennsylvania, and by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the
the

the same, That all prisoners shall beailable by one or more sufficient sureties to be taken by one or more of the judges or justices that have cognizance of the fact, unless for such offences as are or shall be made felonies of death by the laws of this government, and that gaolers shall not oppress their prisoners, under a penalty not exceeding Five Pounds, for each offence, for the relief of the poor of the county where such offence or offences shall be committed, to be recovered, upon due proof thereof, before the justices of the same county, in the Quarter Sessions; and that all prisoners shall be free as to room, and all prisoners shall have liberty to provide themselves with bedding, food, and other necessaries, during their imprisonment; and that the public allowance shall be Six-pence per day, and no more; (a) and that the respective prisons shall be work-houses, until others are provided, for felons, thieves, vagrants, and loose and idle persons, whereof one shall be in each respective county of this government; (b) and that no person or persons shall be obliged to answer to any indictment or presentment, unless the prosecutor's name be indorsed thereon; and if any person or persons shall be imprisoned or prosecuted without probable cause, he, she, or they shall have double damages against the informer or prosecutor, to be recovered by action of common law.

C H A P.
LVIII.
4 Geo. II.

C H A P. LIX. a.

An ACT for regulating pedlars within the government of the counties of New-Castle, Kent, and Suffex, upon Delaware. 4 Geo. II.

WHEREAS of late many idle and vagrant persons are come into this government, and under pretence of being hawkers or pedlars, and carrying

Preamble.

(a) See after in chap. 76. a. sect. 13, 14, 15, 16, 17, other provision in favour of prisoners.

(b) See before in chap. 22. a. sect. 19. and after in chap. 146. a. passed October 30, 1753.

C H A P.
LIX.

4 Geo. II.

ing goods from house to house within the same to sell, have greatly imposed upon many people, as well in the quality as in the price of the goods. *And whereas* many of the persons now following the business or employment of pedlars, hawkers or petty chapmen, within this government, have no fixt or settled place of residence, and thereby are exempted from paying taxes and contributing towards the support of this government proportionably with others the inhabitants thereof. For remedying which inconveniencies, and to the end that no person may be admitted and allowed to follow the business of hawkers or pedlars within this government, but persons of known honesty and civil behaviour,

No person to follow pedling, &c. until they are recommended, licensed, and have given bond, &c.

SECTION I. *BE it enacted by the honorable Patrick Gordon, esq. Lieutenant Governor of the counties of New-Castle, Kent, and Suffex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same,* That after the first day of January next, no person or persons whatsoever, shall follow or employ him, her, or themselves in the business or employment of a hawker, pedlar or petty chapman, or in going from town to town, or to other men's houses, and travelling with horse or horses, ass or asses, mule or mules, or otherways, within this government of the counties of New-Castle, Kent, and Suffex, upon Delaware, (except as herein after is excepted) or carry to sell or expose to sale any goods, wares or merchandizes, within the government aforesaid, until such person or persons shall have obtained a recommendation from the Justices of the County Court, where he or she dwells, certifying their opinion of the honesty of the person recommended, and that he or she is a liver within this government, and intends to travel with one, two or more horse or horses, or other beasts of burden, or on foot, and shall thereupon have obtained a licence from the Governor, and shall have given bond (a) in the Prothonotary's office of the County

(a) By an act passed February 2, 1793. chap. 5. c. intituled "An act to enjoin certain duties to be performed by the Secretary of state and for other purposes,"

ty Court, in his Majesty's name, with one surety at least, in any sum not exceeding Forty Pounds; conditioned that such person or persons shall be of good behaviour, during the continuance of the said licence; and shall well and duly pay and satisfy all such taxes and duties as shall be legally assessed upon him, her, or them, within the county where he, she, or they shall obtain the said recommendation; for which licence there shall be paid to the Governor, the sum of Twenty-five Shillings, (b) by every person obtaining a licence to travel with a horse, ass, mule, or other beast of burden, and the sum of Fifteen Shillings for every person licensed to travel on foot.

CHAP. LIX.

4 Geo. II. Fees to be paid for licences.

SECT. 2. And if any person or persons, not being qualified as aforesaid, shall be found travelling, hawking and peddling from house to house, to sell goods as a hawker, pedlar or petty-chapman, he or she so offending, if travelling with one or more horses, shall forfeit the sum of Fifteen Pounds, and if travelling on foot, the sum of Ten Pounds, one moiety thereof to the Governor, (c) for the support of government, and the other moiety to the person who will sue for the same, by any action of debt, bill, plaint or information, in any Court of Record within this government, wherein no essoin, protection or wager of law, nor more than one imparlance, shall be allowed.

Penalties on persons not qualified, travelling as pedlars, &c.

SECT. 3. And that every person so trading, who, upon demand made by any Justice of the Peace, Constable, or other Officer of the Peace, of any town, place or county within this government, where he or she shall so trade, shall refuse to produce and shew unto such Justice or Officer of the Peace, his or her licence for so trading, to be granted as aforesaid, that then the

Penalty on pedlars, &c. that refuse to shew their licence.

in sect. 6. It is provided that all bonds, &c. to be given for the faithful discharge of any office, commission or public trust in the appointment of the Governor, &c. shall be taken by the Secretary in the name of the state, &c. The sureties therein to be approved by the Governor, except as there excepted.

(b) See the act for regulating and establishing fees, passed June 15, 1793, chap. 27. c. other sums prescribed as fees for such licences.

(c) To the use of the state by an act passed February 22, 1777. chap. 6. b. sect. 13. and payable to the State Treasurer by act passed June 15, 1793. chap. 28. c. sect. 2.

C H A P.
LIX.

4 Geo. II.

Selling at fairs,
&c. not forbid:
nor hawking of
goods that are
made in the go-
vernment.

the person so refusing, shall forfeit Forty Shillings, to be recovered in manner aforesaid; and for nonpayment thereof, shall suffer as a common vagrant.

SECT. 4. *Provided always, and it is hereby further enacted,* That nothing herein contained, shall extend, or be construed to extend, to hinder any person or persons from selling or exposing to sale any sort of goods or merchandize in any public market or fair within this government, or to hinder any persons from carrying about from town to town, and from house to house, any goods, wares or merchandizes, being of the growth, product or linen manufacture of this government, but that such person or persons may do therein as they lawfully might have done before the making of this act; any thing herein before contained to the contrary notwithstanding.

Any dispute
arising, pedlars,
&c. to make
oath.

SECT. 5. *And be it hereby further enacted,* That if any dispute shall happen to arise concerning the said goods, wares or merchandizes, the person or persons for carrying about or exposing the same to sale, in manner aforesaid, shall be obliged to declare upon oath or affirmation before any Justice of the Peace or other Magistrate of the county, town or place, where he, she, or they shall carry about or offer the same to sale, whether such goods, wares or merchandizes, be of the growth, product or linen manufacture of this government.

C H A P. LX. a.

7 Geo. II.

A Supplement to an act of this government, entituled, An act for the better confirmation of the owners of lands, &c. in their just rights and possessions.

Preamble.

WHEREAS by the laws of this government, formerly made for confirming the owners of lands in their just rights, and for quieting the possession of such as were *bona fide* purchasers of lands within this government, for a valuable consideration, are found not to be sufficient to answer the good ends proposed

propofed in the faid laws : And forasmuch as at the first fettlement of these counties, and for a long time after, the inhabitants were very unskilful in making deeds and wills, or conveying and devising of lands, which heretofore were but of very small value in these counties, and by the laws of this government were always subject to be taken in execution, and sold for the payment of debts, as well as to be sold by executors and administrators for the payment of the debts of their intestates and testators, and for maintenance of their children, &c.

SECT. 2. *And whereas*, through the negligence of some persons who have been intrusted with the offices of Clerks and Registers of this government, not only many of the records of the several Courts of Judicature, Orphans Courts, &c. within this government, are burned, or otherwise lost and destroyed; but even some of the former laws are imbezzelled, so that, except where it appears by the recitals of such deeds as are yet in being, there is no legal proof can be made of the judgments, orders or decrees, by virtue whereof many lands within these counties have been sold, and many Wills, Powers of Agency, and Letters of Attorney, are not now to be found, to warrant the sales and conveyances of lands made by executors or other persons, who are said to have had authority to sell by virtue of the powers contained in the said Wills, Powers of Agency, or Letters of Attorney.

SECT. 3. *And whereas*, through the unskilfulness which so generally prevailed formerly in this government among persons pretending to be scriveners, or to have some understanding in the law, sundry lands have been devised to the children of the testators, without the addition of the word Heirs, or any other word, by which, in construction of law, such devises could be understood to be any other than estates for life, though it has been well known that the intention of the testator has been otherwise; and therefore, by constant usage, the children of such testators, claiming under such devises, have held the lands as estates of inheritance, and have sold, and devised the same accordingly : And other testators and scriveners,
for

C H A P.
LX.
7 Geo. II.

C H A P.
LX.
7 Geo. II.

for want of a due understanding and knowledge of the nature of devises, and distinction between words which make an estate in fee-simple, and fee-tail, have devised lands to their children, and their issue, or their heirs or issue of their bodies, or to them and their children; when it has been known that all that was intended by the testator was no more, than that the lands should go to his child or children, and their heirs; and yet the devisees, for want of being truly informed of the legal construction of such devises, have, as soon as they had children, conceived themselves to have a good right to devise or sell the lands so devised to them, and have disposed of the same accordingly; and oftentimes when it hath happened that such devisees have died, but have not sold such lands in their life time, and have left issue, who in construction of law were really the heirs or issue in tail, such issue, from a belief of their having an estate of inheritance in the lands so devised to them, have devised, or for a valuable consideration, sold or mortgaged the said lands.

SECT. 4. *And whereas* the former assemblies of this government, considering that rough and unimproved lands were of very little value, and that if persons having any right or title to lands within this government, should neglect to take possession, or claim the same in a reasonable time, and by that means, persons being ignorant of the claim of such owners, should purchase the same lands for a valuable consideration, of other persons, who have had the same surveyed to them, or of persons pretending to be the true heir or heirs of the first owners of such lands, and such purchaser should afterwards, at a great expence of labour and money, render the same lands of considerable value by their improvements, and die, and leave the said lands to their children: It was therefore provided by a law of this government, above thirty years ago, (a) that seven years quiet possession of lands within these counties, which were first entered on upon an equitable right, should give an unquestionable

(a) See before in chap. 12. 2.

tionable title to the same, excepting as in the same act is excepted: And the people of this government generally trusting to the equity of that law, and the provision therein made for quieting mens possessions, many honest persons, ignorant of the titles of lands, have purchased lands and tenements within this government under the circumstances before in this act mentioned, which purchases have been made *bona fide*, and for a valuable consideration, and the purchasers, and those claiming under them, have hitherto continued in the peaceable and quiet possession of the said lands, without any claim made by any persons pretending right or claiming the same as heirs or owners, or heirs in tail, remainder or reversion; and many of the said lands so devised and sold as aforesaid, have been taken afterwards in execution, and sold for the payment of the debts of the persons to whom they have afterwards been sold, and others of the said lands have been taken into the respective Loan Offices of this government, for securing the payment of the monies borrowed on the credit of the said lands:

SECT. 5. *Wherefore* to avoid the great inconveniencies, and the ruin of great numbers of families which might happen, if the persons, who heretofore, without fraud, and for a valuable consideration, merely for want of knowledge and skill in the laws, and for want of opportunities of being better informed, have *bona fide*, and for a valuable consideration, purchased lands under any of the aforesaid circumstances, or if the persons claiming under such purchasers, who have spent their strength and substance in improving the said lands which formerly were but of small value, should now be turned out of their possessions by persons pretending to claim the same, as owners or as heirs in tail, reversion or remainder, or for want of being able to produce the records of the judgments, decrees or orders of the courts where the same were entered, or the last Wills and Testaments, or Powers of Attorney, by virtue of which the said lands were sold; it is prayed that it may be enacted, *And be it therefore enacted by the honorable Patrick Gordon, esq. Lieutenant Governor of the counties of New-Castle, Kent, and Sussex, on Delaware; and province of Pennsylvania,*

C H A P.
LX.
7 Geo. II.

Purchasers of
lands from te-
nants for life,
&c. how to be
quieted in their
possessions.

Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same, That where any lands or tenements within these counties, which have been devised to any person or persons (where the words of the will in which the same are devised, may be construed to be an estate in tail) have at any time before the thirty-first day of December, in the year of our Lord One Thousand Seven Hundred and Fifteen, been sold by the tenant, for life, or by the tenant or issue in tail, who, in strictness of law; had not a good right to sell the same; nevertheless, the purchaser of such lands and tenements having hitherto continued in the peaceable and quiet possession of the same, and for the recovery of which no suit in law or equity hath hitherto been brought against such purchaser or purchasers, or those claiming under him, her or them; then such purchaser or purchasers, upon payment to the heir in tail, remainder or reversion, claiming right under such will, the sum of money or price for which the said lands or tenements were at first sold, shall hold the said lands and tenements, with their appurtenances, unto the said purchaser or purchasers, his or their heirs and assigns for ever, against the claim of any heir in tail, remainder or reversion, and against all and every other person or persons whomsoever, claiming by, from or under any such devise as aforesaid; the said will, or any thing therein contained to the contrary in any wise notwithstanding.

SECT. 6. *Provided,* That such heir in tail, reversion or remainder, or other person claiming under such devises as aforesaid, do prosecute his or her right within three years after the first day of May, in the year One Thousand Seven Hundred and Thirty-four.

Lands taken in
execution for
payment of
debts, &c.
and sold by Sher-
iffs; or lands
sold by virtue of
some will, order
of court, Power
of Attorney, &c.

SECT. 7. *And be it further enacted by the authority aforesaid,* That where any lands have been sold by any of the Sheriffs within this government, and it appears by the recitals in such Sheriffs deeds, that such sale was made by virtue of some execution or judgment of court, for the payment of the debts of the owners of such lands, although the judgment, order or decree of the court cannot be found; or where

where it appears by the recitals of the grants or conveyances made by executors of the lands of their testators, that such sale or grant was made by an authority in the said will, given to the executor or other person granting such lands, to sell the same; or it be recited that the lands granted were sold by virtue of some Power of Attorney from the person having right to the same, although such Will or Power of Attorney recited in the said deeds, cannot be found; or if it be recited in the grant made by any executor or administrator, that the same was made by some judgment, order or decree of some court within this government, although the record of such judgment or decree cannot be found; that the sales of lands and tenements made by Sheriffs, Executors, Administrators or Attornies, at any time before the thirty-first day of December, in the year One Thousand Seven Hundred and Twenty, and for the recovery of which lands and tenements, no suit in law or equity hath hitherto been brought or prosecuted by the persons pretending right to the same, shall and are hereby adjudged and allowed to be good and available to the purchasers and their heirs for ever; the want of the record of the judgment, orders or decrees of court, or the want of any last Will and Testament, or Power of Attorney, or any of them, notwithstanding.

C H A P.
LX.

7 Geo. II.
How the possession thereof shall be quieted, in cases where such will, order, or power cannot now be found.

SECT. 8. *And whereas* it has formerly been a practice within this government, for executors and administrators to have the lands of their testators or intestates appraised with the personal estate, and have usually accounted for the appraised value of such lands, either by paying the value for which such lands have been appraised, in payment of the testators or intestates debts, or in maintenance of their children, or to the children of such testators or intestates themselves, or to their use. *Be it therefore enacted by the authority aforesaid,* That all sales and grants of lands within these counties, made before the year One Thousand Seven Hundred and Twenty, by any executors or administrators, where it appears the executors, or administrators, who sold the same, have accounted for and paid the appraised value of such lands for the use of their testators and intestates,
and

Sales of lands formerly made by executors, shall be available, &c.

C H A P.
LX.

7 Geo. II.

Sales of lands
formerly made
by Feme Coverts
with their hus-
bands, shall be
good;

and for the recovery of which no suit in law or equity hath hitherto been brought, although it does not appear that the said lands were sold by any judgment, order or decree of any court, or by any authority from the will or wills of the testators, shall and are hereby judged and allowed to be good and effectual for conveying such lands for the uses aforesaid in the said deeds mentioned. (b)

SECT. 9. *And whereas* ever since the settlement of these counties, women under covert have been used to join with their husbands in selling and conveying the lands of such *feme coverts*, and the same hath been constantly hitherto deemed and adjudged a good conveyance of the lands of the wife; and no *feme covert*, who jointly with her husband hath made any such grant or conveyance of her lands within these three counties, have ever after the death of their husbands, or any of the heirs of such *feme coverts* after their decease, sued for or laid any claim to any of the lands sold by such *feme coverts* as aforesaid: Therefore, in order to confirm the rights and quiet the possessions of such persons as have (*bona fide*) purchased lands within these three counties, of *feme coverts* with their husbands, and to declare for the future, what method of conveyance shall be good and effectual to pass the lands of *feme coverts* within this government: *Be it enacted by the authority aforesaid*, That all grants, bargains, sales and alienations of any lands within this government, made by husband and wife, of the lands belonging to the wife in her own right, where the same does not appear to have been done by such *feme covert* by compulsion of her husband, and against her will, declared by her at the time of her executing the deeds or other writings for selling or alienating such lands, all and every such grant, bargain and sale, or conveyance by such *feme covert*, made before the twenty-fifth day of March, in the year One Thousand Seven Hundred and Thirty-four, shall be and is hereby adjudged and deemed to be

(b) See after an act in 25 Geo. II. chap. 142. a. for confirming the sales of lands made by executors, &c. since 1729.

be good and available in law, to convey the said lands so sold to the purchaser and his heirs; and that such sale shall be as effectual a bar against such *feme covert* and her heirs, as if the same had been done by fine and recovery or otherwise howsoever. And that for the future no grant, bargain or sale of any lands of any *feme covert* within this government, to be made by such *feme* during her coverture, shall be good to pass away the estate or right of such *feme covert*, unless the said *feme covert*, granting the same, be examined apart from her husband, by some judge or justice of the court where such deed shall be acknowledged, (c) and the same be indorsed on such deed by the judge or justice who takes such examination, and the time when the same was taken; any former custom, law or usage of this government to the contrary in any wise notwithstanding.

SECT. 10. *Provided always*, That nothing herein contained, shall be deemed or understood to make good or valid any deed, grant or conveyance made of lands within this government, of which the person selling the same, or his or their under-tenants, or some person for him, her or them, have not been in possession at least within three years next before such sale; or shall be deemed, taken or understood to make good and effectual any grant, bargain or sale, where it shall appear any fraud or forgery hath been made or used about any deeds or conveyances of any lands, or of any Powers of Agency, Letters of Attorney, last Wills and Testaments, or other deeds, writings or conveyances of any lands, grounded upon such fraudulent or forged Powers of Agency, Letters of Attorney, or last Wills and Testaments, or to make good the sale of any lands and tenements which have been taken in execution, or sold for any debt, or by any person
other

C H A P.
LX.
7 Geo. II.

but for the future shall not be good, unless the Feme Covert be examined apart by some judge, &c.

Nothing herein contained shall make good any fraudulent grant, bargain, &c.

(c) See an act passed April 12, 1773. chap. 218. 2. providing for the taking the private examination of such Feme Covert, where she and her husband do not reside in the county where the lands intended to be granted are, before any of the Justices of the Court of Common Pleas, or any Mayor, Chief Magistrate or Officer of the city, town or county, where such grants, &c. are made and executed, and certified under the common or public seal of such city, town or county, which is declared to be equally valid as above. And by an act passed January 21, 1795. chap. 68. c. The Chancellor and Judges of the Supreme Court are authorised respectively to take such examinations of Femes Covert.

C H A P.
LX.
7 Geo. II.

other than the lawful owner of the said lands at the time they were sold, or where any suit either in law or equity hath been commenced before the publication of this act, for the recovery of such lands, but that the same shall be and continue as before the making of this act; any thing herein contained to the contrary notwithstanding.

C H A P. LXI. a.

An ACT for regulating elections, and ascertaining the number of the Members of Assembly. (a)

WHEREAS the several laws of this government now in force for regulating elections, and ascertaining the number of Members of Assembly, are found upon experience in some things to be uncertain and deficient, in making due provision for the freedom and impartiality of such elections, and the maintenance of those privileges which the Assembly of this government ought to enjoy, according to the true intent and meaning of the charter granted to the people of the province of Pennsylvania, and the counties of New-Castle, Kent, and Suffex, on Delaware: For remedying whereof,

An Assembly to
be chosen year-
ly.

SECTION 1. *BE it enacted by the honorable Patrick Gordon, esq. Lieutenant Governor of the counties of New-Castle, Kent, and Suffex, or Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same, That for the well governing of the said counties, there shall be an Assembly yearly chosen; (b) and for that end, it*

(a) A Supplementary act hereto, passed June 13, 1772. chap. 207. 2. being temporary, it was made perpetual by an act, passed September 2, 1775.

(b) See the constitution of "The State of Delaware," of June, 1792. article 2. vesting the Legislative power in a General Assembly, to consist of a Senate and House of Representatives. Seven Representatives to be chosen in each county, annually, on the first Tuesday in October; also three Senators for each county, to serve three years, yet so as that one in a county be elected on every first Tuesday in October,

it shall and may be lawful to and for the freemen and inhabitants of the respective counties of this government, without any writ or summons, to meet on the first day of October yearly, for ever, at the most usual place of elections in the said respective counties; that is to say, for the county of New-Castle, at the court-house in the town of New-Castle: For the county of Kent, at the court-house in the town of Dover: And for the county of Suffex, at the court-house in the town of Lewes: (c) And then and there chuse their Representatives or Delegates to serve them in Assembly, which shall consist of not less than six persons for each county of this government, or a greater number as the Governor and Assembly shall at any time hereafter agree. And that every person within this government, qualified to elect according to the directions of this act, refusing or neglecting (not being hindered by sickness or other unavoidable accident) to attend at the election, and to give in his vote, and being thereof legally convicted by the oath or affirmation of one credible witness, before the Justices at their next Court of General Quarter Sessions of the Peace, to be held for the county to which he belongs, shall be fined the sum of Twenty Shillings, one half thereof to be paid to the Treasurer for the use of the county, and the other half to any person who will sue for the same. And that the members so to be chosen, shall meet and sit in Assembly on the (d) twentieth day of October yearly, for ever, at (e) New-Castle, unless the Governor for the time being, in case of some foreign invasion, or raging sickness prevailing in the place to which the Assembly shall stand adjourned, shall see cause to appoint another place within

C H A P.

LXth.

7 Geo. II.

The freemen, &c. to meet on the first of October, &c.

Not less than six Representatives to be chosen for each county.

Penalty on persons not attending, who are qualified to elect.

The Assembly shall sit on the 20th of October yearly, &c.

and to meet in General Assembly on the first Tuesday in January in every year, unless sooner convened by the Governor. For the qualifications of such Senators and Representatives, see the 2d and 3d sections of the said article.

(c) George-Town in the place of Lewes, see chapters 222. b. and 237. b. passed in 1791.

(d) First Tuesday in January, by sect. 4. of article 2. of the constitution of 1792, aforesaid.

(e) The town of Dover, unless, &c. See an act, chap. 47. b. passed October 28, 1779.

C H A P.

LXI.

7 Geo. II.

within this government to meet at : But when any of the said days of elections or meeting of Assembly, shall happen to fall on the first day of the week, called Sunday, then such election and meeting shall be the next day following.

Who are qualified to elect or be elected.

SECT. 2. *Provided always*, That no inhabitants of this government, shall have right of electing or being elected as aforesaid, (*f*) unless he or they be natural born subjects of Great Britain, or be naturalized in England, or in this government, or in the province of Pennsylvania, and unless such person or persons be of the age of twenty-one years or upwards, and be a freeholder or freeholders in this government, and have fifty acres of land or more well settled, and twelve acres thereof cleared and improved, or be otherwise worth Forty Pounds lawful money of this government clear estate, and have been resident therein for the space of two years before such election : And that every man who shall give his vote without being qualified as aforesaid, or that shall receive any reward or gift for his vote, or that shall give, offer or promise any reward to be elected, or shall offer to serve for nothing or less allowance than the law prescribes, shall forfeit Five Pounds, the one half thereof to the Governor, and the other to him or them who will sue for the same in any Court of Record within this government ; and the person so elected shall be incapable to serve for that year.

Penalty on bribing or being bribed to vote.

The method of making and carrying on of elections.

SECT. 3. *And be it further enacted by the authority aforesaid*, That every Sheriff, or in his absence his Under-Sheriff, or such as he shall depute, or for want of such deputation, the Coroner, or such as he shall appoint ; or for want of such appointment, any two of the freeholders, who by the major part of the electors then and there present, shall be nominated and appointed judges of the said elections, in the absence of the said Sheriff or Coroner, shall attend at the said elections ; and the electors shall then proceed to the choice of Inspectors of the said elections, who shall be

(*f*) For the alterations in this clause, see article 4. of the constitution of 1792, aforesaid, and also sects. 2, 3, 12. of article 2. of the same constitution.

CHAPTER
LXI.
7 Geo. II.

be freeholders, and be nominated one out of each hundred by the free electors thereof, and when so chosen, shall be qualified by oath or affirmation, by the Sheriff of the proper county, or other Judges of the elections, who are hereby impowered and required to administer the same, That they will duly attend the ensuing election, during the continuance thereof, and will truly and faithfully assist the Sheriff, Coroner or other persons who shall, by virtue of this act, officiate as Judges of the said elections, to prevent all frauds and deceits whatsoever of electors or others, in the management and carrying on the same, and in causing the poll or votes at such elections to be taken and cast up according to the directions of this act; and being so qualified shall appoint Clerks, who shall take the said poll or names of the electors, in the presence of the said Sheriff, Coroner or other judges as aforesaid, or such as any of them shall depute or appoint, and shall make as many distinct columns on fair paper as there shall be candidates voted for, as is herein after expressed; but before they begin, every Clerk so appointed, shall, by the said Sheriff or Coroner, or by some magistrate then present, be attested or charged on his oath or solemn affirmation, truly and indifferently to take the said poll, and set down the names of each freeholder and elector, and the place of his freehold or estate, and to poll no elector who is not attested, if so required by the Inspectors of such elections. (g) And every person coming to

Qualification of Inspectors.

Vide 13 of George I.

Qualifications of Clerks.

VOL. I.

U

elect

(g) See an act passed November 1, 1766. chap. 187. a directing the choice of Inspectors to be made on 15th September, yearly, in each hundred of the government: That each Inspector so chosen be furnished with an alphabetical list of taxables within the hundred, the better to judge of the qualifications of the electors at the next general election, and that he receive the votes of the electors of his hundred, and none other, marking off the name of the voter by writing the word VOTED in the margin of the list aforesaid, &c.

See also the said supplementary act, chap. 207. a. prescribing the oath, &c. to be taken by the Inspectors, and divers duties to be performed by them at the said general election, and giving to them a concurrent power with the Sheriff or Coroner; prescribing also the oath, &c. to be taken by the Clerks.

And see also "An act for better securing elections in this state," passed June 5, 1779, chap. 44. b. declaring who shall hold the elections for Representatives in General Assembly, in the absence of Sheriff and Coroner, together with the Inspectors: Providing against attempts to interrupt such elections, and if prevented, that the late sitting members of that county reassume their seats in the General Assembly, for the sole purpose of ordering writs for the holding a new election there; and directing the Sheriff or presiding officer or officers, at every election for Representatives, publicly to read this act under the penalty of £200.

C H A P.
I. XI.

7 Geo. II.

Names of persons voted for to be delivered in writing, &c.

The qualification of electors, &c.

Penalty on false oath or affirmation.

The poll not to be delayed or adjourned, &c.

elect members for the said respective counties, shall deliver in writing the names of those persons for whom they vote, to the Sheriff or some other of the said persons so as aforesaid appointed Judges of the said elections, who shall open the paper, if the person be illiterate, and read the persons names contained therein, and ask such elector whether these are the persons for whom he votes, which paper, upon his answering in the affirmative, shall be received and put with the rest of the electors papers in a box, which every Sheriff is hereby required to provide for that purpose: But if the elector brings no such paper or ticket, or if the illiterate elector will not vote for the persons contained in his paper, then, and in all such cases, the elector shall verbally give in the names of the persons he most desires should be chosen, which names shall be entered down by the said Clerks.

SECT. 4. *Provided always,* That every elector before he be admitted to poll (if required by any of the said inspectors) shall upon his oath or solemn affirmation, declare, that he is twenty-one years of age, *(b)* and a freeholder of the county of _____ and has fifty acres of land or more well seated, and twelve acres or more thereof cleared, or that he is otherwise worth Forty Pounds money of this government clear estate, and hath been resident therein for the space of two years, and that he has not been before polled at that election. And in case any person taking the said oath or affirmation, shall be lawfully convicted of wilfully and corruptly making a false oath or affirmation therein, or if any shall suborn any person to take such false oath or affirmation, he or they shall incur the same penalties and forfeitures as by the laws and statutes of England, are provided against persons convicted of wilful and corrupt perjury and subornation of perjury respectively: And that the said poll shall not be delayed, nor the election adjourned to another

(b) See article 4. of the said constitution of June 1792. That every white freeman of the age of twenty-one years, having resided in the state two years next before the election, and within that time paid a state or county tax, assessed at least six months before the election shall enjoy the right of an elector; and the sons of persons so qualified between the ages of 21 and 22 years shall be entitled to vote although they shall not have paid taxes.

other place or part of the country other than where the same begins, but shall continue from day to day till the freeholders and electors then and there present, shall be polled, and no longer: And when all the electors then appearing, shall have delivered in all their papers or names, the said box shall be opened by the Sheriff or some other of the persons appointed by this act to officiate as Judges of the said elections, and the said papers taken out in the presence of the said Inspectors, and delivered one by one to the said Clerk or Clerks, to enter the names therein exprest in fair columns or otherwise, so that they shall cast up how many times such persons name is repeated in the same, and set it down, and shall then pronounce publicly to the people, him, whose name is ofteneft mentioned in the said papers, to be first elected, and so the next highest number successively, until the whole six persons for the county be pronounced elected by majority as aforesaid. But if when the said papers are opened, there appear fewer or more names in any one of them, or more than one paper deceitfully folded together, containing more names than by this act is allowed any one elector to vote for, such papers shall be rejected, and not accounted amongst the votes.

SECT. 5. And after the said Representatives are so chosen as aforesaid, their names (be they present or absent) shall be written in a pair of indentures sealed between the said Sheriff, or other persons officiating as Judges of the said election, and six or more of the said electors; (i) and every Sheriff or other person officiating as Judges of the said election, shall, on the first day of the meeting of every Assembly, in person, or by deputy, present one part of the said indentures to the Governor for the time being, and the other part thereof to the House of Representatives; which

C. H. A. P.
LXI.
7 Geo. II.

Votes to be cast up, and the election proclaimed,

Any deceit in a ticket makes it void.

The names of the Representatives to be written in indentures; one of which to be delivered to the Governor, and the other to the House, &c.

(i) See section 1, of the aforesaid supplementary act, chap. 207. That at least two of the inspectors and four of the electors then present are to join in the said indentures. And see in section 7, directions for preserving all the lists of the names of taxables delivered to the inspectors and used by them in ascertaining the persons voting, with the lists and tallies of their Clerks, and the votes or tickets delivered in and read at the same election, to be signed by the Clerks and two or more Inspectors, under respective penalties, the better to enable the Assembly to judge of the election of their members, &c.

CHAP.
LXI.
7 Geo. II.

which said indentures shall be deemed and taken to be the Sheriff's return of the Representatives or Delegates of the freemen of this government, to serve and act in the Legislative or General Assemblies of the same government from time to time, and the Representatives so as aforesaid chosen, shall yield their attendance accordingly.

Penalty on persons chosen refusing to serve.

SECT. 6. *And* if any person or persons so chosen and returned to serve as aforesaid, shall be absent from the service for which he or they shall be so elected, he or they shall forfeit any sum not exceeding Ten Pounds current money of this government, the one half thereof to the Governor, and the other half to him or them that shall sue for the same in manner aforesaid, unless his or their excuse for such absence be allowed of by the Assembly.

How vacancies in the House are to be filled.

SECT. 7. *And* if any person so chosen and returned as aforesaid, shall happen to die or be wilfully absent, or by vote of the House be disabled to sit or serve in Assembly, (k) that then, and in every such case, the Speaker of the Assembly for the time being, by direction of the House, shall signify to the Governor for the time being, the order of the House for electing a new member in the room of the person deceased, wilfully absent, or disabled by vote of the House to serve in Assembly; and in case the Governor shall not within two days after such application to him made as aforesaid, issue out writs to the Sheriff of the respective counties where there shall be occasion for electing such new member, and cause notice of his having so done to be given to the Assembly within the time aforesaid, it shall and may be lawful for the Speaker of the Assembly for the time being, by order of the House, to issue forth the said writs, which shall be made in the Governor's name, under the hand and seal of the Speaker, whereupon every Sheriff, or other officer, to whom such writ or writs are directed, shall indorse the receipt thereof on the back, and with all convenient speed, after he receives such writ, shall

(k) See section 13 of article 2, of the constitution of June 1792. That when vacancies happen in either House, viz. of Senate or Representatives, writs of election shall be issued by the Speakers respectively, &c.

shall cause public notice to be given of the time and place of election; and proceed to elect thereupon in manner aforesaid, within the space of five days after the receipt of the said writ, and give three days notice at least of the day appointed for the election; which notice shall be given in writing, and shall be proclaimed in the most public places of the capital town or place where such election is to be; and the said Sheriff or other officer shall cause copies of such notice or advertisement to be posted on some tree or house in the way leading from every hundred, township or precinct to the town or place where the said election is to be, as also upon the Court-Houses and public fixed meeting-houses for religious worship in the said respective counties: And when those elections are made by virtue of the said writs in manner aforesaid, the Sheriff, or other officer, who shall officiate as Judges of the said elections, shall write down the names of the persons so elected in a pair of indentures sealed, and present one part thereof to the Governor, and the other part to the Assembly, on the day of the return of such writs; which said indentures shall be deemed to be the Sheriff's return of such Representatives; all which said elections shall begin between the hours of ten in the morning and two in the afternoon; and that no person or persons whatsoever, by force of arms, or menacing, shall disturb the freemen of this government in the free election of their Representatives, but that the same election shall be freely and indifferently made. (1)

C H A P.
LXI.
7. Geo. II.

SECT. 8. *And be it further enacted by the authority aforesaid,* That if any Sheriff shall refuse or neglect to give notice of the said election by writs, then the Coroner of the respective county where the same shall happen, is hereby required by himself, or his deputy, to officiate and perform all that the said Sheriff or his deputy ought to have done and performed at the said elections, according to the tenour and directions of this act. And every Sheriff, or other officer, not making

Penalty on Sheriffs, &c. not performing the duty required of them by this act.

(1) See the said act of June 5, 1779. chap. 44. b. in case of any riotous or unlawful attempt to interrupt or prevent the said election, the Sheriff or other presiding officer or officers thereof, are required to suppress and quell the same, &c.

C H A P.
LXI.

7 Geo. II.

making good and true returns of the said elections of Representatives or Members of Assembly, according to the direction of this act, or refusing, or wilfully neglecting to do and perform all or any of the matters and things in this act required to be done by such Sheriff or Coroner, at and after the said elections, shall forfeit for every such offence, the sum of One Hundred Pounds money aforesaid, the one half thereof to the Governor, and the other moiety thereof to him who will sue for the same in manner aforesaid.

The powers and
privileges of an
Assembly ;

SECT. 9. *And be it further enacted by the authority aforesaid,* That the Representatives so chosen and met according to the directions of this act, (m) shall be and continue the Assembly of this government for the ensuing year, and shall have power to chuse a Speaker and other their officers, and shall be Judges of the qualifications and elections of their own members, sit upon their own adjournments, appoint committees, prepare bills in order to pass into laws, impeach criminals, and redress grievances, and shall have all other powers and privileges of an Assembly according to the rights of the free-born subjects of England, and as is usual in any of his Majesty's plantations in America. And if any county, or part of this government, shall refuse or neglect to chuse their respective Representatives as aforesaid, or if chosen do not meet to serve in Assembly, those who are so chosen and met, shall have the full power of an Assembly, in as ample manner as if all the Representatives had been chosen and met, provided they are not less than two-thirds of the whole that ought to meet. (n)

two thirds of
the whole num-
ber may act :

No member to
vote in the House
will qualified.

SECT. 10. *And be it further enacted by the authority aforesaid,* That no person who shall be hereafter a Member of the Assembly or House of Representatives of this government, shall be capable to vote in the said House, or sit there during any debate after their Speaker

(m) See article 2, of the said constitution of June 1792. throughout for further express provisions, article 5. sects. 1, 2, article 8. sects. 1, 3, 6, 12. and article 10.

(n) See also section 2, of the said act of June 5, 1779. chap. 44. b. 21 in note (i) page 151.

Speaker is chosen, until he shall make and subscribe the following declarations and profession of his christian belief, viz. (o)

C H A P.
LXI.

7 Geo. II.

I A. B. do sincerely promise and solemnly declare before God and the World, That I will be faithful and bear true allegiance to King George the Second. And I do solemnly profess and declare, that I do from my heart abhor, detest and renounce, as impious and heretical, that damnable doctrine and position, that Princes, excommunicated or deprived by the Pope, or any authority of the See of Rome, may be deposed or murdered by their subjects, or any other whatsoever.

The qualification of every Member of Assembly.

And I do declare that no foreign Prince, Person, Prelate, State or Potentate, hath, or ought to have, any power, jurisdiction, superiority, prebeminence or authority, ecclesiastical or spiritual, within the realm of Great Britain, or the dominions thereunto belonging.

And I, the said A. B. do solemnly and sincerely, in the presence of God, profess, testify and declare, that I do believe that in the Sacrament of the Lord's Supper there is not any transubstantiation of the elements of the bread and wine into the body and blood of Christ, at or after the consecration thereof by any person whatsoever; and that the invocation or adoration of the Virgin Mary, or any other Saint, and the sacrifice of the Mass, as they are now used in the Church of Rome, are superstitious and idolatrous.

And I do solemnly, in the presence of Almighty God, profess, testify and declare, that I do make this declaration, and every part thereof, in the plain and ordinary sense of the words read unto me, as they are commonly understood by English protestants, without any evasion, equivocation, or mental reservation whatsoever, and without any dispensation already granted me for this purpose by the Pope or any other authority or person whatsoever; or without any hope of any such dispensation from any person or authority whatsoever, or without thinking I am or may be acquitted before God or man, or absolved of this declaration, or any part thereof, although the Pope or any other person or persons, or power

(o) Repealed by an act passed February 22, 1777. chap. 21 b. in sect. 6. and supplied in article 9, of the constitution of June 1792.

See also article 1. sect. 2. of the same constitution, " That no religious test shall be required as a qualification to any office or public trust under this State."

CHAP.
LXI.

7 Geo. II.

power whatsoever, should dispense with, or annul the same, or declare that it was null or void from the beginning.

And I A. B. profess faith in God the Father, and in Jesus Christ his eternal Son, and in the Holy Spirit, one God blessed for evermore; and I do acknowledge the Holy Scriptures of the Old and New-Testament to be given by divine inspiration.

Time of taking
the qualifica-
tion.

SECT. 11. *Which* said declarations and profession of faith shall be in the next and every succeeding Assembly to be held in this government, solemnly and publicly made and subscribed in their house, between the hours of nine in the morning and four in the afternoon, by every such Member of the House of Representatives at the table, and while a full House of Representatives is there sitting with their Speaker in his chair; and during the making and subscribing thereof, all business and debates in the said House shall cease.

Qualification to
be recorded,
&c.

SECT. 12. *And* the Clerk of the Assembly is hereby required to record the same in rolls or books prepared for that purpose, and every Member of Assembly shall pay the Clerk for recording thereof Sixpence, and no more: And that the manner and method of making the said declarations shall be as followeth (*to wit*) The Speaker shall first read and subscribe the same, and after him every member as he is called over, shall either read and subscribe the said declarations in manner and form aforesaid, or else subscribe them as they shall be read unto him by the Clerk of the Assembly.

Manner of mak-
ing the declara-
tion, &c.

No person cho-
sen, that makes
and subscribes
the same, shall
be denied his
seat in the
House,

SECT. 13. *And be it enacted by the authority afore-* said, That no person whatsoever, who at any time shall be elected Member of Assembly in this government, and who shall make, and be willing and offer to make and subscribe the said declarations in manner and form aforesaid, shall be rejected or denied to sit, debate and act in the House of Representatives, or General Assembly of this government, he being otherwise qualified as this law directs. (*p*)

SECT.

(*p*) See before the references at note. (*m*) p. 154.

SECT. 14. *Provided nevertheless,* That nothing here-
in contained, shall extend to debar or hinder the
House of Representatives to reject such persons as are
or shall be unduly elected members to serve in As-
sembly, or such as the Assembly, or major part of
them, shall see cause from time to time, by vote to
expel, or disable to sit or serve there, by reason of
ill practice in elections, or misbehaviour in the
house. (q)

C H A P.
LXI.
7 Geo. II.
Except unduly
elected, &c.

SECT. 15. *And be it further enacted by the authority
aforesaid,* That every member chosen to serve in As-
sembly as aforesaid, shall be allowed the sum of (r)
Six Shillings per day, and the Speaker Ten Shillings
per day during his or their attendance, by the coun-
ties they respectively represent; and that every Mem-
ber of Assembly shall be allowed towards his travel-
ling charges after the rate of Three-pence per mile,
coming to and going from the place where the As-
sembly is or shall be held.

Members allow-
ance per Diem.

C H A P. LXII. a.

An ACT for erecting a pound in the town of New-Castle.

12 Geo. II.

WHEREAS many of the inhabitants of the
hundred of New-Castle have received great
injury and damage by unruly horses and cattle break-
ing into their fields and inclosures; for remedy where-
of,

Preamble.

SECTION I. *BE it enacted by the honorable George Tho-
mas, esq. (a) Lieutenant Governor of and in the counties of
New-Castle, Kent, and Sussex, on Delaware, and pro-
vince of Pennsylvania; by and with the advice and consent*

Vol. I. W of

(q) See article 2. sect. 7. of the constitution of June 1792, for the powers of
censure and expulsion in each House of the Legislature.

(r) By an act passed February 2, 1793, chap. 6. c. to each of the Members of
the General Assembly Two Dollars, and to the Speaker of each House Two Dollars
and Fifty Cents, with Five Cents per mile.

(a) George Thomas, esq. began his government June 1, 1738, and continued un-
til June 6, 1747.

CHAP.
LXII.

12 Geo. II.
A pound to be
erected in New-
Castle.

Cattle, &c.
breaking into
inclosures, shall
be impounded.

Found-keeper
shall give pub-
lic notice, &c.

Owner not ap-
pearing within
ten days, ap-
praisement and
sale shall be
made, &c.

of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same,

That a pound shall be erected in the town of New-Castle in the county of New-Castle on Delaware, at the proper cost and charge of the inhabitants of the said hundred: And if any horses or cattle shall at any time hereafter break into any field or inclosure of any of the inhabitants of the aforesaid hundred, being fenced as the law of this government directs, then and in that case it shall and may be lawful for the owner or possessor of such field or inclosure, to put such horses or cattle in the pound aforesaid, there to remain until the damages which shall be adjudged by the viewers of the fences within the said hundred to have been sustained, are paid by the owner or owners of such horses or cattle so impounded: (b) But in case the owner or owners of such horses or cattle are not known, or do not appear, the keeper of the pound shall, and is hereby ordered immediately to cause notes to be affixed at the most public places in the said hundred, describing the marks and colour of such horses or cattle in his possession, and shall in the mean time provide the said horses or cattle with sufficient food and water. And if the owner or owners of such horses or cattle do not appear within the space of ten days after such impounding, it shall and may be lawful for the said keeper of the said pound, to cause the said horses or cattle to be appraised by two creditable men, inhabitants of the said hundred, (they being first lawfully qualified) and to cause them to be sold at public vendue, at the market-place within the town of New-Castle aforesaid; and out of the money arising by the sale aforesaid, to pay all charges of keeping such horses or cattle in the pound, and other costs, together with such damages as the owners of such field or inclosure shall have sustained; and the overplus (if any be) to be lodged in the hands of the County Treasurer for the time being, there to remain for the full space of one year; and if the owner or owners of such horses or cattle during that time do not appear, then the money so lodged

(b) See chap. 70. 2. sect. 3. 13 Geo. II.

in the Treasurer's custody, to be applied for the use and benefit of the poor of the hundred aforesaid. But if it shall be found upon view by the overseers of the fences within the hundred aforesaid, that the fences of such fields or inclosures, wherein such horses or cattle have been taken trespassing, are not sufficient or lawful fences, then and in such case the owner or owners of such field or inclosure shall pay all costs and damages which have accrued or shall accrue thereon.

C H A P.
LXII.
12 Geo. II.

SECT. 2. *And in order that the design of erecting the pound aforesaid may not be defeated, Be it enacted by the authority aforesaid,* That the Justices of Newcastle County, in their next Court of Quarter Sessions, together with the Assessor of the said hundred, shall, and are hereby impowered to assess every freeholder and inhabitant of the hundred aforesaid, in all such sum and sums of money, as may be necessary to erect the same.

Justices, &c.
impowered to
assess for erect-
ing the pound.

SECT. 3. *And be it further enacted by the authority aforesaid,* That the said justices, at their sessions aforesaid, or any succeeding sessions, shall, and are hereby impowered to appoint a proper officer for keeping of the said pound, and to establish such fees to be paid to the said officer for his services, and for keeping the said pound in repair, as they from time to time shall think proper.

Justices to ap-
point a pound-
keeper, establish
fees, &c.

C H A P. LXIII. 2.

An ACT impowering John Holliday, James Gorrel, and Thomas Skidmore, jun. of Kent county, gentlemen, to sell and dispose of all such of the lots of ground within the town of Dover, in the said county, as have not hitherto been sold and disposed of; and also to confirm to the present possessors all such lots as have been heretofore purchased within the said town from the former trustees, and which have not been duly conveyed to them.

13 Geo. II.

WHEREAS by an act of General Assembly of this government, entituled, *An act appointing* Preamble.

C H A P.

LXIII.

13 Geo. II.

ing persons to lay out two hundred acres of land in lots adjoining to the Court-House of the county of Kent, and to dispose of the same to the use of the public; Benjamin Shurmer, William Brinkloe, and Richard Richardson, of the said county, gentlemen, or any two of them, were impowered and appointed to survey and lay out into lots a certain tract of land in the said county, adjoining to the Court-House of the said county, and purchased by the people thereof, and commonly called the town of Dover, in such measures and proportions as to them should seem meet and convenient; and the said lots, so surveyed and laid out, to dispose of and sell, to such persons as should be willing to purchase the same; and further, to execute all such deeds and conveyances for the same as should be necessary and requisite, as by the said recited act may appear.

SECT. 2. *And whereas the aforesaid Benjamin Shurmer, William Brinkloe, and Richard Richardson, are since deceased, and many of the lots of ground within the said town remain unsold, to the great detriment of the public.*

SECT. 3. *And whereas, also after the decease of William Brinkloe and Richard Richardson, two of the said trustees, many persons did actually and bona fide purchase of Benjamin Shurmer, the survivor, several lots of ground within the said town; but because the trust did not survive to the said Benjamin Shurmer by virtue of any words of the act aforesaid, such persons could not have sufficient titles for such lots from the said Benjamin Shurmer, but are in danger of being dispossessed of the same: For the remedying and preventing therefore of such inconveniencies both to the public and such persons as have been bona fide purchasers as aforesaid, and in order that the intention of the said act may be fully complied with;*

John Holliday,
and others, im-
powered to sell
lots within the
town of Dover.

SECT. 4. *Be it enacted by the honorable George Thomas, esq. Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent, and Sussex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same, That John Holliday,*

James

C H A P.
LXIII.
13 Geo. II.

James Gorrel, and Thomas Skidmore, jun. of the county of Kent, gentlemen, or any two of them, and the survivors and survivor of them, shall, and are hereby impowered to grant, bargain, sell and confirm all such lots of ground within the town of Dover aforesaid, as have not hitherto been sold or disposed of by the trustees in the aforesaid act named, to such person and persons as shall be willing to purchase the same, for such value and consideration as shall be agreed upon between them and the purchasers.

SECT. 5. *And be it further enacted by the authority aforesaid,* That the said John Holliday, James Gorrel, and Thomas Skidmore, jun. or any two of them, and the survivors and survivor of them, are hereby impowered and required to make, execute and acknowledge all such conveyances and assurances as shall be reasonably required, and are necessary for the confirming all such persons in their rights and possessions, who shall appear to them the said trustees actually and *bona fide* to have purchased any lots within the said town of Dover, of the aforesaid Benjamin Shurmer, since the decease of the aforesaid William Brinkloe and Richard Richardson, at the proper costs and charges of the said purchasers, their heirs and assigns, to be had, made and executed.

And to make assurances to such as purchased of B: Shurmer.

SECT. 6. *Provided always,* That such person or persons shall pay, or secure to be paid to the said trustees, for the use of the public, such sum and sums of money as the said lots were originally contracted for; all which conveyances and assurances shall be good and valid to all such purchaser and purchasers, their heirs and assigns for ever.

The purchasers paying the sum originally contracted for to the use of the public.

SECT. 7. *And be it further enacted by the authority aforesaid,* That the said trustees shall once in every year, render an account to the Justices of the Peace of the said county, and such of the Grand-Jury as shall be present, of all the lots so by them sold or disposed of, and the consideration for which the same have been purchased and bought; and shall also pay to the Treasurer of the said county, for the time being, all such sums of money as they have received for lots sold as aforesaid; all which sums of money shall be disposed of, and applied to such uses and purposes as the

The Trustees to account yearly with the Justices and Grand-Jury.

C H A P.

LXIII.

13 Geo. II.

who shall allow
them a reward
for their trouble.

the said Justices and Grand-Jury, at the time of the laying of the levies for the said county, shall direct and appoint; And that the Justices, together with the Grand-Jury, or such of them as will be present, shall and may, at the time aforesaid, yearly allow to the said trustees such reward, for their care and pains in executing the trust reposed in them by this act, as they the said Justices and Grand-Jury shall think fit and reasonable.

C H A P. LXIV. a.

13 Geo. II.

An ACT about defalcation.

FOR the avoiding numerous suits at law within this government,

Any person sued
on bond, &c.
may defalk what
the plaintiff is
indebted to him,
&c.

SECTION I. *BE it enacted by the honorable George Thomas, esq. by and with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent, and Sussex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same,* That if two men, dealing together, be indebted to each other, upon bonds, bills, bargains, and the like, the defendant may, in his plea and answer to the plaintiff's declaration, acknowledge the debt which the plaintiff demands from him, and defalk what the plaintiff is indebted to him the said defendant, *Provided always,* That if the plaintiff's demand be a specialty, the defendant shall prove the debt to be defalcated, by the evidence of one credible person at the least, or by his or her book regularly kept, with fair entries. (a)

before suit
brought, the
plaintiff shall re-
quest the debtor
to settle.

SECT. 2. *And be it further enacted by the authority aforesaid,* That the creditor or plaintiff shall be obliged by word or writing, at least ten days before suit brought, to request the debtor or defendant, being a freeholder within this government, to settle and adjust

(a) See after in chap. 136. a. sect. 3.

just accounts; and if the balance, upon such settlement, be made under Forty Skillings, the creditor or plaintiff may recover the same by warrant from a Justice of the Peace, as is directed for the recovery of debts under Forty Shillings: (b) And if the debtor or defendant refuse to come to account, the creditor or plaintiff may sue him for the whole account, and shall recover his costs, notwithstanding the balance due may be found under Forty Skillings: (c)

SECT. 3. But if the defendant doth prove, that before suit brought, he rendered to the plaintiff his, the said defendant's, account against him, and so much money as shall, upon trial, be found to be due to the plaintiff, the plaintiff shall suffer nonsuit, and pay costs.

SECT. 4. And be it further enacted by the authority aforesaid, That where the plaintiff and defendant having accounts against one another, shall, by themselves, or their Attornies or Agents, consent to a rule of court for the referring the adjustment thereof to indifferent persons, mutually chosen, or appointed by the Justices in open court, the award or report of such referees being made according to the reference, and approved by the court, shall be deemed and taken, to be as available in law as a verdict of a jury; (d) and the party or parties to whom any sum of money shall be awarded or found to be due, shall have judgment, if he be plaintiff, and a *scire facias*, if he be defendant, and have an execution for the same, with costs of that action, any law, custom or usage to the contrary notwithstanding. And that the former act of Assembly, entituled, *An act about defalcation*, shall be, and is hereby repealed.

CHAP.
LXIV.
13 Geo. II.

If the balance be under 40s. it may be recovered by warrant. If the debtor refuse to settle, the plaintiff may sue for the whole, &c.

If the defendant prove that he tendered his account and balance, the plaintiff shall be nonsuit.

If plaintiff and defendant consent to a rule for referring, the award shall be binding, &c.

Repeal of the former act.

CHAP.

(b) See after in chap. 73. a.

(c) See after an act passed February 4. 1792. in chap. 259. b. sect. 18.

(d) See also an act passed February 2. 1793. chap. 7. c. sect. 6. which directs the appointing of Auditors in cases where judgments are to affect and bind the real estates of deceased persons, &c.

C H A P.
LXV.

C H A P. LXV. a.

13 Geo. II.

An ACT limiting the time of the Sheriffs within this government holding their offices, and preventing bribery and corruption in the election of the said Sheriffs. (a)

Preamble.

WHEREAS it is found by experience that many evils have arisen by persons holding the office of Sheriff within the several counties of this government so often as they could procure themselves to be elected and appointed to that office: *And whereas* such persons as stand candidates, or make interest for being elected and returned for the office of Sheriff within this government, make it their frequent practice to engage persons to vote for them, by giving them strong drink, and using other means, inconsistent with the design of free voting at elections; by means whereof many unguarded persons are drunk and disorderly, more particularly at the time of elections; whereby great confusions and mischiefs arise;

Sheriffs having served 3 years successively, may not be chosen again within 3 years.

The Under Sheriff may not be one of the persons chosen to be Sheriff. Sheriffs having served 3 years, may not be Under Sheriffs,

SECT. 2. For prevention whereof, *Be it enacted by the honorable George Thomas, esq. with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent, and Sussex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same,* That no person or persons within this government, who hath been elected or served in the office of Sheriff in any county of this government for the space of three years successively, or at any one time, shall again be elected, or be capable to serve as Sheriff of the same county within the space of three years next after his being Sheriff as aforesaid: And that of the two persons elected to be Sheriff, the one being commissioned by the Governor for the time being, the other shall not act as Under Sheriff in the said county during that year for which he was elected. *And that no person or persons who hath served*

(a) See before chap. 21. a. an act for the annual election of Sheriffs, &c.

C H A P.
LXV
13 Geo. II.

served in the office of Sheriff as aforesaid for the space of three years; shall be capable of being appointed, or serve in the office of Under Sheriff within the space of three years next after his serving in the office of Sheriff as aforesaid: And that, in like manner, no person or persons who shall have served in the office of Under Sheriff for the space of three years successively, in manner aforesaid; or at any one time, shall again be elected or capable to serve as Sheriff of the said county wherein he hath so served, within the space of three years next after his having served as Under Sheriff as aforesaid. And if any Sheriff or Under Sheriff within this government shall be elected or appointed contrary to this act, such election and appointment shall be void. And if any Sheriff or Under Sheriff shall again enter upon and execute the office of Sheriff or Under Sheriff contrary to the directions of this act, he shall forfeit the sum of Two Hundred Pounds, one moiety thereof to the Governor for the time being, the other moiety to such person or persons as will sue for the same, to be recovered by action of debt, bill, plaint or information, in any Court of Record within this government.

within three years; nor Under Sheriffs, Sheriffs.

Elections, &c. contrary to this act, are void.

Penalty on Sheriffs, &c. acting contrary to this act.

SECT. 3. *And be it further enacted by the authority aforesaid,* That if any person or persons within this government, after the publication of this act, who shall stand as candidate, or make interest by himself or others, to be elected and returned for the office of Sheriff, shall presume, by himself, or any other person or persons whatsoever, to procure him or themselves to be voted for or elected for the office of Sheriff as aforesaid; by giving to any person or persons, either by themselves, or others in their behalf, or for their use or purpose, any gratuity, wages, gift, bribe, strong drink of any kind, treats, entertainments, or any other reward whatsoever, or shall covenant, engage, promise or procure so to be done by himself or any other person or persons, every person or persons so offending, shall, for every such offence, forfeit and pay the sum of Ten Pounds current money of this government, to be, with costs, recovered and applied in manner aforesaid.

Penalty on candidates, bribing or treating electors.

C H A P.
LXV.13. Geo. II.
Penalty on elec-
tors who ac-
cept any bribe,
&c.

SECT. 4. *And every person and persons whatsoever, who shall by himself, or any other person or persons, for his or their use, or by his or their means or procurement, presume to take, accept or receive any such gratuity, gift, bribe, strong drink, treats, entertainments, or other reward whatsoever as aforesaid, for giving any vote or votes, or causing or procuring any vote or votes to be given to any such candidate, or person or persons making interest by himself or others as aforesaid, to be elected and returned to serve in the office of Sheriff as aforesaid, every person or persons so offending, shall, for every such offence, forfeit and pay the sum of Five Pounds, current money aforesaid, to be recovered and applied in manner aforesaid.*

C H A P. LXVI. a

An ACT imposing a duty on persons convicted of heinous crimes, and to prevent poor and impotent persons being imported into the government of the counties of Newcastle, Kent, and Suffex, upon Delaware. (a)

Preamble.

WHEREAS many persons trading into this government, have, for lucre and private gain, imported, sold, or disposed of, and daily do import passengers and servants into this government, who, by reason of age, impotence or indigence, have become a heavy burthen and charge upon the inhabitants thereof; and likewise, do frequently import divers persons convicted of heinous crimes, who soon after their coming into this government, do often commit many felonies, robberies, thefts and burglaries, to the great hurt of his Majesty's subjects trading to and inhabiting the same.

Importer of con-
victs shall pay
5 l. per head,

SECT. 2. *Be it therefore enacted by the honorable George Thomas, esq. by and with his Majesty's royal approbation*

(a) See a supplementary act hereto, chap. 114. a. passed 7 May, 1749. 22 Geo. II.

probation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent, and Sussex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the free-men of the said counties, in General Assembly met, and by the authority of the same, That all masters of vessels, merchants, or others, who shall import, land or bring into any port or place belonging to this government, at any time after the publication of this act, any person in the condition of a servant, or otherwise within the intent and meaning of this act, who hath been convicted of any murder, burglary, rape, sodomy, forgery, perjury, or any other felony, at any time before such importation or coming into this government, shall, before the said convicts be landed or put on shore, pay the sum of Five Pounds for every such convict so imported or otherwise brought in, the one moiety thereof to the Governor for the time being, for the support of government, and the other moiety to the Collector appointed by this act, or the informer; and further, shall become bound with good and sufficient security, to the Treasurer of the county, where such importation shall be made, for the time being, in the sum of Fifty Pounds, for the good behaviour of such convict person, for the space of one year next after his or her importation or coming into this government.

SECT. 3. *And whereas* it hath been a practice for masters of vessels, merchants, and others, trading into this government, with intent to avoid complying with the payment of the duties, and giving the security, required by former acts of Assembly of this government, made to prevent the importation of convicts and poor and impotent persons, to land their passengers, servants and convicts in some of the adjacent governments, which passengers, servants, impotent people and convicts, have afterwards been secretly brought into this government;

SECT. 4. *Therefore* to prevent such practices for the future, *Be it enacted by the authority aforesaid,* That if any such convict as aforesaid, or servant, or passenger, being poor and impotent persons, shall be imported into the river Delaware, after the publication

CHAP.
LXVI.
13 Geo. III

and give security for their good behaviour.

Convicts, &c, found in this government within twelve months after their importation, may be apprehended and examined, &c.

CHAP.
LXXVI.
Geo. II.

tion of this act, and shall be found within this government at any time within the space of twelve months, next after their being imported as aforesaid, whether such persons were landed within this government or elsewhere, it shall and may be lawful for the Collector of the duties, appointed by this act in each county within this government, or any Justice of the Peace within the same, to cause to be apprehended, taken up, and to examine, upon oath or affirmation, all such convicts as aforesaid, or passengers, or servants, being poor and impotent persons, and all other persons who may be supposed to be able to make any discovery of the time and manner of their being imported or coming into this government, and from whence they came last, how long they have been come from beyond seas, of what country, and in what vessel, and who was master or merchant of such vessel, and whether such vessel at the time of such person or persons being shipped or coming on board, was bound to or designed for this government, and whether such person or persons shipped themselves with intent to come into this government: And if, upon examination, it shall appear to such Collector or Collectors appointed by this act, in any county within this government, or any Justice of the Peace as aforesaid, that the said persons were shipped or took their passages for this government, then the said Collector or Collectors, or Justice of the Peace as aforesaid, before whom such examination shall be taken, shall demand and compel the persons, if convicts, immediately to comply with the directions of this act, by paying the duties hereby imposed on them, and giving the security directed in the case of convicts by this act; and shall be, and are hereby empowered and required to send for the master or merchant of such vessel, or either of them, in which such persons were supposed to be imported, and to examine such master or merchant, upon their oath or affirmation, concerning the said passengers, servants or convicts, and their importation or coming into this government; and if it shall appear that the said persons so apprehended, or any other persons, being convicts as aforesaid, were shipped and taken on board

and shall be compelled immediately to comply with the directions of this act.

Penalty on master or merchant convicted of acting contrary to this act.

board to be imported into this government, and put on shore, or permitted to go on shore by such master or merchant in any other government upon the river Delaware, or upon any island or place within the said river, without making report, and complying with the directions of this act, then and in such case, the said master or merchant shall be obliged forthwith to give security for his appearance at the next Court of General Quarter Sessions of the Peace, to be held for the county where such examination is taken; and if, upon presentment or information, he or they shall be legally convicted of such fraudulent practice, he or they so offending shall forfeit the sum of Twenty Pounds for every person so by him or them brought in as aforesaid, and put or permitted to be put on shore, and afterwards, at any time within the space of twelve months next after their being landed or put on shore, shall be found within this government, without making such entry, and paying the duties, and giving the security required by this act, one half to the Governor for the time being, and the other to the Collector or informer, and shall further pay the same duties, and give the same security for such convicts as aforesaid, as if such persons had been imported into this government, and report thereof made according to the direction of this act.

C H A P.
LXXVI.
13 Geo. II.

SECT. 5. *And be it further enacted by the authority aforesaid,* That upon information given to any two Justices of the Peace within this government; that any old persons, infants, maimed, lunatick, or any vagabond or vagrant persons are imported, come or brought into this government, (b) the said justices to whom such information shall be given, shall cause such aged persons, infants, or impotent or vagrant persons to be brought before them, and if, upon examination, they shall judge that such person or persons are likely to become chargeable to the county where they are found or were imported, it shall and may

Importer of persons likely to become chargeable, shall give security to indemnify the inhabitants.

(b) See after in chap. 225. a. sect. 11. "An act for the relief of the poor," passed March 29, 1775. And in chap. 218. b. sect. 17. "An act for the better relief of the poor," passed January 29, 1794, further provision made.

e H A P.
LXVI.
18 Geo. II.

may be lawful for the said justices as aforesaid, by warrant or otherwise, to send for the said master, merchant, or other person who imported any such infant, lunatick, aged, maimed, impotent or vagrant person or persons as aforesaid as are likely to become chargeable as aforesaid, and upon proof made of their being the importers or owners of such infant, lunatick, aged, maimed, impotent or vagrant persons, who shall be judged to be likely to become chargeable as aforesaid, the said justices as aforesaid, shall and may compel the said master, merchant, or importer of such infant, lunatick, maimed, aged, impotent or vagrant person or persons, to give sufficient security to carry and transport such infant, lunatick, maimed, aged, impotent or vagrant person or persons to the place or places from whence such person or persons were imported, or otherwise to indemnify the inhabitants of this government from any charge that may come or be brought upon them by such infant, lunatick, maimed, aged, impotent or vagrant person coming into or living within this government.

Persons aggrieved, may appeal to the Court of Quarter Sessions.

SECT. 6. *Provided always*, That if any person or persons shall apprehend him or themselves aggrieved with any such order or judgment of the justices aforesaid, who shall maket he same, the person or persons so aggrieved, may appeal to the next Court of General Quarter Sessions of the Peace to be held for the county where such order shall be made, whose judgment then shall be final; but before such appeal shall be allowed of, the person or persons appealing shall enter into recognizance with one good surety, at least, to pay the costs and charges of such appeal, in case the said order shall happen to be confirmed.

Masters of vessels, &c. to give an account, on oath, of the names of all servants, passengers, &c.

SECT. 7. *And* for the better discovery of such convicts, and poor and impotent, or idle, or vagrant persons, who shall hereafter be imported into, and shall be likely to become chargeable to the inhabitants of this government, *Be it further enacted by the authority aforesaid*, That all masters of vessels, merchants and others, who shall hereafter bring into any port or place belonging to this government, by land or water, any men or women passengers or servants, shall, within the space of twenty-four hours after their arrival

arrival into any port or place within this government, make entry, and give or cause to be given, upon oath or affirmation, to the Collector of the said duties where such importation is made, a true and just account of all the names of the servants and passengers so imported or brought in; and the said Collector or Collectors as aforesaid, are hereby impowered and enjoined, immediately, by warrant or otherwise, to call before them the said merchant, master, or other person or persons importing such servants or passengers as aforesaid, and to examine, upon oath or affirmation, the said master, merchant, or other person or persons importing such servant or servants, or passengers as aforesaid, and all other person or persons who may be supposed to have any knowledge of the character or circumstances of such servants or passengers, and thereupon shall grant unto the master, merchant or owner, or other person having the charge or care of any servant or servants, or passengers so imported or brought into this government, a certificate, containing the names of all the servants or passengers which such Collector or Collectors shall judge fit to be landed or disposed of as servants, and do not appear to him or them to have been formerly convicted of any of the crimes mentioned in this act, or such as do not appear to him or them to be such infants, lunatic, maimed, aged, impotent or vagrant persons, as he or they shall judge likely to become chargeable to the inhabitants of this government; for which examination, permit and certificate, there shall be paid to the said Collector, where such importation is made, the sum of Six-pence, for every person so imported; and there shall likewise be paid to the Collector or Collectors as aforesaid for each bond he shall take in pursuance of any thing required to be done by virtue of this act, the sum of Two Shillings and Six-pence, and no more.

SECT. 8. *Provided nevertheless, and it is hereby further enacted by the authority aforesaid,* That if after such examination taken, and certificate granted, as aforesaid, it shall be made appear, that any of the said persons so landed or imported are convicts, the master, merchant, or other person who imported such convict

C. H. A. P.
LXVI.
13 Geo. II.

And shall have a certificate of the names of such as are fit to be landed.

Fees to the Collector.

Duty to be paid, &c. notwithstanding the certificate granted, if it afterwards appears, that any of the persons imported are convicts.

or

C H A P.
LXVI.
13 Geo. II.

Penalty on
master, mer-
chant, &c. not
complying with
the directions of
this act.

or convicts, shall be liable to pay the same duty, and give the same security, as if no such examination had been taken, or certificate granted; any thing in this act contained to the contrary notwithstanding.

SECT. 9. *And* if any servant or servants, or convict, or other person, shall be imported or brought into and landed in any port or place within this government, without making such entry, as aforesaid, in the manner before directed, and paying the duty, and giving the security required by this act, and within the time limited by this act for that purpose, and obtaining such certificate from the Collector or Collectors, as aforesaid, every such master of a vessel, merchant and other person, so importing, bringing in or landing such servants or other persons, shall forfeit and pay, for each servant or other person so imported, brought in or landed, contrary to the directions of this act, the sum of Ten Pounds, one half, after the charge of prosecution deducted, to the Governor for the time being, for the support of government, and the other half, after such charges deducted, as aforesaid, to the Collector where such importation shall be made, or to such person or persons as will sue for the same in any Court of Record within this government, by bill, plaint, or information, wherein no esoin, protection or wager of law shall be allowed.

Persons obliged
to make entry,
shall apply to the
Collectors.

SECT. 10. *And be it further enacted by the authority aforesaid,* That all persons obliged by this act to make entry as aforesaid, shall apply to John Finney, esq. for the county of New-Castle, John Holliday, esq. for the county of Kent, and Simon Kollock, esq. for the county of Suffex, who are hereby appointed Collectors of the said duties hereby imposed, without any notice or request made by them.

Who are impow-
ered to receive,
demand, &c.

SECT. 11. *And* the said Collectors, and every of them, are hereby empowered to receive, collect, demand and recover, from all persons importing, landing, or bringing in any servant or servants, or other persons, into any port or place within this government, all forfeitures and penalties herein before appointed to be set, imposed and levied by virtue of this act.

SECT.

SECT. 12. *And be it further enacted by the authority aforesaid,* That in case of the death or removal of any of the Collectors or officers appointed by this act, it shall and may be lawful for the Governor for the time being, to nominate and appoint some fit and proper person to execute the said office, in the room and stead of the person so deceased or removed.

CHAP.
LXVI.

13 Geo. II.
In case of death,
&c. of any Col-
lector, the Go-
vernor may ap-
point another.

CHAP. LXVII. a.

An ACT against drunkenness, blasphemy; and to prevent the grievous sins of prophane cursing, swearing and blasphemy

WHEREAS many persons of vicious lives and morals, make a common practice of getting drunk, and prophane cursing and swearing, and blasphemy, to the great dishonour of Almighty God, the scandal of our christian profession and civil society, and the evil example of others; For the discouragement and just punishment whereof, Preamble.

SECTION 2. *BE it enacted by the honorable George Thomas, esq. by and with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent, and Susssex, on Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same,* That all and every person and persons being drunk, and being thereof convicted, by view of one Justice of the Peace, the testimony of one lawful witness, or confession of the party before any one Justice of the Peace within this government, shall forfeit or pay the sum of Five Shillings for every such offence, to be levied by a warrant, under the hand and seal of such justice before whom the party shall be convicted, upon the goods and chattels of the offender, to be applied to the relief of the poor of the town or hundred where the offence is committed; and if no such goods can be found, the party offending shall be Penalty on
drunkenness.

C H A P.
LXVII.
13 Geo. II.

Penalty on a-
busing or threat-
ning courts or
justices, &c.

set in the stocks, there to remain for the space of two hours.

SECT. 3. *And* in case any offender or offenders against this act, or any other person or persons, taken or arrested by the warrant, order or command of any Court or Justice of the Peace within this government, shall use any abusive, reviling or threatening speeches against such court or justice, or resist or assault the person or persons executing such warrant or order, and be thereof convicted, shall be deemed a breaker of the peace, and shall be fined in any sum not exceeding Five Pounds, to be paid to the Governor, for the support of government. *And* in case the party aggrieved, resisted or assaulted, shall sue such offender, for such resistance or assault, he shall recover treble damages; and the party offending shall be bound to his or her good behaviour.

Penalty on pro-
phane cursing
and swearing.

SECT. 4. *And be it further enacted by the authority aforesaid,* That if any person within this government, shall, in the hearing of any one Justice of the Peace, in his or her common conversation, profanely swear, by the name of God, Christ Jesus, or the Holy Spirit, or curse himself or any other person, and be duly convicted thereof, by one or more credible witnesses, before any one Justice of the Peace of the town or county where such offence is committed, the person so offending shall, for every such offence, forfeit and pay the sum of Five Shillings, to be levied on his or her goods and chattels, by warrant under the hand and seal of the justice before whom the offence is committed or conviction made, for the use of the poor of the town or hundred where the offence is committed, or the party offending shall be set in the stocks, there to remain any time not exceeding three hours.

Punishment of
blasphemy.

SECT. 5. *And be it further enacted by the authority aforesaid,* That if any person shall willfully or premeditatedly be guilty of blasphemy, and shall thereof be legally convicted, the person so offending shall, for every such offence, be set in the pillory for the space of two hours, and be branded in his or her forehead with the letter B, and be publicly whipt, on his or her bare back, with thirty-nine lashes well laid on.

CHAP.

An ACT providing for the security and defence of the town of Lewes, in the county of Sussex; within this government.

WHEREAS the inhabitants of the town of Lewes having heretofore suffered, and now are in danger of suffering by the depredations and insults of privateers and pirates; for prevention whereof,

SECTION 2. *BE it enacted by the honorable George Thomas, esq. by and with his Majesty's royal approbation, Lieutenant Governor, and Commander in Chief of the counties of New-Castle, Kent, and Sussex, upon Delaware; and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same, That it shall and may be lawful to and for the Governor for the time being; from time to time, and at all times hereafter, to commission and empower two sufficient and well-qualified persons or officers, in the said town of Lewes, to keep a military watch within the said town, or in such place and places within the limits herein after particularly described, consisting of such persons, under such regulations, and at such times as to them, or either of them, shall seem necessary.*

The Governor may appoint officers to keep a watch in Lewes, &c.

SECT. 3. *And that all the inhabitants and freemen within these limits, That is to say, from the mouth of Canary-Run and Pagan-Creek, to Southern's-Run, at the King's-Road, from thence to the head of Pot-hook Creek, from thence down to Lewes Creek, and from thence down the said Lewes Creek, to the mouth of Canary Creek aforesaid, within the said county of Susssex, shall each of them provide and keep, when thereunto required by the said officer or officers, these following arms, to-wit, a well-fixed firelock or musket, one cartouch-box, with twelve sufficient charges of gun-powder and ball therein, three good flints, a worm and prining-wire, to be approved by the said officer or officers; and if any inhabitant or freeman, as aforesaid, within the limits aforesaid, shall, for the space of one month next after*

Arms to be provided.

ter

C H A P.
LXVIII.

13 Geo. II.

Penalty on neglect, &c. to provide them.

Obedience to the officers enjoined.

Penalty on non-attendance or disobedience.

Days and times of exercise.

ter notice given him by the said officer or officers, neglect or refuse to provide the arms aforesaid, or to produce them to the said officer or officers, when thereunto commanded, and be thereof convicted before any one Justice of the Peace for the said county, every such person so offending, shall, for the first offence or neglect, pay to the said officer or officers the sum of Ten Shillings, and afterwards, for every such refusal or neglect, monthly the sum of Twenty Shillings, to be recovered, together with costs, by distress and sale of the offenders goods and chattels, by warrant under the hand and seal of the said justice; and if no such goods or chattels shall be found, the offender shall be committed to the gaol of the said county, there to remain the space of ten days, for every such offence.

SECT. 4. *And be it further enacted by the authority aforesaid,* That all the said inhabitants and freemen, within the said town of Lewes and limits aforesaid, shall yield obedience to the said officers, and to each of them, in all things relating to the aforesaid watch, and the defence of the said town and limits aforesaid: And if any person, being an inhabitant or freeman within the said limits, shall wilfully refuse or neglect to give his attendance, when commanded by the said officer or officers, or disobey them, or either of them, in any matter or thing relating to the watch or defence aforesaid, every such person so offending, upon conviction and due proof thereof made before any one Justice of the Peace for the said county, shall, for every such offence, forfeit and pay to the said officer or officers the sum of Five Shillings, to be recovered, together with costs, in manner aforesaid.

SECT. 5. *And be it further enacted by the authority aforesaid,* That the said officer and officers, for the time being, are hereby empowered and required to call together all and every the inhabitants and freemen within the limits aforesaid, once in every month, between the first day of April and the first day of October, and once in every three months, between the first day of October and the first day of April, yearly, to exercise or train the said inhabitants or freemen, and to view their arms and ammunition, that they be in good order, and fit for service, on all occasions;

And

And if any person or persons, having due notice, shall neglect or refuse to attend, or attending, shall wilfully disobey the commands of such officer or officers, or those impowered by them, or either of them, every such person so offending, upon conviction and due proof thereof made as aforesaid, shall, for every such offence, forfeit and pay to the said officer or officers the sum of Five Shillings, to be recovered, together with costs, in manner aforesaid.

C H A P.
LXVIII.
13 Geo. II.

Penalty.

SECT. 6. *And be it further enacted by the authority aforesaid,* That the firing three guns successively, or one after another, and the beating of a drum, shall be deemed and taken for an alarm; and that upon every such alarm given, all the inhabitants and freemen within the limits aforesaid, shall forthwith, either in the day-time, or in the night, repair with their arms and ammunition, to the Market-street of the said town of Lewes, and from thence whithersoever the Commanding Officer shall direct, and shall obey all and every the commands of the said officer and officers, and those impowered by them for the defending of the said town of Lewes and limits, from any invasion or descent which shall happen to be made, and shall not depart without the leave of the said officer or officers first had and obtained: And if any person, being an inhabitant or freeman within the limits aforesaid, shall, upon such alarm given, refuse or neglect to attend, with his arms and ammunition, at the said Market-street, or such other place or places whithersoever he shall be commanded by the said officer or officers, or those impowered by them, or either of them; or depart without leave had, as aforesaid, every such person so offending, upon conviction and due proof thereof, made before any two Justices of the Peace for the said county, shall forfeit and pay to the said officer or officers the sum of Five Pounds, to be recovered, together with costs, by distress and sale of the offenders goods and chattels, by warrant under the hands and seals of the said justices; and if no such goods or chattels shall be found, the offender, for every such offence, shall be committed to the gaol of the said county, there to remain for the space of two months. *And if any*

What shall be
an alarm.

Place of rendez-
vous.

Penalty on non-
appearance at
an-alarm.

person

C H A P.
LXVIII.
13 Geo. II.

Penalty on
making an
alarm, without
the command of
the officer, &c.

No pilot shall go
on board vessels,
inward bound,
without licence:

Penalty.

How the fines
shall be disposed
of.

Persons whose
attendance is
excused.

person or persons shall, without the command of the said officer or officers, or of such person or persons whom they shall empower, presume to make an alarm within the limits aforesaid, every such person so offending, and being thereof legally convicted before any court of justice for the said county, shall, for every such offence, be fined in the sum of Five Pounds, to be paid, the one moiety thereof to the said officer or officers for the time being, the other moiety to the informer.

SECT. 7. *And for prevention of the danger that may arise by the piloting into the bay and river Delaware the ships of enemies and pirates, Be it further enacted by the authority aforesaid,* That no person or persons, who are or shall be pilots within the bay and river aforesaid, shall presume to go on board any inward-bound vessels, without the licence of the Governor for the time being, first had and obtained, or the leave or licence of such person or persons as shall or may be appointed by him for that purpose, upon pain of forfeiting the sum of Ten Pounds, the one half thereof to the use of the Governor for the time being, the other half thereof to the use of such person or persons as will sue for the same, to be recovered in any Court of Record within this government; and all pilots within the bay and river aforesaid are hereby obliged to take notice of the same.

SECT. 8. *And be it further enacted by the authority aforesaid,* That all the fines and forfeitures arising by virtue of this act, and which the said officer or officers shall receive, shall by him or them be laid out for the purchasing arms and ammunition for the said town of Lewes; and the said officer and officers shall from time to time keep just and fair accounts thereof, which shall by him and them, once in every year, be laid before and approved by the Justices of the said Court of Quarter Sessions for the said county, at the time of laying the levies.

SECT. 9. *Provided always, and be it further enacted by the authority aforesaid,* That no person or persons under the age of fifteen years, or above sixty-three, and that no person or persons, producing to the said officer or officers a certificate from the meeting he or they

they frequent, and whose religious persuasion is against bearing or using arms, shall, by this act, be obliged to give his or their attendance, or be liable to any of the fines or forfeitures mentioned in this act, any thing therein contained to the contrary notwithstanding.

C H A P.
LXXVIII.
13 Geo. II.

C H A P. LXIX. a.

An ACT about boats and canoes.

SECTION. I. **B**E it enacted by the honorable George Thomas, esq. by and with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent, and Suffex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same, That if any person or persons within this government shall take up any boat or canoe, being adrift, and secure the same, the taker-up of such boat or canoe shall forthwith, at the reasonable charge of the owner, if known, send him or her notice thereof; if not known, shall advertise the same in three of the most public places of the town or hundred where the same are taken up, on penalty of making good to the owner all the damages he or she shall sustain by the want of such boat or canoe after being taken up.

The taker-up of boats or canoes shall give notice, &c.

SECT. 2. And that the taker-up of a boat or canoe shall receive, as a reward from the owner thereof, the sum of Five Shillings for a boat, and Two Shillings and Six-pence for a canoe.

this reward.

SECT. 3. And if any person or persons shall at any time, after the publication of this act, take, carry away, or set adrift any boat or canoe from any landing or other place within the said counties, or within one hundred yards of any shore or landing-place within this government, without the leave or consent of the owner or possessor of such boat or canoe, and be thereof convicted before any one Justice of the

Penalty on carrying away or setting adrift boats, &c.

Peace

C H A P.
LXIX.
13 Geo. II.

Peace of this government, he or she shall pay to the party aggrieved, all such damages, costs and charges, as shall be awarded by the justice before whom the complaint shall be brought, so as the costs and damages do not in the whole amount to above Forty Shillings.

C H A P. LXX. a.

An ACT for regulating fences within this government. (a)

Post and rail
fences to be four
foot and half
high; worm
fences five foot.

SECTION I. **B**E it enacted by the honorable George Thomas, esq. by and with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent, and Sussex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same. That corn-fields and ground kept for inclosures shall be fenced with a post and rail-fence, or worm-fence, well staked and ridered, at least four feet and an half high from the top of the upper-rail or rider to the ground; and all worm-fences not staked and ridered shall be at least five feet high from the top of the upper-rail to the ground: And if any horses, kine, sheep, hogs or goats, or any kind of cattle, shall break into any person's inclosure, the same being found by the persons to be appointed viewers, according to the direction of this act, to be of the height and sufficiency aforesaid, then the owner of such horses, sheep, goats or cattle, shall be liable to make good all such damages to the owner of such inclosure, as shall be found and awarded by the said viewers, upon their oath or affirmation

If horses, &c.
break through
such fences, the
owner of the
creatures to
make good the
damage.

(a) See a supplementary act hereto passed March 24. 1770, chap. 198. a. temporary, but made perpetual after in chap. 215. a. April 12, 1773. Partition fences in the borough of Wilmington, regulated by a special act, passed June 13, 1772. chap. 206. a. sects. 10, 11.

firmation made before some Justice of the Peace of the county where the trespass is committed, (to be levied, together with costs, by warrant under the hand and seal of the justice before whom such oath or affirmation shall be made, on the goods and chattels of the owners of such cattle so trespassing.

C H A P.
LXX.
13. Geo. II.

SECT. 2. *And be it further enacted by the authority aforesaid,* That all persons having any unruly horses, sheep, goats or cattle as aforesaid; not to be kept off by such fences as aforesaid, and notice being first given to him; her or them, of such creatures being unruly, are ordered, and shall be obliged to take effectual care to restrain the same from trespassing on any person's inclosures, upon penalty of Five Shillings, or double damages for every such trespass, at the election of the party injured, to be levied, together with costs, in manner aforesaid.

Penalty on persons owning unruly cattle, not taking care to restrain them.

SECT. 3. *And Be it further enacted by the authority aforesaid,* That where any person or persons shall inclose any land adjoining to another's land already inclosed with a fence, so that any part of the fence first made become the partition between them, in such case the charge of such division-fence; so far as is inclosed on both sides, shall be equally borne and maintained by both parties; to which end, and the others mentioned in this act, each county-court within this government shall nominate, and are hereby impowered and required, at their respective Courts of Quarter Sessions, to be held in the month of May every year, *(b)* to nominate and appoint so many proper persons as they shall think fit for each hundred, in each county respectively, to view all such fence and fences about which any difference may happen to arise: And that the aforesaid persons, in each hundred respectively, shall be the sole judges of the charge to be borne by both or either of the said parties, and of the sufficiency of all fences, whether partition or other fences, and of the damages sustained by means of any creature's trespassing within the true intent and meaning of this act; and where

Division-fences to be made and maintained equally by both parties.

Viewers to be appointed.

Who shall be sole judges;

VOL. I.

Z

they.

(b) See chap. 61. c. sect. 6. passed Feb. 7. 1794.

C H A P.
LXX.

13 Geo. II.

they judge any fence to be insufficient, they shall give notice thereof to the owners or possessors; and if one of the said owners and possessors, upon the request of the other, and due notice given by the said viewers, shall refuse to make or repair the said fence or fences, or pay the moiety of any fence before made, being a division-fence, within five days after notice given, that then, upon proof thereof before two Justices of the Peace of the respective county, it shall be lawful for the said justices to order the person aggrieved and suffering thereby, to repair the said fence or fences, who shall be reimbursed double his costs and charges from the person so refusing to make good the said partition-fence; and that the said costs and charges, together with the damages in respect of partition-fences as aforesaid, to be assessed by virtue of this act, shall be levied by distress and sale of the offender's goods and chattels, by warrant from the said justices, and the overplus, if any be, to be returned to the owner thereof; and the said viewers to be allowed Two Shillings each for viewing such fence so complained against, and assessing the damages sustained by trespass, and Two Pence per mile each, for travelling-charges.

Their allowance.

SECT. 4. *Provided always, and be it further enacted by the authority aforesaid, That nothing in this act contained shall be construed, deemed or taken to repeal or make null or void an act of General Assembly of this government, entitled, An act for erecting a pound in the town of New-Castle, or any part thereof; but that the same shall continue and be in full force, any thing herein contained to the contrary in any wise notwithstanding.*

See

Robert

Robert

CHAP.

C H A P. LXXI. a.

C H A P.
LXXI.

13 Geo. II.

An ACT for establishing a market in the town of New-Castle, for appointing a Clerk of the Market, and directing the assize of bread.

WHEREAS the want of a regular market in the town of New-Castle, in the county of New-Castle; within this government, hath been attended with great inconveniencies to the inhabitants thereof, as well as to such persons who offer provisions to sale in the said town: for remedy whereof,

SECTION 2. *BE it enacted by the honorable George Thomas, esq; by and with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent, and Suffex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same,* That from and after the publication of this act, no person or persons whatsoever, shall presume either to buy or sell any kind of provisions (fish, milk and bread excepted) on market-days, within any part of the town of New-Castle but at the public Market-house, under the penalty of forfeiting, both by the buyer and seller, all such provisions so sold or bought, or the value thereof, to be levied; together with costs; by the Clerk of the Market, for the use of the poor of the town and hundred of New-Castle, by distress and sale of the offender's goods and chattels respectively, by warrant under the hand and seal of any one Justice of the Peace of the said town or county.

No provision to be sold on market-days but at the Market-house, on pain of forfeiture.

SECT. 3. *And be it further enacted by the authority aforesaid,* That if any person or persons, shall presume to bring to market and sell, or offer to sale, any meat or flesh that shall be poor, lean, or carrion, or any other provision, not sound and wholesome, every person so offending, shall forfeit the same, if found and wholesome, to the use of the prisoners in the common gaol of the said town or county, if unwholesome or unsound, to be thrown into the river.

Poor, lean meat, &c. shall be forfeited.

SECT.

CHAP.
LXXI.
13 Geo. II.

Penalty on
slaughtering in
the Market-
house.

Provision, &c.
sold by false
weights, or
wanting weight,
shall be forfeit-
ed.

Wednesday and
Saturday shall
be the market-
days.

Flesh meat ex-
posed to sale on
Tuesdays or Fri-
days, shall be
forfeited, ex-
cept, &c.

Bakers shall
mark their
bread, on pe-
nalty of 5 s.

SECT. 4. *And be it further enacted by the authority aforesaid,* That no person or persons whatsoever, shall presume to kill or slay any cattle, sheep, calves or hogs, within the said Market-house, on penalty of forfeiting the sum of Five Shillings for every such offence, to be levied as aforesaid, and applied to the use of the poor of the town and hundred aforesaid.

SECT. 5. *And be it further enacted by the authority aforesaid,* That if any person or persons whatsoever, shall, by themselves or others, either sell or offer to sale, any butter, cheese, tallow, or any sort of provisions, by any false weights, or for more weight than the same shall be found to be, by trial of the said Clerk of the Market, for the time being, upon complaint made, such person or persons shall, for every such offence, forfeit such butter, cheese, tallow or provision, so sold or offered to sale, as aforesaid; to the use of the poor of the town and hundred aforesaid; and the Clerk of the Market is hereby empowered to seize the same.

SECT. 6. *And be it further enacted by the authority aforesaid,* That at all times hereafter, every Wednesday and Saturday in each week, and no other days whatsoever, shall be deemed and taken for the public and regular Market-days of the said town of New-Castle.

SECT. 7. *And be it further enacted by the authority aforesaid,* That no person or persons whatsoever, shall presume to hawk or carry about the said town of New-Castle, or expose to sale in the market-house within the same, any flesh meat, on the Tuesdays or Fridays in each week, except in the months of June, July, and August, on pain of forfeiting such flesh meat, or the value thereof, one half thereof to the use of the poor of the town and hundred of New-Castle, the other half to the use of the Clerk of the Market, to be recovered in like manner as other forfeitures are directed to be recovered by this act.

SECT. 8. *And for preventing frauds that may happen to be committed by public bakers of bread for sale, in the said town of New-Castle: Be it enacted by the authority aforesaid,* That from and after the publication of this act, every baker or bakers of bread for sale, in the said town of New-Castle, shall, and are

are hereby directed and required, to make or impress some mark, letter or name of such baker, on every such bread as he or she shall bake for sale, as aforesaid, on penalty of forfeiting and paying, for every such neglect, the sum of Five Shillings to the Clerk of the Market, for the time being.

G H A P .
LXXI.
13. Geo. II.

SECT. 9. *And be it further enacted by the authority aforesaid,* That the Justices of the Court of Quarter Sessions, shall, and are hereby impowered and required, from time to time, at their Quarterly Sessions of the Peace for the said county, to settle and appoint the size and weight of the several sorts of bread, which shall be baked for sale in the said town of New-Castle. *And* all bakers in the said town, shall conform themselves; and make the bread, by them baked for sale, agreeable thereto, on pain of forfeiting, for every such offence, all such bread, as upon trial of the Clerk of the Market, shall be found to be of lesser weight; to be, by the said clerk, seized for the use of the poor of the said town and hundred, and Five Shillings to the said clerk, to be recovered as aforesaid;

Justices impowered to appoint the size and weight of bread.

Penalty on not conforming to such appointment.

192

SECT. 10. *And* that no baker shall, upon any pretence whatsoever, make any different or other sorts of bread for sale, but such as shall, by the Justices of the said Court of Quarter Sessions, be directed and appointed, under the penalty of forfeiting the same, as aforesaid, to be applied in manner aforesaid.

SECT. 11. *And be it further enacted by the authority aforesaid,* That Philip Van Leuvenigh of the said town is hereby appointed and constituted Clerk of the aforesaid Market of the said town of New-Castle, who is hereby strictly charged and commanded, to put this act, and every part thereof, in execution; and impowered to receive, demand and recover all such penalties, fines and forfeitures, as in this act are directed to be forfeited and paid, and to enter into all such places and houses where he shall suspect any such bread to be, which is not made agreeable to the directions of this act, and to examine the weights, and try the same, for the purposes in this act before directed.

Philip Van Leuvenigh appointed Clerk of the Market.

SECT. 12. *And* the said Clerk is hereby directed and

CHAP.
LXXI.
13 Geo. II.

Who shall keep
fair accounts.

The said clerk
may erect booths
and stalls, and
lett them at the
fairs.

His reward for
putting this act
in execution.

The clerk dying,
&c. the Govern-
or may appoint
another.

and required to keep a fair and just account of all fines, forfeitures and penalties, that he shall receive by virtue of this act, and settle such account, once in every year, with the Overseers of the Poor of the town and hundred aforesaid for the time being, and pay to them all such sum and sums of money as shall by him be received for the use of the said poor.

SECT. 13. *And be it further enacted by the authority aforesaid,* That the clerk of the said market, hereby appointed, or that shall hereafter be appointed by virtue of this act, is hereby impowered to make, erect, allot and lett out for hire, stalls or booths for accommodating such persons as shall attend the fairs held within the said town of New-Castle, upon the green, according to the usual custom and usage thereof, and lett out the same on hire, for such sum and sums of money as any three of the justices of the said county shall appoint and direct: *And for encouragement and satisfaction for his care in executing this act,* the said clerk shall receive and take to his own use the whole hire of the stalls erected on the said green, and one moiety of the rents of the stalls in the said market-house, and the other moiety thereof, to be received by the said clerk, shall by him be paid to the Treasurer of the said county, to remain in his hands, until the same, by the said Treasurer, shall be applied to such use and uses as the Justices of the said Court of Quarter Sessions shall from time to time see fit to order and direct; and that no person or persons whatsoever, who are not inhabitants of the said county, shall, without the approbation of the said clerk, make or erect any such stalls or booths as aforesaid.

SECT. 14. *And be it further enacted by the authority aforesaid,* That upon the death, refusal, removal or inability of the Clerk of the said Market appointed by virtue of this act, the Governor for the time being may, and is hereby impowered to appoint from time to time, as often as there shall be occasion, some fit and discreet person to serve in the office of Clerk of the said Market; which said Clerk of the Market, hereby appointed, or that shall hereafter be appointed by virtue of this act, before he shall presume to enter upon his said office, or execute the trust reposed

posed in him, shall first take an oath or affirmation before some Justice of the Peace of the said county of New-Castle, *That he shall and will well and truly demean and behave himself in the Office of Clerk of the Market aforesaid, and impartially discharge the trust reposed in him by virtue of this act, during his continuance in that office.*

C H A P.
LXXI.

13 Geo. II.

His oath.

SECT. 15. *And be it further enacted by the authority aforesaid, That the several acts of General Assembly of this government heretofore made for regulating any market, the affize of bread, or for appointing a Clerk of the Market within the said town of New-Castle, shall be and are hereby repealed, made null and void, any thing in the said acts contained to the contrary in any wise notwithstanding.*

Repeal of former acts.

C H A P. LXXII. a.

An ACT about departers out of this government.

SECTION I. **B**E it enacted by the honorable George Thomas, esq. by and with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent, and Suffex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same, That no person or persons whatsoever shall presume to depart this his Majesty's government, who hath resided three months, next before his departure, in any of the counties of this government, but shall first signify the same in writing under his hand, affixed upon the Court-House door, in the county wherein he shall reside, at least thirty days before his departure, or shall have a certificate under the hands and seals of two Justices of the Peace of the county.

Departers shall publish their design 30 days before they leave the government, &c.

SECT. 2. *And if any person or persons shall presume to transport or convey, or be aiding or assisting to the transporting or conveying any person or persons out of this government, either by land or water, that hath*

Otherwise those who transport them, &c. are liable to pay all damages.

not

CH A P.
LXXII.
13 Geo. II.

not complied with this act, he or they shall make good and pay to the party or parties aggrieved all damages that shall accrue by reason of his or their aiding, assisting, transporting or carrying away any such person or persons as aforesaid, to be recovered by bill, plaint or information in any of his Majesty's Courts of Record within this government.

Deeds, &c. given by departers, void in respect of their creditors.

SECT. 3. *And be it further enacted by the authority aforesaid,* That all deeds and bills of sale privately and clandestinely given for lands or goods by such departers, shall be void, in respect of the creditors of such person or persons so departing this government without such notice or certificate as aforesaid. (a)

C H A P. LXXIII. a.

An ACT for determining debts under Forty Shillings. (b)

SECTION 1. **F**OR the recovery of debts under Forty Shillings, *Be it enacted by the honorable George Thomas, esq. by and with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent, and Sussex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same,* That upon complaint made to any Justice of the Peace within this government against any person or persons for any debt under Forty Shillings, it shall and may be lawful to and for such justice, and he is hereby empowered and required to issue out his warrant in the nature of a summons or *capias*, as the case may require, directed to some Constable of the hundred or county, commanding to bring, or cause such defendant to come before him

Justices empowered to issue warrants &c. in debts under 40s. commanding, &c.

(a) See also after in chap. 82. a. 15 Geo. II. "An act to prevent frauds by clandestine bills of sale."

(b) See "An act for the more easy and speedy recovery of small debts," to wit, for the value of Forty Shillings and upwards, and not exceeding Twelve Pounds, except as therein is excepted, in chap. 250. b. passed Feb. 4. 1792.

C H A P.
LXXIII.
13 Geo. II.

and award execution for debt and costs, &c. Fees.

county, to answer the said creditor, to the value of the debt and costs; and the person or persons, in whose hands any goods or other effects are attached, shall be obliged to appear before the said justice, and declare, upon oath or affirmation, what effects of the defendant he or they have in his or their hands, and pay the same to the use of the plaintiff, when so required by the said Justice: And upon proof being made, to the satisfaction of the justice, of the truth of the debt or demand, the same justice shall award execution for the debt and costs, to be executed by the Constable, who shall have Two Shillings for serving the said Warrant of Attachment, and Three Shillings for serving the execution; which said goods or other effects, not being ready money, shall be brought to an appraisement, but not sold until the expiration of one month next after such attachment and appraisement, to the end that the debtor may have time to redeem them, if he or she shall see cause so to do; but in case such goods be living or perishable goods, the Constable or Constables so attaching, shall and may, by virtue of an order of the Justice or Justices granting such attachment, after appraisement, make lawful sale thereof, and deliver the money arising thereby into the hands of the same justice, who shall keep the same, and at the expiration of one month, as aforesaid, shall satisfy to the plaintiff his debt and costs; and the overplus, if any be, shall be returned to the defendant, or any other person lawfully representing him or her, any law, custom or usage to the contrary thereof in any wise notwithstanding.

Lands and tenements not to be attached by virtue of this act; nor shall attachments issue for rent or damages, &c.

SECT. 4. *Provided always,* That no lands or tenements within this government, shall be subject to be attached or taken in execution, by virtue of this act; and that no Warrant of Attachment, or other warrant, shall be granted, or issue, for any sum or sums of money, due or to become due for the rent of any lands or tenements within this government, or for any trespass, or damage done to any person in the nature of a trespass.

CHAP.

C H A P. LXXIV. a

C H A P.
LXXIV.

13 Geo. 11.

An ACT to prevent the unseasonable killing of deer within this government.

SECTION I. **B**E it enacted by the honorable George Thomas, esq. by and with his Majesty's royal approbation; Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent, and Sussex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same, That if any freeman within this government, (Indians excepted) shall kill or destroy, by guns or otherwise, any deer or fawns, within any of the counties of this government, between the first day of January and the first day of August in every year, and be thereof duly convicted, by the testimony of one or more credible witnesses, or otherwise, before any Justice of the Peace of the county where such offence shall be committed, the offender, for every such offence, shall forfeit and pay the sum of Forty Shillings for every deer or fawn so killed or destroyed, contrary to the directions of this act, to be levied upon the offender's goods and chattels, by distress and sale thereof, by warrant under the hand and seal of the Justice before whom the offender shall be convicted, and paid, the one moiety thereof to the use of the poor of the hundred where the conviction is, the other moiety to the informer.

Forty Shillings
penalty on killing deer out of season,

SECT. 2. And if no such goods and chattels shall be found, then it shall and may be lawful to and for such Justice, before whom the said conviction is made, to judge such offender to make satisfaction by servitude, for any time not exceeding six months.

or six months
servitude.

SECT. 3. And be it further enacted by the authority aforesaid, That if any white servant, Mulatto or Negro slave, shall kill or destroy any deer or fawns within any of the counties aforesaid, contrary to the intent and meaning of this act, such servant, Mulatto or Negro so offending, being thereof duly convicted, shall, for every such offence, be publicly whipt on his

Servants or slaves
so offending to
be whipt.

C H A P.
LXXIV.

Geo. II.

Fresh venison,
&c. in posses-
sion of any per-
son, shall be
good evidence,

his or her bare back, with any number of stripes not exceeding twenty-one.

SECT. 4. *And be it further enacted by the authority aforesaid,* That the finding of any venison or skins of deer or fawns newly killed, in the possession of any person or persons, shall be good evidence to convict such person, in whose custody the same shall be found, unless such person or persons shall bring good evidence to acquit him or themselves of such charge.

Any person
purchasing such
venison or skins,
&c. of Indians,
shall suffer, &c.

SECT. 5. *And be it further enacted by the authority aforesaid,* That if any person or persons (Indians excepted) between the first day of January and the first day of August in every year, shall have in his or her house or custody any venison, or deer or fawn skin or skins, by him or them purchased of or killed, within the said term by any Indian or Indians within this government, the said person or persons, in whose possession the same shall be found, being duly convicted thereof, shall be subject to the like pains and forfeitures, as if he or they had been convicted of killing or destroying the same.

C H A P. LXXV, a.

An ACT for regulating inn-holders, tavern-keepers, and other public house-keepers within this government, and impowering the Justices to settle the rates of liquors.

Preamble.

FOR regulating inn-holders, tavern-keepers, and other public house-keepers within this government.

SECTION 1. *BE it enacted by the honorable George Thomas, esq. by and with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent, and Sussex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same,* That no person or persons within this government shall presume to keep any public house

house of entertainment, tavern, inn, ale-house, ordinary, or victualling-house, without obtaining by petition, a recommendation from the Justices of the Court of Quarter Sessions, to be held in August term, in each county within this government, to his honor the Governor for the time being, for a licence for keeping the same, setting forth that the person so petitioning is a fit person and well qualified for keeping a tavern or house of entertainment. (a)

SECT. 2. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for the Governor for the time being, and his Secretary, to take and receive for all licences to be granted, the same fees and perquisites as were usually paid before the making of this act. (b)

SECT. 3. *And be it enacted by the authority aforesaid,* That no person or persons within this government, shall be recommended to the Governor by such justices as aforesaid, for a licence for keeping such public house, tavern, inn, or ordinary, without making first appear, to the satisfaction of the said justices, that such petitioner is well qualified for keeping the same, and hath necessaries fit and suitable for the entertainment of travellers, and that the place or habitation of such petitioner is situate in a proper and convenient place and stage for the entertainment of travellers as aforesaid.

SECT. 4. *And be it enacted by the authority aforesaid,* That if any master or keeper of any such house of entertainment, tavern, ale-house or victualling-house, shall suffer any person or persons whatsoever to continue drinking and tipping in his or her house at any unseasonable hours of the night, or suffer drunkenness, corrupt or unlawful gaming with cards, dice, or at other games, within his or her house, out-house, office, or any other place thereto belonging, every such master or owner of such house, upon complaint, and

CHAP.
LXXV.
13 Geo. II.

No person may keep tavern, &c. until recommended and licensed.

Fees, &c. for granting licences.

None but fit persons may be recommended by the Justices.

Penalty on tavern-keepers, &c. suffering gaming, drunkenness, &c. in their houses.

(a) This power now vested in the Judges of the Court of Common Pleas when sitting as a Court of General Quarter Sessions at all times, for this see chap. 20. c. passed June 14, 1793.

(b) These fees now regulated in chap. 27. c. sect. 1, 2. passed June 15, 1793. and to be for the use of the state and specially appropriated in chap. 28. c. sect. 3. 5. but see chap. 105. c. a different appropriation.

C H A P.
LXXV.

13 Geo. II.

First offence.

Second offence.

Third offence.

Penalty on
keeping public
house without
licence.

and due proof thereof made before any one Justice of the Peace of the county where the offence shall be committed, or by the view of the said justice, shall, for the first offence, forfeit the sum of Twenty Shillings, to be levied, together with costs, on the offender's goods and chattels, by distress and sale thereof, by warrant under the hand and seal of such justice, to be paid the one moiety thereof to the use of the poor of the hundred where such offence shall be committed, the other moiety to the informer; and for the second offence, upon complaint and due proof thereof made before any two justices of the said county, the offender shall forfeit any sum not exceeding Five Pounds, nor less than Forty Shillings, to be recovered, as aforesaid, by warrant under the hands and seals of the said justices, and applied and paid in like manner as aforesaid. And for the third offence, upon due proof thereof made before any two justices as aforesaid, the offender shall have his or her house suppressed by order of the said two justices, and be disabled from keeping any such public house as aforesaid, for the space of three years next after such offence committed as aforesaid. (c)

SECT. 5. *And be it enacted by the authority aforesaid,* That if any person or persons within this government shall presume, after the publication of this act, to keep any tippling-house, or sell or retail any wine by any less measure than half a gallon; rum, brandy, or any spirituous liquors, by any measure less than a quart; beer, ale, metheglin, perry or cyder, by any measure less than one gallon; punch, or any other mixed liquor, by any measure whatsoever, without licence as aforesaid; the person or persons so offending shall, for every such offence, forfeit and pay Five Pounds, to be recovered, together with costs, by the order of any Court of Quarter Sessions within this government where the offence is committed, upon conviction of the offender, by presentment,
bill,

(c) See also "An act for the suppression of idleness, vice, and immorality;" chap. 140. b. passed June 24, 1786. for further restraint on such public house-keepers.

bill, plaint, information, or confession of the party offending, to be paid to the Governor for the time being, towards the support of Government.

C. H. A. P.
LXXV.
13 Geo. III.

SECT. 6. *And be it further enacted by the authority aforesaid.* That if any master or keeper of any such public-house or houses, or tavern as aforesaid, shall, after the publication of this act, presume to trust or give any credit to any minor or minors, every such master or keeper of such house or houses shall lose the whole sum or sums so trusted and credited, and is hereby precluded and debarred from suing for the same before any magistrate, or in any court within this government.

Public house-keepers, giving credit to minors shall lose the debt.

SECT. 7. *And be it further enacted by the authority aforesaid,* That if any person or persons who shall have been masters or keepers of any such public house or houses as aforesaid, and shall have his, her, or their houses suppressed for offending against this act in manner aforesaid, and after such suppression shall presume to retail any kind of strong or mixed liquors contrary to the intent and meaning of this act, and shall be thereof convicted in manner of other convictions, by virtue of this act, the person or persons so offending shall, for every such offence, forfeit and pay the sum of Five Pounds, to be recovered, together with costs of prosecution, by presentment, bill, plaint, information or confession of the party offending, in any Court of Quarter Sessions for any county of this government where the offence shall be committed, and paid to the Governor for the time being, for the support of government.

Penalty on continuing a public house after suppression.

SECT. 8. *And be it further enacted by the authority aforesaid,* That the Justices of the Peace in the respective counties within this government, during the sitting of the Quarter Sessions in the month of November in each year, are hereby empowered and required to make and settle such rates, prices and orders, on and for all sorts of liquors retailed by all masters and keepers of public houses of entertainment, as aforesaid, within the respective counties of this government, as to them shall appear to be just, meet and convenient; and that copies of all such rates, prices and orders shall, by such masters and

Justices empowered to settle rates, prices, orders, &c. for public houses;

keepers

C H A P.
LXXV.

13 Geo. II.
which shall be
set up in the
most public
room; on pen-
alty of Twenty
Shillings.

keepers of public houses, be set up in the most public room or rooms of his, her or their houses, within ten days next after the same shall be made and settled; and be truly complied with and conformed unto by all such masters or keepers of such licenced public houses, on the penalty of forfeiting the sum of Twenty Shillings for every such default made by such master or keeper of such licenced public houses, upon complaint and proof made as in this act before is directed, to be applied and paid, the one moiety thereof to the Overseers of the Poor of the town or hundred where the offender dwells, the other moiety to the informer

No Justice being an inn-holder, shall judge in any matter contained in this act.

SECT. 9. *And be it further enacted by the authority aforesaid,* That no Justice of the Peace, being himself an inn-holder, shall judge or determine concerning any matter or thing contained in this act, any thing herein contained to the contrary notwithstanding.

Repeal of former acts.

SECT. 10. *And be it further enacted by the authority aforesaid,* That all other acts of General Assembly of this government, heretofore made, for regulating of public houses, and for settling the rates and prices of liquors retailed therein, be and are hereby repealed, made null and void, any thing in the said acts contained to the contrary in any wise notwithstanding.

C H A P. LXXVI. a.

An ACT for the relief of insolvent debtors, within this government. (a)

Preamble.

WHEREAS the act of Assembly of this government, entituled, *An act for the relief of insolvent debtors*, made in the seventh year of his present Majesty's reign, is found by experience not to answer the ends and purposes for which the same was intended:

(a) See a supplementary act hereto, chap. 118. a. passed 24 Geo. II. And an act for amending this original act, chap. 194. a. passed June 16, 1769.

intended: *And whereas* no person whatsoever can take any benefit by the said act, who hath not resided within this government two years next before his or her imprisonment, by means whereof many persons cannot be relieved, who are equally entitled to compassion with such as have resided a longer time within the same: For remedy whereof,

C H A P.
LXXXVI.
13 Geo. 11.

SECTION I. *BE it enacted by the honorable George Thomas, esq. by and with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent, and Sussex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the free-men of the said counties, in General Assembly met, and by the authority of the same,* That if any person or persons, having a charge of small children, not of sufficient age to be bound out as apprentices, or if any person or persons above the age of forty years, shall be imprisoned within this government for any sum or sums of money or other debts above the value of Forty Shillings, and from and after the publication of this act, be willing to deliver up to his, her or their creditors, all his, her or their effects, towards satisfaction of the debts wherewith he, she, or they stand charged, it shall and may be lawful for every such prisoner to exhibit a petition to any of the courts of law within this government from whence the process issued, upon which he or she was taken or arrested, certifying the cause or causes of his or her imprisonment, and an account of his or her whole real and personal estate, with the dates of the securities wherein any part of it consists, and the deeds or notes relating thereunto, and the names of the witnesses to the same, as far as his or her knowledge extends thereunto. And upon such petition the court may, and is hereby required, by order or rule of court, to cause the prisoner to be brought up, and the several creditors at whose suit he or she stands charged as aforesaid, and all his or her creditors that are or can be known to the court, to be summoned to appear personally, or by their Attorney, in court, at a day to be appointed for that purpose; and upon the day of such appearance, if any of the creditors summoned

Prisoner to exhibit a petition, &c.

Creditors to be summoned to appear, &c.

C H A P.
LXXVI.

13 Geo. II.

refuse or neglect to appear, upon affidavit made of notice given to the creditor or creditors, or that the creditor or creditors are not to be found, the court shall in a summary way examine into the matter of such petition, and hear what shall be alledged on either side for or against the discharge of such prisoner; and if, upon examination, the court shall be of opinion that the prisoner ought to be discharged, the court may and are hereby required to administer or tender to the prisoner an oath or affirmation to the effect following;

The Oath.

I A. B. do solemnly swear, in the presence of Almighty God] [or, sincerely and truly declare and affirm] that the account by me delivered in to this honorable court, in my petition to this court, doth contain a full and true account of all my real and personal estate, debts, credits and effects whatsoever, which I, or any in trust for me, have or at the time of my imprisonment had, or am, or was in any respect entitled to, in possession, remainder, or reversion; and that I have not at any time since my imprisonment, or before, directly or indirectly, sold, leased, assigned or otherwise disposed, or made over in trust, for myself or otherwise, other than as mentioned in such account, any part of my lands, estate, goods, stock, money, debts, or other real or personal estate, whereby to expect to have any benefit or profit to myself, or to defraud any of my creditors to whom I am indebted.

SECT. 2. *And in case the prisoner shall in open court take the said oath or affirmation, and the creditor or creditors shall be satisfied with the truth thereof, the court may immediately order the lands, goods and effects contained in such account (except the wearing apparel and bedding for such debtor, and his or her family, and the tools or instruments of such debtor's trade or calling, not exceeding Five Pounds in value for the whole, as the same shall be appraised by two credible persons duly qualified for that purpose) or so much of them as may be sufficient to satisfy the debt or debts wherewith he or she is or shall be charged, together with costs of suit, and the fees due to the keeper of the gaol or prison from which the prisoner was brought, to be by a short indorsement on the back of such petition, signed by the*

the prisoner, assigned to the said creditors, or to one or more of them in trust for themselves and the rest of them, or to some proper person or persons to be by the said court appointed in trust for all the creditors: And by such assignment the estate, interest and property of the lands, goods, debts and effects so assigned, shall be vested in the person or persons to whom such assignment is or shall be made, who may take possession of or sue for the same, in his or their own name or names, in like manner as Assignees of Commissioners of Bankrupts, to which suit no release of the prisoner, his or her executors or administrators, or any Trustee for him or her, subsequent to such assignment, shall be any bar. And immediately upon such assignment executed, the said prisoner shall be discharged out of custody by order of court, and such order shall be a sufficient warrant to the Sheriff, Gaoler or keeper of such gaol or prison, to discharge the said prisoner, if detained for the causes mentioned in such petition, and no other, and he is hereby required to discharge and set him or her at liberty forthwith without fee, nor shall such Sheriff or Gaoler be liable to any action of escape or other suit or information upon that account; and the person or persons to whom the said effects shall be assigned, paying the fees to the Gaoler or keeper of the prison, in whose custody the party discharged was, shall and is, and are hereby required to procure the said effects so assigned to be appraised by men lawfully qualified, and after such appraisement to be divided among all the creditors and other persons for whom he or they shall be intrusted, in proportion to their respective debts: But in case any of the creditors of the prisoner shall not be satisfied with the truth of such oath or affirmation, but shall desire further time to inform him or herself of the matters contained therein, the said court may and shall remand the said prisoner, and direct the said prisoner, and the person or persons dissatisfied with such oath or affirmation, to appear at another day to be appointed by the said court, some time within the term next following the time of such examination; and if at such second day so to be appointed, the creditor or creditors, dissatisfied

C H A P.
LXXVI.

13 Geo. II.
Prisoner to assign his effects to the creditors, &c.

and upon such assignment to be discharged.

Effects to be appraised and divided, &c.

In what cases the prisoner may be remanded.

wi.

C H A P.
LXXVI.
13 Geo. II.

Creditors in-
fisting on the
prisoners being
remanded must
maintain him,
&c.

with such oath or affirmation, shall make default in appearing, or in case he or they shall appear, but shall not be able to discover any estate or effects of the prisoner omitted in such his or her petition, or to shew any probability of his or her having been forsworn, or to have declared falsely in the said oath or affirmation, then the said court shall immediately cause the said prisoner to be discharged, upon such assignment of his or her effects in manner aforesaid, unless such creditor or creditors do insist upon his or her being detained in prison, and do immediately give sufficient security within this government, to the Treasurer of the county wherein the debtor is imprisoned for the time being, that the said prisoner, or any of his or her small children, shall not by sickness or otherwise become a charge to the said county, or any of the hundreds thereof, and to allow and pay unto such person or persons as the court shall appoint, such sum of money as the said court shall judge reasonable for the maintenance of the said prisoner and his or her small children, to be paid on the second day of every week, so long as he or she shall continue in prison, at his, her, or their suits: But in case the said prisoner shall refuse to take the said oath or affirmation, or, having taken the same, shall be detected of falsity therein, he or she shall be presently remanded.

No person dis-
charged by this
act, to be here-
after imprisoned,
&c.

SECT. 3. *And be it further enacted by the authority aforesaid,* That no person to be discharged by this act, shall at any time hereafter be imprisoned by reason of any judgment or decree obtained for payment of money only, or for any debt, damages, contempts, costs, sum or sums of money, contracted, occurred, occasioned, owing or growing due before the time of his or her discharge, but that upon every arrest upon every such judgment or decree, or for such debts, damages or contempts, costs, sum and sums of money, it shall and may be lawful for any Judge of the Court whence the process issued, upon shewing the duplicate of such prisoner's discharge, to release and discharge out of custody such prisoner or prisoners as aforesaid, and the Judge of the Court is hereby empowered so to do, so as every such prisoner or prisoners, arrested or detained as aforesaid, do give a
Warrant

Warrant of Attorney to appear to every such action, and to plead thereunto.

C H A P.
LXXXVI.

SECT. 4. *And be it further enacted by the authority aforesaid,* That if any action of escape, or any suit or action be brought against any Justice or Justices of the Peace, Sheriff, Gaoler or keeper of any prison, for performing their office in pursuance of this act, they may plead the general issue, and give this act in evidence; and if the plaintiff be non-suited, or discontinue his action, or verdict pass against him, or judgment upon demurrer, the defendant shall have treble costs.

13 Geo. II.

Justices, Sheriffs, &c. may plead the general issue, &c.

SECT. 5. *Provided,* That the discharge of any person by virtue of this act shall not acquit any other person from such debt, sum or sums of money, for which such other person became liable or answerable for the same, or any part thereof, but that all others shall be answerable in such manner as if no suit had been brought against the said person so discharged.

SECT. 6. *And provided,* That this act shall not extend to discharge any person out of prison who shall stand chargeable at the suit of the crown only.

SECT. 7. *Provided always, and be it further enacted by the authority aforesaid,* That notwithstanding the discharge of the person of the prisoner or prisoners as aforesaid, all and every debt and debts, due or owing from the said prisoner or prisoners, and all and every judgment or judgments had and taken, and decree obtained against him or her, shall stand and be good and effectual in law to all intents and purposes, against the lands, tenements, hereditaments, goods and chattels of the said prisoner so discharged as aforesaid, which he or she, or any other person or persons in trust for him or her at the time of such discharge, hath or have, or at any time hereafter shall or may be any ways seized or possessed of, interested in, or entitled to, either in law or equity, except his or her wearing apparel, bedding for his or her family, and working tools and implements necessary for his or her occupation, not exceeding the value of Five Pounds in the whole, as aforesaid; and although such prisoner were actually in execution at the time of his or her discharge, as aforesaid, it shall and may be

Judgment to stand good against what the prisoner may hereafter possess, &c.

CHAP.
LXXVI.

13 Geo. II.

and the creditors may take out a new execution, &c.

The debtor's effects not being sufficient, are to be divided in proportion, &c.

Landlords may recover one year's rent as before this act.

No absent creditor barred by this act.

How prisoners for debt under 40s. are to be relieved.

be lawful for the creditor or creditors of such prisoners so discharged as aforesaid, his, her, or their executors, or administrators, to take out a new execution against the lands, tenements, hereditaments, goods and chattels of such prisoner (except as before excepted) for the satisfaction of his, her, or their debts, in such manner and form, as he, she, or they might have done, if the person of the prisoner so discharged as aforesaid, had not been taken in execution; any act, statute, law or custom to the contrary in any wise notwithstanding.

SECT. 8. *Provided also, and be it further enacted by the authority aforesaid,* That if the effects so assigned shall not extend to satisfy the whole debts due to the creditors of the person so discharged, and costs of suit or suits, then there shall be an abatement in proportion, and all the officers concerned in the prosecution of the suit or suits against such prisoner, shall come in as creditors for what shall be due to them for their fees, in proportion with the other creditors.

SECT. 9. *Provided,* That where any rent shall be due from any prisoner at the time of his or her discharge, no goods or chattels then lying, or being in or upon the tenement or lands in lease, or liable to be distrained, shall be removed or disposed of without the consent of the landlord or person to whom the rent is due, until the same, not exceeding one year's rent, be paid or satisfied; and that the landlord may use all lawful ways for the having and recovering his rent, so as the same exceed not one year's rent, by distress or otherwise, as he might have, had, or could have done before the making of this act; any thing herein contained to the contrary in any wise notwithstanding.

SECT. 10. *And provided also,* That this act shall not bar any absent or distant creditor, who had not notice of the prisoner's application to the court as aforesaid.

SECT. 11. *And be it further enacted by the authority aforesaid,* That where any person whatsoever, shall be arrested or taken by warrant from any Justice of the

Peace

Peace for a debt under Forty Shillings, (c) if the plaintiff cannot make appear that the defendant hath goods, chattels, or other effects wherewith to satisfy the said debt and costs, and the defendant offering to make oath or affirmation, that he or she hath not any goods, chattels, or effects, wherewith to make satisfaction for the same (except his or her wearing apparel, bedding for his or her family, and the working tools or instruments necessary for his or her trade or calling, not exceeding the value of Five Pounds in the whole, as aforesaid) and withal signifying his or her willingness to satisfy the plaintiff by servitude, it shall and may be lawful to and for the said justice, and he is hereby required to administer to the defendant such oath or affirmation, and thereupon to order satisfaction to be made to the plaintiff for his debt and costs, by adjudging the defendant to serve the plaintiff, or his or her assigns, so long as the said justice shall judge reasonable for the satisfying the said debt and costs, so as the time of such service do not exceed the term of six months: And if the plaintiff refuse to accept of such service, it shall and may be lawful for such justice before whom the action is brought, and he is hereby required to discharge such defendant, and to oblige the plaintiff to pay all the costs of the said action.

SECT. 12. *Provided always, and be it further enacted by the authority aforesaid,* That if any person who shall take any oath or affirmation, as by this act before is directed, shall upon any indictment for perjury or false affirming in any matter or particular contained in the said oath or affirmation, be convicted by his or her own confession, or by verdict of twelve men; the person so convicted shall suffer all the pains and forfeitures which may by law be inflicted on any person convicted of wilful perjury, and shall likewise be liable to be taken on any process *de novo*, and charged in execution for debt, in the same manner as if he or she had never been taken in execution before or discharged,

CHAP.
LXXXVI.
13 Geo. II.

Prisoner convicted of perjury, shall suffer, &c.

(c) See before in chap. 73. a.

C H A P.
CLXXXVI.

13 Geo. II.

Prisoners not to
be carried to
taverns, &c.
without their
consent, &c.

Extravagant
fees, &c. not
to be demanded.

Justices to make
orders for regu-
lating expences
of prisoners, &c.

charged, and shall never after have the benefit of this act.

SECT. 13. *And whereas* many persons may suffer by the oppression and exaction of Gaolers, and other inferior officers, in the execution of process for debt: For prevention whereof, *Be it further enacted by the authority aforesaid*, That no Sheriff, Under-Sheriff, Bailiff, or other officer or minister whatsoever, shall at any time or times hereafter convey or carry, or cause to be conveyed or carried, any person or persons by him or them arrested, or being in his or their custody, by virtue or colour of any writ, process, or warrant, to any tavern, ale-house, or other public victualling or drinking-house, or to the private house of any such officer, without the voluntary consent of the person so taken or arrested; or charge, demand, take or receive, or cause to be demanded, taken or received, directly or indirectly, any other or greater sum or sums of money than is or shall by law be allowed to be taken or demanded for such arrest, taking, detaining or waiting till the person or persons so arrested or in custody shall have given in an appearance or bail, as the case shall require, or agree with the person or persons at whose suit or prosecution he, she, or they shall be taken or arrested, or until he, she, or they shall be sent to the proper gaol belonging to the county, town or place where such arrest or taking shall be; nor shall keep the person or persons so taken or arrested, in any tavern, ale-house, or other public victualling-house, or private house of any officer, with or without the consent of the person or persons so arrested, above the space of twenty days, nor shall exact or take any reward, gratuity or money, for keeping the person or persons so arrested or in custody out of gaol or prison; nor shall take or receive any other or greater sum or sums of money for one or more night's lodging, or for a day's diet, or other expences, than what shall be allowed as reasonable in such cases, by some order or orders, to be made by the Justices of the respective Courts of Common Pleas within this government, at some court to be held for such county, town, or place where such arrest or taking shall be, who are hereby authorized and required

required, with all convenient expedition, to make some standing order or orders for ascertaining such expences within their respective counties.

SECT. 14. *And be it further enacted by the authority aforesaid,* That every Sheriff, Under-Sheriff, Gaoler, keeper of any prison or gaol, or other person or persons whatsoever, to whose custody or keeping any one so arrested or taken shall be committed on any pretence, shall permit or suffer him or her so arrested or taken, at his or her will and pleasure, to send for and have any beer, ale, victuals, or other necessary food from what place he or she doth please; and also to have and use such bedding, linen, and other things, (d) as he or she shall think fit, without purloining or detaining the same, or any part thereof, or enforcing or requiring him or her to pay for the having or using thereof, or putting any manner of restraint or difficulty upon him or her in the using thereof, or relating thereto.

SECT. 15. *And be it further enacted by the authority aforesaid,* That no fees shall be taken by any Gaoler, or keeper of any gaol or prison within this government, for any prisoner or prisoners commitment or coming into gaol, or chamber-rent there, or discharge from thence, or other expences, than what shall be allowed by law, until such fees shall be settled and established by the Justices or Judges of the respective County Courts, and other Courts of Record within this government, for and in respect of the counties and courts to which they belong, who are hereby directed, empowered and required to settle and establish the same as soon as conveniently may be; and tables shall be made of the respective orders, rules and fees so settled and established; and signed by the Justices or Judges of the respective County Courts, Courts of General Quarter Sessions of the Peace, and other Courts of Record, for their respective gaols within their respective jurisdictions; which rules, orders and fees, may from time to time be enlarged, reformed, altered and amended, as occasion shall require, by

C H A P .
LXXVIIJ
13 Geo. II.

Officers shall permit prisoners to send for necessaries to where they please.

Judges shall settle the tables of fees, &c.

Vol. I

2 C

the

(d) See before chap. 58. 2.

C H A P.
LXXXVI.
13 Geo. II.

the Judges of the Supreme Court, by rules and orders of the said court, to be signed by the judges of the same, and duplicates shall be transmitted to the respective County Courts, and other Courts of Record, for which they are made, to be entered of record, and enrolled, without any fee to be taken for the enrollment thereof.

Courts shall enquire concerning the tables of fees, &c.

SECT. 16. *And be it further enacted by the authority aforesaid,* That the several Courts of Common Pleas, and other Courts of Record within the several counties of this government, shall at every time of the sitting of such court or courts enquire whether such tables of fees, and such rules as aforesaid, be hung up and remain public, and easy to be resorted to in the several prisons to the courts respectively belonging, and whether the same be duly complied with and observed, and cause eight days notice to be given to the prisoners in the said prison of the time appointed for such enquiry, and shall inform themselves touching the same in the best manner they can, and supply and redress whatever they find neglected or transgressed: And that the Judges of the Court of Oyer and Terminer, and General Gaol Delivery, shall likewise make enquiry of the matters aforesaid, at such Courts and Sessions of Gaol Delivery within this government, for and in respect of the gaols and prisons within their respective jurisdictions, and shall expressly give it in charge to the Grand Jury to enquire concerning the same.

How Gaolers, &c. guilty of extortion, shall be punished.

SECT. 17. *And for the more speedy punishing Gaolers, Bailiffs and others employed in the execution of process, for extortions, or other abuses in their respective offices and places; Be it further enacted by the authority aforesaid,* That upon petition of any prisoner or person being or having been under arrest or in custody, complaining of any exaction or extortion by any Gaoler, Bailiff, or other officer or person employed in the keeping or taking care of any gaol or prison, or the arresting or apprehending of any person or persons by virtue of any process or warrant, or any other abuse whatsoever, committed or done in their respective offices or places, unto any of his Majesty's Courts of Record within this government, from whence

whence such process issued, or under whose power such gaol or prison is, or to any two justices of such court in the time of the vacation, or to the judges of the Supreme Court, or any of them in their respective Sessions of Oyer and Terminer, or General Gaol-Delivery, it shall and may be lawful for the same court, justices or judges, to hear and determine the same in a summary way, and to make such order thereupon for redressing such abuse, and punishing such officer or person complained of, and making reparation to the party or parties injured as they shall think just, together with the full costs of such complaint: And all orders and determinations which shall be made by the said courts, or of the said justices or judges respectively, in such summary way as herein prescribed, shall have the same effect, force and virtue, to all intents and purposes, as any other orders of the said respective courts, and obedience thereto may be enforced either by attachments ordered by the said respective courts, or by attachments to be issued under the seal of the said courts, by direction of the justices or judges making such order.

SECT. 18. *And* for the preventing prisoners being imposed upon by being under a necessity of spending their money in prisons where strong liquors are sold, *Be it enacted by the authority aforesaid*, That no Gaoler or keeper of any gaol, or any Sheriff, or Under-Sheriff, having the care or keeping of any gaol or prison within this government, shall keep or suffer to be kept any tavern, public house or ale-house, or shall utter or sell to any person or persons under arrest or in prison any wine, rum, beer, ale, cyder, punch, or any other strong liquors, other than what shall be allowed by the justices as aforesaid for a day's diet or expences by such order to be made as aforesaid, on pain of being removed from his or their office or offices of Sheriff, Under-Sheriff, or Gaoler, upon complaint made, to be heard and determined upon petition in a summary way as aforesaid, before the Justices in their respective Courts of Common-Pleas for the county to which such Gaoler, Sheriff or Under-Sheriff, having the keeping of any gaol, does belong.

SECT.

C H A P .

LXXVI.

13 Geo. II.

No Sheriff, &c.
to keep any ta-
vern, &c.

C H A P.

LXXXVI.

13 Geo. II.

Persons under forty years of age, having no charge of children, and whose debts exceed 40s. may be adjudged (if willing) to serve their creditors.

SECT. 19. *And be it further enacted by the authority aforesaid,* That any person or persons being imprisoned within any of the counties of this government for any debt, sum or sums of money above Forty Shillings, and not being above the age of forty years, or not having a charge of such small children as aforesaid, may at any succeeding court, to be held for the county where he or she is imprisoned, next after his or her imprisonment, exhibit to the justices of the said court, upon oath or affirmation, an account of all their effects (if any they have) and to which they have any right in law or equity, (e) and the names of their creditors, at whose suit such person or persons are imprisoned, and the sums of money which they owe, and when the same became due, as far as their knowledge does extend, and shall by petition shew to the court their inability to pay the debts for which such person or persons are imprisoned, and shall make an assignment of their effects (if any they have) to any person or persons that shall be appointed by the court in trust for all his or her creditors, or for such of them as the said court shall direct, and shall signify his or her willingness make satisfaction by servitude for the debt or residue of his or her debts according to the judgment of the court where such cause is depending, or judgment given, in order as the judgments shall be entered against him or her, and dignity of the debts, if the plaintiff or plaintiffs will accept of the same; and the said court may and is hereby impowered and required to adjudge the said debtor to serve his or her creditors, their executors, administrators and assigns accordingly.

The time not to exceed seven years.

SECT. 20. *Provided always,* That the time the defendant shall be adjudged to serve all his or her creditors shall not exceed seven years in the whole.

Creditors not accepting such satisfaction, his debt is discharged.

SECT. 21. *But* if any of the plaintiffs or creditors will not accept of such manner of satisfaction, as aforesaid, then and in such case the defendant shall be discharged from the judgment, suit, debt, or demand of every such plaintiff or creditor so refusing.

SECT. 22. *And whereas* it often happens that many

poor

(e) See before in sect. 1. and after in chap. 118. a, 24 Geo. II.

poor persons are arrested and imprisoned within the counties of this government, and are so poor that they immediately become a charge to the county where they are imprisoned: For remedy whereof; *Be it enacted by the authority aforesaid;* That every person and persons who shall make application by him or themselves, or any other person, for any writ or warrant for the taking or arresting any such poor person within this government, for any debt or demand whatsoever, shall before the granting of any such writ or warrant be required by the officer or justice who grants the same, to give sufficient security within the same county, to be taken in the name of the Treasurer of the said county, or of the Overseers of the Poor of the town or hundred where the party shall be likely to be imprisoned for the time being, and his and their successors, to indemnify the said county, town or hundred from all charges that may arise either by the maintenance or sickness of the person so to be imprisoned; and that until such security be given as aforesaid; the officer or justice, to whom such application shall be made, shall not grant any such writ or warrant, on penalty of being answerable for all such charges as may arise by means of such imprisoning the party by virtue of such writ or warrant as aforesaid. (f)

CHAP. LXXVI.

13. Geo. II.

Those who take writs, &c. against poor persons, shall give security that they do not become chargeable.

They who grant such writs, &c. without taking such security, shall be answerable themselves.

SECT. 23. *And be it further enacted by the authority aforesaid,* That no person or persons who have not resided within this government for the space of one year, next before his, her, or their arrest or imprisonment, shall have any benefit of this act, saving that persons arrested for any debt or demand under Forty Shillings, and having no effects wherewith to make satisfaction for the debt and costs, shall be liable to make satisfaction to the plaintiff or plaintiffs by servitude as aforesaid.

No person to have the benefit of this act, that has not resided one year in the government, except, &c.

SECT. 24. *And be it further enacted by the authority aforesaid,* That one act of General Assembly of this government, made in the seventh year of his Majesty's reign, entitled, *An act for the relief of insolvent debtors,* is hereby repealed and made void.

Repeal of a former act.

CHAP.

(f) This section repealed and supplied in chap. 194. a. passed June 16, 1769.

CHAP.
LXXVII.
13 Geo. II.

CHAP. LXXVII. a.

An ACT for the better regulation of servants and slaves within this government. (a)

Preamble.

FOR the due encouragement of servants in the discharge of their duty, and preventing of their desertion from their masters or owners service; and for the discouraging of such who corrupt, entertain, traffick or deal with any servant or slave

No servant to be sold into another Government, without the approbation of at least one Justice, &c.

SECTION 1. *BE it enacted by the honorable George Thomas, esq. by and with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent, and Sussex, upon Delaware, and province of Pennsylvania; by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same,* That no indentured servant, or person bound to serve his or her time in this government, shall have the term of his or her servitude, or any part thereof, assigned, transferred or sold to any person residing in any other province or government, without the consent of such servant, and the approbation of at least one Justice of the Peace of the county, (b) whereof the master or owner of such servant is a residenter, under penalty of Ten Pounds, and the said assignment and sale shall be void.

Nor assigned over, but in the presence of one Justice.

SECT. 2. *And be it further enacted by the authority aforesaid,* That no indentured servant within this government, shall have the time of his or her servitude, or any part thereof, assigned, transferred, or sold to any other person within this government; but in the presence and with the approbation of one Justice of the

(a) See a supplementary act hereto, chap. 129. a. 25 Geo. II. A further supplement, chap. 170. a. passed October 1760. Another supplement, chap. 188. a. passed October 31, 1767.

(b) In chap. 206. a. sect. 31. passed June 13, 1772, Burgesses of Wilmington within that borough are vested with the powers of a Justice of the Peace of the county.

the Peace of the county (b) whereof the master or owner of such servant is a residenter, under the penalty of Five Pounds, and the assignment and sale shall be void.

CHAP.
LXXXVII.
13 Geo. II.

SECT. 3. *And be it further enacted by the authority aforesaid,* That no person or persons whatsoever, shall, upon any pretence or consideration whatsoever, take or receive any indenture of servitude or apprenticeship from any person or persons whatsoever within this government, but in the presence and with the approbation of one Justice of the Peace of the county (b) where the party taking such indenture dwells, under the penalty of Five Pounds, together with costs of prosecution, to be paid by the said party, and every such indenture shall be void. (c)

nor indentures
taken, &c.

SECT. 4. *And be it further enacted by the authority aforesaid,* That such servants as shall be imported into this government, and truly serve his or her time mentioned in his or her indenture, shall, at the expiration of the term of his or her servitude, have a discharge from his or her master or mistress, and by them be clothed with two suits of apparel, whereof one shall be new, to be approved by at least one Justice of the Peace upon complaint to him by such servant becoming free.

The allowance
to servants, at
the expiration of
their servitude.

SECT. 5. *And for the prevention of servants absenting themselves from their master's or mistress's service, Be it enacted by the authority aforesaid,* That from such time as any servant shall absent him or herself from his or her master or mistress's service, without leave first obtained for the same, every such servant, for such absence, and expences of taking up, securing and other necessary charges, shall, at the expiration of the time of his or her servitude, make satisfaction by servitude, according to the judgment of any Court of Quarter Sessions within this government, before which the said servant shall be brought for that purpose.

Servants absent-
ing themselves,
shall make sa-
tisfaction, &c.

SECT. 6. *And be it further enacted by the authority aforesaid,*

(c) See before in chap. 30. a. sect. 6. for the powers of Orphan's Courts: as to binding out of minors as apprentices.

C H A P.
LXXVII.

13 Geo. II.

Notice to be
given of the
taking up of
runaway ser-
vants, &c.

Reward for tak-
ing up runaway
servants, &c.

when they may
be sold by
Sheriff.

Suspicious per-
sons travelling
without a pass
shall be deemed
runaway ser-
vants.

aforesaid, That if any person shall apprehend or take up any run-away servant, and carry him or her before the next Justice of the Peace of the county where such servant shall be so taken up, in order to be sent to and secured in the gaol of the said county, for his or her master or mistress's service (whom the Sheriff of the said county, or the Gaoler, is hereby commanded to receive, and immediately to send notice thereof to the said servant's master or mistress, if the same can be known, and if not known, the said servant to be advertised in some public news-paper of the city of Philadelphia, for the space of one month next after such servant's commitment). At the discharge of such servant, the said Sheriff or Gaoler shall pay to the taker-up of such servant, or his order, as follows, *That is to say*, If the place of the taking-up the said servant be ten miles distant from the place of the said servant's last abode, or under, the sum of Ten Shillings, and if upwards of ten miles, the sum of Twenty Shillings, and to all others concerned in the carrying to prison or securing the said servant, such sum or sums of money as by the said justice, or any other justice, shall be allowed reasonable. *And* the said Sheriff or Gaoler shall detain the said servant in prison until the master or mistress of such servant shall pay unto him for the taking-up, together with the charges of committing, securing, maintaining, and all other necessary expences arising upon such servant. *And* if the master or owner of such servant so imprisoned as aforesaid, shall, for the space of six weeks next after notice had of his or her servant's imprisonment, neglect or refuse to release such servant, it shall and may be lawful for the said Sheriff, and he is hereby required and commanded, upon affidavit made of the due service of such notice, to expose every such servant to sale at public vendue, and him or her to sell to the highest bidder, for such term and sum as shall be sufficient for the defraying the costs and charges arising upon the apprehending and imprisoning the said servant.

SECT. 7. *And be it further enacted by the authority aforesaid*, That if any suspicious person shall be taken up, travelling in or through this government, with-
out

out having a sufficient pass, signed by some justice or proper officer of the place from whence he or she came, approved and renewed by some Justices of the Peace in the parts through which such person hath travelled, or shall not otherwise be able to give a good and satisfactory account of him or herself to the justice before whom he or she shall be brought, such person shall, by the said justice, be committed to the gaol of the county where he or she shall be taken up, and be deemed to be, and dealt withal, as a run-away servant.

SECT. 8. *And that no Sheriff or Gaoler within this government, shall allow or receive, for the maintenance or victualling of any servant, slave, or other person committed to gaol as a servant, any more than at the rate of Two-pence per day for such maintenance.*

C H A P.
LXXVII.
13 Geo. II.

Allowance to the Gaoler for the maintenance of servants, &c.

SECT. 9. *And be it further enacted by the authority aforesaid, That if any person or persons, from and after the publication of this act, shall presume to deal, trade or barter with any indentured servant, or Negro or Mulatto slave, belonging to any person within this government, without the content, approbation, or allowance of the master or owner of such servant or slave, from time to time, first had and obtained, specifying and limiting the particular sum for which such servant or slave, at every such time, are permitted or allowed to deal, trade or barter for, as aforesaid, and be thereof duly convicted, by the testimony of one or more credible witnesses, or otherwise, before any three justices of the county where any such offence shall be committed, to be heard in any time of the vacation, the offender, for such his or her first offence, shall be fined, in any sum not exceeding Five Pounds, and for the second, in any sum not exceeding the sum of Ten Pounds, together with costs, and be obliged to enter into a recognizance with sufficient sureties for his or her good behaviour. And in case any master or mistress shall complain to any two Justices of the Peace of any county within this government, against any person inhabiting the same, that he or she hath just reason to suspect and believe, that the said person doth deal, trade or barter with*

Penalty on persons dealing with servants or slaves.

C H A P.
LXXVII.

13 Geo. II.

Whoever man-
mits a slave,
&c. shall give
security to in-
demnify the
county.

The children
of free Negroes
to be bound out
to service.

his or her servant or slave, contrary to the intent and meaning of this act, and the said justices shall judge such suspicion just and reasonable; then the said justices are hereby impowered and required, to oblige every such person so complained of as aforesaid, to enter into such recognizance as aforesaid.

SECT. 10. *And whereas* it is found by experience, that free Negroes and Mulattoes are idle and slothful, and often prove burthen some to the neighbourhood wherein they live, and are of evil example to slaves; *Therefore be it enacted by the authority aforesaid,* That if any master or mistress, shall, by will or otherwise, discharge or set free any Mulatto or Negro slave or slaves, above the age of thirty-five years; or decrepid or infirm, he or she, or his or her executors or administrators, at the next respective County Court of Quarter Sessions, shall enter into a recognizance with sufficient sureties, to be taken in the name of the Treasurer of the said county for the time being, in the sum of Thirty Pounds, for each slave so set free, to indemnify the county from any charge they or any of them may be unto the same, in case of such Negro or Mulatto's being sick, or otherwise being rendered incapable to support him or herself; and that until such recognizance be given, no such Mulatto or Negro shall be deemed free. (*d*)

SECT. 11. *And if any free Negro or Negroes having children, are not able to maintain or support them, it shall and may be lawful to and for the two next Justices of the Peace, and they are hereby required, together with the Overseers of the Poor of the hundred where the said Negro or Negroes shall dwell, to bind out to service such Negro children, the males until they shall come to the age of twenty-one years, the females until they shall come to the age of eighteen years.* (*e*)

SECT.

(*d*) This section was repealed and supplied in chap. 188. a. sects. 2, 4, passed October, 31, 1767, but after altered and further provided for in chap. 145. b. passed Feb. 3, 1787.

(*e*) That by a supplement to the act for the relief of the poor, chap. 190. a. of October 1767, all such children, females as well as males, were to be bound until they should arrive to the age of 21 years, and this clause then repealed.

Also, that in the "Act for the relief of the poor," chap. 225. a. sect. 31. passed

SECT. 12. *And be it further enacted by the authority aforesaid,* That if any free Negro or Mulatto shall harbour or entertain any servant or slave in his or her house or habitation, without the leave and consent of such servant or slave's master or mistress, such free Negro or Mulatto shall forfeit and pay the sum of Five Shillings for the first hour, and Two Shillings for every hour afterwards, during the whole time that such servant or slave shall be so harboured or entertained; and if any free Negro or Mulatto shall barter, trade or deal with any servant, or Negro, or Mulatto slave, without licence had as aforesaid, he or she shall make restitution to the master or owner of such servant or slave, and also be publicly whipt with any number of lashes not exceeding twenty-one.

CHAP.
LXXVII.
13 Geo. II.

Penalty on free Negroes entertaining servants or slaves.

Free Negroes, &c. dealing with slaves shall make restitution, and be whipt.

SECT. 13. *And be it further enacted by the authority aforesaid,* That if any free Negro or Mulatto shall refuse, or be unable to pay his or her fine or forfeiture, or to make restitution as aforesaid, it shall and may be lawful to and for the justice before whom such matter shall be tried, to order the said free Negro or Mulatto offending, to make satisfaction to the party injured, by servitude.

Or being unable to pay, &c. shall make satisfaction by servitude.

SECT. 14. *And be it further enacted by the authority aforesaid,* That whosoever shall take up any Negro or Mulatto slave, at above ten miles distance from his or her master or mistress's habitation, and not having leave, in writing, from his or her master or mistress, or not being known by the taker-up to be about his or her master or mistress's business or service, and shall convey him or her to the habitation of his or her said master or mistress, if known, such taker-up shall receive, of the said master or mistress, for his reward, the sum of Five Shillings, with reasonable charges.

Reward for taking up slaves, above ten miles from home.

SECT. 15. *And be it further enacted by the authority aforesaid,*

March 29, 1775. All former acts for the relief of the poor were repealed, and provision made in sect. 8. for binding out all children likely to become chargeable to the hundred, which is further extended in sect. 18. of chap. 2:8. b. being "An act for the better relief of the poor," passed Jan. 29, 1791; both which last acts fix the respective ages to which males and females are to be bound unto, as in the foregoing sect. 11.

C H A P.
LXXVII.

13 Geo. II.

Penalty on har-
bouring or con-
cealing servants
or slaves.

How the fines,
&c. are to be
recovered and
disposed of.

afore said, That no person shall employ or knowingly harbour, conceal or entertain another's servant or slave at his or her house or plantation without the master or owner's leave and consent, except in distresses of weather, or other extraordinary occasion or accident, under the penalty of Forty Shillings for every twenty-four hours he or she shall entertain any such servant or slave, as *afore said*, and so in proportion for any lesser time.

SECT. 16. *And be it further enacted by the authority afore said*, That all the fines and forfeitures arising by this act, together with the respective costs, shall be recovered by distress and sale of the offender's goods respectively, by warrant under the hands and seals of the justice or justices before whom the offender or offenders shall be convicted, and shall be paid, the one moiety to the Overseers of the Poor, for the use of the poor of the town or hundred where the offence or offences shall be committed, the other moiety thereof to the party or parties aggrieved.

C H A P. LXXVIII. a.

13 Geo. II.

An ACT for the striking and making current Six Thousand Pounds in new bills of credit, to exchange such of the bills of credit of this government, emitted Anno Domini One Thousand Seven Hundred and Thirty-four, as are worn and defaced.

C H A P. LXXIX. a.

13 Geo. II.

An ACT to prevent the breach of the Lord's Day, commonly called Sunday. Repealed and supplied by an act passed Feb. 6, 1795. chap. 78. c.

CHAP.

C H A P . LXXX. a.

C H A P .
LXXX.

An ACT against unseasonable firing the woodlands and marshes within this government. (a)

13 Geo. II.

FOR prevention of damages and dangers that may ensue upon firing the woodlands or marshes within this government, at unseasonable times of the year,

SECTION I. *BE it enacted by the honorable George Thomas, esq. by and with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent, and Sussex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same,* That whosoever shall presume to set or cause to be set on fire any woodlands or marshes, within this government, before the tenth day of March, or after the first day of May yearly, and be duly convicted thereof, by the testimony of one or more credible witnesses, before any two Justices of the Peace of the county where such offence is committed, shall, for every such offence, forfeit any sum not exceeding Five Pounds, to be levied, together with costs, by warrant under the hands and seals of the justices before whom the conviction is had, on the offender's goods and chattels; and paid, the one moiety thereof to the Overseers of the Poor of the hundred for the use of the poor where the offence is committed, the other moiety to the use of the informer; and for want of goods and chattels, the offender shall be adjudged, by the said justices, to make satisfaction by servitude; and shall also make good all damages that shall thereby happen to any of the inhabitants of this government, to be recovered by bill, plaint or information, in any of his Majesty's Courts of Record within this government. And if any Negro or Mulatto slave or slaves shall be duly convicted of such offence as aforesaid,

Woodlands or marshes to be fired only between the tenth of March and the first of May, on penalty of Five Pounds.

Offender to make good all damages.

Slaves so offending to be whipt.

(a) See chap. 87. a. 15 Geo. II. setting forth limits in the two counties of New-Castle and Sussex, in which woodlands shall not be set on fire at any time.

C H A P.
LXXX.
19 Geo. II.

said, the said justices shall order him, her, or them, to be publicly whipt with any number of lashes not exceeding thirty-one.

C H A P. LXXXI. a.

14 Geo. II.

A Supplementary ACT to the act, entitled, "An act for the striking and making current Six Thousand Pounds in new bills of credit, to exchange such of the bills of credit of this government, emitted Anno Domini One Thousand Seven Hundred and Thirty-four ~~as~~ are worn and defaced."

C H A P. LXXXII. a.

14 Geo. II.

An ACT to prevent frauds by clandestine bills of sale. (a)

WHEREAS many frauds have been and daily are committed, by making clandestine bills of sale for goods and chattles within this government, to the prejudice of creditors, who by that means are defrauded of their just debts; For prevention whereof,

SECTION 2. *BE it enacted by the honorable George Thomas, esq. by and with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent, and Suffex, on Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same, That no sale, or bill or bills of sale, which shall hereafter be made of any goods or chattels within any of the counties of this government, shall be good or available in law, or shall change or alter the property of such goods or chattels, unless a valuable consideration shall be paid, or really and bona fide secured to be paid for such sale or bill or bills*

Bills of sale not good without valuable consideration, &c.

(a) See before in chap. 72. a. 13 Geo. II. sect. 3.

bills of sale, and unless the goods and chattels sold or contained in such bill or bills of sale, shall be actually delivered into the possession of the vendee or vendees, as soon as conveniently may be, after the making of such sale or bill or bills of sale.

CHAP.
LXXXII.
14 Geo. II.

SECT. 3. *And* if such goods and chattels sold, or contained, or mentioned in such bill or bills of sale, shall afterwards return or come into, and continue in the possession of such vendor or vendors, the same shall be chargeable and liable to the demands of all creditors of such vendor or vendors as aforesaid.

SECT. 4. *Provided always, and be it further enacted on the authority aforesaid,* That all bills of sale made of goods or chattels within any of the counties of this government, by any person or persons within the same to any other person or persons, shall be good and effectual against the vendor or vendors of such goods and chattels, any thing herein contained to the contrary notwithstanding.

C H A P. LXXXIII. a.

An ACT for acknowledging and recording deeds.

15 Geo. II.

SECTION I. **B**E it enacted by the honorable George Thomas, esq. by and with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent, and Suffex, on Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same, That there shall be an Office of Record in each county of this government, which shall be called and stiled, *The office for recording of deeds*; and shall be kept in some convenient place in the said respective counties; (a) and the Recorder shall duly attend the service of the same, and

An Office of
Record to be
kept in each
county.

at

(a) See this provided for in article 8, sect. 5, of the constitution of June 1792, and also in chap. 80. c. passed Feb. 7. 1795.

CHAP.
LXXXIII.
15 Geo. II.

at his own proper costs and charges shall provide good large books of royal or other large paper, well bound and covered, wherein he shall record, in a fair and legible hand, all deeds and conveyances which shall be brought to him for that purpose, according to the true intent and meaning of this act.

All Deeds, &c.
shall be record-
ed.

SECT. 2. *And be it further enacted by the authority aforesaid,* That all bargains and sales, deeds and conveyances of lands, tenements and hereditaments within this government, shall be recorded in the said office within one year after the execution thereof: But before the same shall be so recorded, the grantee or grantees, or some other proper person for such grantee or grantees, shall procure the grantor or bargainer named in every such deed, or his, her or their Attorney or Attornies for that purpose appointed, to acknowledge that such deed or deeds, conveyance or conveyances, is or are the act or acts, deed or deeds, of such grantor or grantors, to appear before the Court of Common Pleas of the proper county where the lands lie; which said court is hereby impowered to take an acknowledgment of the grantor, if one, or one of the grantors, if more, or his, her or their Attorney or Attornies, that the same is his, her, or their act and deed. (b) But in case the grantor be dead, or cannot appear, and no Attorney be appointed as aforesaid, the grantee or grantees, or some proper person for such grantee or grantees, shall and may procure one or more of the witnesses that were present at the execution thereof, to be brought before such court, who shall be examined upon oath or affirmation to prove the execution of the deed or conveyance then produced; whereupon the Clerk of the said Court, under his hand, and seal of the county, shall certify such acknowledgment or proof upon the back, or at the foot of the deed or conveyance as aforesaid, with the day and year when the same was made, and by whom:

But first to be
acknowledged,
&c.

Or proved.

(b) By article 6. sect. 6. of the constitution of June 1792, any Judge of the Supreme Court or of the Court of Common Pleas may out of court take the acknowledgment of deeds for the purpose of recording. As to the acknowledgment of deeds by Feme Coverts of lands in their own right, see chap. 60. a. sect. 9. 7 George II. and the note there (c) referring to chaps. 218. a. and 68. c.

whom: And after the same shall be recorded, the Recorder shall certify on the back, or at the foot thereof, under his hand and seal of his office, the day he recorded the same, and the name or number of the book and page wherein it is recorded.

C H A P.
LXXXIII.
15 Geo. II.

Recording to be certified.

SECT. 3. *And be it further enacted by the authority aforesaid,* That where any deed or deeds, conveyance or conveyances, or Power of Attorney, for granting or conveying of any lands or tenements within this government,^(c) or Power of Attorney to acknowledge such deed or deeds, conveyance or conveyances, shall hereafter be made or executed by any person or persons out of this government, such deed or deeds, conveyance or conveyances, or Power of Attorney, shall be proved by one or more of the witnesses to such deed or deeds, conveyance or conveyances, or Power of Attorney, in open court, in the county where the lands or tenements lie;^(d) and such witness or witnesses shall upon a legal qualification declare, that he, she, or they, was or were present, and saw such deed or deeds, conveyance or conveyances, or Power of Attorney, duly signed, sealed and delivered by the party or parties making such deed or conveyance, or Power of Attorney.

Deeds, &c. made out of the government shall be proved; &c.

SECT. 4. *And be it further enacted by the authority aforesaid,* That all deeds and conveyances made and to be made, and proved or acknowledged and recorded as aforesaid, which shall appear so to be by certificate made thereon, according to the true intent and meaning of this act, shall be of the same force and effect here for the giving possession and feizin, and make good the title and assurance of the lands, tenements and hereditaments, as deeds of feoffment with livery and feizin, or deeds enrolled in any of the King's Courts of Record at Westminster, are or shall be in that

Deeds, &c. so proved, acknowledged and recorded, shall be good. &c.

VOL. I.

2 E

part

^(c) See before in chap. 28. a. sect. 4, 5. declaring that all sales or conveyances of lands, &c. in virtue of Powers of Attorney proved where executed, &c. or in the Courts of Common Pleas of the government, by any of the witnesses thereto shall be good, &c. And that such Letters of Attorney shall be deemed in force until due notice to the Attorney of a countermand, revocation or death of the constituent.

^(d) And see after in chap. 127. a. 15 George II. providing that all deeds, conveyances and Powers of Attorney, made out of the government, may be proved where executed. And in chap. 218. a. passed April 12, 1773. That the private examination of Feme Coverts, parties to grants of Lands in their own right, may be taken in the like manner.

C H A P.
LXXXIII.
15 Geo. II.

part of Great Britain called England; and the copies or exemplifications of all deeds so enrolled, being examined by the Recorder, and certified under his hand and seal (which the Recorder or keeper of the records is hereby required to affix thereto) shall be allowed in all courts of law where produced, and are hereby declared and enacted to be as good evidence, and as valid and effectual in law as the original deeds or conveyances, or as bargains and sales enrolled at the said courts at Westminster and copies thereof can or may be, and the same may be sued, pleaded, and made use of accordingly.

Force of the words, grant, bargain and sell, &c.

SECT. 5. *And be it further enacted by the authority aforesaid,* That in all deeds to be recorded in pursuance of this act, whereby any estate of inheritance in fee-simple shall hereafter be conveyed to the grantee and his heirs or assigns, the words [*grant, bargain, and sell,*] shall be judged an express covenant to the grantee, his heirs and assigns, *To wit,* That the grantor was seized of an indefeazable estate in fee-simple, freed from all incumbrances done or suffered by the grantor (excepting the rents and services due to the lord of the fee) as also for quiet enjoyment against the grantor, his heirs and assigns, unless limited by express words contained in such deeds; and that the grantee, his heirs, executors, administrators and assigns, may in any action assign breaches, as if such covenants were expressly inserted.

SECT. 6. *Provided always,* That this act shall not extend to leases on rent, or to leases not exceeding twenty-one years, where the actual possession goes with the lease.

No mortgage shall be good, unless recorded.

SECT. 7. *And be it further enacted,* That no mortgage-deed, or defeazable deed in the nature of mortgages, hereafter to be made, shall be good or sufficient to pass any freehold or inheritance, or to grant any estate therein for life or years, unless such deed be acknowledged, or proved and recorded in the county where the lands or tenements lie, within twelve months after the date thereof, as herein is before directed for other deeds.

SECT. 8. *And be it further enacted,* That every mortgagee within this government, his or her heirs, executors,

executors, administrators or assigns, having received full satisfaction and payment of all such sum and sums of money as are really due to him or them by such mortgage, shall, at the request of the mortgager, his heirs or assigns, enter satisfaction upon the margin of the record of such mortgage recorded in the said office, which shall for ever thereafter discharge and release the same, and shall likewise bar all actions brought or to be brought thereon. And if any such mortgagee, his heirs, executors, administrators or assigns, by him or themselves, or his or their Attorney, shall not within three months next after request and tender made for his or their reasonable charges, repair to the said office, and there cause such satisfaction to be entered as aforesaid; he or they neglecting or refusing so to do, shall for such neglect or refusal forfeit and pay unto the party or parties aggrieved, any sum or sums of money not exceeding the consideration mentioned in the mortgage-deed, to be recovered, together with costs, in any Court of Record within this government, by bill, plaint or information.

SECT. 9. *And whereas* it hath been customary for some persons to lett out money at interest upon mortgage of lands, tenements and hereditaments within this government, and to take of the mortgagers absolute deeds of bargain and sale, or deeds of lease and release which have been acknowledged and recorded, and to give them separate defeazances, which have not been recorded, and upon discharge or payment of the mortgage-money and interest, to return to the mortgager, his heirs or assigns, the said deeds, with short releases thereon indorsed, which have not been acknowledged or recorded; whereby great difficulties will hereafter arise to the true and rightful owners of the said lands, tenements or hereditaments, and suits for the same may be brought against them by the heirs of such mortgagees; *Be it therefore enacted by the authority aforesaid,* That where any person shall, after the publication of this act, take or receive any absolute deed of conveyance, or deed of lease and release from the mortgager of any real or personal estate, as aforesaid, and shall give or make any defeazance

C H A P.
LXXXIII.
15 Geo. II.

Mortgagee having received payment, shall enter satisfaction on the margin of the record.

Forfeit on neglect or refusal.

Defeazances to be acknowledged, &c. within twelve months.

CHAP.
LXXXIII.
15 Geo. II.

feazance or other contract in writing in the nature of a defeazance, for redemption and discharge of such estate mortgaged; every such mortgager shall, and is hereby required to cause such defeazance, or other contract in writing, as aforesaid, to be acknowledged, or proved and recorded, within the space of twelve months next after the execution thereof: And if such mortgager shall neglect so to do, he or she shall lose all benefit whatsoever of the said defeazance, and the same shall be utterly null and void.

Mortgages being paid off, reconveyances to be made.

SECT. 10. *And be it further enacted by the authority aforesaid,* That whenever any deed or conveyance, which shall be defeazanced as aforesaid in the nature of a mortgage or mortgages, shall be paid off, and satisfied in the mortgagee or mortgagees, his or their heirs, executors, administrators or assigns, they and every of them shall, at the reasonable request, and at the proper cost and charges of the mortgager, his heirs, executors, administrators or assigns, by good and sufficient deeds and conveyances in the law, convey unto such mortgager or mortgagers, his or their heirs, executors, administrators or assigns, for the use of the said mortgager or mortgagers, his or their heirs and assigns, all and every the lands, tenements and hereditaments so conveyed as aforesaid, with the appurtenances, under the penalty of the value of the lands and tenements so mortgaged, to be recovered in manner aforesaid, for the use of the mortgager, his heirs or assigns.

Recorders to find sureties, &c.

SECT. 11. *And be it further enacted by the authority aforesaid,* That before any of the said Recorders shall enter upon their respective offices, they shall find sureties as follows, *viz.* The said Recorder of Deeds shall give bond to the County Court, or to the County Treasurer within the county where such Recorder shall be appointed for the time being, *(e)* with one or more sufficient sureties in a bond of Five Hundred Pounds, conditioned for the true and faithful execution of his office, and for delivering up the records and

(e) See chap. 5. c. sect. 6. passed February 2, 1793, directing all bonds and recognizances of public officers, &c. to be taken by the Secretary in the name of the state, except as there excepted.

and other writings belonging to the said office, whole, safe, and undefaced to his successor in the said office; and shall take a receipt for the same, which shall contain a list thereof; which said bond and receipt shall be preserved and kept safely by the Justices of the said Court, or County Treasurer, in order to be sued and prosecuted, for making satisfaction to the parties that shall be damnified or aggrieved, or for not delivering the same in manner aforesaid, as is or shall be in such cases directed by the laws of this government. And that no Recorder of Deeds whatsoever, hereafter appointed as aforesaid, shall enter upon, or officiate in the said office, before he hath given such surety as aforesaid, upon pain of forfeiting the sum of One Hundred Pounds, the one half to the Governor, for support of government, and the other half to him or them that will sue for the same, to be recovered as aforesaid.

C H A P.
LXXXIII.
15 Geo. II.

Penalty on officiating before security given.

SECT. 12. *And be it enacted by the authority aforesaid,* That all acts of Assembly, and laws of this government, heretofore made or enacted, any way relating to, or concerning the recording of any deeds or conveyances, or mortgages, or the proving or acknowledging them, or any of them, or of any Letters or Powers of Attorney for the conveying of lands or tenements, or acknowledging of any such deeds or conveyances, as aforesaid, contrary to this act; be, and the same are hereby repealed, and declared to be null and void to all intents and purposes whatsoever.

Former acts repealed.

C H A P. LXXXIV. a.

A Supplementary Act to an act of General Assembly of this Government, entitled, An act for the advancement of justice, and more certain administration thereof. 15 Geo. II.

WHEREAS the act of General Assembly of this government, made in the sixth year of the reign of his late Majesty King George the First, entitled,

C H A P.
LXXXIV.
15 Geo. II.

entituled, *An act for the advancement of justice, and more certain administration thereof*; (a) doth not clearly appear to have sufficiently provided for the manner of trial and punishment of petty treason, misprision of treason, murder, manslaughter, homicide, bestiality, incest and bigamy;

SECTION 2. *BE it therefore enacted by the honorable George Thomas, esq. by and with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent, and Sussex, on Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same, That every person or persons, who shall be guilty of any petty-treason, (b) misprision of treason, murder, manslaughter, homicide, bestiality, incest or bigamy, shall be tried in like manner as other felons by the said act are directed to be tried, and punished in the like manner as persons guilty of the like crimes and offences are punishable by the laws and statutes of that part of Great Britain called England.*

C H A P. LXXXV. a.

18 Geo. II. *An ACT to prevent abuses committed by destroying timber and other trees within this government.*

SECTION. 1. *BE it enacted by the honorable George Thomas, esq. by and with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent, and Sussex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same, That*
if

(a) See before in chap. 22. a.

(b) By an act passed June 5, 1787. chap. 158. b. It is declared that petit treason shall thereafter be punished as in case of a felony of death, and in no other manner.

If any person or persons shall fall or cut down any timber, tree or trees upon the land of any other person or persons within this government, without leave first had of the owner or owners thereof, every such person so offending shall for every such tree so fallen or cut down, forfeit the sum of Fifty Shillings, to be recovered, with costs of suit, by action of trespass to be brought upon this act by the party injured; and in case such trespasser or trespassers shall not be able to pay such damages and costs as aforesaid, he or they shall be adjudged by the Justices of the Court wherein a verdict shall be obtained against such offender or offenders, to make satisfaction for the said damages and costs, by servitude, for any term of time not exceeding four years.

SECT. 2. *And that every tree which at the distance of two feet from the ground shall be found or deemed to measure one foot over, or more, shall be adjudged a timber-tree.*

SECT. 3. *And be it further enacted by the authority aforesaid, That if any person or persons shall fall or cut down any fire- or under-wood on the land of another person or persons within this government, without leave first had as aforesaid, every such person so offending shall forfeit treble the value of all such fire- or under-wood so fallen or cut down, with costs of suit, to be recovered in manner abovementioned; and for want of goods and chattels to satisfy such damages and costs, the offender shall be adjudged by the Justices of the Court wherein a verdict shall be given against such offender or offenders, to make satisfaction for the said damages and costs by servitude, as aforesaid.*

SECT. 4. *And be it further enacted by the authority aforesaid, That an act of Assembly of this government, entituled, An act about cutting timber trees, shall be and is hereby repealed.*

C H A P.

LXXXV.

15 Geo. II.

Penalty on falling timber on the land of others.

What shall be deemed a timber-tree.

A former act repealed.

CHAP.

C H A P.
LXXXVI.

C H A P. LXXXVI. a.

15 Geo. II.

An ACT for limitation of actions, and proving accounts against the estates of persons dying within this government.

SECTION I. **B**E it enacted by the honorable George Thomas, esq. by and with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent, and Suffex, on Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same, That no person or persons that now hath or have any right or title of entry into any lands, tenements or hereditaments, now held from him or them, shall thereinto enter, but within twenty years next after the end of this present Session of General Assembly, or within twenty years next after any other title of entry accrued; and that no person or persons shall at any time hereafter, make any entry into any lands, tenements or hereditaments, but within twenty years next after his or their right or title, which shall hereafter first descend or accrue to the same: And in default thereof, such person or persons so not entering and bringing his or their action or actions, and their heirs, shall be utterly excluded and disabled from such entry or action to be made or brought, any former law, statute or act of Assembly to the contrary notwithstanding. (a)

SECT.

(a) See a supplementary act hereto, chap. 216. a. passed April 12, 1773, providing an express saving to the operation of this clause in favour of minors, Feme-Coverts, persons Non Compos Mentis, imprisoned, or not within any of his (then) Majesty's dominions in America, they and their heirs making entry, or bringing action within ten years after impediment removed.

See also an additional supplementary act hereto, chap. 40. c. passed June 19, 1793, declaring that no person shall make an entry into lands, &c. but within twenty years after right or title descended, or accrued, nor maintain any writ of right or other action, or make any claim to lands, &c. and allege any seisin but an actual seisin within twenty years; with a proviso in favour of persons at the time of passing the said additional supplementary act, having a right of entry to bring suit within ten years thereafter and a further proviso in favour of an infant, Feme-Coverr, Non Compos Mentis or a prisoner, for ten years after the removal of such disability, and of the heirs of such as die under any of the said disabilities.

Persons having right of entry into lands, &c. shall not enter after twenty years, &c.

CHAP.
LXXXVI.

15 Geo. II.

In what cases a
new action may
be commenced,

Defendant in
actions of tres-
pass, &c. may
plead a disclaim-
er, &c.

Persons within
age, non com-
pos, &c. being
entitled to ac-
tions, may af-
terwards bring
the same, so,
&c.

any of the said actions or suits, judgment be given for the plaintiff or plaintiffs, and the same be reversed by error, or a verdict pass for the plaintiff or plaintiffs, and upon matter alledged in arrest of judgment, the judgment be arrested and stayed, and judgment there-fore be given that the plaintiff or plaintiffs take nothing by his or their plaint, writ or bill; That in all such cases the plaintiff or plaintiffs, and his or their heirs, executors or administrators, as the case may require, where the action shall not by law die with the person, may commence a new action or suit from time to time within a year after such judgment reversed, stayed or given against the plaintiff or plaintiffs, as aforesaid, and not after.

SECT. 4. *And be it further enacted,* That in all actions of trespass *quare clausum fregit*, hereafter to be brought, wherein the defendant or defendants shall in his or their plea disclaim any title or claim to the land in which the trespass shall be in the declaration supposed to be done, and the trespass be by negligence, or involuntary, the defendant or defendants shall be admitted to plead a disclaimer, and that the trespass was by negligence, or involuntary, and a tender or offer of sufficient amends for such trespass before the action brought; whereupon, or upon some of them, the plaintiff or plaintiffs shall be enforced to join issue; and if the said issue be found for the defendant or defendants, or the plaintiff or plaintiffs shall be non-suited, the plaintiff or plaintiffs shall be clearly barred from the said action or actions, and all other suit concerning the same.

SECT. 5. *Provided always, nevertheless,* That if any person or persons, who is or shall be entitled to any such action of trespass, detinue, trover, replevin, actions of account or debt, actions of trespass for assault, menace, battery, wounding or imprisonment, actions upon the case for words, are or at the time of any cause of such action given, or accrued, fallen or come, shall be within the age of twenty-one years, *feme covert, non compos mentis*, imprisoned, or beyond sea, or out of this government; that then, and in such case, such person or persons shall be at liberty to bring the same actions, so as the same be brought within such times

as

as are hereby before limited, after their coming to or being of full age, discoverture, of found memory, at large, or returning into this government. (d)

SECT. 6. *And* if any person or persons, against whom any of the causes of action before-mentioned do arise, shall at the time of the cause of suit or action arising, or afterwards before the time of bringing such action be expired, be beyond seas, or go out of this government, then the person entitled to such suit, may bring an action after the return of such person, so as he bring the same within such time after the return, as is before limited by this act.

SECT. 7. *And* forasmuch as many evils may arise, and great frauds be committed, by suffering persons to prove accounts of long standing against the estates of persons dying within this government; for prevention whereof, *Be it enacted by the authority aforesaid*, That no person or persons whatsoever, from and after the publication of this act, who doth not, or shall not keep a day-book or other regular book of account, shall be admitted to prove or require payment of any account or demand against the estate of any person or persons dying within this government, if such account or demand shall appear to be older, or of any longer standing than one year next before the death of the deceased person, unless such person or persons so pretending to be a creditor or creditors of the deceased, shall be able clearly to make appear, by one good and sufficient evidence at least, that his debt or demand is just and true: And that no person or persons whatsoever, who do or shall keep regular books of account, shall be admitted to prove or require payment of any account or demand against the estates of persons so dying as aforesaid, if such account or demand shall appear to be older, or of any longer standing than three years next before the death of such person or persons so dying or deceased as aforesaid. (e)

SECT.

(d) This and the next section 6. altered in the first supplementary act aforesaid, chap. 216. a. in its sections 5, 6. so as to correspond with their preceding section 4. which were again altered and supplied in the said act, chap. 248. b.

(e) This section also altered and supplied in the said first supplementary act hereto, chap. 216: a. sect. 7. which was again altered and further supplied in the aforesaid additional supplementary act, chap. 248. b. in its sections 9, 5, 6.

CHAP.
LXXXVI.
15 Geo. II.

Accounts against the estates of persons deceased, may not be proved, unless, &c.

C. H. A. P.
LXXXVI.
15 Geo. II.
Repeal of a former act.

SECT 8. *And be it further enacted by the authority aforesaid, That the act of Assembly of this government, entituled, An act for the limitation of actions, be and is hereby repealed.*

C H A P. LXXXVII. a.

15 Geo. II. *An ACT to prevent the damages which may arise by firing the woodlands in the parts of this government in this act mentioned.*

Preamble,

WHEREAS it is found by experience, that the annual firing the woods, as has been customary within this government, is very prejudicial to lands, and doth much impoverish the same, as well as destroy many timber-trees, and prevent the growth of young trees and woods; and also many fences and buildings have often been burnt by such fires: For prevention whereof,

SECTION 2. *BE it enacted by the honorable George Thomas, esq. by and with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent, and Sussex, on Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the free-men of the said counties, in General Assembly met, and by the authority of the same, That from and after the publication of this act, if any person or persons shall, at any time or times whatsoever, wilfully fire or set on fire, or cause to fire or be set on fire, any woodlands, (a) whereby any other person or persons shall suffer damage, within the limits herein after expressed, That is to say, within the county of New-Castle, any woodlands lying to the northward of the public highway called Nottingham Road, leading from the township of Nottingham, in Chester county, to Christiansa Bridge; any woodlands lying to the eastward of*

Limits within which woodlands shall not be set on fire.

(a) See before in chap. 80. a. a general regulation against firing the woodlands and marshes within the government, other than between the tenth day of March and the first day of May yearly.

of the road leading from the aforesaid bridge to the intersecting of the road leading down the said county, from the town of New-Castle, near Red-Lion Run; or any of the woodlands lying to the eastward of the highway called the Upper Road, leading from the said run down by the plantation late of Andrew Peterfon, esq. deceased, to Blackbird's Bridge, and from the said bridge down Blackbird's Creek to Delaware river: And within the county of Suffex, any of the woodlands lying to the eastward of the King's highway or road leading down the said county of Suffex, from the place where the said road crosses the Three Runs to the Cool-spring Branch, and up the said branch to the head thereof; thence, by the nearest course, to the head of Bundick's Branch, which issueth into Rehoboth Bay; thence down the said branch to the intersecting Indian-River Road; thence by the said road to a landing on Indian-River, known by the name of Philip Askew's Landing; and thence down the said river to the ocean; every such person or persons so offending, and being duly convicted thereof, by the testimony of one or more credible witnesses, or confession of the offender or offenders, before any two Justices of the Peace of the county where the offence is or shall be committed, shall, for every such offence, forfeit and pay any sum not exceeding Five Pounds, current money of this government, at the discretion of the said justices, to be levied, together with costs, by warrant under the hands and seals of the said justices, before whom the conviction is had, on the offender's goods and chattels, and paid, within New-Castle county, the one moiety thereof to the Overseers of the Poor of the hundred where the offence is committed, for the use of the poor of the said hundred; and within the county of Suffex, to the Treasurer of the county, for the use of the poor of the said county of Suffex; the other moiety to the informer: And for want of such goods and chattels, the offender or offenders shall, by such justices, be adjudged to make satisfaction for the said fine and costs, by servitude; and shall also make good all damages, that, by such firing and burning, shall happen to any of the inhabitants of this

C H A P.
LXXXVII:
15 Geo. II.

Penalty.

How to be recovered and disposed of.

For want of effects, the offender shall make satisfaction by servitude.

CHAP.
LXXXVII.

15 Geo. II.

Punishment of
slaves offending
against this act.

this government, to be recovered, together with costs, by bill, plaint or information, in any of his Majesty's Courts of Record within this government. And if any Negro or Mulatto slave, or slaves, shall be duly convicted of such offence, as aforesaid, the said justices shall, at the charge or charges of the owner or owners of such slave or slaves, order and cause him, her or them, to be publicly whipt, with any number of lashes not exceeding thirty-one, on his, her, or their bare back or backs, well laid on; and if the owner or owners of such slave or slaves, shall neglect or refuse to pay such charge or charges, then the said justices shall commit the said slave or slaves to the common gaol of the county wherein the offence is committed, there to be kept, until the same, together with the costs thereon arising, be paid and satisfied.

CHAP. LXXXVIII. a.

15 Geo. II.

An ACT for the relief of the poor. (a)

CHAP. LXXXIX. a.

15 Geo. II.

An ACT for laying out roads, Repealed.

CHAP.

(a) This act, so far as the same related to the county of New-Castle, was repealed and supplied by chap. 106. a. 17 Geo. II. and also repealed as to the county of Kent after in chap. 163. a. passed October 27, 1759; which last act of repeal was after repealed, and this original act revived as to the county of Kent in chap. 179. a. passed November 2, 1762: But after in chap. 202. a. passed March 23, the act of 17 Geo. II. chap. 106. a. entitled, "An act for the better relief of the poor in the county of New-Castle," was extended to the counties of Kent and Suffex, and this original act totally repealed.

In March 29, 1775, "An act for the relief of the poor," to wit, chap. 225. a. was passed, where in sect. 31, all acts of Assembly theretofore made for the relief of the poor, and every article, clause and thing in such acts, were repealed and made void.

C H A P. XC. a.

C H A P.
XC.

15 Geo. II.

An ACT for the more effectual preventing and punishing the evil and wicked practices of horse-stealing, and other felonies and offences committed within this government.

WHEREAS the acts of Assembly of this go- Preamble
vernment, heretofore made for the punish-
ment of horse-stealing, and other felonies and rob-
beries, have been found insufficient to restrain per-
sons of profligate and dishonest minds, from com-
mitting such offences; and the number of such hath,
of late years, greatly increased in this government, to
the great damage of the inhabitants thereof: For the
more effectual prevention whereof for the future, and
for the more exemplary punishment of such of-
fenders,

SECTION 2. *BE it enacted by the honorable George Thomas, esq. by and with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent, and Sussex, on Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same,* That from and after the publication of this act, every person who shall feloniously steal, take or carry away any Negro or Mulatto slave, horse, gelding, mare, or colt, or aid or assist any person or persons, in committing any such offence, and being thereof legally convicted or attainted, by verdict of a jury, or confession of the party offending; or being indicted thereof, shall stand mute, or not directly answer to the indictment indorsed with the name or names of the prosecutor or prosecutors, or shall peremptorily challenge above the number of twenty persons, legally returned to be of the jury for the trial of such offenders, shall suffer death without benefit of clergy, in like manner as such felons, by the laws now in force in that

Stealing of slaves, horses, &c. death.

CHAP.
XC.

15 Geo. II.

Breaking into
houses in the
day time, &c.
death.

that part of Great Britain called England, any law of this government to the contrary notwithstanding. (a)

SECT. 3. *And be it further enacted by the authority aforesaid,* That every person who shall feloniously break or enter into any dwelling-house, out-house or other house whatsoever, in the day time, with an intent to kill some reasonable creature, or to commit some other felony; or shall aid or assist any person or persons in committing any such offence, and being thereof legally convicted or attainted, by verdict of a jury, or confession of the party offending, or being indicted thereof, shall stand mute, or not directly answer to the indictment indorsed with the name or names of the prosecutor or prosecutors, or shall peremptorily challenge above the number of twenty persons legally returned to be of the jury for the trial of such offender, shall suffer death without benefit of clergy, any law of this government to the contrary notwithstanding.

Stealing to the
value of Five
Pounds out of
any house,
death.

SECT. 4. *And be it enacted by the authority aforesaid,* That if any person or persons whatsoever, being in a dwelling-house, or any other house, whether as a tenant, lodger, or otherwise, shall take, steal, or carry away, with an intent to imbezzle the same, any money, furniture, goods, wares, or merchandizes, whether he, she, or they be intrusted with the same, or otherwise, to the value of Five Pounds current money of this government, to be valued by any two Justices of the county where the offence shall be committed, at the time of the complaint made by the party aggrieved, or the taking such offender, every such person so offending, shall be deemed a felon, and being thereof legally convicted or attainted, by verdict of a jury, or confession of the party offending, or being indicted thereof, shall stand mute, or not directly answer to the indictment indorsed with the

(a) This sect. 2. and also sect. 6. are repealed and supplied in chap. 45. b. passed June 5, 1779, and the punishment there altered to fining, whipping, pilloring and cutting off part of the ear, and directing that insolvent offenders make restitution by servitude not exceeding seven years.

Manumitted Negroes and Mulattoes convicted of horse-stealing, to be transported and sold for a term of years; for this see chap. 145. b. passed Feb. 3, 1787.

the name or names of the prosecutor or prosecutors, or shall peremptorily challenge above the number of twenty persons, legally returned to be of the jury for the trial of such offender, shall suffer death without benefit of clergy, any law of this government to the contrary notwithstanding.

G H A P.
X C.
15 Geo. II.

SECT. 5. *And be it enacted by the authority aforesaid,* That every person who shall enter into any mansion- or dwelling-house of another, by day or by night, without breaking the same, with an intent to commit felony, or being in such house, shall commit any felony, and shall in the night-time break the said house to get out of the same, shall be taken to be guilty of burglary, and ousted of the benefit of clergy, in the same manner as if such person had broken and entered the said house in the night-time, with an intent to commit felony there, any law of this government to the contrary notwithstanding.

Entering into a mansion-house with intent to commit felony, &c. death.

SECT. 6. *And be it further enacted by the authority aforesaid,* That every person who shall receive or buy, of any such felon or felons, any Negro or Mulatto slave, horse, gelding, mare, or colt, knowing the same to be stolen; or shall knowingly harbour or conceal any felon or felons, in this act before mentioned, or be assisting to the escape of such felon or felons, knowing him or them to be such, shall be deemed guilty of felony, and being thereof legally convicted or attainted, by verdict of a jury, or confession of the party offending, or being indicted thereof, shall stand mute, or not directly answer to the indictment indorsed with the name or names of the prosecutor or prosecutors, or shall peremptorily challenge above the number of twenty persons, legally returned to be of the jury for the trial of such offender, shall suffer death without benefit of clergy, any law of this government to the contrary notwithstanding. (b)

Buying or receiving stolen horses, slaves, &c. knowingly, death.

SECT. 7. *And be it further enacted by the authority aforesaid,* That if any person or persons shall take and prosecute any such felon or felons to conviction

Any person taking and prosecuting such felons, shall have Five Pounds reward.

Vol. I.

2 G

tion

(b) Repealed and supplied as in note to sect. 2.

C H A P.

XC.

15 Geo. II.

tion, within this government, upon every such conviction, and procuring a certificate thereof, under the hands of the judges or justices before whom the conviction shall be, or either of them, which the said judges or justices are hereby directed and required to give, without taking any fee for the same, such person or persons shall receive of the Treasurer of the county where such conviction shall be had, the sum of Five Pounds, lawful money of this government, which the said Treasurer is hereby directed and required to pay out of the public money of the said county in his hands, which shall be raised upon the inhabitants of the said county, in like manner as other county levies are raised.

Any felon discovering and convicting others, shall have Five Pounds, and a pardon.

Exception.

Punishment for receiving stolen goods, wares, &c.

SECT. 8. *And be it further enacted by the authority aforesaid,* That if any person shall have committed any such felony or felonies, and shall afterwards discover any other person, who shall have committed such felony or felonies, so that he or she be legally convicted thereof, every such person so discovering, shall receive the like sum of Five Pounds, to be paid and raised as aforesaid, and shall also be entitled to a pardon of all felonies by him or her committed within this government before such discovery, treason and murder excepted.

SECT. 9. *And be it enacted by the authority aforesaid,* That every person, who shall receive or buy of any felon or felons any goods, wares, or merchandizes, knowing the same to be stolen, and being thereof legally convicted, by verdict of a jury or confession of the party offending, shall be publicly whipt, on his or her bare back, with twenty-one lashes, well laid on, and be branded on his or her forehead with the capital letter R; and shall moreover, for all such goods, wares or merchandizes so received or bought, make fourfold satisfaction to the party injured, with costs of prosecution: And if unable to make such satisfaction, shall, for the making thereof, and payment of the costs of prosecution, as aforesaid, be assigned into servitude, by the court where the conviction is had or made, for any term of time not exceeding seven years, any law of this government to the contrary notwithstanding.

CHAP.

C H A P. XCI. a.

CHAP.
XCI.
15 Geo. II.

An ACT against forcible entry, barratry, maintenance, champerty and embracery.

SECTION I. **B**E it enacted by the honourable George Thomas, esq. by and with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent, and Sussex, on Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same, That whosoever shall forcibly enter into the house, lands, or possessions of any other person, or being entered peaceably, shall forceably hold the house, lands or possessions of any other person within this government, shall be proceeded against and punished as by the several statutes made against forcible entries and detainures in that part of Great Britain called England, is provided and directed.

SECT. 2. And be it further enacted by the authority aforesaid, That if any person within this government, be a common barrator, vexing others with unjust and vexatious suits, or shall promote or encourage others so to do, or shall be guilty of maintenance, champerty or embracery, every such person so offending shall be proceeded against, and punished for his offence, as by the common law and the several statutes made against such offences in that part of Great Britain called England, is provided and directed.

C H A P. XCII. a.

An ACT for ascertaining the proportion of the government charges hereafter to be paid by the several counties of New-Castle, Kent and Sussex, on Delaware. 15 Geo. II.
Repealed by an act of 15 Geo. III. chap. 230. sect. 29,

CHAP.

C H A P.
XCIII.

15 Geo. II.

C H A P. XCIII. a.

An ACT to prevent duelling, and fighting of duels within this government.

FOR preventing of duelling, and fighting of duels within this government;

SECTION 1. *BE it enacted by the honorable George Thomas, esq. by and with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent, and Sussex, on Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same, That if any person within this government shall challenge any other person to fight with sword, pistol, rapier, or any other dangerous and destructive weapon, every such person so challenging, being legally convicted thereof, by bill, plaint, or information, in any Court of Quarter Sessions within this government, shall forfeit and pay the sum of Twenty Pounds, or suffer three months imprisonment in the common gaol of the said county.*

SECT. 2. *And if any person shall carry or deliver to another person any such challenge, knowing it to be such, every such person carrying or delivering such challenge, being legally convicted as aforesaid, shall forfeit and pay the like sum of Twenty Pounds, or suffer three months imprisonment as aforesaid.*

SECT. 3. *And if any person shall accept any such challenge, and meet the person challenging, in order to fight as aforesaid, every such person so offending, and being thereof legally convicted as aforesaid, shall forfeit and pay the sum of Ten Pounds, or suffer six weeks imprisonment as aforesaid.*

CHAP.

C H A P. XCIV. a.

CHAP.
XCIV.
15 Geo. II.

An ACT directing and impowering the several Sheriffs within this government, to summon a sufficient number of freeholders to serve as jurors in the several counties thereof.

SECTION I. **B**E it enacted by the honorable George Thomas, esq. by and with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent, and Suffex, ou Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same, That the Sheriffs of the respective counties within this government, shall, upon receiving a Writ of *venire facias*, to be to them respectively directed, for summoning a jury to attend a Court of Oyer and Terminer within any of the said counties, forthwith proceed to summon twenty-four of the most able, sufficient and substantial freeholders within their respective bailiwick, to serve as Grand Jurors, and forty-eight of the most discreet and judicious freeholders, to serve as Petty Jurors, at the court aforesaid; (a) which said Grand Jurors and Petty Jurors shall be summoned at least ten days before the day appointed for holding the said courts within the said counties. And if any of the said jurors so summoned as aforesaid, shall refuse or neglect

Sheriff's shall
summon twenty
four Grand and
forty-eight Pet-
ty Jurors, ten
days before the
court.

(a) See "An act for more certainly obtaining returns of impartial juries, and their better regulation," chap. 8. c. passed February 2, 1793, directing Sheriffs, &c. to summon and return as jurors for the trial of all issues in civil and criminal causes, a number not less than thirty-six, nor more than sixty; without a special direction of two judges of the courts respectively, for a greater number, not exceeding eighty-four, of sober and judicious persons of fair character, and none other; such summoning to be in writing at least ten days before the return day of the writ or process, annexing thereto a panel containing their christian and sir names, additions and places of abode, with divers special provisions for drawing juries from the numbers so returned, punishing defaults, supplying deficiencies by an award for a *Tales decimumstantibus*, providing in case of views when allowed, for keeping a register of the summoned jurors, furnishing each one with a certificate of his attendance gratis, and lastly, providing for their payment.

See also chap. 204. a. sect. 27. passed March 24, 1770. That if any juror has any matter of fact at issue depending for trial at the same court it is a sufficient cause of challenge, such juror not compellable to serve, nor to receive any reward for attendance.

C H A P.
XCIV.
15 Geo. II.

Penalty on their
not attending.

Penalty on
Sheriffs return-
ing jurors not
to summoned.

A standing
Grand Jury to
be summoned
for the year,

but to be qua-
lified every fel-
low.

lect to attend at the said courts, they and every of them shall be fined by the said court, according to the directions of an act of General Assembly of this government, entituled, *An act against jurors absenting themselves, being lawfully summoned to attend the several courts of judicature within this government.* (b)

SECT. 2. *And be it further enacted by the authority aforesaid,* That if any Sheriff or Sheriffs from and after the end of this present Sessions of Assembly, shall or do return any person or persons to serve as aforesaid, when in truth such person or persons shall not have been summoned according to the directions aforesaid, such Sheriff or Sheriffs shall for every such offence, be fined by the said court, in any sum not exceeding Ten Pounds, and shall be committed till such fine shall be paid. And if any Sheriff or Sheriffs shall refuse or neglect to summon and return persons to serve on the juries as before directed, whereby justice may be delayed, if not altogether eluded; such Sheriff or Sheriffs shall for every such refusal or neglect, be fined by the said court in any sum not exceeding One Hundred Pounds, and shall be committed until such fine be paid, and be disabled from holding or exercising the said office, during the term of three years then next ensuing.

SECT. 3. *And be it further enacted by the authority aforesaid,* That the respective Sheriffs of the several and respective counties within this government, shall, at least ten days before May Sessions, yearly, and every year, without any Writ of *venire facias*, proceed to summon and return twenty-four substantial and judicious freeholders, lawful men, and inhabitants of his bailiwick, to serve as Grand Jurymen at the next May Sessions aforesaid; which said persons, or a sufficient number of them, so summoned and returned, shall be and remain the standing Grand Jury for that year: But the Justices of the respective Courts of Quarter Sessions are hereby required to administer or cause to be administered to the said jurors every sessions the qualifications usual for the faithful discharge of their duty and trust. And the Sheriffs of the said respective counties are hereby required

(b) See before chap. 48. a.

quired to summon twenty-four able, discreet and judicious freeholders, legal men, and inhabitants in the bailiwick to such Sheriffs respectively belonging, at least ten days before each and every Court of Quarter Sessions, to serve as Petty Jurymen for the court or sessions to which they are summoned, and make return of the persons so summoned, at the respective sessions, (b) which persons so summoned and returned by the Sheriffs as aforesaid to serve as Grand and Petty Jurors, are hereby required to attend the respective courts, upon pain of being fined by the courts for such their default, according to the directions of the act of Assembly aforesaid.

CHAP.
XCIV.
15 Geo. II.

Petty Jurors
to be summoned,
&c.

SECT. 4. *Provided always*, That no person shall be obliged to serve as a Grand Juryman for two years successively in any of the said counties.

SECT. 5. *And be it further enacted by the authority aforesaid*, That the Sheriffs of the respective counties of this government, shall, and are hereby required and authorized, from time to time, and at all times hereafter, when and as often as occasion may require, to summon all and every other inquests, or jurors, which Sheriffs ought to summon, or evidences requisite and necessary for the executing justice within their respective counties, who are hereby required to give due attendance accordingly; (c) and the neglects or defaults of the Sheriffs aforesaid, or any of them, shall be punished by fine as aforesaid.

Sheriffs to sum-
mon all other
inquests, &c.

SECT. 6. *And be it further enacted by the authority aforesaid*, That the Coroners of the respective counties aforesaid, shall and are hereby required to conduct, regulate and behave themselves in summoning juries, or other matters where the Sheriff cannot legally do it, by reason of his affinity to any suitors, or otherwise, in the same manner and form as the Sheriffs are by this act directed and impowered, under the like penalties to be inflicted and laid upon Sheriffs for neglects and defaults contrary to this act. And all persons are hereby required, in such cases, to pay the same obedience and attendance

Duty of Cor-
oners in particu-
lar cases.

(b) As to Petty Jurymen, see preceding note (a)

(c) As to neglects or defaults in witnesses attendance, See before, in chap. 38.
2. 2 Geo. II.

C H A P.
XCIV.

15 Geo. II.

attendance to the precepts and summons of such Coroner or Coroners as before directed, as to the precepts and summons of the Sheriffs aforesaid, under the like penalties as above mentioned; and generally to do and execute all other matters and things, which to their offices by the laws of that part of Great-Britain called England, appertain, under the penalties inflicted by the laws of England, for such their neglect or default, so far as the same have received no alteration by this act.

Fines how to be
disposed of.

SECT. 7. *And be it further enacted by the authority aforesaid,* That all the fines and forfeitures arising or becoming due by virtue of this act, shall be and remain, the one moiety thereof to the Governor for the time being, towards the support of government, (d) the other moiety to be paid to the Treasurer of the county, for the use of the poor of the county where the offence is or shall be committed.

Repeal of a former act.

SECT. 8. *And be it further enacted by the authority aforesaid,* That an act of Assembly of this government, entituled, *An act for summoning of juries, and about trials by twelve men,* shall be, and the same is hereby repealed.

C H A P. XCV. a.

15 Geo. II.

An ACT against spreading false news and defamation.

FOR the restraining of evil-minded persons, who by seditious words or libels may endeavour to disturb the public peace and quiet of this government, or defame any of the inhabitants thereof;

SECTION 1. *BE it enacted by the honorable George Thomas, esq. by and with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent, and Sussex, on Delaware, and province of Pennsylvania, by and with the advice and*

(d) This first moiety to go to the use of the state, by chap. 6. b. sect. 5, passed February 22, 1777.

and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same, That if any person shall speak or write any thing tending to the disturbance of the peace of this government, or shall maliciously report and spread abroad false news tending thereto, such person, being thereof legally convicted in any Court of Quarter Sessions in this government, upon presentment or indictment, shall be fined by the said court in any sum not less than Five Pounds, nor exceeding Twenty Pounds, or suffer three months imprisonment at hard labour in the house of correction. And that all the fines and forfeitures arising by this act, shall be paid to the Governor for the time being, for the support of government.

C H A P.
XCV.
15 Geo. II.

SECT. 2. *And be it further enacted by the authority aforesaid,* That whosoever shall slander or defame any person whatsoever within this government, the person or persons so slandered or defamed may bring his or their action at law against such slanderer or slanderers; and if the plaintiff in such action shall obtain a verdict, although the damages given may be under Forty Shillings, the plaintiff in such action or actions shall recover his or her costs, in such manner as he or she should have done in case the jury had found damages to the value of above the sum of Forty Shillings. (a) And all former acts of Assembly of this government concerning defamation and slander, are hereby repealed.

C H A P. XCVI. a.

An ACT directing the punishment of petty larceny. Repealed and supplied in chap. 120. b. passed June 4, 1785, where this offence is to be prosecuted and punished as in the "Act against larceny to the value of Five Shillings and upwards," for which see chap. 120. a. sects. 1, 2, 3. 25 Geo. II.

15 Geo. II.

VOL. I.

2 H

CHAP.

(a) Ante chap. 86. a. sect. 2. and no e. there.

C H A P.
XCVII.

15 Geo. II.

C H A P. XCVII. a.

An ACT against trusting mariners.

TO the end that no ship or vessel may be detained from proceeding in the intended voyage by the arrest of any sailer or mariner shipped or belonging to any such ship or vessel in any port or harbour within this government;

BE it enacted by the honorable George Thomas, esq. by and with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent, and Sussex, on Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same, That no tavern-keeper or innholder, or other person within this government, shall trust any sailer or mariner shipped or belonging to any ship or vessel in any port or harbour within this government, above the sum of Ten Shillings, unless the Master, Commander or Owner of such ship or vessel, to which such sailer or mariner belongs, give his or their orders or consent for the trusting such sailer or mariner. And that no person trusting any sailer or mariner belonging to, or shipped as aforesaid, for any value above the sum of Ten Shillings, without such order or consent as aforesaid, after tender to him or her made of the said sum of Ten Shillings, and costs, if any shall have arisen, shall stop or hinder such sailer or mariner from proceeding the intended voyage for which he shall then be shipped, any law, custom or usage to the contrary notwithstanding.

CHAP.

C H A P. XCVIII. a.

C H A P.
XCVIII.

15 Geo. II.

An ACT for the appointing a corder or measurer of fire-wood in each of the towns and villages within this government.

SECTION I. **B**E it enacted by the honorable George Thomas, esq. by and with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent, and Suffex, on Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same, That all fire-wood sold and bought in any of the towns and villages within this government, shall be by the cord, each cord to contain in length eight feet, in breadth four feet, and in height four feet, and so in proportion for a greater or lesser quantity: And that all such wood shall be of the length of eight feet, or of four feet, to be measured from the extremity at one end unto the beginning of the cut or carf at the other end, and shall be laid or corded as close as possible, and all crooked pieces, if occasion be, shall be cut, for the more compact and better stowage thereof.

Fire-wood shall be sold by the cord;

measure of a cord.

SECT. 2. *And be it further enacted by the authority aforesaid,* That the Justices of the Court of Quarter Sessions, in each of the counties within this government, shall and are hereby required, from time to time, as often as occasion shall be, to appoint some suitable and proper person to be a measurer or corder of all fire-wood which shall be brought for sale into any of the towns or villages within the several counties; and the said person or persons so appointed, upon misbehaviour to remove from his or their office, and some other more suitable person to appoint in his or their room and stead. And that there shall be paid by the buyer of such wood unto the said corder or corders, or his or their deputy or deputies respectively, for each cord of wood by him or them corded and measured

Justices empowered to appoint corders.

C H A P.

XCVIII.

15 Geo. II.

Corder's fee.

Corders may
appoint deputies.Corders to be
qualified:Penalty on other
persons measuring
of wood.

measured, the sum of Six-pence, (a) and so in proportion for any greater or lesser quantity; one half whereof shall by the person selling the same, be repaid to the buyer, or deducted out of the price thereof; and upon non-payment thereof, the same may be recovered by the said corder, deputy and buyer respectively, in like manner as debts under Forty Shillings.

SECT. 3. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for the said corder of wood for any of the towns or villages within this government, to appoint one or more deputy or deputies to be his assistant or assistants, when and so often as he shall see or have occasion. But before the said corder or corders of wood, hereafter to be appointed by virtue of this act, enter upon the execution of the trust hereby reposed in him or them, every corder and deputy shall be qualified upon oath or affirmation before some Justice of the Peace of the same county wherein such corder or corders, deputy or deputies shall be appointed; which oath or affirmation any such justice is hereby impowered and required to administer, *That he or they will well and truly, to the best of his or their knowledge and ability, fairly and impartially cord and measure all such wood as he or they shall cord.*

And no person or persons whatsoever, without deputation from the corder, shall cord or measure any firewood hereafter to be sold or brought to sale into any of the towns or villages aforesaid, upon pain of forfeiting the sum of Ten Shillings for each cord of wood by him or them corded or measured, and in proportion for any lesser quantity, to be recovered, together with costs, by distress and sale of the offender's goods and chattels, by warrant under the hand and seal of any Justice of the Peace of the same county, and paid, the one moiety thereof to the corder for the time being, the other moiety to the informer.

CHAP.

(a) See a supplementary act hereto, chap. 109, c. passed February 9, 1796. This fee increased to Ten Cents penalty for neglect of duty in sect. 3.

C H A P . X C I X . a .

C H A P .
X C I X .
15 Geo. II.

An ACT for establishing a market in the town of Dover in the county of Kent, and in the town of Lewes in the county of Sussex, within this government. (a)

WHEREAS the want of regular markets in the towns of Dover in the county of Kent, and Lewes in the county of Sussex, within this government, is attended with great inconveniencies as well to the inhabitants as to persons offering provisions to sale in the said towns : For remedy whereof,

SECTION 2. BE it enacted by the honorable George Thomas, esq. by and with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent, and Sussex, on Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same, That from and after

the publication of this act, no person or persons whatsoever, shall presume either to buy or sell any kind of provisions (fish, milk and bread excepted) on market-days, within any part of the said town of Dover, but in such part of the market-square, as by the Justices of the said county of Kent, or the majority of them, shall be appointed, until there shall be erected a market-house in the said town, and after the building of a market-house, shall not sell the same in any other place than the said market-house ; or in the said town of Lewes, in any other place but at the public market-house of the said town of Lewes, under penalty of forfeiting both by the buyer and seller, all such provisions so sold or bought, or the value thereof, to be levied, together with costs, by the Clerk of the Market of the said towns respectively, by distress and sale of the offender's goods and chattels respectively, by warrant under the hand and seal of any one Justice
of

No provisions to be bought or sold but in the markets, except, &c.

Penalty.

(a) See an amendatory act hereto, chap. 124. a. 25 Geo. II. relating to the town of Dover only.

C H A P.
XCIX.

15 Geo. 11.

Poor or unsound
flesh how to be
disposed of.

of the Peace of the respective county, and to be applied to the use of the poor of the same county.

SECT. 3. *And be it further enacted by the authority aforesaid,* That if any person or persons shall presume to bring or carry to the said markets, or either of them, and sell or offer to sale any meat or flesh that shall be poor, lean or carrion, or any other provision or provisions not found and wholesome; every person so offending shall forfeit the same, if too poor or lean for sale, to the use of the prisoners in the common gaol of the respective county, or the poor; if unwholesome or unsound, to be burnt, or thrown into some creek or river.

Butchering for-
bid within the
limits of the
markets.

SECT. 4. *And be it further enacted by the authority aforesaid,* That no person or persons whatsoever, shall presume to kill or slay any cattle, sheep, calves, or hogs, within the limits of the said square or market-house or houses, on penalty of forfeiting the sum of Five Shillings for every such offence, to be levied as aforesaid, and applied to the use of the poor of the said counties respectively.

Penalty on
frauds in weight
of butter, &c.

SECT. 5. *And be it further enacted by the authority aforesaid,* That if any person or persons whatsoever, shall, by themselves or others, either sell or offer to sale, any butter, cheese, tallow, or any sort of provisions, by any false weights, or for more weight than the same shall be found to be by trial of the Clerk of the respective market for the time being, upon complaint made, such person or persons shall, for every such offence, forfeit such butter, cheese, tallow, or provision so sold or offered to sale; and the Clerk of the said market is hereby empowered and required to seize the same, to be applied to the use of the poor of the said county.

Market days
appointed.

SECT. 6. *And be it further enacted by the authority aforesaid,* That at all times hereafter every Wednesday and Saturday in each week, and no other day or days whatsoever, shall be deemed and taken for the public and regular market-days of the said towns of Dover and Lewes.

No flesh to be
sold on Tues-
days or Fridays,
except, &c.

SECT. 7. *And be it further enacted by the authority aforesaid,* That no person or persons whatsoever, shall presume to hawk or carry about the said towns of
Dover

Dover and Lewes, or to expose to sale on the square in the town of Dover; or in the market-house or market-houses of the said towns of Dover and Lewes, or either of them, any flesh-meat on the Tuesdays or Fridays in each week, except in the months of June, July and August, on pain of forfeiting such flesh-meat, or the value thereof, to be recovered in like manner as other forfeitures are directed to be recovered by this act, and paid, the one moiety thereof to the said Clerk, for the use of such Clerk, the other moiety to the Treasurer of the County, for the use of the poor of the said county.

C H A P.
XCIX.

16 Geo. II.

SECT. 8. *And* for preventing frauds that may happen to be committed by public bakers of bread for sale in the said towns of Dover and Lewes, *Be it enacted by the authority aforesaid*, That from and after the publication of this act, every baker or bakers of bread for sale within the said towns of Dover and Lewes, shall and are hereby directed and required to make or impress some mark, letter or name of such baker on every such bread as he or she shall bake for sale as aforesaid, on penalty of paying for every such neglect, the sum of Five Shillings to the Clerk of the respective market aforesaid for the time being.

Bakers shall mark their bread;

SECT. 9. *And be it further enacted by the authority aforesaid*, That all soft or loaf-bread, baked or to be baked for sale within the said counties of Kent and Suffex, shall be either white, middling, or brown, and of no other sort whatsoever: And that the Justices of the Court of Quarter-Sessions for the said counties respectively, shall and are hereby impowered and required, from time to time, at their Quarterly Sessions of the Peace, to settle and appoint the size and weight of the several sorts of bread which shall be baked for sale in the said towns of Dover and Lewes respectively: And all bakers in the said towns shall conform themselves, and make the bread by them baked for sale, agreeable thereto, on pain of forfeiting, for every such offence, all such bread as upon trial of the Clerk of the Market shall be found to be of lesser weight, to be by the said Clerk seized for the use of the poor of the respective county, and Five Shillings to the said Clerk, to be recovered as aforesaid: And that no

penalty on neglect.

Sorts of bread to be baked.

Size and weight of bread shall be conformable to appointment made by the justices.

baker

CHAP.
XCIX.
15 Geo. II.

baker shall, upon any pretence whatsoever, make any different or other sorts of bread for sale, but white, middling and brown, under the penalty of forfeiting the same, to be applied in manner aforesaid.

Clerks of the
market appointed,

their Power.

Clerks to keep
fair accounts.

In case of death,
&c. justices may
appoint new
clerks.

Qualification of
Clerks of the
Market.

SECT. 10. *And be it further enacted by the authority aforesaid;* That Thomas Nixon, of the town of Dover aforesaid, is hereby appointed and constituted Clerk of the Market for the said town of Dover; and Joshua Fisher, of the town of Lewes aforesaid, is hereby appointed and constituted Clerk of the Market for the said town of Lewes; who are hereby strictly charged and commanded to put this act and every part thereof in execution in their respective towns, and impowered to receive, demand and recover all such penalties, fines and forfeitures, as in this act are directed to be forfeited and paid; and to enter into all such places and houses where they shall suspect any such bread to be which shall not be made agreeable to the directions of this act; and to examine the weights, and try the same, for the purposes in this act before directed.

SECT. 11. *And the said Clerks respectively are hereby directed and required to keep fair and just accounts of all fines, forfeitures and penalties that each of them shall receive by virtue of this act, and settle such accounts once in every year with the Treasurers of the respective counties, and pay to them all such sum and sums of money as shall by them be received for the use of the poor.*

SECT. 12. *And be it further enacted by the authority aforesaid,* That upon the death, refusal, removal, or inability of any of the Clerks of the said markets of Dover and Lewes, appointed by virtue of this act, the Justices of the Court of Quarter Sessions for the said counties of Kent and Suffex respectively, shall, and are hereby impowered and required to appoint, from time to time, so often as there shall be occasion, some fit and proper person or persons to serve in the Office of Clerk of the Market of the aforesaid towns of Dover and Lewes respectively; which said Clerks of the said markets hereby appointed, or that shall hereafter be appointed by virtue of this act, before they or any of them shall presume to enter

Enter upon their said office or offices, or execute the trust reposed in them, shall first take an oath or affirmation before some Justice of the Peace of their respective county, *That they shall and will well and truly demean and behave themselves in their respective Offices of Clerks of their Markets aforesaid, and impartially discharge the trust reposed in them by virtue of this act.*

C. H. A. P.
XCIX.
15 Geo. II.

C H A P. G. a.

An ACT to prevent stoned horses under size from running at large within this government.

15 Geo. II.

FORASMUCH as the generation and breed of good and strong horses within this government, is of great benefit and profit to the inhabitants thereof: Therefore, for the increase of such,

SECTION 1: *BE it enacted by the honorable George Thomas, esq. by and with his Majesty's royal approbation, Lieutenant Governour and Commander in Chief of the counties of New-Castle, Kent, and Suffex, on Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the free-men of the said counties, in General Assembly met, and by the authority of the same,* That from and after the first day of June, in the year of our Lord One Thousand Seven Hundred and Forty-two, between the first day of March and the first day of November, yearly; and every year, no stoned horse or horses above the age of two years, and not being of the height of thirteen hands and an half, to be measured from the lowest part of the hoof of the fore-foot to the highest part of the wither, and each hand to contain four inches, shall by the owner or owners thereof be permitted to range or run at large in any of the woodlands or marshes within this government. And if any such horse, above the age of two years, and under the height of thirteen hands and an half as aforesaid, shall within the time above-limited be found at large as aforesaid, it shall and may be lawful to and for any freeholder within this government, finding such horse,

No stoned horse under thirteen hands and an half, shall be permitted to go at large.

CHAP.

C.

15 Geo. II.

to take up the same, and him to bring to the next Justice of the Peace of the county wherein the said horse shall be taken up; which said Justice shall cause such horse's age and height to be enquired into, or examined and measured, and upon finding him to be above the age of two years, and under the height by this act required, the said justice shall and is hereby impowered and required to administer an oath or affirmation to the person or persons taking up such horse, that he or they did find the said stoned horse at large within the said county, and that neither he or they, or any other person or persons for him or them, or by his or their means, privity, or procurement, or to his or their knowledge, did drive or turn the said horse out of the inclosure of any person or persons whatsoever, or did pull or lay down the fence or fences, or any part thereof, or open any gate or door of any person or persons, with intent that the said horse might go out of such inclosure: Whereupon the said justice shall cause notice to be given to the owner of such horse, if known, requiring him immediately to appear before him; and upon appearance of such owner, or some other proper person for him, the said justice shall order the said owner to pay unto the person or persons taking up the said horse, the sum of Twenty Shillings, to be recovered, together with costs, in like manner as debts under Forty Shillings. And the said justice shall cause the said horse to be delivered to such owner or other proper person for him, and order him to have the said horse cut or gelded within the space of three days then next following. And if the owner of such horse shall neglect or refuse to cause the said horse to be gelded as aforesaid, and the same horse shall afterwards be found at large, and not gelded, upon complaint and due proof thereof made before any two Justices of the Peace of the said county, the owner of the said horse shall forfeit the said horse, or pay the sum of Five Pounds, to be recovered by distress and sale of such owner's goods and chattels, by warrant under the hands and seals of the said justices, and paid, the one moiety thereof to the Treasurer of the county, for the use of the poor of the said county, the

Penalty.

Further penalty.

the other moiety to the informer; or the horse forfeited shall be gelded and sold as in this act after directed; and after payment of all necessary charges, the money arising by the sale, shall be applied and paid as aforesaid.

C H A P.
C.
15 Geo. II.

SECT. 2. *And* if, upon notice given to the owner of any stoned horse taken up, and found under size as aforesaid, the owner shall refuse or neglect to appear before the said justice, or to send some proper person in his behalf or stead, or if the owner of any such horse shall not be known, then the said justice shall order the taker-up of any such horse to lead or take him to some proper and skilful person, by the said justice to be named, and the same horse to cause to be cut or gelded at the risque of the owner thereof, and the taker-up shall take into his care and keeping the said horse, until cured; for which cutting, keeping and service, there shall be paid to the said taker-up by the owner of such horse, or out of the money arising by the sale thereof, the sum of Ten Shillings, over and above the aforesaid sum of Twenty Shillings: And the said taker-up shall put up in three of the most public places of the hundred wherein the said horse was taken up, advertisements describing the size, colour, age and marks of the said horse, and setting forth, that if the owner thereof shall not before the end of fifteen days then next following, come in, and prove his property, and pay the charges, the said horse will be sold at public vendue. And in case no owner shall within the said fifteen days claim the said horse, and pay charges as aforesaid, then the said horse, being duly advertised as aforesaid, shall, by order of the said justice, be sold at public vendue, by some Constable of the same hundred, and the money arising by the sale shall be delivered to the said justice, who out of the same shall pay to the taker-up his charges for taking up, cutting and keeping the said horse, and his own and the Constable's fees; and the overplus, if any be, shall remain in the hands of the said justice, for the use of the owner of such horse, if within six months after such sale, he shall come in, and, to the satisfaction of such justice, prove his or her property therein. And in case no owner shall, within

The owner not appearing, or not being known, the justice shall order such horse to be cut, &c.

Advertisements to be put up.

No claim being made in fifteen days, the horse shall be sold, &c.

C H A P.
C.
15 Geo. II.

within the space of six months aforesaid, prove his or her property aforesaid, the said overplus money shall by the said justice be paid to the Treasurer of the county, for the use of the poor of the said county; and the said owner shall for ever after be foreclosed and debarred from any title or claim thereto.

None but freeholders may claim the reward, &c.

SECT. 3. *And be it enacted*, That no person other than a freeholder within this government, shall be entitled to any reward for taking up any such stoned horse under size as aforesaid.

Sales of horses by virtue of this act, shall be good.

SECT. 4. *And be it further enacted by the authority aforesaid*, That all and every sale and sales of any horse and horses hereafter to be made by virtue of this act, shall be good and available in law, to all intents and purposes whatsoever; and that the buyer and buyers of every such horse and horses, shall, or lawfully may hold and retain the same horse and horses, and every of them, to his and their own proper use, as his and their own proper goods and chattels, without any lett, interruption, vexation, suit, or trouble of the former owner or owners of them, or any of them, or any other person or persons whatsoever.

Repeal of a former law,

SECT. 5. *And be it further enacted by the authority aforesaid*, That an act of General Assembly of this government, entitled, *A law preventing stoned horses under the height of thirteen hands and an half, from running at large*, shall be, and the same is hereby repealed.

C H A P. C I. a.

15 Geo. II. *An ACT to encourage the killing of wolves within this government.*

BE it enacted by the honorable George Thomas, esq. by and with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent, and Sussex, on Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties,

counties, in General Assembly met, and by the authority of the same, That if any person shall kill any wolf, and shall bring the head thereof to any Justice of the Peace of any of the counties of this government, and upon oath or affirmation declare that such wolf was killed within the county to which such justice doth or shall belong; every such person shall receive, for killing a grown wolf, the sum of Fifteen Shillings, and for killing a whelp, or puppy, the sum of Ten Shillings, to be paid by the Treasurer of the county out of the public money of the said county, raised or to be raised as county levies are; and the said justice shall cause the ears of every such wolf or puppy to be cut off, and shall give unto such person a receipt and certificate to the said Treasurer, who is hereby directed and required to pay the said money to the person who killed such wolf, or his order.

C H A P.
C.
15 Geo. II.

2d. C H A P. CI. a.

16 Geo. II.

An ACT for the better settling intestates estates. Repealed 24 Geo. II. see after in chap. 119. a. sect. 14.—Note, this act passed in 16 Geo. II. and for which see the appendix.

C H A P. CII. a.

16 Geo. II.

An ACT for raising county-rates and levies.

WHEREAS it is necessary, yearly, and every year, to raise several sums of money for the defraying and paying the public charges of the respective counties of this government: Therefore, for the more easy and regular laying and raising the same,

SECTION 2. *BE it enacted by the honorable George Thomas, esq. with the King's royal approbation, Lieutenant Governor and Commander in Chief, under the honorable John Penn, Thomas Penn, and Richard Penn, esquires,*
true

CHAP.
CII.
16 Geo. II.

Freeholders to
chuse Assessors
yearly.

Penalty on As-
sessor not serv-
ing.

true and absolute proprietaries of the counties of New-Castle, Kent, and Sussex, upon Delaware, and province of Pennsylvania, and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same, That the freeholders and inhabitants of the respective counties of this government, who are legally qualified to elect and be elected Members of Assembly, shall yearly, and every year, on the first day of October, at the place appointed for making such elections, by a majority of voices of the electors, as aforesaid, for each hundred, chuse one substantial freeholder for every hundred in the counties aforesaid, to be the Assessor for the ensuing year; (a) and when such assessor or assessors shall be so chosen, the Sheriff of the respective counties shall take down their names in writing, under the hands and seals of six or more of the freeholders of the respective counties where they shall be so chosen, and certify the same to the justices of their General Sessions of the Peace in each of the counties next after such election, which return shall be entered on record in the session's minutes; and such assessor or assessors being so chosen as aforesaid, shall serve in said office, under the penalty of Twenty Shillings, to be recovered by a warrant under the hand and seal of any one Justice of the Peace of the county, to be paid to the Treasurer for the use of the poor of the county. And if any such assessor or assessors so chosen as aforesaid, shall happen to die, or remove out of this government, or be otherwise disabled to serve in the said office, the justices of the respective county-courts

(a) See an act directing the choice of Inspectors and Assessors, and for the amendment of this act for raising county rates and levies, chap. 187. a. passed November 1, 1766. Who are to be ballotted for annually on 15th September, unless that shall happen on Sunday, then on the day after, in each hundred at some convenient place therein to be appointed by the Collector of Public Taxes for the hundred, or in case of his disability, refusal, &c. by the Overseers of the Poor thereof, &c. who with two freeholders are to preside at such election, first giving ten days previous notice thereof: And after to certify under their hands and seals the names of the persons so chosen to the Sheriff of the county, &c. who is to return such certificate into the office of the Clerk of the Peace within three days after the general election, &c.

By the supplementary act to the act for the better relief of the poor, chap. 249. b. sect. 13, passed February 4, 1792, Constables are to perform and execute several duties of Overseers of the Poor directed by several laws of the state made previous to January 29, 1791, the time of passing the principal act, whereby that office was done away by a new substitution of persons styled "Trustees of the Poor," &c.

courts shall so often as it shall so happen, nominate and appoint another fit person to serve in the said office, until a new election shall be made in manner aforesaid. But before any of the said assessors so to be chosen or returned as aforesaid, shall take upon themselves the service and duty by them to be performed and executed, under the directions of this act, they shall be qualified, by taking an oath or affirmation, to the effect following, viz.

© H A P.
CII.
16 Geo. II.

I A. B. will well and truly lay, or cause the rates and sums of money by virtue of this act to be imposed or raised, duly and equally to be assessed and laid, according to the best of my skill and knowledge; and herein I will spare no person for favour or affection, or grieve any for hatred or ill-will.

Their qualification.

Which qualification may be administered by any Justice of the Peace of the respective counties, where such assessor or assessors shall be chosen as aforesaid. (b) And if the inhabitants of any of the said counties neglect or refuse to chuse or elect such assessor or assessors (after assessors shall be once chosen by virtue of this act) then and so often, and when it shall so happen, the assessor or assessors of the next preceding year shall continue to officiate in their respective station as assessor or assessors, until a new election shall be made, pursuant to the direction of this act. (c)

No new choice being made, the old Assessors shall continue, &c.

SECT. 3. And be it further enacted by the authority aforesaid, That the Justices of the Peace of the respective counties within this government, or any three of them, at their respective courts to be held in the month of November yearly, and every year, for laying the levies, together with eight Grand Jury-men, or such of them as will attend, and the assessors, or the majority of them, (d) shall meet at the court-houses

Justices, eight Grand Jurymen, and Assessors, to meet and settle the public debts, &c.

(b) See " An act for the valuation of real and personal property within this state," chap. 98. c. passed February 9, 1796 for another form of a qualification to be taken by an assessor by and before a commissioner of taxes, a new body under the said act.

(c) See in said act, chap. 98. c. sect. 12. further provision for compelling assessors to serve as such, and do certain duties assigned to them in the said act, and also for supplying vacancies.

(d) See " An act to amend the laws of this state for raising county rates and levies," chap. 18. c. passed June 14, 1793, wherein the constitution of this Levy Court and Court of Appeal, in sect. 8. of this original act, is totally changed, and the powers

CHAP.
CII.
16 Geo. II.

houses within the said counties, on the next Tuesday following their respective county courts held in the month aforesaid, and shall then and there proceed to calculate and settle the public debts and charges of the respective counties, allowing all just debts and demands which now are or hereafter shall be chargeable upon the said respective counties, and shall settle and adjust the sum and sums of money, which ought of necessity to be raised yearly, to defray the charges of building and repairing court-houses, prisons, work-houses, or for destroying wolves, crows and black-birds, with such other uses as may redound to the public service and benefit of the said counties respectively; and shall also ascertain and set down such competent sum and sums of money, as shall be yearly applied toward every of the said duties and services; together with such sum or sums as may be needful to make good deficiencies in county-rates assessed and not yet collected, and to enforce the collection thereof as need may require.

Lists of taxables,
&c. to be
brought in
every August
Sessions.

SECT. 4. *And be it further enacted by the authority aforesaid,* That the Clerk of the Peace in each county, shall and is hereby required, at every August sessions to issue forth precepts directed to the Constables of every hundred or district, requiring them to bring to the said justices at the November sessions next after the date of such precepts, fair and true lists or accounts in writing, upon their oaths or affirmation, of the names and surnames of all and every the taxable persons residing or dwelling within the limits of those hundreds or districts with which they shall be charged, and the names of all the freemen, inmates, hired servants, and all other persons residing or sojourning in every of their hundreds or districts aforesaid; (e) upon pain of forfeiting any sum not exceeding five Pounds, at the discretion of the justices aforesaid, to be

Penalty on neglect.

thereof vested in Commissioners to be chosen, as to numbers and residence as specially prescribed in said chap. 18. c. at the same time and place, and in the same manner that Senators and Representatives for the counties are.

(e) See the act beforementioned, chap. 187. a. sect. 9. for further provision as to the contents of such lists of taxables and for procuring returns thereof. But see said chap. 98. c. from sects. 4 to 10 inclusive, where other provision is made.

be levied by distress and sale of the delinquent's goods and chattels, to be paid to the Treasurer of the county, for the use of the poor of the county; and for want of such goods or chattels, then to take the body of such offender or offenders in execution, to be committed to the county gaol, there to remain until debt and cost are fully paid, or be otherwise legally discharged. And every of the said Constables shall have and receive of the Treasurer of the respective counties for the time being, the sum of Five Shillings each, for their care and trouble in taking and returning the said lists in manner aforesaid.

SECT. 5. *And be it further enacted by the authority aforesaid,* That after settling and allowing all just debts and demands chargeable upon the respective counties, and adjusting and settling the sum and sums of money of necessity to be raised as aforesaid, to be allowed by the Justices, Grand Jurymen and Assessors aforesaid, it shall and may be lawful for the Assessors of the respective counties, and they are hereby required to meet together, and by the Constables returns, or any other lawful way or means, inform themselves what persons and estates in their respective counties are rateable by virtue of this act; and shall forthwith equally and impartially assess themselves and all others as aforesaid (exempting out of such assessments all unsettled tracts or parcels of land, and having due regard to such as are poor, and have a charge of children, the poorer sort of such not to be rated under Eight Pounds) and no single man, who at any time of assessment is under twenty-one years of age, or hath not been out of his servitude or apprenticeship six months, shall be rated by this act; and as to those single men who have no visible estates; they shall not be rated under Twelve Pounds, nor above Twenty-four Pounds. (f)

SECT. 6. *And be it further enacted by the authority aforesaid,*

VOL. I

2 K

aforesaid,

(f) This sect. 5, added to and explained in the aforesaid chap. 187. a. sects. 10, 11. But see said chap. 48. c. throughout, for an entire new arrangement of duties to be performed by the Assessors, as also by the six Commissioners of Tax to be appointed in each county under that act.

See also sect. 32. thereof, that the Commissioners of the Levy Court and Court of Appeal may, at their discretion, strike any person's name off the Levy List.

C H A P.
CII.

16 Geo. 4k.

Fair duplicates
to be delivered
to the Treasur-
ers.

Copies of assess-
ments to be
published.

Penalty on Neg-
lect.

Justices, &c.
to meet and hear
complaints, &c.

aforesaid, That the said respective sums of money, with the names of the persons to whom payable, and the particular uses to which they are appropriated, shall be entered on the minutes kept by the Clerk of the Peace of each respective county; who is to officiate as Clerk of the Levy Court, which said Clerk is to transcribe, from said minutes, fair and true duplicates of all the proceedings of said court, to be delivered to the Treasurer of each respective county for the time being; who is hereby required to provide good and sufficient books, at his own cost and charge, where he shall make entries of the said duplicates accordingly.

SECT. 7. *And be it further enacted by the authority aforesaid*, That after the making such rates and assessments as aforesaid, the Clerk of the Peace in each respective county shall set up, or cause to be set up and published in the most public places of the respective hundreds of the said counties, in writing under his hand, a true copy of such rates and assessments as aforesaid, together with notice of the day appointed by this act for holding the Court of Appeal; and for every neglect or refusal to forfeit and pay the sum of Twenty Shillings, to be paid to the Treasurer for the time being, for the use of the poor, to be recovered by warrant under the hand and seal of any Justice of the Peace of said county, by distress and sale of the offender's goods and chattels.

SECT. 8. *And be it further enacted by the authority aforesaid*, That after the Justices, Grand Jurymen and Assessors, or a majority of them, shall have made such rates, calculations and assessments as aforesaid, the said justices shall appoint that day four weeks from the time of their meeting in each of the respective counties to meet again (g) at the same place to hear the complaints, and redress the grievances of such person or persons as shall be unequally or over-rated,

(g) See after in chap. 137. s. sect. 4. See sect. 98, of the said act chap. 28. c. directing the Commissioners of the Levy Court and Court of Appeal to meet on the first Tuesday in January in each year, for the purpose of remedying the complaints of all who may be unequally or over-rated.

rated, and, upon just cause shewed; they are hereby impowered to add or diminish to such person's rate or assessment as to them shall seem just and reasonable; and they may then and there call before them such person or persons as they find are omitted in the said assessment, and rectify such omission or omissions; and if the person or persons so omitted refuse or neglect to appear, to give an account of his, her, or their estate or estates, he, she, or they so offending, shall forfeit and pay any sum under Twenty Shillings, at the discretion of the court, to be paid to the Treasurer for the use of the poor of the county, and on default thereof, to be recovered by a warrant under the hand and seal of any one Justice of the Peace of the said county, by distress and sale of the offender's goods or chattels. (b)

C H A P.
CII.
16 Geo. II.

Omissions to be rectified.

SECT. 9. *And be it further enacted by the authority aforesaid,* That on the day the Justices, Grand Jurymen and Assessors do meet to hold their Court of Appeal, as before is directed, in each of the respective counties aforesaid, or so many of them as will be present, they shall and are hereby required to nominate and appoint one substantial freeholder at least in every hundred, to be Collector of the public tax or assessment from time to time, and immediately after such second meeting or days of appeal as aforesaid; shall cause duplicates of the said assessments of each hundred to be transcribed from the Records of the Court by the Clerk, and by him delivered to the Collector of each respective hundred, with a warrant from the justices aforesaid, or any two of them, empowering such Collector, in his proper district, to demand and receive of the persons assessed, the respective sums of money wherewith they shall stand charged in his list or duplicate as aforesaid. And if any person or persons so rated or assessed by virtue of this act, shall refuse or neglect to pay the sum or sums so assessed, or any part thereof, by the space of ten days after demand made, such person or persons

Collectors to be appointed by the Commissioners of this court. See note (d) at sect. 3. Antc.

(b) See in section 20, of the same act, chap. 98. c. how persons omitted by the Assessors may be rated by the Commissioners of Tax.

H A P.
CII.

16 Geo. II.

Their power.

persons being a freeholder, it shall and may be lawful for the said Collectors respectively, to levy by distress and sale of the goods and chattels of the person or persons so neglecting or refusing to pay as aforesaid, the said several sums of money that the said person or persons stand chargeable with, and to make sale thereof, rendering the overplus (if any be) to the owner or owners thereof, after all reasonable charges be deducted; but if no distress can be found by the respective Collectors, and the party assessed refuse or neglect to shew goods or chattels of his own forthwith to be levied upon to satisfy such assessment, with reasonable charges, then such Collector shall take the body of every such person or persons so neglecting or refusing to pay as aforesaid, and bring him to the county gaol, and deliver him to the Sheriff, or keeper of the said gaol, who is hereby required to receive and detain him in safe custody, until payment, with costs, be made.

Collectors to
render accounts.

SECT. 10. *And be it further enacted by the authority aforesaid,* That the said Collector shall once in ten months at least, from such day or court of appeal as aforesaid, render a just and true account of, and pay unto the respective County Treasurer for the time being, all such sums of money as they or any of them shall have then received, and shall pay all and every the sums of money aforesaid in their respective duplicate, within the space of eleven months after such day of appeal as aforesaid; and the Treasurer's receipt to the Collectors shall be a sufficient discharge from such collection or assessment. And if any of the said Collectors refuse or neglect to pay the sum or sums of money, or any part thereof, that they shall be accountable for as aforesaid, according to the directions of this act (retaining such sum or sums as are herein after allowed for collecting and paying the same) then such delinquent Collector shall be fined by the respective county court, in any sum not exceeding Five Pounds; and the said county court shall appoint another Collector or Collectors as the case

Penalty on delinquents.

may

may require, to act in his or their stead until the next Court of Appeal. (i)

CHAP.
CII.

16 Geo. II.

Collectors fees.

SECT. 11. *And be it further enacted by the authority aforesaid,* That the fees of the respective Collectors within this government, shall be as followeth, viz. For collecting and paying to the Treasurer any sum or sums of money by him or them so collected and paid as aforesaid, at the rate of ten per cent. and so in proportion for any greater or lesser sum or sums of money; and for taking and selling the goods or chattels by virtue of their warrant in execution, or making distress as aforesaid, shall be Three Shillings and Six-pence, and no more; and for taking the body of any person, and delivering him to the Sheriff or Gaoler as aforesaid, shall be Four Shillings, and no more, any law, custom or usage to the contrary notwithstanding.

SECT. 12. *And be it further enacted by the authority aforesaid,* That the respective County Treasurers (k) for the time being, or any others to be chosen by virtue of this act, before they enter upon their respective offices, according to the directions of this act, shall give bond to the Justices of the Court of Quarter Sessions, in the name of the Governor for the time being, with one or more sufficient sureties, in the sum of Five Hundred Pounds, conditioned for the true execution of their respective offices, and due observation of this act; (l) which bond shall be immediately recorded by the Clerk of the Peace, in the minutes of the aforesaid court: And in case of death, or removal of any of the said Treasurers, then the Justices of the Peace of the proper counties for the time being, or the major part of them, shall appoint

County Treasurer to give bond.

Vacancies how to be supplied.

(i) That Collectors of the State Tax directed by annual acts to be raised for the support of government are now by special provision therein to be appointed by, and accountable to the State Treasurer.

(k) A good and substantial freeholder to be appointed Treasurer at the Court of Appeals in each county, and to continue in office three years, giving security, &c. for which see chap. 137. a. 25 Geo. II.

(l) See said chap. 98. c. sect. 27. That such Treasurer is to give bond with one or more sufficient sureties in the name of the State of Delaware, to be approved of by the Commissioners of the Levy Court and Court of Appeals in the sum of Six thousand Dollars, &c.

C. H. A. P.
CII.

16 Geo. II.

Treasurer's al-
lowances, &c.

appoint others to supply the places of such as shall so die or be removed from time to time; which said Treasurer shall give security in manner aforesaid, and shall keep a distinct book in each county, containing a particular account of all the rates and assessments made or to be made as aforesaid, as also of all disbursements and payments made by order of the Justices and Grand Jurymen, or other lawful authority. And the Treasurers shall be allowed for their trouble, in receiving and paying all such sums of money as shall come into their hands respectively, by virtue of this act (or any other lawful authority) the sum of Four Pounds for every Hundred Pounds; and so in proportion for any greater or lesser sums of money, to be allowed him at settling his accounts, as is hereafter directed. And where any County Treasurers shall be removed from their office of Treasurer, they shall deliver up to his or their successor or successors all the books belonging to or concerning such respective county or counties where he or they acted, whole, intire and undefaced; and upon the death of any County Treasurer, his executors or administrators shall deliver up in like manner, all the books and papers relating to the public accounts of the said office, to the succeeding Treasurer or Treasurers.

Persons to be
appointed to settle
the Treasurers
accounts, &c.

SECT. 13. *And be it further enacted by the authority aforesaid,* That the Justices, Grand Jurymen and Assessors, at their respective courts, to be held in the month of November, yearly, and every year, shall nominate and appoint out of their own number, three fit persons to settle accounts with the Treasurer, who is hereby required to lay before them the true and just state of all the accounts relating to the public, in his hands; which three persons shall proceed, or any two of them, to adjust and settle the said accounts, and make their report to their next Court of Appeal after their appointment as aforesaid; which settlement, when so made, shall be signed or subscribed by the parties as aforesaid, and then received and filed among the papers of the said court.

Allowance to
Justices, Grand-
jurymen and
Assessors.

SECT. 14. *And be it further enacted by the authority aforesaid,* That the Justices, Grand Jurymen and Assessors of the several counties within this government, shall

shall be allowed and paid for their trouble, attendance and expenses in executing and performing what is required of them in this act, the several sums of money following, *viz.* To the Justices, Grand Jurymen and Assessors of the county of New-Castle, the sum of Eighteen Pounds, and no more. And to the Justices, Grand Jurymen and Assessors of the county of Kent, the sum of Fourteen Pounds, and no more. And to the Justices, Grand Jurymen and Assessors of the county of Suffex, the sum of Twelve Pounds, and no more. (*m*) And to the respective Clerks of the Peace of the said counties, for their pains in officiating as Clerks of the Levy Court, and for writing duplicates, warrants and precepts as aforesaid, relating to the premises, such fees as the aforesaid Justices, Grand Jurymen, and Assessors shall from time to time think proper to allow.

CHAP.
CII.
16 Geo. II.

SECT. 15. *And be it further enacted by the authority aforesaid,* That the several Collectors of the aforesaid counties respectively, shall each of them, before he enter upon his office, give bond to the Justices of the Court of Quarter Sessions, with such security as shall be required, in the name of the Treasurer of each respective county, for the faithful performance of the trust by this act in him reposed.

Collectors to
give bond, &c.

SECT. 16. *And be it further enacted by the authority aforesaid,* That all the laws or acts of Assembly heretofore made in this government for the raising county-rates and levies, and every matter, clause and thing therein contained, shall be, and are hereby declared to be repealed, and made null and void; any thing in the said acts, or any of them, contained to the contrary, notwithstanding.

Repeal of former laws.

CHAP.

(*m*) See the act of June 19, 1793, chap. 18. c. sect. 7. a daily allowance prescribed for the Commissioners of the Levy Court and Court of Appeal, and Assessors attending there.

See also section 23, of chap. 98. c. as to the compensation to be made to the Commissioners of Tax, and Assessors for their trouble and expense in discharging the duties of their respective offices.

CHAP.
CIII.

16 Geo. II.

CHAP. CIII. a.

An ACT for regulating and establishing fees. Repealed and supplied by an act, passed March 24, 1770. chap. 204. a.

CHAP. CIV. a.

17 Geo. II. *An ACT for the more easy and speedy recovery of small debts.* Temporary and expired, but occasionally revived at different periods with some alterations, and finally re-enacted Feb. 4, 1792, which see in chap. 250. b.

CHAP. V. a.

17 Geo. II. *An ACT for reprinting, exchanging, and re-issuing all the bills of credit, and for striking Six Thousand and One Hundred Pounds, &c. to be emitted on loan.*

CHAP. CVI. a.

17 Geo. II. *An ACT for the better relief of the poor of the county of New-Castle.* This and all other acts made for the relief of the poor, repealed in sect. 31. of chap. 225. a. passed March 29, 1775.

CHAP.

C H A P. CVII. a.

C H A P.
CVII.

An ACT to impower executors and administrators within this government, by leave of court, to convey lands contracted for with their decedents. 17 Geo. II.

WHEREAS it frequently happens that persons Preamble. within this government sell lands, and by bond or other writings obligatory under their hands and seals, in their life-time duly executed, oblige themselves and their heirs to convey the same, and die before they have conveyed the lands so contracted for, sometimes intestate, and sometimes without making sufficient provision by their last wills or testaments, for discharging such obligation or contract, by which means the purchaser or purchasers may, be without the full use or benefit of his, her, or their purchase or purchases, for many years, when the heir or heirs are in his or their minority; whence many inconveniencies already have, and hereafter may arise, both to the purchasers, and to the estates of the deceased, for want of some proper provision for fulfilling their mutual contracts. For remedying whereof for the future, and for preventing the costs and damages which may accrue to the estate of the deceased, for want of such contracts being complied with,

SECTION. 2. *BE. it enacted by the honorable George Thomas, esq. with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent, and Sussex, upon Delaware, and province of Pennsylvania, under the honorable John Penn, Thomas Penn, and Richard Penn, esquires, true and absolute proprietaries of the counties and province aforesaid, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same,* That from and after the publication of this act, any person or persons whatsoever, having any bond or other writing, under hand and seal duly witnessed, whereby any deceased person or persons hath or have obliged him, her, or themselves, or their heirs, to convey any land or lands, which has not been complied with in

Bond to convey land, must be proved, &c.

SC H A P.
CVII.
17 Geo. II.

Probate to be
certified, &c.

Order to issue
for conveyance,
&c.

Consideration
money to be first
paid.

Such conveyances
to be valid;
&c.

the life-time of the deceased, such person or persons having any such bond or writing in possession, whether in his, her, or their own right, or as Attorney, Agent, Trustee or Guardian to any other person or persons whatsoever, shall, before he, she, or they, bring any suit against any executor or executrix, administrator or administratrix, procure the said bond or writing to be proved in open Court of Common Pleas, in the county where the said lands lie, in the same manner as deeds executed by deceased persons, and not acknowledged in their life-time, are directed to be proved; (a) which probate the Clerk of the said Court shall certify under his hand and seal of the said county, and when so certified and recorded in the Rolls Office, shall be shewn to the executor or executrix, administrator or administratrix concerned, who shall then be at liberty to prefer a petition to the said court, praying leave to execute a deed for such lands, in discharge of such recorded bond, or other sealed writing as aforesaid; whereupon the said court shall, and are hereby authorized and required, as often as any such petition shall be to them preferred, to give an order for the said executor or executrix, administrator or administratrix, to execute and acknowledge in open court a deed or conveyance of and for the said land or lands, according to the tenor and true intent and meaning of the respective writing or writings so proved and recorded as aforesaid:

SECT. 3. *Provided always*, That the consideration money, if any shall appear to be due for the said lands, shall be first paid.

SECT. 4. *And be it further enacted by the authority aforesaid*, That all deeds and conveyances executed by virtue of, and in pursuance of this act, shall be as good and available in law and equity, and as binding on the estate of the deceased, as the same might or could have been if executed by the deceased in his, her, or their life-time.

SECT. 5. *And be it further enacted by the authority aforesaid*, That if any person or persons shall bring any

(a) See before chap. 83. a. sect. 2, 15 George II.

any suit in any court of this government, for non-performance of any such writings as aforesaid, without first proving, recording, and acquainting the defendant thereof, according to the direction of this act, such person or persons shall not recover any costs in such suit, any law, custom or usage to the contrary notwithstanding.

C H A P.
CVII. 23
17 Geo. II.

Suits brought contrary to the direction of this act, shall not recover costs.

SECT. 6. *And* that any executor or executrix, administrator or administratrix, who shall suffer him, her, or themselves, to be sued in any such case or cases, after due proceedings and notice given him, her, or them, according to the direction of this act, shall pay the costs of such suit, without burthening the respective estate therewith, except he, she, or they, shall shew good reason for the same to be allowed of by the Orphans Court within the respective counties of this government.

Executor, &c. suffering suit, to pay costs, unless, &c.

C H A P. CVIII. a.

An ACT for the enabling religious societies of Protestants within this government, to purchase lands for burying-grounds, churches, houses for worship, schools, &c. (a)

17 George II.

WHEREAS fundry religious societies of people within this government, professing the Protestant religion, have, at their own respective costs and charges, purchased small pieces of land within this government, and thereon have erected churches, and other houses of religious worship, school-houses, and inclosed part of the same lands for burying-grounds; *And whereas* the said lands were purchased and paid for by the said respective societies in the name or names of persons, at that time being of, or professing themselves to be of the same religious persuasion with the societies who made use of the names of

Preamble.

(a) See an act passed February 3, 1787. chap. 144. b. making further provision in favour of the religious of all denominations in this State, as to appointment of Trustees and incorporation to take care of the temporalities of their respective congregations.

CHAP.
CVIII.
17 Geo. II.

of the said persons as Trustees for and in behalf of the said societies; *And whereas* some of the said Trustees, or their heirs, having afterwards changed their opinions, and joined themselves to other religious societies, of a different persuasion from the people by whom the said persons were at first intrusted, and, upon pretext of their having the fee-simple of the lands so purchased in their names vested in them, have, contrary to the true intent and meaning of the first grant, or gift, attempted (by granting away the said lands, houses of religious worship, and burying-grounds) to deprive the society of people in possession of the same, of the right and use of the said houses of worship and burying-grounds, to the great disquiet and uneasiness of many of the good people of this government; and others, being intrusted in the like manner, may hereafter do the same, For remedy whereof, and for the better securing the several religious societies in the quiet and peaceable possession of their churches, houses of worship, school-houses, alms-houses, and burying-grounds within this government,

Grants to Trustees of religious societies, &c. declared to be for the use of such societies, &c.

SECTION 2. *BE it enacted by the honorable George Thomas, esq. by and with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent, and Sussex, upon Delaware, and province of Pennsylvania, under the honorable John Penn, Thomas Penn, and Richard Penn, esquires, true and absolute proprietaries of the counties and province aforesaid, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same,* That all gifts, grants, or bargains and sales, made of lands or tenements within this government, to any person or persons in trust for societies of protestant churches, houses of religious worship, schools, alms-houses, and for burying-grounds, or for any of them, shall be, and are hereby ratified and confirmed to the person or persons to whom the same were sold, given, or granted, their heirs and assigns in trust, and not otherwise, but for the use of the same religious societies for whom they were at first so sold, given, granted, or purchased, according to the true intent and meaning of such gifts, grants, or bargains and sales; and

C H A P .
CVIII.
17 Geo. II.

and that every sale, gift, grant, or devise of any such Trustee or Trustees, or any person or persons, in whose name or names the said lands for erecting churches, houses of religious worship, schools, alms-houses, or burying-grounds, within this government, were purchased, taken, or accepted, or the heirs or assigns of such Trustees shall be, and are hereby declared to be for the sole use, benefit and behoof of the said respective societies, who have been in the peaceable possession of the same, for the space of seven years next before the first day of April, in the year of our Lord One Thousand Seven Hundred and Forty-four, or for whose use the same were at first given, granted, or devised, and no other.

SECT. 3. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful to and for any religious societies of Protestants within this government, to purchase, take, and receive by gift, grant, or otherwise, for burying-grounds, erecting churches, houses of religious worship, schools, and alms-houses, for any estate whatsoever, and to hold the same, for the uses aforesaid, of the lord of the fee by the accustomed rents.

Religious societies may hold lands, &c.

§

SECT. 4. *Provided always, and be it further enacted by the authority aforesaid,* That nothing in this act contained shall be deemed, taken, or construed, to enable any of the said religious societies of people, or any person or persons whatsoever, in trust for them, or to their use, to purchase, take, or receive, any lands or tenements by gift, grant, or otherwise, for or towards the maintenance or support of the said churches, houses of worship, schools, or alms-houses, or the people belonging to the same, or for any other use or purpose, save for the uses in this act before mentioned. (b)

but only for the uses in this act mentioned.

SECT. 5. *Provided also,* That this act, nor any thing therein contained, shall be deemed or construed to impeach the just right or title which any person or persons may have to any of the lands or tenements herein before mentioned, so that they prosecute such their

(b) See sect. 5. of chap. 144. b.

C H A P.
CVIII.
17 Geo. II.

their right or claim within the space of three years next after the publication of this act.

C H A P. CIX. a.

- 20 Geo. II. *An ACT for enabling the Trustees of the respective Loan-Offices within this government, to lend Two Hundred and Thirty Pounds for the uses in this act mentioned.*

C H A P. CX. a.

- 20 Geo. II. *An ACT for reprinting, exchanging, and re-issuing Twenty Thousand Pounds of the bills of credit of this government.*

C H A P. CXI. a.

1746. *An ACT for repairing and amending the highways, roads, causeways, and bridges, within the hundred of New-Castle. Repealed and supplied by a general act for New-Castle county, passed November 2, 1762, for which see chap. 180. a.*

C H A P. CXII. a.

- 20 Geo. II. *An ACT concerning rangers and strays. Repealed and supplied by an act passed March 24, 1770, chap. 203. a. which being temporary was suffered to expire, but after, February 2, 1786, re-enacted as in chap. 130. b.*

CHAP.

C H A P. CXIII. a.

C H A P.
CXIII.
20 Geo. II

An ACT to prevent swine running at large without rings and yokes, in certain parts of New-Castle county, within this government. (a)

WHEREAS the several acts of Assembly of this government, for the preventing of swine running at large in certain parts of New-Castle county, within this government, are not found to answer all the good ends designed thereby: For remedy whereof,

Preamble.

SECT. 2. *BE it enacted, by the honorable George Thomas, esq. by and with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent, and Sussex, on Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same,* That from and after the first day of April, which shall be in the year of our Lord One Thousand Seven Hundred and Forty-seven, no swine shall be allowed to run at large (unless sufficiently ringed; to prevent them from rooting, and yoked, to prevent them from creeping or breaking through fences) on any of the improved lands, meadows, or marshes, of the inhabitants in the county aforesaid (Pencader and Appoquinimink hundreds only excepted) And if at any time after the said first day of April, in the year of our Lord One Thousand Seven Hundred and Forty-seven, any swine shall be found at large, and trespassing upon the improved lands, meadows, or marshes, of any inhabitant within the above-mentioned limits, not, as aforesaid, sufficiently ringed and yoked (except upon the lands, meadows, or marshes of the owner or owners of the said swine) it shall and may be lawful for any person, being, a freeholder, or possessing some tenement or farm, within the said limits, of the yearly value of Forty Shillings,

No swine to run at large in New-Castle county, except, &c.

(a) This act extended to certain parts of Appoquinimink hundred, in chap. 192. a, passed June 16, 1769; and after to Pencader hundred, in chap. 226. a. passed March 29, 1775.

C H A P.
CXIII.

20: Geo. II.

Damages by
trespassing swine,
to be made
good;how to be re-
covered.Advertisement
to be made.Swine not to be
carried out of
the limits, &c.

lings, to take up or kill any such swine found upon his or their improved lands or farms, and shall immediately give notice to the owner or owners thereof, who shall be obliged to make good all damages done by such trespassing swine, according to the valuation of two creditable men of the vicinage, to be appointed and qualified by the next Justice of the Peace of the same county for that purpose; but in case the owner or owners of such swine should neglect or refuse to pay the damages valued as aforesaid, then it shall and may be lawful for any Justice of the Peace of the county aforesaid, who is hereby required, upon complaint made to him by the person or persons so trespassed upon in any manner aforesaid, to grant a warrant under his hand and seal, in order to recover the valuation of such damages as aforesaid, to be levied by distress and sale of the offender's goods and chattels, together with costs accrued thereon; or if the owner or owners of the said trespassing swine be not known, shall inform the next Justice of the Peace of the same county, whereupon the said justice shall cause the same immediately to be appraised by two creditable men as aforesaid, upon their oaths or affirmations, and sold to the highest bidder, and, after deduction of charges and damages, the residue of the money arising by such sale, shall be paid to the said justice, for the use of such owner or owners, if within six months next after such sale he or she shall claim the same, and (to the satisfaction of such justice) prove his or her right thereto; and the said justice shall cause an advertisement to be set up in some public place of the neighbourhood, setting forth the number and marks of all such swine, and the time of their being so taken up or killed as aforesaid. But in case no such owner shall within the said six months appear, and make out such his or her right as aforesaid; then the said residue shall by the said justice be paid for the use of the poor, to the Overseer or Overseers in the hundred where the trespass is committed, and the said owner shall for ever after be foreclosed and debarred from any title or claim thereto.

SECT. 3. *And be it further enacted by the authority aforesaid,* That no person or persons inhabiting within
the

Dear

July

the limits aforesaid (except as before excepted) shall be allowed or permitted to drive or carry any swine out of the limits aforesaid, which were raised or bred therein, with intent that the said swine may run at large without rings and yokes in any other parts of the said county of New-Castle, under the penalty in this act before provided against swine running at large within the said limits, to be disposed of in manner aforesaid, unless the person or persons so driving or carrying any such swine, shall at the time of his or their doing thereof, be owner or owners, or possessor or possessors of land near the place whereunto such swine shall be so driven or carried, and whereupon he or they shall have a tenant or tenants, servant or servants, slave or slaves, residing or inhabiting.

C H A P.
CXIII.
20 Geo. II:

SECT. 4. *And be it further enacted by the authority a-* Former acts
foresaid, That all other acts of General Assembly of repealed.
this government, heretofore made, relating to swine running at large without rings and yokes in certain parts of New-Castle county, within this government, be, and are hereby repealed, made null and void, any thing in the said acts contained to the contrary in any wise notwithstanding.

Passed October 31, 1746.

C H A P. CXIV. a.

A Supplement to an act, entitled, An Act imposing a du- 22 Geo. II.
ty on persons convicted of heinous crimes, &c. (a)

WHEREAS it is found by experience that the Preamble.
said act is deficient in several parts, and doth not answer the good purposes for which the same was intended; *And whereas* there are no directions for the several Collectors mentioned, or to be named, pursuant to said act, to keep a register of the several persons imported, as in said act is mentioned; *And whereas* there is no penalty enjoined on the purchaser

Vol. I.

2 M

or

(a) For the original act see before chap. 66. a. 13 Geo. II.

C H A P.

CXIV.

22 Geo. II.

or purchasers of said convicts so as aforesaid imported; *And whereas* there is a duty of Six-pence by said act laid on every passenger who hath paid for his passage to the master or owner of such vessel wherein he, she, or they are imported, which is found to be an aggrievance to many honest persons imported into this government: For remedying whereof,

Collectors not to take any money, &c. from free passengers.

SECTION 2. *BE it enacted by the honorable James Hamilton, esq. (b) by his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent, and Sussex, on Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the free-men of the said counties, in General Assembly met, and by the authority of the same,* That it shall not be lawful for any Collector or Collectors mentioned, or to be named pursuant to the said act, after the publication hereof, to take or receive, directly or indirectly, any sum or sums of money, or any thing in lieu thereof, of and from any person or persons who shall be imported into this government, where it shall or may appear by any certificate or other writing, under the hand of the captain, master, merchant, or owner of such vessel wherein said person or persons are imported, that same person or persons have paid the sum of money contracted for with said master, owner, or merchant, for his, her, or their passage, and that the same person or persons are free from any indenture of apprenticeship or servitude to said master, owner or merchant of any vessel as aforesaid, or any other person whatsoever, on pain of forfeiting the sum of Three Pounds, current money of this government, to be recovered by bill, plaint, or information, in any Court of Record within this government, wherein no essoign, protection, or wager of law, shall be allowed; any law, usage, or custom to the contrary notwithstanding.

Penalty:

Collectors to keep a register.

SECT. 3. *And be it further enacted by the authority aforesaid,* That the several Collectors mentioned, or hereafter to be appointed, pursuant to the aforesaid act,

(b) James Hamilton began his government in October 1748, and continued until October 1754.

act, shall, and each of them are hereby required to keep a fair book or register of all the persons names who shall be imported into this government as redemptioners, servants, and convicts, for keeping of which register the said Collector and Collector's shall be allowed and paid by the master or importer of such redemptioner, servant and convict, for each the sum of Six-pence, and for taking every bond, pursuant to the aforesaid act, as by said act is directed, and no more.

C H A P:
CXIV.
22 Geo. II,

SECT. 4. *And be it further enacted by the authority aforesaid,* That any person or persons within this government, who shall buy or purchase any person or persons convicted of any of the several crimes in the aforesaid act mentioned, knowing them to be such, such person or persons buying as aforesaid, shall forfeit the sum of Ten Pounds, current money, for every such convict so as aforesaid bought, to be recovered in manner aforesaid, one half thereof to the Governor for the time being, the other half to the informer, or person who will sue for the same, together with costs of suit. Penalty on purchasing convicts.

SECT. 5. *And whereas* it is found by experience, that sundry masters of vessels, and others, to avoid complying with the aforesaid act, land servants and convicts as aforesaid, at Reedy Island, and thereabouts; for prevention whereof, *Be it enacted by the authority aforesaid,* That all persons obliged to make entry by the aforesaid act, and who incline to land said servants and convicts at any place within the bounds of New-Castle county, below St George's Creek, shall apply to John Vance, of New-Castle county, gentleman, who is hereby appointed a Collector of the duties within the limits aforesaid, as by said act and this supplement is imposed, without any notice or request made by him. John Vance appointed Collector.

SECT. 6. *Provided always,* That nothing in this supplement contained, shall be deemed, construed, or understood, to alter, change, or repeal, any clause, article, or thing, in the aforesaid act mentioned, except as in this supplement is mentioned, any law, custom, or usage to the contrary notwithstanding.

Passed May 7, 1749.

CHAP.

C H A P.
CXV.

C H A P. CXV. a.

22 Geo. II.

An ACT allowing a salary to the Justices of the Supreme Courts within this government. Repealed and supplied in chap. 204. a. passed March 24, 1770.

C H A P. CXVI. a.

23 Geo. II.

An ACT for reviving and continuing an act of Assembly of this government, made in the seventeenth year of his Majesty's reign, entitled, "An act for the more easy and speedy recovery of small debts."—Temporary, being for five years; expired. See note at chap. 104. a.

C H A P. CXVII. a.

23 Geo. II.

An ACT for repealing an act passed in the twenty-second year of his Majesty's reign, entitled, An act obliging executors to give security in the Register's Office, in the respective counties within this government, at the time of the proving the wills of their testators or testatrixes, for the due execution thereof; and likewise empowering the said executors to sell the lands of their testators by order of Orphans Courts, and directing how executors shall make such sales, and render accounts of their testators estates for the future. (a)

SECTION 1. **B**E it enacted by the honorable James Hamilton, esq. by his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent, and Suffex, on Delaware, and province of Pennsylvania, by
and

(a) An act to compel executors to give security, &c. passed February 3, 1787. chap. 146. b. to continue for five years; made perpetual by another act passed February 2, 1793. chap. 7. c. with further provisions.

and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same, That from and after the publication of this act, the Orphans Courts in the respective counties of this government, shall, and may, and are hereby enabled to proceed, and call every executor and executors to account for and touching the goods and chattels of their testators or testatrixes, and if, upon examination and due proof thereof made to the respective Orphans Courts within this government, it shall be found that the personal estate of such testators is not sufficient to discharge and pay the several and respective debts due by such decedents, being owners of lands and tenements within this government at the time of their death; and likewise, if the widow and children of the said testators (if any) or any devisee of the said decedents, who have lands left him or them, by the said testators being of the age of twenty-one years, or, being under that age, any person or persons who are or may be their guardians, or any other person or persons who may have the care and tuition of such minors, shall neglect and refuse to pay the said decedents debts which shall remain unpaid after a just settlement of the personal estate of the said decedents in the respective Orphans Courts for the counties aforesaid, in proportion to the parts or parcels of land enjoyed by each devisee, by virtue of any devise as aforesaid; that then, and in such case, it shall and may be lawful for the executor or executors of such testators, by order of the Orphans Court, to sell and convey such part or parts of such decedents lands and tenements, in proportion to each devisee's share, as shall by the said Orphans Court be deemed sufficient to defray and pay the just debts of such testators, upon the best computation the said Orphans Court can make of the value of such lands, so as aforesaid to be sold; all which sales made pursuant to this act, shall be deemed as available as if the said decedents had sold and conveyed the same lands in their life-time. (b)

G H A R.
CXVII.
23 Geo. II.

Orphans Court
impowered to
call executors to
account, &c.

In what cases
lands may be
sold, &c.

SECT.

(b) As to sales by administrators, see after in chap. 119. a. sect. 10, 11.

C H A P.
CXVII.
23 Geo. II.

Sales to be advertised.

SECT. 2. *Provided always, and be it enacted by the authority aforesaid,* That before any such sale of lands and tenements be made as aforesaid, the court shall order so many writings to be made by the Clerk of the said Court, as they shall think fit, to signify and give notice of such sale, and of the time and place of the said sale, and also what lands are to be sold, and where they are situate, which notice shall be by the said executor or executors affixed in three of the most public places of the county, and in the hundred where the lands lie, at least twenty days before the said sale shall begin.

Proceedings to be returned into the Orphans Court.

SECT. 3. *And be it further enacted by the authority aforesaid,* That the executor or executors that makes such sale, shall return his, her or their proceedings therein to the next Orphans Court to be held in the respective counties after such sale made; and if it should happen that any lands shall be sold by virtue of this act, for more than the Court's computation of the value thereof, that then, and in such case, the executor or executors shall be accountable for the surpluse of the same, to be paid and divided in such manner as by the said Orphans Court shall be directed.

Former acts repealed.

SECT. 4. *And be it further enacted by the authority aforesaid,* That the aforesaid act, passed in the twenty-second year of his Majesty's reign, obliging executors to give security, &c. and every part thereof, is hereby repealed, made void, and utterly annulled and abolished.

C H A P. CXVIII. a,

24 Geo. II. *A Supplementary act for the amendment of an act of General Assembly of this government, entitled, An act for the relief of insolvent debtors, &c. (a)*

Preamble.

WHEREAS the act of Assembly of this government, entitled, *An act for the relief of insolvent*

(a) See the original act before, chap. 76. a. 13 George II. and an act for amending the same, passed June 16, 1769. chap. 194. a.

vent debtors within this government, made in the fourteenth year of his Majesty's reign, is by experience found deficient, and not to answer all the good ends and purposes thereby intended, in admitting all persons having a charge of small children not of sufficient age to be bound out as apprentices, or who shall be above the age of forty years, to the benefit and relief of the said act, without lodging a discretionary power in the court to grant or reject the petition of such persons as they shall see meet, after due enquiry made into the case and circumstances of such petitioner; by means whereof many ill disposed persons, who have not been real objects of compassion, have been relieved by the said act, and have defrauded their creditors of their just debts:

SECTION 2. *BE it therefore enacted by the honorable James Hamilton, esq. with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the government of the counties of New-Castle, Kent, and Sussex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same*, That if any person or persons within this government, having a charge of small children not of sufficient age to be bound out as apprentices, or if any person or persons above the age of forty years, shall be imprisoned for any sum or sums of money, or other debts, above the value of Forty Shillings, and shall be willing to deliver up to his, her, or their creditors, all his, her, or their effects and estate, towards the satisfaction of the debts wherewith he, she, or they, stand charged, it shall and may be lawful for such person or persons to exhibit a petition or petitions to the Court of Common Pleas of that county where he, she, or they shall be imprisoned, in like manner as by the said act is prescribed and directed; and thereupon the said court shall and may proceed to the summoning the creditors of such petitioner, and after hearing (on a day to be for that purpose appointed) what shall be alledged on either side for or against the discharge of such prisoner, if the court shall be of opinion, that the prisoner, upon the circumstances and equity of his case, should be discharged, then, and

C H A P.
CXVIII.

24 Geo. 11.

Insolvent debtors having a charge of small children, or being above forty years of age, may petition, &c.

C H A P.
CXVIII.

24 Geo. II.

and in such case, and no other, the said court shall go on to tender or administer to the said prisoner the oath or affirmation in the said act particularly specified, and take such other methods for the discharge of the said prisoner, as the said act limits and appoints; but if the said court, upon such examination, shall adjudge, that the said prisoner, on the merits of his or her case, ought not to be admitted to the benefit of the said act, then the said court shall and may reject the petition of such prisoner, and remand him or her to gaol; or if the said prisoner shall signify his or her willingness to deliver up all his or her effects towards the discharge of his or her debts, and make satisfaction for the residue by servitude, then the said court shall and may adjudge the said debtor to serve his or her creditors, their executors, administrators, or assigns, in order as the judgments shall be entered against him or her, and dignity of the debts, for any term or time not exceeding seven years; any law, statute, custom, or usage to the contrary in any wise notwithstanding.

SECT. 3. *Provided always,* That all and every other part of the said act for the relief of insolvent debtors within this government, shall be and continue in full force, save only those parts which by this present act are altered and amended.

C H A P. CXIX. a.

24 Geo. II.

An ACT for the better settling intestates estates.

SECTION I. **B**E it enacted by the honorable James Hamilton, esq. with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the government of the counties of New-Castle, Kent and Sussex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same, That the Registers of the several counties in this government, having power to grant letters of administration unto the widow or
next

Registers to
take and.

next of kin to the intestate, and, upon their refusal to the principal creditor or creditors of the said intestate, (a) as the said Register shall think meet and convenient, shall, upon their granting and committing of such letters of administration, take sufficient bond, with one or more able sureties, in the name of the Governor (b) for the time being (respect being had to the value of the estate) with a condition in manner and form following, *mutatis mutandis*, viz.

THE condition of this obligation is such, That if the The condition.
above bounden, A. B. administrator of all and singular the goods and chattels, rights and credits of C. D. deceased, do make, or cause to be made, a true and perfect inventory of all and singular the said goods and chattels, rights and credits of the said deceased, which have or shall come to the hands, possession or knowledge of the said A. B. or unto the hands and possession of any other person or persons for him; and the same so made, do exhibit, or cause to be exhibited, unto the Register's Office of the county of
at or before the day of
next ensuing; and the same goods and chattels, rights and credits of the said deceased, at the time of his death, or which at any time after shall come to the hands or possession of the said A. B. or into the hands and possession of any other person or persons for him, do well and truly administer, according to law; and further do make, or cause to be made, a true and just account of his administration, at or before the day of And all
the rest and residue of the said goods and chattels, rights and credits, which shall be found remaining upon the said administrator's account, the same being first examined and allowed of by the Orphans Court of the county where the said administration is granted, shall deliver and pay unto such person or persons respectively, as the said Orphans Court in the respective counties, by their decree or sentence, pursuant to the true intent and meaning of this act, shall
VOL. I. 2 N limit

(a) See chap. 186. a. passed November 1, 1766. The right of husbands to have administration of their wives estates expressly declared.

(b) The Delaware State by an act of Feb. 22, 1777, chap. 2. b. 6. ct. 3. and "The State of Delaware," by the constitution of June 1792, in art. 6. sect. 21.

CHAP.
CXIX.

24 Geo. II.

limit and appoint. And if it shall hereafter appear that any last will and testament was made by the said deceased, and the executor or executors therein named do exhibit the same into the Register's Office, making request to have it allowed and approved accordingly; if the said A. B. within bounden, being thereunto required, do surrender and deliver up the said letters of administration (approbation of such testament being first had and made in the Register's Office) then this obligation to be void and of none effect, or else to remain in full force and virtue.

Estate how to
be divided by
the Orphans
Courts.

SECT. 2. *Which bonds are hereby declared and enacted to be good to all intents and purposes, and pleadable in any Court of Justice within this government, (c) and also that the said Orphans Courts in the respective counties of this government, shall, and may, and are hereby enabled to proceed and call such administrator or administrators to account for and touching the goods and chattels of any person dying intestate, and upon the hearing and due consideration thereof, to order and make just and equal distribution of what remaineth clear of the deceased's personal estate, after all debts, funeral and just expences of every sort first allowed and deducted, amongst the widow and children, or their legal representatives, if any such be, in manner and form following; That is to say, one third part of the surplusage of the said intestate's personal estate to the widow of the said intestate for ever, and the residue of the deceased's personal estate shall be distributed, by equal portions, to and amongst the children of the said deceased, and such as shall legally represent them, if any of the said children be then dead, other than such child or children, who shall have any estate by settlement of the intestate, or shall be advanced by him in his lifetime, by portion or portions equal to the share which shall by such distribution be allotted to the other children, to whom such distributions are to be made; and in case there be any child or children, or their representatives, who shall have had any estate by settlement*

(c) See chap. 30. a. sect. 12 Ante, directing the proceeding in case of suits brought thereon.

ment from the intestate, or shall have been advanced by the said intestate in his life-time by portion or portions not equal to the share which will be due to the other children by such distribution as aforesaid, then so much of the surplusage of the estate of such intestate shall be distributed to such child or children, or their representatives so advanced as aforesaid, as shall make the estate of all the said children to be equal, as near as can be estimated. And in case there be no children, nor any legal representatives of them, then one moiety of the said personal estate to be allotted to the widow of the intestate, and the residue of the said estate to be distributed equally to and among the brothers and sisters of the deceased, or their legal representatives; and in case there be no brothers and sisters, or legal representatives of them, then the residue of the said personal estate to be distributed equally to every of the next of kindred of the intestate, who are in equal degree, or those who legally represent them; and if there be no kindred, then the whole of the said personal estate to be allotted to the widow of the intestate for ever. *Provided always*, That there be no representatives admitted amongst collaterals after brothers and sisters grand-children. And in case there be no wife, then the said personal estate to be distributed equally to and amongst the children of the intestate, and their legal representatives. And in case there be no wife or child, then the personal estate of the said deceased to be distributed equally to and amongst the brothers and sisters of or unto the intestate, and their legal representatives; and in case there be no brothers or sisters, or legal representatives of them, then to the next of kindred in equal degree of or unto the intestate and their legal representatives as aforesaid, and in no other manner whatsoever.

SECT. 3. *Provided also, and be it further enacted by the authority aforesaid, to the end that a due regard be had to the creditors of the intestate, That no such distribution of the goods and chattels of any person dying intestate, shall be made as aforesaid, till one year be fully expired after the intestate's death, and that every one, to whom any distribution or share shall be allotted, shall give bond with sufficient surety or sureties*

C H A P.
CXIX.
24. Geo. II.

Distribution not to be made before the expiration of one year, &c.

C H A P.

CXIX.

24 Geo. II.

Refunding bond
to be given.Administration
with testament
annexed, &c.Lands of intes-
tates how to be
divided, &c.

sureties to the Orphans Court, in the name of the Governor for the time being, for the use of the administrator or administrators, that if any debt or debts, truly owing by the intestate, shall be afterwards sued for, and recovered, or otherwise duly made appear, that then, and in every such case, he, she, or they, shall respectively refund and pay back to the administrator, or administrators, his, her, or their rateable part of the said debt or debts, and of the costs of suit and charges of the said administrator or administrators, by reason of such debt or debts, out of the parts or shares so as aforesaid allotted to him, her, or them, thereby to enable the said administrator or administrators to pay and satisfy the said debt or debts so recovered, or made to appear, after distribution made as aforesaid.

SECT. 4. *Provided always, and be it further enacted by the authority aforesaid,* That in all cases where the Register hath used heretofore to grant administration, with the testament annexed, he shall continue so to do, and the will of the deceased, in such testament expressed, shall be performed and observed in such manner as it should have been if this act had never been made.

SECT. 5. *And be it further enacted by the authority aforesaid,* That if any person or persons shall die intestate, being owners of lands, tenements and hereditaments, within this government, at the time of his death, that then all and every such lands, tenements and hereditaments shall be subject to a division, and be distributed according to the manner and form herein after expressed; *That is to say,* one third part of the said lands, tenements, and hereditaments, to the widow of the said intestate, during her natural life (where such widow shall not be provided for by marriage settlement or otherwise) and the residue of the said deceased's real estate shall be distributed, by equal portions, to and amongst the children of the said deceased, or such as shall legally represent them, if any of them be dead, and to their heirs and assigns forever, other than such child or children who shall have any real or landed estate by settlement, or shall have been advanced by the said deceased in his or her lifetime,

time, by portion or part of such real estate equal to the shares which shall by such distribution be allotted to the other children to whom such distributions are to be made. And in case there be any child or children who shall have any real or landed estate by such settlement from the intestate, or shall be advanced by the intestate in his or her life-time by part or portion not equal to the share which shall be allotted to the other children by such distribution as aforesaid, then so much of the real or landed estate of such intestate shall be distributed to such child or children as shall have had any such settlement from the intestate, or were advanced in the life-time of the intestate, as shall make the real or landed estate of all the said children to be equal, as near as can be estimated, except the eldest son, or his lawful issue (if any be) who shall have two shares, or a double portion of the whole of the real or landed estate of the said intestate. *(d)* And when there are no sons, the daughters shall inherit as coparceners in the division of the intestate's lands, tenements, and hereditaments. *(e)* And in case there be no child or children, nor any legal representatives of them, then one moiety of the real or landed estate of the intestate shall be allotted to the widow of such intestate, during her natural life, and the residue thereof shall be distributed equally to and amongst the brothers and sisters of the deceased, or their legal representatives. *(f)* And in case there be no brothers or sisters, or legal representatives of them, then the said residue to be distributed equally to every of the next of kindred of the intestate, who are in equal degree, or those who legally represent them. And in case there be no wife, then all the said real or landed estate

(d) By a supplementary act hereto, chap. 53. c. passed January 29, 1794, the eldest son or his lawful issue, or their representatives, of every person "dying intestate within this state," thereafter to have no more than an equal share with the other children of the intestate: And this part of the original act giving a double portion to the eldest son of "such an intestate." Repealed.

(e) See before in chap. 28. a. the Proviso in sect. 1.

(f) See this added to and explained in chap. 222. a. sect. 4. passed November 6, 1773, making a distinction between the whole and half blood in certain cases.

C H A P.
CXIX.
24 Geo. II.

Five Freeholders
to be chosen to
divide, &c.

estate to be divided amongst the children of the intestate, or their legal representatives, in manner and form aforesaid. And if there be no wife or child, then to the brothers and sisters of the said deceased, or their legal representatives. And in case there be no brothers or sisters, or legal representatives of them, then to the next of kindred in equal degree of or unto the intestate, and their legal representatives, as aforesaid, and in no other manner whatsoever: (g)

SECT. 6. *And for the lessening the charge of dividing the lands of intestates amongst their children or their heirs, Be it enacted by the authority aforesaid,* That the Justices of the Orphans Court of the county where the lands lie, upon application made to them by any of the children, or other heirs of the intestate, (h) when he, she, or they, shall attain to the age of twenty-one years, shall, and are hereby empowered to appoint five sufficient freeholders of the county, who, being first sworn or affirmed for that purpose in open court, or before some Judge, or Justice of the Peace of the county, shall take with them a skilful surveyor, to be qualified on his solemn oath or affirmation, and go upon the lands of the intestate, and divide the same equally amongst the children or other heirs of the intestate, according to the directions, true intent, and meaning of this act, due regard being had to the quality as well as quantity of the said lands; which said five freeholders, or any three of them, agreeing, shall make return of such division to the next Orphans Court: And if such division be approved of by the said court, the same shall remain firm and stable for ever.

SECT. 7. *Provided always,* That nothing in this act contained shall be deemed or judged to extend to such persons interested in any lands, tenements, or hereditaments of the intestate, who, being of age, and capable

(g) See chap. 186. a. sect. 3. passed November 1, 1766, that in the division of intestates real estates, there be no representatives admitted after brothers and sisters' grand-children.

(h) See also in said chap. 186. a. sect. 2. that widow, guardian, or legal assignee, may make such application.

capable to act for themselves, shall agree of and make division of such lands, &c. amongst one another, and mutually give each other releases in writing, under their hands and seals; in which case such releases shall be allowed and accounted good and valid in law, being first acknowledged by the parties subscribing the same in open Court of Common Pleas for the aforesaid respective counties, and duly enrolled.

CHAP.
CXIX.
24 Geo. II.

SECT. 8. *Provided also, and be it further enacted by the authority aforesaid,* That where any estates in lands, tenements, and hereditaments, cannot be divided amongst all the children or other heirs of the intestate, without prejudicing and spoiling the whole, the same being so represented and made to appear by the report of the said five freeholders, or any three of them, to the Orphans Court of the county where the said lands or tenements lie; then, and in such case, the said court may and shall order the whole of such lands or tenements (*i*) to the eldest son, if he will accept it, or, on his refusal, to any other of the sons successively; and if all the sons refuse, or there should be no sons, then to the eldest daughter, or, on her refusal, to every other of the daughters successively, (*k*) he, she, or they, paying to the other children of the deceased, or their representatives, their equal or proportionable parts or shares of the appraised value of such lands, tenements, and hereditaments, to be made by three sufficient freeholders to be appointed by the Orphans Court, and qualified as aforesaid for that purpose, or giving good security to pay the same in such reasonable time as the said Orphans Court shall limit and appoint; and the person or persons, whether minors or others, to whom, or for whose use, payment or satisfaction shall be made as aforesaid, for his, her, or their respective parts or shares of the deceased's

Proceedings
where lands
cannot well be
divided, &c.

(*i*) See in chap. 186. a. sects. 2, 3. An express saving of the widow's thirds thereof during her natural life, and of her moiety in case of a valuation where only collateral heirs.

(*k*) In the act of November 1766, chap. 186. a. the order of acceptance on a valuation in case of collaterals and legal assignees, &c. is prescribed. And by the act, chap. 222, a. sect. 3, passed November 6, 1773, if the preference of taking at a valuation be in a minor then the next in order of succession may take.

C. H. A. P.

CXIX.

24 Geo. II.

ceased's lands, tenements, and hereditaments, shall be for ever debarred of all his, her, or their right, title, and demand, of, in, and to such share or parts, by virtue of this act, and the same shall be held and enjoyed by the said purchaser, as freely and fully as the intestate held the same; saving to any person or persons aggrieved at any order, sentence, or decree of the Orphans Court, made for the settlement and distribution of any intestates estates, their right of appeal to the Supreme Court of this government, (l) to be held for each county respectively; every person so appealing giving security to prosecute the said appeal with effect, within twelve months after such appeal.

Refunding
bond to be given
the adminis-
trators, &c.

SECT. 9. *And be it further enacted by the authority aforesaid,* That every one, to whom any distribution or share of the intestate's lands, tenements, and hereditaments, shall be allotted, shall give bond, with sufficient surety or sureties, if required, to the Orphans Court, in the name of the Governor for the time being, for the use of the administrator or administrators, to refund, if any debts of the intestate should afterwards be recovered, or made appear, in the same manner and form as is herein before directed in the distribution of intestates personal estates; and the widow's part or portion of the lands, tenements, and hereditaments of the intestate, shall, after her decease, be distributed and divided amongst the children or other heirs of the intestate, by such proportions and in like manner as aforesaid.

Ante sect. 3.

Widow's por-
tion, &c.

Personal estate
being insuffi-
cient to pay debts,
lands may be
sold, &c.

SECT. 10. *And be it further enacted by the authority aforesaid,* That if the personal estate of any person or persons dying intestate, being owners of lands and tenements, at his decease, within this government, shall be found insufficient to pay their just debts, and maintain their children, then, and in such case, it shall and may be lawful for the administrator or administrators of such deceased, (m) to sell and convey such

(l) This affirmed in art. 6. sect. 15, of the constitution of June 1792.

(m) See before chap. 117. a. sales by executors to pay debts under order of Orphans Courts.

such part or parts of the lands, tenements, and hereditaments of the said deceased, for the defraying their just debts, maintenance of their children, and putting them apprentices, and teaching them to read and write, and for the improvement of the residue of the estate (if any be) to their advantage, as the Orphans Court of the county where such estate lies, shall think fit to allow, order, and from time to time direct.

SECT. II. *Provided always*, That no lands and tenements contained in any marriage settlement, shall, by virtue of this act, be sold or disposed of contrary to the form and effect of such settlement, nor shall any Orphans Court allow or order any intestate's lands and tenements to be sold before the administrator or administrators, requesting the same, do exhibit one or more true and perfect inventory or inventories, and conscionable appraisement, of all the intestate's personal estate whatsoever, (*n*) and also a true and just account upon his, her, or their solemn oath or affirmation, of all the intestate's debts which shall be then come to his, her, or their knowledge; and if thereupon it shall appear to the said court, that the intestate's personal estate will not be sufficient to pay the debts and maintain the children until the eldest son attains the age of twenty-one years, or to put them out apprentices, and teach them to read and write, then, and in every such case, and not otherwise, the said court shall allow such administrator or administrators to make public sale of so much of the said lands, as the court, upon the best computation they can make of the value thereof, shall judge necessary for the purposes aforesaid, reserving the mansion-house and most profitable part of the estate till the last. But before any such sale the court shall order so many writings to be made by the Clerk as they shall think fit, to signify and give notice of such sale, and of the day and place where the said sale will be, and what lands are to be sold, and where they lie, which notices shall be by the administrator or administrators affixed in the most public places of the county, at least

C H A P.
CXIX.

24 Geo. II.

Children to be
educated, &c.

Marriage settle-
ments, &c.

Administrators
to exhibit an in-
ventory, &c.

Public notice
to be given of all
sales of land, &c.

VOL. I.

2 O

twenty

(*n*) See chap. 186. a. sect. 5.

C H A P.
CXIX.
24 Geo. II.

twenty days before the said sale is to begin, and the administrator or administrators shall bring his, her, or their proceedings thereon to the next Orphans Court after such sale made, and if it should happen that any lands be sold, by virtue of this act, for more than the court's computation of the value thereof, then the administrator or administrators shall be accountable for the surplusage of the same to be paid and divided as by this act is before required and directed, in respect of the intestate's personal estate.

Surplusage how
to be divided.

SECT. 12. *And be it further enacted, by the authority aforesaid,* That the surplusage and remaining parts of the intestate's lands, tenements, and hereditaments, shall be divided as the other lands of the intestate are herein before directed.

Posthumous
children how to
be provided for.

SECT. 13: *And be it further enacted by the authority aforesaid,* That if any posthumous child or children of any person dying intestate, leaving a personal and real or landed estate within this government, shall be born, such posthumous child or children shall be admitted and entituled to such part or portion of the said deceased's personal and real estate as the said child or children would have shared had he, she, or they, been born and living at the time of the said intestate's death; and if any person should die, leaving a personal and real estate as aforesaid, his wife being pregnant or with child, and shall have disposed of his estate by a will in writing, or a nuncupative will, (o) without taking notice, or having made any provision in his said will, for such child or children in *ventre sa mere*, such child or children born after the death of the said testator, shall be admitted and entituled to such part or portions of the deceased's whole estate, as he, she, or they, would have shared, by virtue of this act, if the said testator had died intestate, and no such will had ever been made. And if any one shall die intestate, having no known kindred but a wife, then all his lands, tenements, and hereditaments, shall be enjoyed by his wife, during her natural life, and after her

Effects of intestates, having no relations, &c. how to be disposed of.

(o) This part of the section added to and further provision made in case of marriage, or children born, after making a will, in chap. 136. a. sect. 4. and for the case arising on a partition or valuation.

her death the same shall escheat to the immediate landlord of whom such lands, tenements, and hereditaments are held, and to his heirs and assigns for ever. And all the goods, chattels, and personal estate whatsoever, of such persons dying intestate, and without wife or kindred, shall go to the Governor and Commander in Chief of this government, for the time being, and his heirs and assigns for ever. But if any of the said intestate's relations shall appear, and make good their claim or claims to such intestate's personal estate within seven years after the decease of the intestate, they shall be restored thereunto. And if any lawful heir to any such escheated lands, or tenements, shall at any time appear within twenty-one years after the intestate's decease, he may traverse the inquisition or office found for the lands so escheated, and recover the same, paying the lord, or person in possession, for the improvements they have made thereon, according to the valuation of a jury of twelve men, to be appointed by the Court of Common Pleas for that county in which the said lands or tenements lie.

SECT. 14. *And be it further enacted by the authority aforesaid,* That all laws, or acts of Assembly, heretofore made in this government, for the settling intestates estates, and directing the descent or distribution thereof, and every matter, clause, and thing therein contained, shall be, and are hereby declared to be repealed, made null and void.

Former laws repealed.

SECT. 15. *Provided always,* That all settlements and divisions of any intestates estates, either real or personal, heretofore made, pursuant to any former laws of this government, shall stand in full force, and are hereby ratified, confirmed and approved.

C H A P.
CXX.

C H A P. CXX. a.

25 Geo. II.

An ACT against larceny to the value of Five Shillings and upwards. (a)

SECTION. I. **B**E it enacted by the honorable James Hamilton, esq. with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent, and Sussex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same, That if any person or persons within this government, shall feloniously and fraudulently take and carry away any goods, chattels, or effects of another, to the value of Five Shillings or upwards, which is not made felony of death by any law of this government, and shall be duly convicted thereof at the Court of Quarter Sessions to be held for the respective county where such offence shall be committed, he, she, or they, so offending; their accessaries, aiders, comforters, and abettors, shall restore the goods, chattels, or effects, so stolen, to the right owner thereof, and pay to the said owner double the value thereof; or if the said goods, chattels, or effects, cannot be found, then the four-fold value thereof, with the full costs of prosecution, and be committed to the public gaol, till all the said sums be paid, and shall be whipped at the public whipping post of the county, with any number of lashes not exceeding twenty-one, on his, her, or their bare back, well laid on, and shall be adjudged to wear a Roman T, as a mark or badge of his, her, or their crime, not less than four inches in length, and one inch in breadth, on the outer part of the left arm, between the shoulder and the elbow, which shall be of such colour as the court shall order and direct at all times that he, she, or they, shall travel or appear from his,

Larceny above
Five Shillings
how to be pu-
nished.

(a) The "act directing the punishment of petty-larceny" chap. 96. a. Ante.— Repealed and supplied in chap. 120. b. passed June 4, 1785, and that offence to be prosecuted for and punished as in this act.

his, her or their habitation, for the term of six months; and if such felon or felons shall at any time, during the said term of six months, be found from his, her, or their habitation, without such badge or mark, and be thereof duly convicted before any Justice of the Peace, he, she, or they, for every such offence, shall be whipped not exceeding twenty-one lashes.

C H A P.
CXX.
25 Geo. II.

SECT. 2. *And be it further enacted by the authority aforesaid,* That if any person or persons shall be duly convicted of such offence as aforesaid, a second time, he, she, or they, so offending, their accessaries, aiders, comforters, and abettors, shall make four-fold satisfaction, as aforesaid, to the owner or owners of the goods, chattels, or effects stolen, and be whipped at the public whipping-post of the county with any number of lashes not exceeding thirty-one, and shall stand in the pillory for the space of two hours, and pay the costs of prosecution, and be committed as above directed.

Second offence,

SECT. 3. *And be it further enacted by the authority aforesaid,* That if any person or persons convicted as aforesaid of either of the said offences, shall not have sufficient estate, real or personal, to make satisfaction as aforesaid, and discharge the costs attending the prosecution, he, she, or they, shall be adjudged by the Court of Quarter-Sessions for the respective county where such offence shall be committed, to be disposed of as a servant by the Sheriff, for the payment thereof, for any term or time not exceeding seven years. (b)

Where the criminal is insolvent, satisfaction is to be made by servitude.

SECT. 4. *And be it further enacted by the authority aforesaid,* That if any person or persons shall commit a third offence as aforesaid, and be duly thereof convicted, he, she, or they, so offending, shall suffer death, (c) without benefit of clergy, any custom, law, or statute to the contrary in any wise notwithstanding.

For the third offence, death,

SECT. 5. *And be it further enacted by the authority aforesaid,*

(b) See before chap. 77. a. sect. 13. chap. 89. a. sect. 9. and see after in chap. 45. b. sect. 3. chap. 145. b. sect. 9.

(c) Not to be in case of petty larceny, see chap. 120. b.

CHAPTER
CXX.
25 Geo. II.

Penalty on
compounding
of felonies, &c.

aforeaid, That if any person or persons shall agree or compound any felony, made punishable by this act, or shall take back again his, her, or their stolen goods, or receive any amends not to prosecute such felon or felons, and shall be duly convicted thereof at any Court of Quarter-Sessions for the respective county where such offence shall be committed, he, she, or they, so offending, shall forfeit and pay treble the value of the goods stolen, or the sums taken or agreed for, to the Governor for the time being, towards the support of government, to be recovered by action of debt, bill, plaint, or information, in any court within this government, wherein no essoin, protection, or wager of law shall be allowed, nor more than one imparlance.

SECT. 6. *Provided always, and be it enacted by the authority aforeaid*, That no indictment, presentment, or process whatsoever, now depending in any court within this government, for any of the crimes or offences mentioned in this act, shall be discontinued, abated, or quashed, for or by reason of this act, or anything herein contained; but the Justices of the respective Courts in this government shall proceed to hear, try, and determine the said offences, and thereupon to give judgment, and award execution, according to the directions of the law, or acts of Assembly, on which the said indictment, presentment, or process, are founded, any thing herein contained to the contrary in any wise notwithstanding.

Former act
repealed.

SECT. 7. *And be it further enacted*, That the law of this government, entitled, *An act against robbing and stealing*, shall be, and is hereby repealed.

C H A P. CXXI. a.

25 Geo. II. *An ACT obliging persons returned and appointed for Constables, to serve accordingly.* Repealed and supplied: See after chap. 205. a.

End

CHAP.

C H A P. CXXII. a.

C H A P.
CXXII.
25 Geo. II.

An ACT for the making and establishing a new Great Seal for the use of this government. (a)

WHEREAS, by an act of Assembly of this government, entitled, *An act for establishing a Great Seal for this government*; it is therein directed, that a certain Silver Seal, in the then Governor's Custody, with the King of Great Britain's arms engraved thereon, and the inscription, *Delaware*, round it, should be held and deemed to be the Great Seal of government in these counties and territories; to be made use of and affixed to all judicial writs, of whatsoever kind, issued in the King's name, and made returnable into the Supreme Court of this government, also to all Charters, Patents, Commissions, Privileges, or Authorities, which the Governor for the time being, by virtue of his commission and power, might or could lawfully grant; *And whereas*, upon viewing the said seal, it is found that the inscription, *Dellowarre*, round the same is thereon cut, instead of the word, *Delaware*, in the said act mentioned: Therefore, for preventing any doubts and controversies that may arise, by reason thereof,

SECTION 2. *BE it enacted by the honorable James Hamilton, esq. with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent, and Sussex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same,* That all Laws, Patents, Grants, Commissions, and other Public Writings, heretofore sealed with the seal now called the Great Seal of this government, and inscribed round the same with the word, *Dellowarre*, or which hereafter may be sealed with

Laws, &c.
sealed with the
present seal, to
be deemed va-
lid, &c.

(a) See article 19, of the constitution or system of government established in convention of the Delaware State, September 20, 1776, providing for the making a new Great Seal. See also an act passed Feb. 2, 1793: chap. 5. c. sects. 9. 11. providing for another Great Seal.

C H A P.
CXX.
25 Geo. II.

Penalty on
compounding
of felonies, &c.

aforeſaid, That if any perſon or perſons ſhall agree or compound any felony, made puniſhable by this act, or ſhall take back again his, her, or their ſtolen goods, or receive any amends not to proſecute ſuch felon or felons, and ſhall be duly convicted thereof at any Court of Quarter-Sessions for the reſpective county where ſuch offence ſhall be committed, he, ſhe, or they, ſo offending, ſhall forfeit and pay treble the value of the goods ſtolen, or the ſums taken or agreed for, to the Governor for the time being, towards the ſupport of government, to be recovered by action of debt, bill, plaint, or information, in any court within this government, wherein no eſſoign, protection, or wager of law ſhall be allowed, nor more than one imparlance.

SECT. 6. *Provided always, and be it enacted by the authority aforeſaid*, That no indictment, preſentment, or proceſs whatſoever, now depending in any court within this government, for any of the crimes or offences mentioned in this act, ſhall be diſcontinued, abated, or quaſhed, for or by reaſon of this act, or any thing herein contained; but the Juſtices of the reſpective Courts in this government ſhall proceed to hear, try, and determine the ſaid offences, and thereupon to give judgment, and award execution, according to the directions of the law, or acts of Aſſembly, on which the ſaid indictment, preſentment, or proceſs, are founded, any thing herein contained to the contrary in any wiſe notwithstanding.

Former act
repealed.

SECT. 7. *And be it further enacted*, That the law of this government, entitled, *An act againſt robbing and ſealing*, ſhall be, and is hereby repealed.

C H A P. CXXI. a.

25 Geo. II. *An ACT obliging perſons returned and appointed for Couſtables, to ſerve accordingly*. Repealed and ſupplied: See after chap. 205. a.

Fl. 2

CHAP.

C H A P. CXXII. a.

C H A P.
CXXII.
25 Geo. II.

An ACT for the making and establishing a new Great Seal for the use of this government. (a)

WHEREAS, by an act of Assembly of this government, entitled, *An act for establishing a Great Seal for this government*; it is therein directed, that a certain Silver Seal, in the then Governor's Custody, with the King of Great Britain's arms engraved thereon, and the inscription, *Delaware*, round it, should be held and deemed to be the Great Seal of government in these counties and territories; to be made use of and affixed to all judicial writs, of whatsoever kind, issued in the King's name, and made returnable into the Supreme Court of this government; also to all Charters, Patents, Commissions, Privileges, or Authorities, which the Governor for the time being, by virtue of his commission and power, might or could lawfully grant; *And whereas*, upon viewing the said seal, it is found that the inscription, *Dellowarre*, round the same is thereon cut, instead of the word, *Delaware*, in the said act mentioned: Therefore, for preventing any doubts and controversies that may arise, by reason thereof,

Preamble.

SECTION 2. *BE it enacted by the honorable James Hamilton, esq. with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent, and Sussex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same,* That all Laws, Patents, Grants, Commissions, and other Public Writings, heretofore sealed with the seal now called the Great Seal of this government, and inscribed round the same with the word, *Dellowarre*, or which hereafter may be sealed with

Laws, &c.
sealed with the
present seal, to
be deemed va-
lid, &c.

(a) See article 19, of the constitution or system of government established in convention of the Delaware State, September 20, 1776, providing for the making a new Great Seal. See also an act passed Feb. 2, 1793. chap. 5. c. sects. 9. 11. providing for another Great Seal.

C H A P.
CXXII.

85 Geo. II.

with the said seal, until another be provided, and delivered into the hands and possession of the Governor for the time being, shall be deemed, taken and adjudged to be as good and available in law, as if the inscription round the same had been *Delaware*, pursuant to the said act of Assembly.

A new seal to be provided.

SECT. 3. *And be it further enacted*, That Jehu Curtis, Benjamin Chew, and Abraham Wyncoop, gentlemen, or any two of them, are hereby authorized and appointed to procure, at the expence of this government, with all possible speed, a Silver Seal to be made of the diameter of two inches, and to cause the same to be engraven, with the arms of the King of Great Britain, and an inscription of the words, *Counties on Delaware*, and the figures 1751, round the same, which seal, when so engraven, and inscribed, shall be delivered to the Governor for the time being, by the aforesaid Jehu Curtis, Benjamin Chew, and Abraham Wyncoop, gentlemen, or any two of them, and from thenceforth shall be taken, adjudged, and deemed, to be the Great Seal of this government, to be made use of and affixed to all Laws, Writs, Charters, Patents, Commissions, and other Public Writings, which the Governor for the time being, by virtue of his commission, power, and the laws of this government, may or can grant. The which new seal being so as aforesaid made, engraven, inscribed, and delivered, the aforesaid Jehu Curtis, Benjamin Chew, and Abraham Wyncoop, or any two of them, shall cause the Great Seal now in use, to be broken and defaced in their presence.

All laws, &c. to be sealed with the new Seal, after the same shall be delivered to the Governor.

SECT. 4. *And be it further enacted by the authority aforesaid*, That all Laws, Writs, Charters, Patents, Grants, Commissions, and other Public Writings, whereto an impression of the same Great Seal may be required, shall be of no force, or have any effect in law, to the purposes therein respectively mentioned, until the impression of the said seal, after delivery thereof to the Governor for the time being, as aforesaid, be thereunto affixed, either by the Governor for the time being, who is hereby understood and declared to be the principal and sole keeper of the Great Seal of this government, or by such person or persons,

as

as by the Governor for the time being, from time to time, may be appointed for keeping of the said Great Seal.

C H - A P.
CXXII.

25 Geo. II.

SECT. 5. *Provided always, and be it further enacted by the authority aforesaid,* That it shall not be lawful for any person or persons to be appointed as aforesaid, to affix any impression of the said Great Seal to any Writ, Charter, Patent, Commission, or other Public Writing, until the said person or persons, to be appointed as aforesaid, shall first obtain a warrant under the Governor's Sign Manual and Seal at Arms, for affixing each stamp and impression of the said Great Seal respectively; which warrant, so as aforesaid granted by the Governor for the time being, from time to time as aforesaid, shall be carefully preserved on a file in the office where the said Great Seal is kept.

Keeper of the Seal not to affix the same but by warrant from the Governor.

SECT. 6. *And be it further enacted by the authority aforesaid,* That if any person or persons, either by fraud, or any pretended authority whatsoever, shall at any time affix the impression of the said Great Seal unto any parchment, paper, wax, or wafer, or otherwise, than by warrant under the Governor's Sign Manual, and Seal at Arms, as aforesaid, to be preserved in the office, as aforesaid, he or they so offending, shall forfeit the sum of Two Hundred Pounds, to be levied for the Governor's use, and shall be for ever incapable of any public trust within this government, and shall suffer the punishment inflicted by the laws of that part of Great Britain called England, on persons convicted of forgery.

Penalty on affixing the same without warrant.

SECT. 7. *And for defraying the necessary expence of parchment, paper, wafers, and wax, and appointing and keeping an office for the said Great Seal, with a proper Clerk to give his attendance on the same, Be it enacted by the authority aforesaid,* That for each impression of the said Great Seal, there shall be paid by the party or parties requiring the same, to the Clerk of the said Office, or any other person appointed by the Governor to receive the same, the sum of Twenty Shillings, for the Governor's proper use, as a recom-

Fee to the keeper of the seal.

C H A P.
CXXII.
25 Geo. II.
former act re-
pealed.

pence for the trouble and charge of keeping the Office of Great Seal of this government. (g)

SECT. 8. *And be it further enacted by the authority aforesaid, That an act of Assembly of this government, entituled, An act for establishing a Great Seal of this government, shall be, and is hereby repealed.*

C H A P. CXXIII. a.

25 Geo. II. *An ACT for preventing accidents that may happen by fire in any of the towns or villages within this government.*

BE it enacted by the honorable James Hamilton, esq. with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent, and Sussex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same, That from and after the publication of this act, if any person or persons within any town or village of this government, shall set on fire any chimney or chimnies of the house or houses wherein he, she, or they dwell, to cleanse the same, or, by neglect, shall suffer his, her, or their chimney or chimnies to take fire, and blaze out at the top thereof, every such person being thereof duly-convicted, by the oath or affirmation of one credible witness, or the confession of the party or parties offending, before any one Justice of the Peace of the town or hundred wherein such chimney shall take fire, shall, for every such offence, or neglect, forfeit the sum of Twenty Shillings, to be levied, together with costs of prosecution, on his, her, or their goods and chattels, by distress and sale thereof to be made, by warrant under the hand and seal of such justice; which said forfeiture shall be paid to the Treasurer of the respective county for the time being, for the use of the poor of the town or hundred wherein such chimney shall take fire.

CHAP.

(g) See chap. 27. c. sects. 1, 2, passed June 15, 1793.

C H A P. CXXIV. a.

C H A P.
CXXIV.

35 Geo. II.

An ACT for the amendment of an act, entituled, An Act for establishing a market in the town of Dover, in the county of Kent, and in the town of Lewes, in the county of Suffex, within this government. (a)

WHEREAS the said act hath been found insufficient, so far as it concerns the town of Dover, in regard that no place within the said town hath yet been laid out, and called by the name of a market square, nor any place yet allotted for building a market-house, or appointed where provisions may be bought and sold on market days, until such house shall be built: For remedy whereof, Preamble.

SECTION 2. *BE it enacted by the honorable James Hamilton, esq. with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent, and Suffex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the free-men of the said counties, in General Assembly met, and by the authority of the same, That Nicholas Ridgely, esq. Andrew Caldwell, and Thomas Alford, of Kent county, gentlemen, or any two of them, shall lay out, and are hereby authorised and required, with all convenient speed, after the publication of this act, to lay out a square plot of ground in or near the middle of that part of the town of Dover, commonly called the court-house square, which said plot of ground, when so laid out, shall be called the market-square. And the said Nicholas Ridgely, esq. Andrew Caldwell, and Thomas Alford, or any two of them, shall also allot and describe some spot of ground within the said market-square, for building a market-house upon, and make return of their proceedings therein to the next succeeding Court of Quarter-Sessions, to be held for the said county of Kent, who shall order the* Persons appointed to lay out a market square, &c.

(a) See before chap. 99. a. 15 Geo. II.

C H A P.
CXXII.
25 Geo. II.
former act re-
pealed.

pence for the trouble and charge of keeping the Office of Great Seal of this government. (g)

SECT. 8. *And be it further enacted by the authority aforesaid, That an act of Assembly of this government, entitled, An act for establishing a Great Seal of this government, shall be, and is hereby repealed.*

C H A P. CXXIII. a.

25 Geo. II. *An ACT for preventing accidents that may happen by fire in any of the towns or villages within this government.*

BE it enacted by the honorable James Hamilton, esq. with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent, and Sussex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same, That from and after the publication of this act, if any person or persons within any town or village of this government, shall set on fire any chimney or chimnies of the house or houses wherein he, she, or they dwell, to cleanse the same, or, by neglect, shall suffer his, her, or their chimney or chimnies to take fire, and blaze out at the top thereof, every such person being thereof duly convicted, by the oath or affirmation of one credible witness, or the confession of the party or parties offending, before any one Justice of the Peace of the town or hundred wherein such chimney shall take fire, shall, for every such offence, or neglect, forfeit the sum of Twenty Shillings, to be levied, together with costs of prosecution, on his, her, or their goods and chattels, by distress and sale thereof to be made, by warrant under the hand and seal of such justice; which said forfeiture shall be paid to the Treasurer of the respective county for the time being, for the use of the poor of the town or hundred wherein such chimney shall take fire.

CHAP.

(g) See chap. 27. c. sects. 1, 2, passed June 15, 1795.

C H A P. CXXIV. a.

C H A P.
CXXIV.

35 Geo. II.

An ACT for the amendment of an act, entitled, An Act for establishing a market in the town of Dover, in the county of Kent, and in the town of Lewes, in the county of Suffex, within this government. (a)

WHEREAS the said act hath been found insufficient, so far as it concerns the town of Dover, in regard that no place within the said town hath yet been laid out, and called by the name of a market square, nor any place yet allotted for building a market-house, or appointed where provisions may be bought and sold on market days, until such house shall be built: For remedy whereof, Preamble.

SECTION 2. *BE it enacted by the honorable James Hamilton, esq. with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent, and Suffex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the free-men of the said counties, in General Assembly met, and by the authority of the same,* That Nicholas Ridgely, esq. Andrew Caldwell, and Thomas Alford, of Kent county, gentlemen, or any two of them, shall lay out, and are hereby authorized and required, with all convenient speed, after the publication of this act, to lay out a square plot of ground in or near the middle of that part of the town of Dover, commonly called the court-house square, which said plot of ground, when so laid out, shall be called the market-square. *And the said Nicholas Ridgely, esq. Andrew Caldwell, and Thomas Alford, or any two of them, shall also allot and describe some spot of ground within the said market-square, for building a market-house upon, and make return of their proceedings therein to the next succeeding Court of Quarter-Sessions, to be held for the said county of Kent, who shall order* Persons appointed to lay out a market square, &c.

the

(a) See before chap. 99. a. 15 Geo. II.

CHAP.
CXXIV.

25 Geo. II.

Market house
to be built.

the same to be recorded in the Rolls Office for the said county.

SECT. 3. *And* that the inhabitants of the said town of Dover may not be longer prevented from building a market-house, and putting the said act in execution so far as it relates to them, *Be it enacted by the authority aforesaid*, That as soon as the said Nicholas Ridgeley, Andrew Caldwell, and Thomas Alford, or any two of them, shall have laid out the market-square, and spot of ground for a market-house, as aforesaid, they, or any two of them, shall, and are hereby required and authorized to have the oversight and care of building the said market-house; and that as soon as a market-house shall be built, as aforesaid, the said act shall be put in execution, to which all persons concerned are hereby required to be assisting.

Clerk of the
Market appointed.

SECT. 4. *And be it further enacted by the authority aforesaid*, That Thomas Parke, esq. of the town of Dover aforesaid, is hereby appointed and constituted Clerk of the Market for the said town of Dover.

SECT. 5. *Provided always, and be it further enacted*, That no person or persons shall be restricted from buying and selling provisions in any part of the said town of Dover, until the said market-house shall be built, any thing in the above recited act to the contrary notwithstanding.

Clerk of the
Market impowered to erect
stalls, &c.

SECT. 6. *And whereas* many pedlars and petty chapmen, recommended and licensed to sell goods within this government; do frequently (especially at court times) set up stalls or booths in the town of Dover, for exposing their goods to sale, which, for want of proper regulations, do not only too much incumber some part of the town, but also often produce frays and disorders; for the remedy whereof, *Be it further enacted by the authority aforesaid*, That the Clerk of the Market for the said town of Dover, already by this act appointed, or hereafter to be appointed by the Justices of the Court of Quarter Sessions of the said county, in manner and form as in the before-mentioned act is directed, shall and may, and he and they are hereby impowered and authorized to set up stalls or booths within the said market square, by virtue of this act to be laid out, and to lett out the same on hire

hire for such sum or sums of money as any three of the justices of the said county shall direct. And for encouragement and satisfaction for his care, in executing the said act, the said Clerk for the time being, shall receive, and take to his own use, the whole hire of the said stalls and booths so to be erected for the uses aforesaid; and that no person or persons whatsoever, who are not an inhabitant or inhabitants of the county of Kent, shall expose goods to sale in any street, alley, or square of the said town of Dover, except in the market square only, and by the approbation of the Clerk, on penalty of forfeiting the sum of Ten Shillings for every such offence, to be recovered as other fines and forfeitures are by the said act directed, one half to the use of the poor of the said county, and the other half to the use of the said Clerk.

CHAP.
CXXIV.
25 Geo. II.

Penalty on
strangers selling
goods except in
the market
square.

SECT. 7. *And be it further enacted by the authority aforesaid,* That an act of Assembly of this government, entitled, *An act for the amendment of an act for establishing a market in the town of Dover, in the county of Kent, and in the town of Lewes, for the county of Sussex,* is hereby repealed.

Former act re-
pealed.

C H A P. CXXV. a.

An ACT for regulating attachments within this government. Repealed and supplied chap. 200. a. passed March 24, 1779. 25 Geo. II.

C H A P. CXXVI. a.

An ACT against menacing, assault, and battery. 25 Geo. II.

SECTION I. **B**E it enacted by the honorable James Hamilton, esq. with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent, and Sussex, upon Delaware, and province of Pennsylvania, by and with the advice

C H A P:
CXXVI.
25 Geo. II.

Punishment for
such as assault,
&c. parents.

Assault and bat-
tery fineable at
the discretion of
the court.

Free Negroes,
&c. convicted,
to be fined, &c.

Menacing or
assaulting of
Magistrates, fi-
neable at dis-
cretion of the
court.

advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same, That whosoever shall menace, assault, or beat, his or her parent, and shall be duly convicted thereof in any Court of Quarter Sessions within this government, upon complaint first made by his or her parent, he, she, or they, so offending, shall suffer imprisonment for any space of time not exceeding eighteen months, during which time he or she shall be kept at hard labour.

SECT. 2. *And be it further enacted by the authority aforesaid, That if any person or persons shall, at any time, after the publication of this act, commit an assault or battery on the person of another, and be duly convicted thereof in any Court of Quarter Sessions within this government, he, she, or they, so offending, and convicted as aforesaid, shall be fined, at the discretion of the said court before whom such conviction is had, according to the heinousness of the offence, which fine shall go to the use of the Governor for the time being, towards the support of government.*

SECT. 3. *Provided always, and be it enacted by the authority aforesaid, That if any of the persons convicted as aforesaid, be a free Negro, or Mulatto, he, she, or they, shall be fined by the court before whom such conviction is had, as aforesaid, in any sum not exceeding Ten Pounds, and not less than Five Pounds, to be appropriated as aforesaid; and for want of goods and chattels, to pay the said fine, and cost of prosecution, he, she, or they, shall be adjudged to make satisfaction by servitude, for any term or time not exceeding four years, and be publicly disposed of as a servant, by the Sheriff of the respective county where such offence shall be committed.*

SECT. 4. *And be it further enacted by the authority aforesaid, That if any person or persons shall menace, assault, or beat, any Magistrate, or Justice of Peace of this government, in the execution of his office, and be duly convicted thereof, he, she, or they, so offending, and convicted as aforesaid, shall be fined at the discretion of the said court, to be levied and applied as aforesaid.*

SECT.

SECT. 5. *And be it further enacted by the authority aforesaid,* That if any indented or adjudged servant, or servants, shall assault, or beat, his, her, or their master, or mistress, and be legally convicted thereof by one credible witness at least, besides the oath or affirmation of his or her said master or mistress, before two Justices of the Peace for the county where such offence shall be committed, such servant or servants so offending, and convicted as aforesaid, shall be adjudged by the said justices, to serve his, her, or their master or mistress, for every such offence, after the expiration of their indenture, or adjudged time pursuant to law, any term or time not exceeding six months; and the justices, before whom such conviction and adjudication as aforesaid, shall be had, are hereby ordered to keep a fair book of record of the whole proceedings, which record shall be as available in law, as if the same servant had been adjudged by any Court of Record within this government. *And* that the said justices, before whom such conviction is had, and adjudication made, shall, for recording the same, and giving a transcript thereof, receive the sum of Two Shillings and Six-pence each, to be paid by the master or mistress requiring the same.

C H A P.
CXXVI.
25 Geo. II.

Penalty on servants assaulting their masters, &c.

SECT. 6. *And be it further enacted by the authority aforesaid,* That if any Negro or Mulatto slave shall assault or beat any white person or persons, he, she, or they, so offending, being duly convicted thereof before one Justice of the Peace for the county where such offence shall be committed, shall be adjudged by the said justice to stand in the pillory, for any space of time not exceeding two hours, and be publicly whipt with any number of lashes not exceeding thirty-nine, on his, her, or their bare back, well laid on. (b)

Negroes, &c. assaulting white persons, how to be punished.

SECT. 7. *And be it further enacted,* That the law of this government, entituled, *An act against menacing, assault, and battery,* shall be, and is hereby repealed.

CHAP.

(b) One Negro or Mulatto slave assaulting another to be punished by the sentence of two Justices of the Peace for the county, &c. See chap, 188, 2, sect, 3, passed October 31, 1767.

C H A P.
CXXVII.

C H A P. CXXVII. a.

25 Geo. II.

A Supplement to an act of General Assembly of this government, entitled, An act for acknowledging and recording of deeds. (a)

Preamble.

WHEREAS by the said act it is directed, That where any deed or deeds, conveyance or conveyances, or Power of Attorney, for granting or conveying of any lands or tenements within this government, or Power of Attorney to acknowledge such deed or deeds, conveyance or conveyances, should thereafter be made or executed by any person or persons out of this government, such deed or deeds, conveyance or conveyances, or Power of Attorney, should be proved by one or more of the witnesses thereto, in open court, in the county where the lands or tenements lie, &c. *And whereas* it hath been found very inconvenient, as well as very difficult and expensive, where deeds or other writings are executed out of this government, to procure the witnesses thereto to come into the county where the lands lie, and prove the same in manner as by the said act is required: For the remedying whereof,

SECTION 2. *BE it enacted by the honorable James Hamilton, esq. with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent, and Suffex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same,* That all deeds and conveyances, and Powers of Attorney in the said act mentioned, already made and executed, or hereafter to be made and executed, out of this government, and brought hither, and recorded in the county where the lands lie, the execution thereof being first proved by the oath or affirmation of one or more of the witnesses thereunto, before the Justices of

Deeds, &c.
proved before a
Mayor, or chief
Magistrate, &c.
and certified
&c. shall be as
available as if
proved in the
proper county.

(a) For the original act, see before chap. 83, a, and see also sect 3, thereof, and the note (d) there.

of the Court of Common Pleas, or any Mayor, Chief Magistrate, or officer, of the city, town, or county, where such deeds, conveyances, or powers, are or shall be made and executed, and accordingly certified under the common or public seal of such city, town, or county, shall be as good and available in law, to all intents and purposes, as if the same had been made, acknowledged and proved in the proper county where the lands lie in this government. (b)

C H A P.
CXXXVII.
25 Geo. II.

SECT. 3. *And whereas*, for want of a due understanding of the laws of this government, heretofore made, relating to the acknowledgment of deeds and other writings, the Justices of the Court of Common Pleas of some of the counties within this government, have, as occasion required, called Special Courts, and therein received the acknowledgment of sundry deeds, under which many of the inhabitants of this government claim title to, and have quietly enjoyed possession of the lands granted and conveyed by such deeds: *Therefore*, for the quieting the minds of those, who have purchased, enjoyed, and held, lands under such deeds, and for confirming them in their rights and possessions, *Be it enacted by the authority aforesaid*, That all deeds, conveyances, and other writings, that have heretofore been acknowledged before any three or more of the Justices of any Court of Common Pleas within this government, at any Special Court, by them called and held, shall be deemed, and are hereby declared to be as good and effectual in law, to all intents and purposes whatsoever, as if the same had been acknowledged in open Court of Common Pleas for the said county, any law, usage, or custom to the contrary notwithstanding. *Provided always*, That nothing in this act contained, shall be construed, or deemed, to make good and valid any deed proved or acknowledged as aforesaid, where any fraud in such case can be made appear.

Deeds, &c. heretofore acknowledged before three justices, shall be deemed as good as if acknowledged in court.

SECT. 4. *And be it enacted by the authority aforesaid*, That an act of General Assembly of this government,

Former act repealed.

VOL. I.

2 Q

made

(b) A like provision as to taking the private examination of Feme-Coverts, parties to grants of lands in their own right, where the resides, and of the county in which such lands lie, in chap, 218, a, passed April 12, 1773.

CHAP.
CXXVII.
25 Geo. II.

made in the twenty-second year of the reign of his present Majesty, entitled, *A supplement to an act of General Assembly of this government, entitled, An act for recording and acknowledging of deeds*, shall be, and is hereby repealed.

C H A P. CXXVIII. a.

25 Geo. II. *An ACT for the new appointment of Trustees for the several General Loan Offices within this government.*

Preamble:

WHEREAS by an act of Assembly of this government, entitled, *An act for reprinting, exchanging, and re-emitting Twenty Thousand Pounds of the bills of credit of this government, passed in the twentieth year of the reign of his present Majesty, Jehu Curtis, John M'Coolé, and John Vance, of New-Castle county; gentlemen, were constituted Trustees of the General Loan Office of the said county of New-Castle; and John Brinkley and Thomas Green, gentlemen, were constituted Trustees of the General Loan Office of Kent county, and Ryves Holt and Jacob Kollock, gentlemen, were constituted Trustees of the General Loan Office of Sussex county; And whereas the time limited by the said act, for the continuance of the said Trustees in the exercise of their respective offices, will at the end of this Session of Assembly expire, whereby a new appointment of Trustees, to execute said offices, is become necessary:*

SECTION 1. *BE it enacted by the honorable James Hamilton, esq. with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent, and Sussex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same, That Jehu Curtis, John Vance, and Richard M'William, of New-Castle county, gentlemen, are hereby nominated and appointed Trustees of the General Loan Office for the county of New-Castle; and John Vining and Andrew Caldwell, of Kent county,*

Trustees appointed.

county, gentlemen, are hereby nominated and appointed Trustees of the General Loan Office of the county of Kent; and Ryves Holt and Jacob Kollock, of Suffex county, gentlemen, are hereby nominated and appointed Trustees of the General Loan Office for the county of Suffex. Which said Trustees shall and may have, hold, and enjoy, the same offices, for and during the term of four years next after their entering into the execution of their respective trusts as aforesaid, and from thence to the end of the next Session of Assembly. And the said Trustees are hereby authorized and empowered, immediately after the end of this Session of Assembly, to enter upon the execution of their trust, to which they are hereby appointed, in their respective counties, and to receive, remit, and exchange, all bills of credit of this government, according to the directions of the act of Assembly aforesaid; and to do and perform all other matters and things enjoined or required, or that shall be enjoined or required to be done by the several Trustees, in their respective counties, by any act of Assembly, now made, or hereafter to be made, during their continuance in said trust and office, as fully and amply, to all intents and purposes, as the present or former Trustees of the several General Loan Offices within this government, now can, or might, or could have done, by virtue of any of the acts of Assembly, by which the said Trustees therein named were appointed; and as fully as if the aforesaid Jehu Curtis, John Vance, and Richard M'William, for the county of New-Castle; John Vining and Andrew Caldwell, for the county of Kent; and Ryves Holt, and Jacob Kollock, for the county of Suffex; had been nominated, constituted, and appointed, Trustees of the respective General Loan Offices within this government, in the bodies of said acts of Assembly.

SECT. 2. *Provided always*, That each of the said Trustees in their respective counties, before they enter upon the execution of their trust as aforesaid, shall enter into a recognizance in the respective Courts of Quarter-Sessions, or by bond to the Treasurer of the said county, in the sum of One Thousand Pounds, with two or more sureties at the least, conditioned as by

C. H. A. P.
CXXXVIII.
25 Geo. II.

Their duty.

Trustees to enter into recognizance, &c.

C H A P.
CXXVIII.

25, Geo. 11.

by the said act of Assembly is directed, with a further condition, to deliver up to their successors in the said trust, the mortgage deeds, bonds, and warrants of attorney, plate, bills of credit, and other money, remaining in the said office, and all books and papers appertaining to the same, at the expiration of their said office, or when they shall be removed from their trust; and shall take the oath or affirmation therein enjoined to be taken by the Trustees, for the due performance of their respective trusts as aforesaid.

In case of death,
&c. the Assembly
to nominate
others.

Trustees im-
powered to re-
ceive the mort-
gage deeds, &c.

SECT. 3. *And* if any of the above-mentioned Trustees shall happen to die, or be removed, for any cause whatsoever, it shall and may be lawful to and for the General Assembly of this government, so often as need may require, to nominate and appoint some other fit person or persons in the place and stead of such Trustee or Trustees, so dead or removed as aforesaid, who shall have the same power and authority as if he or they had been nominated and appointed by this act. And the Trustees aforesaid are hereby further authorized and required, from and immediately after the end of this present Session of Assembly, to demand, take, and receive, of the present Trustees, and of every of them, and of every other person concerned therein, all mortgage deeds, bonds, and warrants of attorney, together with the books of record, and enrollments of the same, and all deeds and evidences, relating to or concerning the right or title of any lands, tenements or hereditaments, or other things, taken or received by any of the Trustees of the respective offices, into the said General Loan Offices, for the security of the payment of any sum of money; and all the bills of credit, and other money, of what kind soever, in their, or any of their hands, belonging to any of the General Loan Offices of the respective counties within this government; and, on refusal or neglect to deliver the same, to take all legal ways and means necessary for the recovery thereof, and, on receipt thereof, to account with the respective committees, as by the afore-mentioned act is directed.

Late Trustees
may have re-
course to the re-
cords, &c.

SECT. 4. *Provided always*, That it shall and may be lawful for the late Trustees, or any of them, in their respective counties, at any seasonable time, or times,

times, to have recourse to, and inspection of, all mortgage deeds or inrollments of the same, with their indorsements, thereby to enable them, or either of them, to account with the General Assembly of this government, or their committees, or any other persons appointed by the General Assembly of this government for that purpose, if any such account shall be required.

CHAP.
CXXVIII.
25 Geo. II.

C H A P. CXXIX. a.

A Supplementary act to the act, entitled, An act for the better regulation of servants and slaves, within this government. (a) 25 Geo. II.

WHEREAS the laws of this government, in regard to the regulation of servants and slaves, have been found to be defective, in not prescribing any mode for the settling and determining in a short and summary way any differences or disputes that may arise between any master or mistress, and his or her apprentice, indented or other servant: For the remedying of which inconveniencies and defects for the future, Preamble.

Be it enacted by the honorable James Hamilton, esq. with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent, and Sussex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the free-men of the said counties, in General Assembly met, and by the authority of the same, That the Justices of the respective Courts of Quarter-Sessions within this government, upon any petition to them, to be preferred by any apprentice or apprentices, or his, her, or their parents, guardians, or next friends, or by any servant

Justices, on petition, may summon masters, &c.

(a) For the original act, see before chap. 77. a. 13 Geo. II. For a further supplement see after chap. 170. a. passed October 1760. And for another supplement, see chap. 188. a. passed October 31, 1767.

C H A P.
CXXIX.

25 Geo. II.

and discharge
apprentices,
&c.

vant against his or her master or mistress, for or by reason of any breach of covenants, or other matter, cause, or thing whatsoever, it shall and may be lawful for the said justices, to issue a summons against such master or mistress, and to cause him or her to come before them, to answer such complaint; and, after hearing the proofs and allegations of the parties, to discharge any apprentice from his or her indenture, and bind him or her out to some other master or mistress of the same trade, art and mystery, if to the said justices it shall seem meet and expedient; and likewise to order and compel any master or mistress, to sell and dispose of the residue and remaining part of such servant's indented time to some other person or persons, to be approved of by one or more of the said justices, or to make such other order or decree between any master or mistress, and his or her apprentice, indented or other servant, as to them shall seem agreeable to equity and good conscience; and to force obedience to such their judgment and decree, by committing the body of the person or persons refusing, or neglecting to comply therewith.

C H A P. CXXX. a.

25 Geo. II. *An ACT to limit the continuance of actions in the respective Courts of Common Pleas, in this government.*

Preamble.

WHEREAS the long continuance of actions in the several Courts of Common Pleas within this government, hath been attended with great evils, and many persons, by means thereof, have been kept out of their just rights: For the remedy whereof for the future,

SECTION 2. *BE it enacted by the honorable James Hamilton, esq. with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent, and Sussex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties*

ties, in General Assembly met, and by the authority of the same, That in all actions hereafter to be commenced in any Court of Common Pleas within this government, where the plaintiff or plaintiffs shall send a copy of the declaration, with the writ, and cause the same to be served on, or delivered to, the defendant or defendants, or left at the last place of his, her, or their abode, at least twenty days before the court to which such writ is returnable, it shall and may be lawful for the justices of such court, on due proof thereof, to make a rule for the defendant; or defendants, to file his, her, or their plea, or pleas, by the second day of the next succeeding term after such court; and if the defendant or defendants, shall neglect or refuse to comply with such rule, the justices of such court shall and may proceed to render judgment against him, her, or them, with costs of suit; for such neglect or refusal, unless he, she, or they, can shew good cause, upon oath or affirmation, why a further day should be given, and thereupon to award a Writ of Enquiry; if the case may require it.

C H. A. P.
CXXX.

25 Geo. II.

Court may make a rule for defendant to plead, &c.

SECT. 3. *And be it further enacted by the authority aforesaid,* That in all actions, hereafter to be commenced in any Court of Common Pleas within this government, the plaintiff, or plaintiffs, shall file his, her, or their declaration, by the second day of the next term succeeding the court to which the writ is returnable; and if the plaintiff or plaintiffs shall neglect or refuse to file his, her, or their declaration, within the time aforesaid, then the justices of such court are hereby impowered and directed to cause judgment to be entered for the defendant, with costs, against the plaintiff or plaintiffs, for such neglect or refusal. But if the plaintiff or plaintiffs shall file his, her, or their declaration within the time aforesaid, then the justices aforesaid shall make a rule for the defendant, to file his, her, or their plea, by the second day of the next term after filing the said declaration, and, on neglect or refusal, to comply with such rule, shall give judgment against the defendant, or defendants, in manner above-mentioned, unless sufficient cause shall be shewn in manner aforesaid.

Plaintiff neglecting to file declaration in due time, judgment may be entered for defendant, &c.

Defendant neglecting, &c.

SECT.

C H A P.
CXXX.
25 Geo. II.

No action to be
continued longer
than the
fourth term, un-
less, &c.

SECT. 4. *And be it further enacted by the authority
aforesaid,* That no action hereafter to be commenced
as aforesaid, may or shall be continued longer than
the fourth term after such action brought, and then
the parties shall be obliged to come to trial, unless it
shall happen that some material evidence is wanting,
and out of the reach of the process of the court, or
some other special cause shall be assigned, to the satis-
faction of the court, all which matters and things
shall be made out to the court by affidavit of the par-
ty, plaintiff, or defendant, in such suit. And in such
cases the justices may direct the trial of the said cause
to be put off to some succeeding court.

Former act
repealed.

SECT. 5. *And be it further enacted by the authority
aforesaid,* That an act of Assembly of this govern-
ment, made in the twenty-second year of the reign of
his present Majesty, entitled, *An act to limit the con-
tinuance of actions in the several Courts of Common Pleas
within this government,* shall be, and is hereby re-
pealed, made null and void.

C H A P. CXXXI. a.

25 Geo. II. *An ACT for erecting public bridges, causeways, and lay-
ing out and maintaining highways. (a)*

Preamble.

WHEREAS nothing more contributes to the
ease, safety, and conveniency of travellers,
than the erecting of bridges, causeways, and keeping
in

(a) For several subsequent provisions and alterations in this act, See as to the
county of New-Castle, chap. 180. a. passed November 1, 1762, for straitning the
roads through that county from the line of Chester county to that of Kent, &c.

A supplementary act thereto, chap. 184. a. passed March 31, 1764, for a review
of such roads and their establishment.—A further supplement, chap. 195. a. passed
June 16, 1769, altering that part of the then King's highway from Whiteclay Creek
Bridge to Christiana Bridge.

And another further supplement, chap. 211. a. passed June 13, 1772, directing
by whom the owners of St. Georges Mill-dam are to be paid Six Pounds yearly, to
enable them to keep it in good order as a road. That water-wheels of mills near the
roads be concealed by sheds, &c. That Overseers may open drains through lands ad-
joining: And that gravel, sand or stones may be taken therefrom.

As to the counties of Kent and Suffex, see chap. 176. a. passed October 31, 1761,
establishing roads leading from Salisbury town, at the run of Duck-Creek and the
line of New-Castle county, by Dover, through Kent and Suffex counties, to Lewes

in good repair the highways and roads of each particular government,

CHAP.
CXXXI.
25 Geo. II.

SECTION 2. *BE it therefore enacted by the honorable James Hamilton, esq. with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent, and Sussex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same,* That all King's roads and highways, and all such other roads as may be deemed necessary for the ease and advantage of the inhabitants of this government, and travellers, shall be laid out by order of the Justices of the Peace, at the Court of Quarter Sessions, within each respective county, where the application shall be made in manner as herein-after is directed. (b)

Highways, &c.
to be laid out,
by order of the
Justices.

SECT. 3. *And be it further enacted by the authority aforesaid,* That the Justices of each respective Court of Quarter Sessions within this government, are hereby impowered and required, in May Sessions, yearly, and every year, to nominate and appoint in each of the hundreds of their respective counties, one or more discreet and substantial inhabitant, or inhabitants, to be Overseer or Overseers of the highways, causeways, and bridges, of the several parts of their respective hundreds, for the ensuing year, by warrant from under the seal of the said court, signed by the Clerk of the Peace. (c)

Justices to ap-
point Overseers
of highways and
bridges, &c.

SECT. 4. *And be it further enacted by the authority aforesaid,* That all King's roads or highways within this government, shall be of the breadth of forty feet,

Breadth of
highways, &c.

VOL. I.

2 R

whereof

Town, &c. and from the Court House then there to Frame's saw-mill, thence back to the dwelling of John Clows, jun. (head of the Broad-hill) as public or King's roads, liable to be altered under the direction of the Courts of Quarter Sessions.

That as to the county of Kent—by a special act, chap. 99. c. passed February 9, 1796, wherein the greater part of the system in this chap. 131. a. and the said chap. 176. a. is altered and many new regulations made. And then as to the county of Sussex, by another special act, chap. 100. c. passed the same 9th February, 1796. wherein a system somewhat different from that for Kent county is adopted.

(b) See chap. 180. a. sect. 7—chap. 184. a. sect. 3, 6—chap. 99. c. sect. 1, 2, 26. chap. 100. c. sect. 1, 4.

(c) See chap. 99. c. sect. 4, 8—chap. 100. c. sect. 4, 8.

CHAP.
CXXXI.
25 Geo. II.

whereof thirty feet shall be grubbed and cleared, and the branches and limbs of trees adjoining to the said roads or highways, shall be cut down, at least ten feet from the ground, and all dead trees standing near the said roads or highways, if by falling they might reach the same, shall be cut down, and that all public roads, which are not properly King's roads or highways, shall be of the breadth of thirty feet, twenty feet of which shall be grubbed and cleared in like manner as King's roads or highways. (d)

Causeways to
be made.

SECT. 5. *And be it further enacted by the authority aforesaid,* That all roads into and out of all swamps, creeks, runs, and sunken lands, that fall within the limits aforesaid, shall be secured by good causeways, and that all causeways and bridges shall be of the breadth of twelve feet at least, and bridges standing over deep water, shall be railed in at the distance of ten feet from rail to rail, and of the height of three feet from the plank or floor of the bridge. (e)

Bridges by
whom to be re-
paired.

SECT. 6. *And be it further enacted by the authority aforesaid,* That all bridges over creeks, and deep waters, lying on the King's highways, leading through any of the counties aforesaid, shall be repaired and maintained at the common expence of the respective county where such bridges are erected. (f)

SECT. 7. *Provided nevertheless,* That such persons as by any act of Assembly of this government are entitled to the benefit of any bridge or bridges lying over deep waters or creeks, and the causeways leading thereto, built at their own expence, or at the expence of their predecessors, or assignors, shall enjoy all and every the privileges and advantages already granted them; they maintaining and keeping in repair such bridges and causeways as aforesaid.

SECT. 8. *And be it further enacted by the authority aforesaid,* That every person or persons, who, for his,

(d) See chap. 176. a. sect. 2—chap. 180. a. sect. 3—chap. 99. c. sect. 9—chap. 100. c. sect. 2.

(e) See chap. 176. a. sect. 3—chap. 214. a. sect. 9—chap. 99. c. sects. 9, 18, 19, 20, 24—chap. 100. c. sect. 5, 9, 11, 16, 20, 21, 22, 26, 27.

(f) See references at preceding section.

his, her, or their own benefit, already hath or have, or hereafter shall cut through the King's highway, or other public road, any mill-race, ditch, drain, or other water-course, he, she, or they, shall be obliged to make, support, maintain, and repair, a good and sufficient way over the same, for the convenient passage of men, horses, carts, and other carriages, under the penalty of Five Pounds for each offence, to be recovered by bill, plaint, or information.

CHAP.
CXXXI.

25 Geo. II.

Where mill races, &c. cross a public road, the owner to keep the way in repair.

Penalty,

SECT. 9. *And be it further enacted by the authority aforesaid,* That all bridges heretofore erected in the several hundreds of this government, or public roads, which are not properly King's roads, shall be repaired and maintained by the inhabitants residing in the respective hundreds where such bridge or bridges are erected.

Bridges not in the King's roads, by whom to be repaired.

SECT. 10. *Provided nevertheless,* That where any bridge is already erected over any creek or deep water, which is a boundary between two hundreds, the inhabitants of each hundred shall and are hereby obliged to support equally the said bridge, and the causeway leading to the same on either side. (g)

SECT. 11. *And in order that bridges and causeways may be easier built and supported, Be it enacted by the authority aforesaid,* That it shall and may be lawful for the Overseers in their respective hundreds, to fall, cut down, and carry away, all such timber and trees as stand within the limits of the roads aforesaid, for and towards the support of the bridges and causeways of the same. And in case no such timber or trees can there be found, then it shall and may be lawful for the respective Overseers, to cause such trees or timber, as shall be necessary for building and repairing bridges and causeways, standing or growing on any lands that are most commodiously situated for such use, to be viewed and appraised by two impartial freeholders of the vicinage, nominated and appointed by the said Overseer or Overseers, they being first sworn or affirmed before some Justice of the Peace, to duly appraise the same in the presence of the owner thereof, if he will attend (after notice given him by the Overseers)

Power to Overseers, of cutting timber, &c.

Timber to be appraised and paid for,

(g) See chap. 99, c. sect. 13—chap. 100, c. sect. 16.

C H A P.
CXXXI.
25 Geo. II.

seers) to be cut down, and carried off for the use before mentioned, and the appraised value thereof to be paid to the owner or owners, and to be levied as other county rates and levies are.

Overseers sued,
may plead the
general issue.

SECT. 12. *And if the said Overseer or Overseers shall be sued for cutting down any timber for the uses as above-mentioned, he or they may plead the general issue, and give this act in evidence. And if the plaintiff be non-suited, discontinue his action, or a verdict pass against him, he shall pay the defendant treble costs. (b)*

Proceedings in
obtaining new
roads.

See the several
acts before re-
ferred to.

Damage to im-
proved lands,
how to be set-
tled, &c.

SECT. 13. *And be it further enacted by the authority aforesaid, That where application shall be made to the Justices in their Court of Quarter Sessions of their respective counties, by any person or persons, that a road is necessary or wanting, the said justices are hereby required and impowered to nominate and appoint five good and substantial freeholders of the neighbourhood, to view and examine whether such road is necessary and convenient. And if, upon viewing the premises, the said freeholders, or a majority of them, shall think such road fit and convenient, then they are hereby ordered to lay out the same, and make return thereof to the Justices of the succeeding Court of Quarter Sessions, to be held in the county where such application is made, describing, in writing under their hands, the said road, with courses and distances, as nigh as can be estimated; and if the said return shall be approved of by the said justices, they shall cause the same to be entered on record, and from thenceforth it shall be deemed, taken, and allowed, to be a public road; and whenever it shall be found necessary and convenient by such five freeholders, or any three of them, that such road shall run or go through the improved lands of any person or persons, then, and in such case, such five freeholders, or any three of them, shall, together with the return of the view of such road, make return to the respective Courts of Quarter Sessions, upon oath or affirmation, to be taken before any Justice of the Peace of the county where such lands lie, of the damages that may be*

(b) See chap. 99. c. sect. 22—chap. 100, c. sect. 24.

be sustained by such person or persons as shall be owners of such improved lands, by reason or means of laying out such road through the same. And the road so returned shall not be confirmed until the person or persons petitioning for the same, shall pay to the owner or owners of such improved lands all such damages as he, she, or they, shall have sustained, by the valuation of such freeholders, or any three of them, as aforesaid. And the petitioner or petitioners for such road, shall pay and satisfy all costs and charges whatsoever, that shall or may happen to accrue for laying out such road. And the said freeholders, or any three of them, so nominated and appointed by the justices as aforesaid, shall receive and have from the parties petitioning for any road or roads as above mentioned, the sum of Five Shillings each, for every day they shall attend the viewing and laying out the same. And any of the said freeholders so nominated and appointed by the justices as aforesaid, neglecting or refusing to comply with the directions of this act (unless hindered by sickness, or other unavoidable accidents) every such freeholder so neglecting or refusing, and being duly convicted thereof, shall, for such neglect or refusal, forfeit the sum of Ten Shillings, to be levied, together with costs, by distress and sale of the offender's goods and chattels, by warrant under the hand and seal of any one Justice of the Peace of the county where such offender shall reside. (i)

C H A P.
CXXXI.
25 Geo. II.

Costs, by whom
to be paid.

Penalty on free-
holders neglect-
ing, &c.

SECT. 14. *And be it further enacted by the authority aforesaid* That if any person or persons shall presume to obstruct any of the said highways or other roads heretofore laid out, or hereafter to be laid out, and allowed of as aforesaid, or to turn the same, without leave of the Court of Quarter Sessions first had and obtained, or shall commit any nuisance therein, by falling of trees, making fences, or any other way, and do not remove the same forthwith, such person or persons so offending, and being duly convicted thereof, shall be fined in the sum of Five Pounds, to be recovered in manner aforesaid, and to be applied by the court for the clearing and removing such nuisances,

Penalty on ob-
structing high
roads.

and

(i) See chap. 176. a. sect. 7—chap. 184. a. sect. 3—chap. 99. c. sect. 3. 6—chap. 99. c. sect. 3, 6, 27.

CHAP.
CX XXI.
25 Geo. II.

Overseers to
give notice to
the taxable in-
habitants, &c.

Number of men
to be sent, &c.

Penalty on not
sending men,
&c.

and the remainder thereof (if any there be) shall be applied by the said court, to repairing and clearing other roads within the hundred where the offence shall be committed. (k)

SECT. 15. *And to the end that highways may be kept in good order and repair, Be it further enacted by the authority aforesaid, That all and every Overseer and Overseers of every hundred, within the respective counties of this government, being first by the justices appointed as aforesaid, may and are hereby respectively empowered and required to give notice to every taxable person within their respective districts, in manner and form following; That is to say, every Overseer appointed as aforesaid, shall fix public advertisements in writing, at five of the most noted places in his district, at least ten days before the intended day of meeting, advertising and requiring each and every person in his said district, taxed or rated at any sum not exceeding Thirty Pounds, to find one sufficient man to be and appear at the place he the said Overseer shall in the said advertisement appoint, in order to do and perform such services as the said Overseer, in the discharge of his duty, shall direct; and every person taxed or rated at any sum not exceeding Sixty Pounds, nor under Thirty-one Pounds, to find two sufficient men for the purposes aforesaid; and any person taxed or rated at any sum exceeding Sixty Pounds, to find three sufficient men for the purposes aforesaid; which said notice shall be deemed a sufficient warning; and every taxable, who neglects, refuses, or delays, to appear after notice given as aforesaid, or to stand a sufficient man or men, according to the directions of this act, with proper tools and instruments, to do and perform such services as the Overseer or Overseers shall require and direct, from one hour after sun-rise until one hour before the setting of the same (meal times excepted) shall forfeit for the delinquency, or non-performance of the duties and services above required and directed, any sum not exceeding Five Shillings, nor under Two Shillings and Six-pence, to be levied as aforesaid; and the*

(k) See chap. 176. a. sect. 5—chap. 180. a. sect. 11—chap. 184. a. sect. 11—chap. 99. c. sect. 23—chap. 100. c. sect. 25.

the Overseers return of each delinquent or delinquents, upon his oath or affirmation, to any one Justice of the Peace of the county where he resides, shall be deemed sufficient proof for the conviction. (l)

C H A P.
CXXXI.
25 Geo. II.

SECT. 16. *And be it further enacted by the authority aforesaid,* That any person appointed Overseer, as in this act is directed, refusing or neglecting the performance of his duty as Overseer, shall forfeit, for such his refusal or neglect, the sum of Four Pounds, to be recovered by bill, plaint, or information. (m)

Penalty on
Overseer ne-
glecting, &c.

SECT. 17. *And be it further enacted by the authority aforesaid,* That all and every the fines and forfeitures in this act laid, and to be recovered as aforesaid, and not herein before appropriated, shall be paid to the Treasurer of the county where such fines and forfeitures shall be hereafter levied for and towards the defraying the charges in repairing and maintaining the bridges lying on the King's highways as aforesaid. And to prevent any difference that may arise amongst neighbours about roads or causeways already laid out by order of the Governor and Council, or any of the courts of this government, and which are or shall be entered upon record, either before or after the making and publishing this act, all such roads and causeways as aforesaid, shall be taken, deemed, and allowed to be free, open, and lawful common roads and cart-ways, from the time of their being laid out and recorded as aforesaid. (n)

Fines how to be
appropriated.

SECT. 18. *And be it further enacted,* That all acts of Assembly of this government, for laying out roads, and for erecting, repairing, and maintaining bridges, causeways, and highways, within this government, shall be, and are hereby repealed, madenull and void, except an act of Assembly of this government, entitled, *An act for repairing and amending the highways, roads, causeways, and bridges, within the hundred of New-Castle,* which is hereby declared to be in full force,

Former acts re-
pealed.

(l) See chap. 176. a. sect. 4—chap. 180. a. sect. 8—chap. 184. a. sect. 7, 8—chap. 99. c. sect. 9, 10, 12, 14, 19, 20—chap. 100. c. sect. 5, 9, 12, 13, 14, 15, 16, 17, 20, 21, 22.

(m) See chap. 176. a. sect. 5—chap. 180. a. sect. 10—chap. 184. a. sect. 10—chap. 99. c. sect. 24—chap. 100. c. sect. 26.

(n) See chap. 176. a. sect. 5—chap. 180. a. sect. 10—chap. 184. a. sect. 10—chap. 99. c. sect. 5, 8, 9, 15, 18, 23, 24—chap. 100. c. sect. 8, 9, 13, 18, 23, 26.

C H A P.
CXXXI.
25 Geo. II.

force, any thing in this act contained to the contrary in any wise notwithstanding. (o)

C H A P. CXXXII. a.

25 Geo. II. *An ACT to prevent swine running at large within the bounds of Lewes Town, in Sussex county*

Preamble.

WHEREAS the inhabitants of the town of Lewes, and parts adjacent, have heretofore suffered great damage by swine running at large, without rings and yokes,

Swine not to run at large without rings and yokes, &c.

Proceedings directed concerning swine found running at large, &c.

SECTION. 2. *BE it enacted by the honorable James Hamilton, esq. with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent, and Sussex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same,* That from and after the publication of this act, no swine shall be allowed or permitted to run at large, without sufficient rings and yokes, on any of the lands and marshes within the limits and bounds following, *viz.* Beginning at the mouth of Pagan or Canary Creek, thence up the same to the public road; thence by a right line to the head of Pothook's creek; thence down the same to the mouth thereof; and thence down Lewes Creek, to the mouth of Pagan or Canary Creek aforesaid. And if at any time, after the publication of this act, any swine shall be found at large within the above-mentioned bounds and limits, not sufficiently ringed and yoked as aforesaid, unless on the lands or marshes of the owner thereof, it shall and may be lawful for any person, being a freeholder, to take up, and secure, or kill the same swine so found upon his, her, or their lands and marshes, without rings and yokes, as aforesaid, and shall give notice to the owner or owners thereof, if known;

(o) See before chap. 111. a.

known; which owner or owners shall make good and pay all damages, by the party taking up the said swine, sustained, as shall be adjudged by two sufficient freeholders, upon oath or affirmation; which damages so adjudged as aforesaid, shall be levied by distress and sale of the offenders goods and chattels, and paid to the party injured: But if the party or parties injured by such swine shall kill all or any such swine, he, she, or they, shall inform the nearest Justice of the Peace of the same county, whereupon the same justice, by warrant under his hand and seal, directed to any of the Constables of Lewes, shall cause the swine so killed as aforesaid, immediately to be appraised by two sufficient freeholders, upon their oath or affirmation; and the said Constable shall publicly advertise the marks thereof, and sell the said swine so killed, to the highest bidder, and deliver the money arising on such sale into the hands of the Justice of Peace who granted the warrant, there to remain for the benefit of the owner, after deducting legal costs: But if the owner or owners shall neglect to claim the money due on such sale, after deducting legal costs, as aforesaid, within the space of six months, then, and in such case, the said justice shall pay to the Treasurer of the county the sum remaining in his hands, for the use of the poor, and the owner is hereby utterly barred, after the six months as aforesaid, from claiming any part of the said sum of money.

SECT. 3. *And be it further enacted by the authority aforesaid,* That no freeholder or freeholders, residing within the limits aforesaid, shall be allowed or permitted to drive or carry any swine out of the limits aforesaid, which were bred or raised therein, without rings and yokes, into any other part of the county of Suffex aforesaid, under the penalty in this act before provided against swine running at large, without rings and yokes, within the limits aforesaid, to be disposed of in manner aforesaid.

SECT. 4. *And be it enacted by the authority aforesaid,* That if any person or persons shall be sued for doing any thing according to the directions of this act, he, she, or they, may plead the general issue, and give

VOL. I.

2 S

this

CHAP.
CXXXII.
25 Geo. II.

Swine not to be
driven into
other parts,
without yokes,
&c.

C H A P.
CXXXII.

25 Geo. II.

Former acts re-
pealed.

this act in evidence, as a justification, and shall recover treble costs of the plaintiff or plaintiffs, any law, custom, or usage to the contrary notwithstanding.

SECT. 5. *And be it further enacted by the authority aforesaid,* That all acts of Assembly of this government, heretofore made for preventing swine running at large within the limits aforesaid; so far as the same may relate to swine, shall be, and are hereby repealed, made null and void.

C H A P. CXXXIII. a.

25 Geo. II.

An ACT for the killing of squirrels in the county of Kent.
Expired by its own limitation, being for three years.

C H A P. CXXXIV. a.

25 George II.

An ACT for the regulation of toll.

WHEREAS the inhabitants of this government do greatly suffer, by reason of the exorbitant toll taken by millers within the same, for the grinding of grain: Therefore, for the better and more just regulation of the same for the future,

SECTION 2. *BE it enacted by the honorable James Hamilton, esq. with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent, and Sussex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same,* That no person or persons, keeping a mill or mills, within this government, shall, after the publication of this act, presume, on any pretence whatsoever, to take more than the tenth part of each bushel of wheat, rye, Indian corn, buckwheat, or malt, as toll, for grinding the same, within the county of New-Castle; or more than the tenth part, for grinding

Quantity of toll
to be taken by
millers regulat-
ed.

grinding each bushel of wheat or malt, and the eighth part of Indian corn, rye, and buckwheat, within the counties of Kent and Suffex; and if any miller or millers, within this government, shall take, or cause to be taken, any greater or larger toll than is allowed by this act, he or they so offending, being legally convicted thereof, shall be adjudged to pay double damages to the party injured, with costs of prosecution, and shall be fined the sum of Five Pounds, one moiety whereof shall go to the Governor for the time being, towards support of government, and the other moiety to the party grieved, to be recovered by bill, plaint, or information, wherein no essoign, protection, or wager of law, shall be allowed.

SECT. 3. *And be it further enacted by the authority aforesaid,* That an act for the regulation of toll, made in the twelfth year of his late Majesty's reign, is hereby repealed, made null and void. Former act repealed.

C H A P. CXXXV. a.

A Supplementary act to an act, entitled, "An Act for regulating and establishing fees within this government." Repealed in chap. 204. a. sect. 39. 25 Geo. II.

C H A P. CXXXVI. a.

An ACT about contracts and assumptions. 25 Geo. II.

SECTION 1. **B**E it enacted by the honorable James Hamilton, esq. with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent, and Suffex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same, That all promises and assumptions, whereby any person or persons shall undertake

C H A P.
CXXXVI.

25 Geo. II.

Assumptions
proved on oath,
&c. shall be a-
vailable, &c.

Executors, &c.
not to be charg-
ed, except the
assumption be
proved, &c.

What agree-
ments are to be
in writing.

to answer or pay for the default, debt, or miscarriage, of another, any sum under Forty Shillings, being proved by the oath or affirmation of the person or persons to whom such promise and assumption shall be made, are hereby declared to be good and available in law, to charge the party or parties making such promise and assumption.

SECT. 2. *And be it further enacted by the authority aforesaid,* That no action shall be brought, whereby to charge any executor or administrator, upon any special promise, to answer damages out of his own estate; or whereby to charge any defendánt, upon any special promise, to answer for the debt, default, or miscarriage, of another person, of the value of Forty Shillings, and not exceeding Ten Pounds, unless such promise and assumption shall be proved by the oath or affirmation of one credible witness, or some memorandum, or note in writing, shall be signed by the party to be charged therewith.

SECT. 3. *And be it further enacted by the authority aforesaid,* That no action shall be brought, whereby to charge any person or persons, upon any agreement made upon consideration of marriage, or upon any contract, or sale of lands, tenements, or hereditaments, or any interest in, or concerning them, or upon any agreement that is not to be performed within the space of one year from the making thereof; or to charge any person or persons, whereby to answer for the debt, default, or miscarriage, of another, in any sum of the value of Ten Pounds and upwards, unless the same shall be reduced to writing, or some memorandum or note thereof shall be signed by the party or parties to be charged therewith, or some other person thereunto by him or them lawfully authorized, except for goods, wares, and merchandizes sold and delivered, and other matters, which be and are properly chargeable in an account; in which case the oath or affirmation of the plaintiff, together with a book regularly and fairly kept, (a) shall be allowed in all cases to be given in evidence,

in

(a) See before in chap. 64, s. sect. 1.

in order to charge the defendant or defendants with the sum or sums therein contained.

C H A P.
CXXXVI.

25 Geo. II.

SECT. 4. *And be it further enacted by the authority aforesaid, That an act of Assembly of this government, entituled, An act about contracts and assumptions, shall be, and is hereby repealed.*

Former acts re-
pealed,

C H A P. CXXXVII. a.

A Supplementary act to An act for raising county rates and levies. 25 Geo. II.

WHEREAS an act of Assembly of this government, entituled, *An act for raising county rates and levies*; hath been found very defective, by omitting to direct in what manner the respective county Treasurers within this government shall be elected and appointed, and how long they shall continue in the enjoyment of their respective offices; For the remedying of which for the future,

Preamble:

SECTION 2. *BE it enacted by the honorable James Hamilton, esq. with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent, and Sussex, on Delaware, and province of Pennsylvania; by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same, That the Justices, eight Grand Jurymen, and Assessors, in the several counties of this government, or as many of them as will attend at the next ensuing Courts of Appeal, to be held in the said counties respectively, shall and are hereby required to elect, nominate and appoint one good and substantial freeholder in each county, to be their Treasurer, who, before he shall enter into the said office, shall give bond, with surety or sureties, in manner and form as is directed and prescribed by the said act, (a) for raising county rates and levies; who is hereby vested with*

Justices to ap-
point a county,
Treasurer, who

shall give bond
&c.

(a) See before chap. 102. a. sect. 12. of the original act.

C H A P.
CXXXVII.
25 Geo. II.

Treasurers to
continue three
years, &c.

with all the powers and authority, and entitled to all the benefits and advantages by the said act to such officer allowed and given.

SECT. 3. *And be it further enacted by the authority aforesaid,* That the Treasurers so to be elected, shall hold and enjoy their respective offices for the term of three years, and no longer, unless they shall be re-elected; but the said Justices, Grand Jurymen, and Assessors, for the time being, shall proceed to a new choice at the expiration of every three years. *And in case of the death or removal of any Treasurer within the said time, then the Justices of the Peace of the proper counties, for the time being, or the major part of them, shall appoint another, to succeed him, for the residue of the said term, who shall give security in manner aforesaid.*

Court of Appeal
not to be held on
Christmas Day.

SECT. 4. *And be it further enacted by the authority aforesaid,* That if any day, on which the Court of Appeal is appointed to be within the respective counties of this government, by the aforesaid act, for raising county rates and levies, shall happen to be Christmas Day, then, and in such case, such court shall be held on the day next following, and not otherwise, any law, custom, or usage to the contrary in any wise notwithstanding.

C H A P. CXXXVIII. a.

25 Geo. II. *An ACT for regulating the ferry over Christiana creek, and the bridge over Brandywine, in New-Castle county.* This act so far as the same respects the ferry over Christiana creek, repealed and supplied in chap. 63. c. passed Feb. 8, 1794. And as to the bridge then over Brandywine, (called Vandever's bridge) become obsolete, the same being destroyed, and a new bridge erected at the public expense higher up the Brandywine on the public road there, established under the act in chap. 184. a.

CHAP.

C H A P. CXXXIX. a.

C H A P.
CXXXIX.*An ACT for barring estates tail within this government. (a)* 25 Geo. 11.

WHEREAS the intailing of estates within this government, would introduce perpetuities, prevent the improvement of such estates, and disable tenants in tail from making provision for the younger branches of their families: *And whereas* it hath been made a doubt, whether estates tail can legally be barred or docked, by fines and common recoveries suffered within this government, in like manner as they may in that part of Great Britain called England: For the remedying whereof for the future,

Preamble.

SECTION 2. *BE it enacted by the honorable James Hamilton, esq. with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent, and Sussex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same;* That all fines and common recoveries heretofore levied and suffered within this government, or which at any time hereafter shall or may be levied or suffered therein, in pursuance of, or according to, the common or Statute Laws of that part of Great Britain called England, in any of the Supreme Courts of this government, or in any of the Courts of Common Pleas within the county where the lands, tenements, and hereditaments intailed, do, or shall lie, shall be, and are hereby declared to be as good and available in law, to all intents, constructions, and purposes, for the barring estates so intailed as aforesaid, as fines and common recoveries of land, tenements, and hereditaments, suffered or levied in that part of Great Britain called England, may or can be.

Fines and recoveries declared to be good and valid.

SECT.

(a) See "An act for docking estates tail," passed Feb. 2, 1793, chap. 2, c. enabling tenants in tail to grant, &c. by like form of conveyance as tenants in fee simple may do, and to have the like effect as a common recovery.

CHAP.
CXXXIX.
25 Geo. II.

SECT. 3. *Provided always*, That it shall and may be lawful for any heir at law, or other person or persons claiming any right in the said lands, tenements, or hereditaments, either by Appeal, or Writ of Error, as the case may require, to reverse such fines or recoveries, for any error or errors, which heretofore have, or hereafter may happen in levying or suffering the same.

C H A P. CXL. a.

25 Geo. II. *An ACT* empowering James Gorrell, Benjamin Chew, and Robert Willcocks, of Kent county, gentlemen, to sell and dispose of all the lots of ground within the town of Dover, in the said county, as have not hitherto been sold and disposed of; and also to confirm to the present possessors all such lots as have been heretofore purchased, within the said town, from the former Trustees, and which have not been duly conveyed to them.

Preamble.

WHEREAS by an act of General Assembly of this government, entituled, *An act appointing persons to lay out two hundred acres of land in lots adjoining to the Court House of the county of Kent, and to dispose of the same, to the use of the public*, Benjamin Shurmer, William Brinkley, and Richard Richardson, of the said county, gentlemen, or any two of them, were empowered and appointed to survey, and lay out into lots, a certain tract of land in the said county, adjoining the Court House of the said county, and purchased by the people thereof, and commonly called the town of Dover, in such measures and proportions as to them should seem meet and convenient, and the said lots so surveyed and laid out, to dispose of and sell to such persons as should be willing to purchase the same; and further, to execute all such deeds and conveyances for the same, as should be necessary and requisite, as by the said recited act may appear; *And whereas* the aforesaid Benjamin Shurmer, William Brinkley, and Richard Richardson, afterwards died, and many of the lots of ground, within the said town,
remained

remained unfold, to the great detriment of the public; *And whereas*, after the decease of the aforesaid William Brinkley, and Richard Richardson, two of the said Trustees, many persons did actually, and *bona fide*, purchase of Benjamin Shurmer, the survivor, several lots of ground, within the said town; but because the trust did not survive to the said Benjamin Shurmer by virtue of any words of the act aforesaid, such persons could not have sufficient titles for such lots from the said Benjamin Shurmer, but were in danger of being dispossessed of the same; *And whereas*, for the remedying and preventing of such inconveniencies, both to the public and such persons as were *bona fide* purchasers, as aforesaid; and in order that the intention of the said act might be fully complied with, an act of General Assembly of this government was made in the thirteenth year of the reign of his present Majesty, appointing John Holliday, James Gorrell, and Thomas Skidmore, junior, of Kent county aforesaid, gentlemen, or any two of them, and the survivors and survivor of them, to bargain, sell, and confirm all such lots of ground within the town of Dover aforesaid, as had not theretofore been conveyed and confirmed by any of the said Trustees; *And whereas* the aforesaid John Holliday, and Thomas Skidmore, junior, two of the said Trustees, are since deceased, and their survivor, by an indisposition of body, is at present rendered incapable of performing the trust required of him by the said act; *And whereas* there are several lots of ground within the said town of Dover, which have not been conveyed and confirmed, by any of the aforesaid Trustees, to the purchaser or purchasers thereof: For the remedying and preventing therefore of such inconveniencies, both to the public and such person or persons as have been *bona fide* purchasers,

SECTION 2. *BE it enacted by the honorable James Hamilton, esq. with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent, and Sussex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the*

C H A P.
CXLI

25, Geor II.

Trustees im-
powered to con-
vey the lots,
&c.

Their convey-
ances, &c.
declared valid.

same, That James Gorrell, Benjamin Chew, and Robert Willcocks, gentlemen, or any two of them, and the survivors and survivor of them, shall and are hereby impowered to grant, bargain, sell, convey, and confirm, all such lots of ground, within the town of Dover aforesaid, as have not hitherto been sold or disposed of by any of the Trustees in the aforesaid acts named, to such person or persons as shall be willing to purchase the same for such value and consideration as shall be agreed upon between them and the purchasers.

SECT. 3. *And be it further enacted by the authority aforesaid*, That the said James Gorrell, Benjamin Chew, and Robert Willcocks, or any two of them, and the survivors and survivor of them, are hereby impowered and required to make, execute, and acknowledge, all such conveyances and assurances, as shall be reasonably required, and are necessary for the confirming all such persons in their rights and possessions, who shall appear to them, the said Trustees, actually and *bona fide* to have purchased any lots within the said town of Dover, of the aforesaid Trustees, or any two of them, at the proper costs and charges of the said purchasers, their heirs and assigns; all which conveyances and assurances shall be good and valid to all such purchaser and purchasers, their heirs and assigns, for ever.

SECT. 4. *Provided always*, That such person or persons shall pay, or secure to be paid, to the said Trustees, for the use of the public, such sum and sums of money as the said lots were originally contracted for, unless the same shall appear to be paid to any of the former Trustees.

Trustees to ren-
der account,
&c.

SECT. 5. *And be it further enacted by the authority aforesaid*, That the said Trustees shall once in every year render an account to the Levy Court of the said county, of all the lots so by them sold or disposed of, and the consideration for which the same have been purchased and bought, and shall also pay to the Treasurer of the said county for the time being, all such sums of money as they have received for lots sold as aforesaid, which money shall be disposed of, and applied to such uses and purposes as the said Levy Court,

Court, at the time of laying of the levies for the said county, shall direct and appoint. And the said court shall and may, at the time aforesaid, yearly allow to the said Trustees such reward for their care and pains, in executing the trust reposed in them by this act, as they shall think fit and reasonable.

C. H. A. P.

CXLI.

25 Geo. II.

C. H. A. P. CXLI. a.

An ACT for repealing divers acts of Assembly of this government, in this act mentioned.

25 Geo. II.

WHEREAS sundry acts of Assembly of this government are found, by experience, not to be well adapted to the present circumstances of the inhabitants thereof,

BE it therefore enacted by the honorable James Hamilton, esq. with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent, and Sussex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties; in General Assembly met, and by the authority of the same; That an act, entituled, An act for ascertaining the dimensions of casks, and for the true packing of meat and tobacco for transportation; and that one other act, entituled, An act for the recovery of officers fees; and that one other act, entituled, An act for the destruction of blackbirds and crows; and that one other act, entituled, An act empowering the Justices of New-Castle county in a further regulation of roads; and that one other act, entituled, An act for stopping up the mouth of the Broad Kyll, in order to deepen Lewes Creek; and that one other act, entituled, An act for improving navigation by deepening Lewes Creek; and that one other act, entituled, A supplement to the act for regulating and establishing fees; and that one other act, entituled, An act empowering James Smith and Abraham Allee to sell the lands late of John Hall, deceased, &c. and all and every of them, and all and every matter, clause and thing,

Titles of the
acts repealed.

in

C H A P.
C X L I.
25 Geo. II.

in the said acts, and every of them, contained, are hereby repealed, made null and void.

C H A P. C X L I I. a.

25 Geo. II. *An ACT for confirming the sales of lands made by executors, by virtue of orders of the several Orphans Courts within this government.*

Preamble.

WHEREAS it hath been a practice within this government, for executors to sell and convey the lands, tenements, and hereditaments of their testator or testators, by order of the respective Orphans Courts within the same, upon due proof made to such court, that the personal estate or estates of such testator or testators hath or have not been sufficient to discharge his, her, or their just debt, or debts, and to educate and maintain his, her, or their children, when in strictness of law the said courts do not appear to have been invested with any power to make such order or orders: Therefore, for the quieting the minds of such persons as have fairly purchased lands from executors, under such orders, and for the confirming them in their rights and possessions,

SECTION 2. *BE it enacted by the honorable James Hamilton, esq. with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent, and Suffex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same, That all grants, bargains, and sales of lands, tenements, and hereditaments, that have been made within this government, since the Year of our Lord One Thousand Seven Hundred and Twenty, by any executor or executors, pursuant to any order of the respective Orphans Courts within this government, where it appears that the executor or executors have accounted for, and paid the money for which such lands were sold, for the uses above-mentioned,*

Sales of Lands,
&c. by execu-
tors, since 1720,
declared valid,
&c.

mentioned, and where no suit in law or equity hath been brought, for the setting aside such grants, bargains, and sales, shall be adjudged, and are hereby declared to be good and effectual in law, to all intents, constructions, and purposes, for the conveying, assuring, and confirming, to the grantee, or bargainee, such estate or estates therein, as by his or her deed or deeds are limited and directed. (a)

C H A P.
CXLII.
25 Geo. II.

SECT. 3. *Provided always*, That nothing in this act contained shall be deemed or understood to make good or valid any grant, bargain, or sale, wherein any fraud or collusion hath been practised.

unless in cases of fraud.

SECT. 4. *And be it further enacted by the authority aforesaid*, That an act of Assembly of this government, entituled, *An act for the confirmation of the possessors of lands purchased bona fide from executors, by virtue of orders of Orphans Courts, within this government*, and every matter, clause, and thing, therein contained, is hereby repealed, and declared to be null and void.

Former act repealed.

C H A P. CXLIII. a.

An ACT appointing Trustees to sell the gaol and lot in the town of Dover, and to purchase another lot in said town for the erecting a new gaol thereon.

25 Geo. II.

WHEREAS it hath been represented to this House, that the inhabitants of Kent county are raising and levying a sum of money for the erecting a new prison in the town of Dover, in the said county, and that the lot whereon the old gaol now stands, is not conveniently situated for such purpose,

Preamble.

SECTION 2. *BE it therefore enacted by the honorable James Hamilton, esq. with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent, and Sussex, upon Delaware, and province*

(a) See before chap. 60. a. sect. 7. and chap. 28. a;

CHAP.
CXLIII.
25. Geo. II.

Trustees appointed to sell lots, &c.

Money how to be applied.

Lot for the gaol to be purchased.

province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same, That Samuel Dickinson, John David, and John Vining, of the county of Kent, esquires, and Robert Willcocks, and Benjamin Chew, of the said county, gentlemen, or the majority of them, are hereby constituted, nominated, and appointed Trustees, and are hereby impowered to sell and dispose of the gaol and lot in the town of Dover, for the best price they can procure for the same, and to make over, convey, and confirm, by one or more deed or deeds, the said gaol and lot, with the appurtenances thereunto belonging, to the purchaser or purchasers thereof, his, her, or their heirs and assigns for ever; which sale, when so made, is hereby declared to be good and valid in law, to all intents and purposes; and the said Trustees shall apply the money arising on such sale towards the purchase of a new lot in the said town, for the use of the public, and the residue (if any) shall be paid to the Treasurer of the said county for the time being, to be applied towards defraying the charge of building a new gaol, or such other purposes as the Levy Court of the said county shall direct and appoint.

SECT. 3. *And be it further enacted by the authority aforesaid,* That the said Trustees, or the major part of them, shall, and are hereby impowered and authorized to purchase some other lot of ground within the said town of Dover, for the building of a new gaol, and shall take a deed to themselves, and the survivor of them, their and the survivor of their heirs and assigns for ever, in trust for the use of the inhabitants of the said county of Kent.

CHAP.

C H A P. CXLIV. a.

C H A P.
CXLIV.

26 Geo. II.

An ACT prescribing an easy and summary method to perpetuate the testimony of witnesses, relating to the bounds of lands within this government. (a)

WHEREAS the estates of the inhabitants of this government consist chiefly in lands, the bounds of which being subject to decay, and to be destroyed by various accidents, many disputes frequently arise about such bounds; *And whereas* the present legal mode of perpetuating the testimony of witnesses relating to the bounds of lands, is both tedious and expensive: For the remedying of which evils,

SECTION 2. *BE it therefore enacted by the honorable James Hamilton, esq. with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent, and Sussex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same,* That it shall and may be lawful for any person or persons who are owners and possessors of any lands within this government, as often as he, she, or they shall have occasion, to examine any witness or witnesses, to prove any boundary or boundaries of his, her, or their land, in order to perpetuate their testimony, to exhibit his, her, or their petition to the Justices of the Court of Chancery, of the county where the lands lie, thereby praying that they will appoint three Commissioners to take the examination of such witness or witnesses. And if the said justices shall see a reasonable cause for the granting the prayer of such petition, then and in such case they shall nominate and appoint three honest and discreet freeholders of the county, to be Commissioners for the taking such examination, who shall, before they enter on their office, take an oath or affirmation before one of the justices of the said court, to whom power is hereby

Preamble.
Petition to be exhibited to the Chancery Court,

who may appoint Commissioners, &c.

(a) See "An act for marking and bounding lands," chap. 117. c. passed February 19, 1796.

C H A P.
CXLIV.
26 Geo. II.

hereby given to administer such oath or affirmation, (b) that they will faithfully and impartially take the examination of such witness or witnesses as shall be produced to them for the purposes aforesaid, and return the same into the said court. (c)

Ten days notice to be given, &c.

SECT. 3. *Provided always, and be it further enacted by the authority aforesaid,* That before the said justices shall proceed to appoint such Commissioners, the person or persons petitioning, or intending to petition for such appointment, shall give, or cause to be given, ten days notice in writing to the owners of the contiguous or adjoining lands, their agents, attornies or guardians (if they are known, or can be found) of such the said petitioner's intended application to the said justices, in order that such owners of the contiguous lands, their agents, attornies or guardians, or any of them, may be present, and make and offer to the said justices, any legal or reasonable objections to any person or persons to be nominated by the said justices for such Commissioners; and also, that before any such examination shall be taken, the person or persons petitioning, or some person or persons by him, her, or them delegated, shall affix an advertisement at the Court House door of the said county; at least ten days before the meeting of the said Commissioners, thereby giving notice of the time and place of their meeting; and shall further give such notice in writing, to all the owners of the contiguous or adjoining lands, their agents, attornies, or guardians, in order that they may attend (if they think proper) to cross-examine such witness or witnesses: And such owners of the contiguous lands, their agents, attornies, or guardians, or any of them, shall also have liberty to produce on their party to the said Commissioners, any witness or witnesses, to be examined touching such boundaries, reserving to the said petitioners, their agents or attornies, the like power:

and an advertisement to be affixed to the Court house door, &c.

(b) By an act of February 7, 1795, chap. 79, c. sect. 3. such oath, &c. may be administered by any Judge or Justice of any of the Courts of Law, or any Justice of the Peace in this state.

(c) See before chap. 54 a. sect. 21, and the note (b) there.

power and liberty to be present at such examinations, and to cross-examine such witness or witnesses, so to be adduced by the owners of the contiguous lands, their agents, attornies, or guardians, or any of them. And full power and authority is hereby given to the said Commissioners, to take the examination and depositions of all such witness or witnesses as shall be produced before them, as well by the said petitioners, their agents or attornies, as by any of the owners of the contiguous lands, their agents, attornies, or guardians, upon the oath or affirmation of such witness or witnesses; which oath or affirmation the said Commissioners are impowered to administer.

C H A P.
CXLIIV.
26 Geo. II.

Commissioners
power.

SECT. 4. *Provided always, and be it further enacted by the authority aforesaid,* That all such depositions and cross-examinations shall be fairly and impartially taken in writing, upon the oath or affirmation of the witness or witnesses making the same, and shall be distinctly read to, approved and signed by, such witness or witnesses making the same respectively.

Depositions, &c.
to be taken in
writing, &c.

SECT. 5. *And be it further enacted by the authority aforesaid,* That the depositions so as aforesaid taken, shall be returned into the Court of Chancery aforesaid, by the Commissioners aforesaid, or any two of them, in order to be there recorded and perpetuated, and shall be admitted as evidence in any court of law or equity within this government, in case of the death of such witness or witnesses, or his, her or their absence out of this government, or other legal disability to attend, and in no other case whatsoever.

and returned in-
to the Court of
Chancery, &c.

SECT. 6. *Provided always, and be it further enacted by the authority aforesaid,* That if upon the return of any such depositions into the said court, any error or errors shall appear to the justices of the said court, to have been made or committed by the said Commissioners, in the taking the said depositions, or any of them, either through mistake, partiality or otherwise, that then the said justices shall have power to make a new appointment of three other Commissioners, to re-take the depositions of such witness or witnesses, and make return thereof in manner aforesaid, any thing herein before mentioned or contained to the contrary notwithstanding.

In case of error,
new Commis-
sioners may be
appointed.

C H A P.
CX LIV.
26 Geo. II.

hereby given to administer such oath or affirmation, (b) that they will faithfully and impartially take the examination of such witness or witnesses as shall be produced to them for the purposes aforesaid, and return the same into the said court. (c)

Ten days notice to be given, &c.

SECT. 3. *Provided always, and be it further enacted by the authority aforesaid,* That before the said justices shall proceed to appoint such Commissioners, the person or persons petitioning, or intending to petition for such appointment, shall give, or cause to be given, ten days notice in writing to the owners of the contiguous or adjoining lands, their agents, attornies or guardians (if they are known, or can be found) of such the said petitioner's intended application to the said justices, in order that such owners of the contiguous lands, their agents, attornies or guardians, or any of them, may be present, and make and offer to the said justices, any legal or reasonable objections to any person or persons to be nominated by the said justices for such Commissioners; and also, that before any such examination shall be taken, the person or persons petitioning, or some person or persons by him, her, or them delegated, shall affix an advertisement at the Court House door of the said county; at least ten days before the meeting of the said Commissioners, thereby giving notice of the time and place of their meeting; and shall further give such notice in writing, to all the owners of the contiguous or adjoining lands, their agents, attornies, or guardians, in order that they may attend (if they think proper) to cross-examine such witness or witnesses: And such owners of the contiguous lands, their agents, attornies, or guardians, or any of them, shall also have liberty to produce on their part, to the said Commissioners, any witness or witnesses, to be examined touching such boundaries, reserving to the said petitioners, their agents or attornies, the like power:

and an advertisement to be affixed to the Court house door, &c.

(b) By an act of February 7, 1795, chap. 79, c. sect. 3. such oath, &c. may be administered by any Judge or Justice of any of the Courts of Law, or any Justice of the Peace in this State.

(c) See before chap. 54 a. sect. 21, and the note (b) there.

power and liberty to be present at such examinations, and to cross-examine such witness or witnesses, so to be adduced by the owners of the contiguous lands, their agents, attornies, or guardians, or any of them. And full power and authority is hereby given to the said Commissioners, to take the examination and depositions of all such witness or witnesses as shall be produced before them, as well by the said petitioners, their agents or attornies, as by any of the owners of the contiguous lands, their agents, attornies, or guardians, upon the oath or affirmation of such witness or witnesses; which oath or affirmation the said Commissioners are impowered to administer.

CHAP.
CXLIV.
26 Geo. II.

Commissioners
power.

SECT. 4. *Provided always, and be it further enacted by the authority aforesaid,* That all such depositions and cross-examinations shall be fairly and impartially taken in writing, upon the oath or affirmation of the witness or witnesses making the same, and shall be distinctly read to, approved and signed by, such witness or witnesses making the same respectively.

Depositions, &c.
to be taken in
writing, &c.

SECT. 5. *And be it further enacted by the authority aforesaid,* That the depositions so as aforesaid taken, shall be returned into the Court of Chancery aforesaid, by the Commissioners aforesaid, or any two of them, in order to be there recorded and perpetuated, and shall be admitted as evidence in any court of law or equity within this government, in case of the death of such witness or witnesses, or his, her or their absence out of this government, or other legal disability to attend, and in no other case whatsoever.

and returned in-
to the Court of
Chancery, &c.

SECT. 6. *Provided always, and be it further enacted by the authority aforesaid,* That if upon the return of any such depositions into the said court, any error or errors shall appear to the justices of the said court, to have been made or committed by the said Commissioners, in the taking the said depositions, or any of them, either through mistake, partiality or otherwise, that then the said justices shall have power to make a new appointment of three other Commissioners, to re-take the depositions of such witness or witnesses, and make return thereof in manner aforesaid, any thing herein before mentioned or contained to the contrary notwithstanding.

In case of error,
new Commis-
sioners may be
appointed.

C H A P.
CXIV.

1753.

C H A P. CXLV. a.

An ACT concerning written and nuncupative wills.

Preamble.

WHEREAS the laws of this government heretofore made, relating to testaments and last wills, (a) have been found to be very defective, and not well adapted to the circumstances of the inhabitants of this government: For the remedying whereof, and prevention of all fraud in the making and proving last wills and testaments; (b)

Devises of lands
to be in writing.No devise of
lands, &c. revocable
but by writing, or
cancelling, &c.

SECTION 2. *BE it therefore enacted by the honorable James Hamilton, esq. with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent and Suffex, upon Delaware, and province of Pennsylvania, under the honorable Thomas Penn, and Richard Penn, esquires, true and absolute proprietaries of the said counties and province, by and with the advice and consent of the Representatives of the free-men of the said counties, in General Assembly met, and by the authority of the same,* That from and after the first day of May, in the year of our Lord One Thousand Seven Hundred and Fifty-four, all devises and bequests of any lands or tenements, within this government, shall be in writing, and signed by the party so devising the same, or by some other person in his or her presence, and by his or her express directions, and shall be attested and subscribed, in the presence of the the said devisor, by two or more credible witnesses, or else they shall be utterly void, and of none effect. *And moreover,* no devise, in writing, of any lands, tenements, or hereditaments, within this government, or any clause thereof, shall, at any time after the said first day of May, be revocable, otherwise than by some other will or codicil in writing, or other writing, declaring the same, or by burning, cancelling, tearing, or obliterating the same, by the testator

(a) See appendix,

(b) See also chap, 196, s. "An act concerning wills made by persons residing out of this government," passed June 16, 1769.

testator or testatrix, or in his or her presence, and by his or her directions and consent: But all devises and bequests of lands and tenements shall remain and continue in force until the same be burnt, cancelled, torn or obliterated, by the testator or testatrix, or his or her directions in manner aforesaid, or unless the same be altered by some other will or codicil in writing, or other writing of the devisor, signed in the presence of two or more credible witnesses declaring the same, any former law or usage to the contrary notwithstanding.

SECT. 3. *And whereas* many testaments and last wills, in writing, have been heretofore legally proved according to the the directions, and within the times limited by the laws of this government, before the respective registers, or other proper officers, within this government, and the said wills and probates have been recorded in the Register's Office, by the laws of this government appointed to be kept in the respective counties for such purposes: *And whereas* many testaments and last wills, so proved and recorded, have, either by the neglect of officers, or by fraud, or some unavoidable accident, been mislaid, lost or destroyed, which renders it highly necessary, for the safety and security of the estates and properties of the inhabitants of this government, to provide a remedy in such cases: *Be it therefore enacted by the authority aforesaid,* That in all cases, where any original testament or last will cannot be found or had, the copy of such testament and last will, that hath been heretofore legally proved in manner aforesaid, and recorded, or, after the first day of May next, may be made, proved and recorded, in manner as by this act is above directed, being duly certified, under the hand and seal of any register of the respective counties within this government, where such testament or last will hath been or shall be so proved and recorded, shall be good and sufficient evidence in all Courts of Judicature within this government, to all intents and purposes whatsoever, as fully and amply as if such original testament and last will was produced in open court, and there proved by the witnesses to such will, any law, custom, usage

C H A P.
CXLV.

1753.

Where original testaments, &c. cannot be found, proved copies shall be good.

C H A P.
CXLV.

1753:

Testaments re-
voked by writ-
ting, not made
good by this act,
&c.

usage or statute, to the contrary in anywise notwithstanding. *Provided always,* That nothing in this act contained shall be deemed or construed to establish or make good any testament or last will, or the copy thereof, that shall appear to have been revoked or altered by the testator by any latter will or codicil, in writing, made before the first day of May next, or any testament or last will which shall be made after the first day of May next, that shall appear to be revoked or altered by the testator or testatrix, by any latter will or codicil in writing, or other writing of the devisor, signed in the presence of two or more credible witnesses, legally declaring the same, nor any will, in the obtaining or proving of which, any forgery, fraud or collusion hath been used.

Nuncupative
wills not good
unless proved,
&c.

SECT. 4. *And,* for the prevention of fraudulent practices in the proving and setting up nuncupative wills, *Be it enacted by the authority aforesaid,* That from and after the first day of May next, no nuncupative will shall be good, where the estate thereby bequeathed shall exceed the value of Fifty Pounds, that is not proved by the oaths or solemn affirmations of two credible witnesses at the least, who were present at the making thereof; nor unless it be proved, that the testator or testatrix, at the time of pronouncing the same, did desire the persons present, or some of them, to bear witness, that such was his or her will, or to that effect; nor unless such nuncupative will was made in the last sickness of the deceased, and in the house of his or her habitation or dwelling, or where he or she hath been resident for the space of ten days or more next before the making of such will, except where such person was surpris'd or taken sick, being from his or her own home, and died before he or she returned to the place of his or her dwelling.

SECT. 5. *And be it further enacted,* That after six months past, from the speaking of the pretended testamentary words, no testimony shall be received, to prove any will nuncupative, except the said testimony, or the substance thereof, were committed to writing within six days after the making of the said will.

SECT. 6. *And be it further enacted by the authority aforesaid,* That no letters testamentary, or probate of
any

any nuncupative will, shall pass the seal of the Register's Office in the respective counties of this government, till fourteen days at the least after the death of the testator be fully expired; nor shall any nuncupative will be at any time received or proved, unless process hath first issued, to call in the widow, or the next of kindred to the deceased, to the end they may contest the same if they please.

C H A P.
CXLV.

1753.
Lectors testamentary, &c. not to pass the seals until, &c. Nuncupative will not to be received, &c. unless, &c.

SECT. 7. *Provided always*, That notwithstanding this act, any mariner or seaman, being at sea, or any soldier, being in actual military service, may dispose of his moveables, wages and personal estate, as he or they might have done before the making of this act.

Mariners at sea, &c. may dispose of their estate, &c.

SECT. 8. *And be it further enacted by the authority aforesaid*, That an act of Assembly of this government, intituled, *An act confirming devises of lands, and validity of nuncupative wills*; and one other act, intituled, *An act confirming devises of lands, and the validity of nuncupative wills*, from and after the first day of May next, are hereby repealed, and from thenceforth declared to be null and void. (c)

Former acts repealed.

Passed October 30, 1753.

C H A P. CXLVI. a.

An ACT for empowering the Justices of the Peace, within the respective counties of this government, to appoint proper officers for the regulating and governing such work-houses or houses of correction as shall hereafter be built within the same; and for the regulating and governing of the gaols of the said respective counties, until such work-houses and houses of correction are built.

1753.

WHEREAS, by an act of General Assembly of this government, made in the sixteenth year of his Majesty's reign, intituled, *An act for raising county*

Preamble.

(c) For these see appendix:

C H A P.
CXLVI.
1753.

county rates and levies, (a) the Justices of the Peace of the respective counties within the same, or any three of them, together with eight Grand Jurymen, or such of them as will attend, and the Assessors, or the majority of them, (b) are empowered yearly, and every year, to raise, settle and adjust, such sum and sums of money as may be thought necessary to defray the charges of building and repairing of work-houses within the said government; but no provision is made by the said act for the regulating and governing the said houses, and appointing keepers and other proper officers for that purpose;

SECT. 2. BE it therefore enacted by the honorable James Hamilton, esq. with his Majesty's royal approbation, Lieutenant Governour, and Commander in Chief, of the counties of New-Castle, Kent and Sussex, on Delaware, and province of Pennsylvania, under the honorable Thomas Penn, and Richard Penn, esquires, true and absolute proprietaries of the counties and province aforesaid, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same, That from and after the publication of this

Justices may appoint work-house keepers.

act, it shall and may be lawful for the Justices of the Peace of the respective counties of this government, in their General Quarter Sessions, to elect and appoint some able and honest inhabitant or inhabitants of the said respective counties, as often as need may require, to be keeper or keepers of the said houses when built, and such other proper officer or officers as may be necessary for the well governing the same, who, when so as aforesaid elected and appointed, shall give punctual and constant attendance at the said houses, there to receive and execute the orders given him or them by the commitments which may happen to be made from time to time, by any Justice of the Peace, or other magistrate having legal power to commit and send to the said work-houses, and houses of correction, all vagabonds, unruly servants, and other idle or disorderly persons; the which said
work-

(a) See before chap. :02. a. 16 Geo. II.

(b) See chap. 18. c. "An act to amend the laws of this State for raising county rates and levies," for other constitution of this power, passed June 14, 1793.

work-houses, and houses of correction, when erected and built, shall be used and employed for the keeping, correcting, and setting to work, of all rogues, vagabonds, sturdy-beggars, and idle or disorderly persons, who, by the laws and usage of Great Britain, or by the laws of this government, are to be kept, corrected, or set at work in such houses, or in the yards belonging to them.

C H A P.
CXLVI.
1753.

Use of work-
houses.

SECT. 3. *And be it further enacted by the authority aforesaid,* That the keepers of such work-houses, and the other proper officers of the same, hereafter to be elected and appointed as aforesaid, shall, for the discharge of their several offices, be allowed such fees, and have such reward, as the Levy Courts of the said respective counties, from time to time, shall judge most reasonable and expedient; which reward shall be raised as other county rates and levies are within this government.

Levy Courts to
settle the fees.

SECT. 4. *And be it further enacted by the authority aforesaid,* That no keeper or officer of any such work-houses shall keep, or suffer to be kept any tavern, public-house or ale-house, or shall presume to utter or sell, or knowingly suffer to be uttered or sold in the said houses, to any person or persons whatsoever, any wine, rum, beer, ale, cyder, punch, or any other strong liquor; but if he or they shall be duly convicted thereof, or of any breach or neglect of his or their duty, before the Justices of the Court of Quarter Sessions of the respective county where such offence shall be committed (who are hereby authorized and impowered to hear and determine all such complaints against them, in a summary way, by petition) he or they shall, by the said justices on such conviction, be removed from his or their office or offices, and fined at the discretion of such court. *And if any officer or officers of such houses shall die, or be removed from his or their office or offices, between the times appointed by the laws of this government for the meeting and holding the said Courts of Quarter Sessions, then, and in such case, the Justices of the Court of Quarter Sessions, for that respective county, or any three of them, shall, and are hereby impowered, to nominate and appoint some other proper*
person

Work-house
keepers not to
sell strong li-
quors, &c.

Vacant offices
how to be sup-
plied.

CHAP.
CXLVI.
1753.

Prison keepers
to b. all wed
fees as work-
house keepers,
&c.

person or persons to exercise such office or offices, until a new appointment of such officer or officers, shall be made by the Justices of the Peace in their next Quarter Sessions.

SECT. 5. *And*, whereas by a law of this government, intituled, *An act for bailing prisoners, and about imprisonments*, (c) the several prisons in the respective counties within this government are directed to be used as work-houses until such houses shall be particularly erected for that purpose, *Be it therefore enacted by the authority aforesaid*, That, until such work-houses shall be erected, the keepers of the prisons of the said respective counties, so used as work-houses, shall be provided for, and the fees of such keepers regulated from time to time, by the Levy Courts of the said respective counties in like manner as is herein before directed, for the keepers and other proper officers of such work-houses hereafter to be built.

Gaolers to ex-
ecute the office
of work-house
masters, until
houses, &c. are
erected.

SECT. 6. *And be it further enacted by the authority aforesaid*, That, until the work-houses and houses of correction shall be erected in the several counties of this government, the keeper or keepers of the respective gaols in the said counties; for the time being, are hereby declared and appointed to execute the office of work-house master, and shall keep to hard labour, and correct, in their gaol or prison, all such idle and disorderly persons, or others, as shall be committed to them by the justices of the said respective counties, or others, having legal power to commit such person or persons, and, in every thing, obey the legal commands contained in such commitments; and on breach or neglect of his duty, being thereof legally convicted before the Justices of the Court of Quarter Sessions of the county where such offence is committed (after complaint to them made) shall be punished and fined in the same manner as is before directed in relation to the keepers of the work-houses hereafter to be built.

Passed October 30, 1753.

CHAP.

(c) See before chap. 58. a. 4 Geo. 11.

C H A P. CLXVII. a.

C H A P.
CLXVII.
1754.

An ACT for reviving and continuing an act of Assembly of this government made in the seventeenth year of his Majesty's reign, intituled, "An act for the more easy and speedy recovery of small debts." Expired.

Note. Robert Hunter Morris, esquire, began his government in October, 1754, and continued until August, 1756.

C H A P. CXLVIII. a.

An ACT encouraging the killing of squirrels in Kent County. Expired.

1754.

C H A P. CXLIX. a.

An ACT for raising the sum of One Thousand Pounds for his Majesty's use, and providing a fund for sinking the same. Expired.

1754.

C H A P. CL. a.

An ACT for reviving an act of Assembly of this government, made in the fifteenth year of his Majesty's reign, intituled, "An act for establishing a militia within this government." Expired.

1755.

Vol. I.

2 W

CHAP

CHAP.
CLI.

1756.

A Supplement to an act of Assembly of this government, intitled, "An act for establishing and regulating fees." Repealed in chap. 204. a. sect. 39. passed March 24, 1770.

CHAP. CLII. a.

1756.

An ACT for striking the sum of Two Thousand Pounds in new bills of credit for his Majesty's use, and providing a fund for sinking the same. Expired.

CHAP. CLIII. a.

1759.

An ACT for establishing a militia in this government. Expired.

CHAP. CLIV. a.

1756.

An ACT to restrain the exportation of provisions and warlike stores from the government of the counties of New-Castle, Kent, and Sussex, upon Delaware. Expired.

CHAP. CLV. a.

1756.

An ACT for the new appointment of Trustees for the several General Loan Offices of this government. Expired.

CHAP.

C H A P. CLVI. a.

C H A P.
CLVI.

1756.

An ACT to revive and continue an act of Assembly of this government, intituled, "An act to restrain the exportation of provisions and warlike stores, &c." Expired.

C H A P. CLVII. a.

An ACT for establishing a militia in this government.
Expired in 1763.

1759.

C H A P. CLVIII. a.

An ACT for striking Four Thousand Pounds in bills of credit, and granting the same to his Majesty's use, and to provide a fund for sinking the same Expired.

1757.

C H A P. CLIX. a.

An ACT for extending several sections of an act of Parliament, passed in the twenty-ninth year of the present reign, intituled, "An act for punishing mutiny and desertion, and for the better payment of the army and their quarters." Expired.

1757.

C H A P.
CLX.

1758.

C H A P. CLX. a.

An ACT for striking Eight Thousand Pounds in bills of credit, and giving the same to the King's use, and for the providing a fund for sinking the same. Expired.

C H A P. CLXI. a.

1759.

An ACT for raising the sum of Twelve Hundred Pounds for his Majesty's use, and providing a fund for sinking the same. Repealed. See chap. 174. a. sect. 11.

C H A P. CLXII. a.

1759.

An ACT for re-printing, exchanging and re-issuing Twenty Thousand Pounds of the bills of credit of this government, to be let out on loan; and for striking the further sum of Seven Thousand Pounds in such bills, and giving the same to his Majesty's use, and for providing a fund for sinking the same. (a)

Preamble.

WHEREAS, through the scarcity of silver and gold in this government, occasioned by re-issuing the same to Great Britain, to pay for the product and manufactories of that kingdom imported hither for the use of the inhabitants, sundry sums in bills of credit were formerly emitted, which, by experience, have been found to be very useful for carrying on the trade and commerce of this government, and all the said acts whereby the said bills were struck and made current are now expired: *And whereas*, by means of the interest-money, arising on the loan of the

(a) For subsequent acts authorising the emitting bills of credit to be let out on loan, &c. See after chap. 230, a, passed September 2, 1775, and chap. 8, b, passed February 22, 1777.

the said bills, the inhabitants of these counties have been enabled to support the government in an honorable manner, and to erect some, and repair others of the public buildings thereof: *And whereas* the Assembly of this government, ever ready to shew their zeal for his Majesty's service, have already contributed very largely toward the support of the common cause, to the exhausting all their public funds, and greatly to the impoverishing their constituents by heavy taxes; yet, forasmuch as the King's service, and the present exigency of affairs require immediate additional supplies, we, the Representatives of the freemen of this government, being desirous to demonstrate our loyalty and duty to the best of Kings, and willing to exert ourselves with the utmost vigour; to the annoying his Majesty's enemies, and restoring peace to America, have agreed to give a further sum of Seven Thousand Pounds, in bills of credit of this government, to his Majesty's use, and pray that it may be enacted;

SECTION 2. *And be it enacted by the honorable William Denny, esq. (b) with his Majesty's royal approbation, Lieutenant Governor, and Commander in Chief of the counties of New-Castle, Kent and Suffex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same,* That indented bills of credit, to the value of Twenty-seven Thousand Pounds, lawful money of America, according to an act of Parliament made in the sixth year of the late Queen Ann for ascertaining the rates of foreign coins in the plantations, in America, shall, before the first day of June next, be prepared, and printed on good strong paper, under the care and direction of Jacob Kollock, William Armstrong, and Cæsar Rodney, gentlemen, or any two of them, and at the charge of the public, to be discharged out of the interest-money that hath arisen, or shall arise, upon the loan of any bills of credit formerly emitted, or to be re-emitted, by any Trustees
of

C H A P.
CLXII.

1759.

Twenty Seven
Thousand
Pounds to be
struck in bills
of credit.

(b) William Denny, esquire, began his government in August 1756, and continued until November 16, 1759.

C H A P.
CLXII.
1759.

of the Loan Offices of this government for the time being; which bills shall be made and prepared in manner and form following, and no otherwise, viz.

Form of bills.

THIS indented bill shall pass current for within the government of the counties of New-Castle, Kent and Suffex, on Delaware, according to an act of Assembly of the said government made in the thirty-second year of the reign of our Sovereign Lord King George the second. Dated the first day of June, One Thousand Seven Hundred and Fifty-nine.

And the same bills shall be printed with the arms of the King on the side, and the sums of money for which every of the said bills is to pass shall be printed at the top of each bill in words at length, with such other devices on the said bills as the said Jacob Kollock, William Armstrong and Cæsar Rodney, or any two of them, shall think fit to direct, as well to prevent counterfeits as to distinguish their several denominations; each of which bills shall be of the several and respective denominations following, and no other, *to wit.*

Number and denominations thereof.

Fifteen thousand five hundred of the said bills, the sum of Twenty Shillings value in each of them.

Six thousand of the said bills, the sum of Fifteen Shillings in each of them.

Six thousand of the said bills, the sum of Ten Shillings in each of them.

Eight thousand of the said bills, the sum of Five Shillings in each of them.

Five thousand of the said bills, the sum of Two Shillings and Six-pence in each of them.

Five thousand of the said bills, the sum of Two Shillings in each of them.

Eight thousand of the said bills, the sum of One Shilling and Six-pence in each of them.

Five thousand five hundred of the said bills, the sum of One Shilling in each of them.

And the said Jacob Kollock, William Armstrong and Cæsar Rodney, or any two of them, shall use the best of their care, attention and diligence, during the printing the said bills, that the number and amount of them, according to their respective denominations and

and value aforesaid, be not exceeded, nor any clandestine or fraudulent practices used by the printer, his servants, or any person concerned therein.

C H A P.
CLXII.
1759.

And for the perfecting the said bills, to make them current within this government, according to the true intent and meaning of this act.

SECT. 3. *Be it enacted by the authority aforesaid,* That all and every of the said bills shall be signed and numbered by the persons following, *to wit,* William Armstrong, of the county of New-Castle, esq. John Barns, of the county of Kent, gentlemen, and David Hall, of Suffex county, esq. who are hereby nominated and appointed to be the signers of the said bills, and shall, before they presume to receive or sign any of the said bills of credit, take an oath or affirmation to the following effect ;

Signers names.

THAT they will well and truly sign and number all the bills of credit that shall come to their hands for that purpose by the direction of this act ; and the same, so signed and numbered, will deliver, or cause to be delivered, unto the Trustees of the respective General Loan Offices of this government, pursuant to the said directions of this act.

Their qualification,

And the said William Armstrong, Jacob Kollock, and Cæsar Rodney, or any two of them, after the said bills are printed, shall deliver them into the hands of the said signers to be signed and numbered, who shall give their receipts for the said bills ; and the said signers shall deliver to the Trustees, hereafter named, at the respective Loan Offices, all the said bills so made and numbered and signed as aforesaid, not exceeding the number herein before respectively limited and appointed. And the said signers shall keep or cause to be kept a true account of all the said bills by them signed and delivered to the said Trustees, which accounts shall be returned by the said signers to the General Assembly of this government at their next meeting after signing the said bills : And for their trouble, care and diligence in doing what is required of them by this act, they shall each of them receive Ten Shillings for every thousand bills by them so signed and numbered, to be paid to each of them, his executors, administrators or assigns, in bills of credit, to be delivered to them out of the interest money arising, or

and allowance.

C H A P.
CLXII.

1759.

to arise, in the Trustees hands of the respective Loan Offices aforesaid, within thirty days after they deliver the said bills, to be paid by the said Trustees proportionably. And if any of the persons before nominated to be signers shall happen to die, or be rendered incapable of doing his or their duty by this act required, it shall and may be lawful for the Members of Assembly of that county in this government, where any such death or incapacity shall happen, with the consent of the Governor for the time being, to appoint another signer in the stead of such person so dying or rendered incapable as aforesaid, which said person or persons, so to be appointed, shall take the same qualifications as the signers in this act appointed are required to take.

Trustees names.

SECT. 4. *And be it further enacted by the authority aforesaid,* That the sum of Ten Thousand Pounds of the said bills of credit, being signed and numbered as aforesaid, shall be by the said signers put into the hands of William Patterson, Richard M^cWilliam and Evan Rice, of New-Castle county, gentlemen, who are hereby constituted Trustees of the General Loan Office of the said county of New-Castle; and the sum of Six Thousand Pounds of the said bills of credit shall be put into the hands of John Vining, and John Brinkle, of Kent county, gentlemen, who are hereby constituted Trustees of the General Loan Office of the said county of Kent; and the sum of Four Thousand Pounds of the said bills of credit shall be put into the hands of Jacob Kollock, and Ryves Holt, of Suffex county, gentlemen, who are hereby constituted Trustees of the General Loan Office of the said county of Suffex, which Trustees shall give their receipts for such bills as shall be by them received; which receipts, as also the receipts given by the signers, shall be delivered to the General Assembly of this government at their next sessions after the dates of the said receipts.

When and where Trustees are to give attendance at their Offices.

SECT. 5. *And be it further enacted by the authority aforesaid,* That the Trustees for the time being, after the receipt of their several quotas of the said new bills, signed and numbered as aforesaid, shall give due attendance at their respective Loan Offices; *That is to say,*

By, at New-Castle, in the county of New-Castle, at Dover, in the county of Kent, and at Lewes, in the county of Suffex, two days in each week, *to wit*, Wednesdays and Thursdays, at least for the first ten weeks successively; and, afterwards, shall duly attend at their said offices on the first Wednesdays and Thursdays, in the months of April, August and December, and at such other times, as their duty and trust shall require, as well for exchanging the said bills in manner as herein directed, as for doing and performing every other part of their office and trust, according to the directions of this act.

C. H. A. P.
CLXXII.
1759.

SECT. 6. *And* the said Trustees shall deliver out the said new bills to such persons as shall demand them in exchange for bills of the same value emitted by the directions of an act of General Assembly made at New-Castle in the year of our Lord One Thousand Seven Hundred and Forty-six; which said old bills shall be kept by the Trustees for their vouchers, to discharge them of so much of the aforesaid Twenty Thousand Pounds, value in new bills, as they shall have given in exchange as aforesaid, before any Committee of Assembly of this government to be appointed for that purpose, who having truly examined such old bills, so received in exchange, shall cause the same to be burned and destroyed in their presence. And the said Trustees shall have for their trouble and care in exchanging every Thousand Pounds value of the said bills the sum of Thirty Shillings, to be defrayed out of the interest-money aforesaid.

Their allowance
for exchanging
old bills,

SECT. 7. *And be it enacted by the authority aforesaid,* That the said new bills of credit hereby directed to be made and signed as aforesaid shall, from and after the first day of June, One Thousand Seven Hundred and Fifty-nine, be the current bills of this government, for the payment and discharge of all manner of debts, rents, sum and sums of money whatsoever, due, payable or arising upon, or by reason of, any mortgage, bill, specialty, bond, note, book-account, promise, or any other contract or cause whatsoever, as if the same was tendered or paid in the coins mentioned in such bond or other writing, book-account, promise, assumption, or in any other con-

Bills of credit
lawful tender.

C H A P.
CLXII.

1795.

Trustees and
their successors
impowered to
take, hold, &c.
lands, &c. grant-
ed in mortgage.

tract whatsoever, and at the rates ascertained in the
aforesaid act of Parliament, and shall be so received
in all payments by all persons whatsoever.

SECT. 8. *And be it further enacted by the authority
aforesaid,* That the said Trustees shall have capacity
and power to take, hold and enjoy, unto them and
their successors in the said trust, all such lands, tene-
ments, rents and hereditaments, and all such plate,
as shall be granted them in mortgage, or which hath
at any time heretofore been granted to any Trustee or
Trustees of the General Loan Offices of this govern-
ment, for securing the re-payment of the money, or
bills, formerly lent, or hereby directed to be lent ;
and also to sell, grant, alien, and dispose of the same
lands, tenements, rents, hereditaments and plate, in
default of payment ; and also to do, execute, per-
form and suffer, all other things whatsoever as fully,
to all intents and purposes, as any Trustees of the
General Loan Offices aforesaid, by any former act
or acts of Assembly of this government, might have
done, executed, performed and suffered. And upon
the death, malfeasance, incapacity or removal, of
any of the Trustees by this act appointed, or of any
other that shall be nominated and appointed hereaf-
ter, it shall and may be lawful to and for the Gene-
ral Assembly of this government to nominate and
appoint some other fit person or persons in his or
their place and stead, who shall have the same power
and authority as if they had been nominated and ap-
pointed by virtue of this act.

To continue in
their office four
years.

SECT. 9. *Provided always, and it is hereby further
enacted,* That none of the persons herein before nomi-
nated, or hereafter to be appointed, Trustees of the
General Loan Offices aforesaid, shall longer continue
in the exercise of the said offices than the term of four
years, from the time of their entering upon their re-
spective offices, and from thence to the end of the
next Sessions of Assembly. (b)

SECT. 10. *Provided also,* That none of the Trus-
tees, so as aforesaid nominated, or to be nominated
and

(b) For after appointments of such Trustees, see, chap. 191. a. passed June 16,
1769. and chap. 209. a. passed June 13, 1772.

and appointed, according to the directions of this act, or any of them, or any of their heirs, executors, administrators, or securities, hereby directed to be given, be acquitted or discharged from any thing done, or suffered, in or about the trust hereby committed to them, until they have accounted for and paid, and delivered up, to the succeeding Trustees, all bills, money, securities and writings, belonging to the respective Loan Offices, and so from time to time during the continuance of this act, any thing herein contained to the contrary notwithstanding. But before any of the Trustees, hereby nominated and appointed, or such as shall be appointed hereafter Trustees, shall enter upon the execution of their trust, or any part thereof, they shall enter into bond, with good security, for the sums delivered into their hands and possession respectively; *That is to say*, the Trustees of the Loan Office for New-Castle county to John Finney, William Till and George Monro, of New-Castle county, gentlemen, their executors and administrators; and the Trustees of Kent county to Robert Willcocks, Vincent Lockerman and John Clayton, gentlemen, their executors and administrators; and the Trustees of Suffex county to Jacob Phillips, David Hall and Jacob White, gentlemen, their executors and administrators, who are hereby nominated and appointed Trustees and Agents for the public for that end and purpose, conditioned, for the execution of their trust and performance of all things required of them by this act; (c) and shall take an oath or affirmation before some Justice of the Peace in the words following, *to wit*,

C H A P .
CLXH.

1759.

Before discharge
to account and
deliver up all
bills, &c.

To give bond.

I A. B. will, according to the best of my skill and knowledge, faithfully, impartially and truly, demean myself in the discharge of the trust required of me by an act of Assembly of this government, intituled, An act for re-printing, exchanging and re-emitting Twenty Thousand Pounds of the bills of credit of this government, to be let out on loan, and for striking the further sum of Seven Thousand Pounds in such bills, and giving the same to his Majesty's use, and for providing a fund for sinking the same.

Their qualification.

SECT.

(c) See after in chap. 174. a. sect. 5, &c. and in chap. 178. a. sect. 3, &c. further securities directed to be given by these Trustees, and other duties assigned to them.

C. H. A. P.
CLXII.]

1759.

SECT. II. *And be it further enacted by the authority aforesaid,* That the principal sums of money in bills of credit made current by the aforesaid former act of Assembly, and exchanged according to the directions of this present act, shall not be sunk or destroyed otherwise, or at any other time, than by this present act is directed; limited and appointed, any law, custom or usage, to the contrary notwithstanding: But the same principal sums, and all and singular the parts, parcels and quotas thereof, or any of them now received by the Trustees of the several Loan Offices of this government, or yet to be received or recovered from any mortgagor, County Treasurer, or person whatsoever, shall be re-emitted on loan for and during the time and to the full end and term of fifteen years from the first day of June next in the year of our Lord One Thousand Seven Hundred and Fifty-nine; all which loans, made by virtue of this act, shall be made in sums not exceeding Sixty Pounds, nor less than Twelve Pounds, to any one person upon mortgage of messuages, lands, tenements, rents and hereditaments, in this government, whereof the borrowers stand seized in fee simple in their own right, free from incumbrances, the proprietary quit-rents and other rents charged on the same, and discovered to the said Trustees, only excepted; of which titles and clearness, the Trustees are to inform themselves the best they can by any of the ways and means heretofore granted and allowed to the former Trustees of the said General Loan Offices; or to any of them; and shall inform themselves as well of the clear value of the titles of all lands, houses and ground rents, offered in security, so as to be satisfied that the same lands and ground-rents are held in fee simple, and are at least of double the value of the sums requested to be lent; and that as to houses, erected upon ground subject to the payment of ground-rent, offered in mortgage, care shall be taken by the said Trustees, that there be no rent in arrear at the time of receiving the same in mortgage, and that the ground shall be near equal in value, above the ground-rent, to the sum lent, yet so that the house and ground be of a treble value, for the better security of the mortgage money; and thereupon the said Trustees, in pursuance of the

- trust

Sums to be lent
on mortgage
limited.

trust hereby committed to them, shall, by the name and stile of the Trustees of the General Loan Offices of this government, and not otherwise, take and receive deeds of mortgage in fee simple, of such messuages, lands, tenements, rents and hereditaments, with the appurtenances, to secure the re-payment of the sums they lend, to be made yearly, on the first day of June, by equal payments, with the whole interest accrued, at the rate of Five Pounds per cent. per annum.

SECT. 12. *Provided always, and it is hereby further enacted,* That the better to enable any of the mortgagors, by any former act of Assembly, to discharge their mortgages, it shall and may be lawful to and for the said Trustees, and they are hereby required, to permit those mortgagors, or their heirs, or such other person or persons, to whom they have made over their right of redemption and estate in their mortgaged messuages, lands and rents, to renew their mortgages respectively, if they the said Trustees shall judge them a sufficient security for the sums thereon due and in arrear; Provided the same do not exceed Sixty Pounds as aforesaid, according to the proportions and within the times by this present act limited and appointed.

Mortgagors under any former act may renew their mortgages.

SECT. 13. *Provided also,* That if any mortgagor of any messuages, lands or rents, in pursuance of this act, his heirs, executors, administrators or assigns, shall be minded to pay off and discharge his mortgage and security at any other time than according to the time specified in his mortgage deed, it shall be lawful for him or them so to do before sale of the mortgaged premises, by paying down the whole principal sum due and in arrear, together with the interest and charges then accrued.

Mortgagors may at any time pay off.

SECT. 14. *And be it further enacted by the authority aforesaid,* That all the principal sums of money which the said Trustees, or their successors in the said trust, shall receive by virtue of any mortgage deed, or other security by them, or any of them, taken in pursuance and by virtue of this present act, whether yearly quotas or such sums as shall by them, or any of them, be received in full discharge of the said mortgage deeds, or other securities, shall again, from time to time, be re-emit-
by

No part of principal sums to be sunk before June 1, 1775.

C. H. A. P.

CLXII.

1759.

CHAP.
CLXII.
1759.

by the respective Trustees of the General Loan Offices of this government for the time being, upon loan, in manner and form as herein before directed for all the remaining part, and until the end and term aforesaid, to be repaid in equal annual quotas. And that all the yearly quotas and parcels of the principal sums arising from the said re-emissions, which shall be paid into the said General Loan Offices, or any of them, on or before the first day of June in the year of our Lord One Thousand Seven Hundred and Seventy-three, shall, by the respective Trustees thereof for the time being, be again re-issued on securities as aforesaid, and so from time to time until all the principal money, anyways arising, which shall be paid unto them, or any of them, on or before the first day of June in the year of our Lord One Thousand Seven Hundred and Seventy-two, shall be wholly re-issued on such security as herein before is directed; all which deeds of mortgage shall be fairly entered in books of large paper, to be provided by the said Trustees, and an attested copy of the said deed so entered and certified by the said Trustees, or any of them, for the time being, shall be and is hereby declared to be good evidence to prove the mortgage thereby mentioned to be made; and on every of the aforesaid deeds of mortgage shall be indorsed or added an oath or affirmation, to be taken by the mortgagor or mortgagors before some one of the said Trustees, who are hereby impowered and required to administer the same: That he, she or they, is, or are, seized of the hereditaments and premises thereby granted, in his, her or their own right, and to his, her, or their own use, and that free from all incumbrances to the knowledge of such mortgagor, (the yearly quit-rents thence issuing, payable to the chief lord or lords of the fee thereof, and such other rents, if any, as are therein particularly mentioned and discovered to the Trustees, only excepted.) And the aforesaid deeds, being so executed and acknowledged, shall transfer the possession and vest the inheritance of and in such mortgaged premises to and in the said Trustees, and their successors, as fully and effectually as deeds of feoffment, of livery and seizen, or deeds inrolled in any

Affidavit to be
taken by the
mortgagors.

any of the King's Courts at Westminster, may or can do: In all which deeds the words *grant, bargain, and sell,* shall be, and be adjudged, in all places and courts whatsoever, within this government, to have the force and effect of a covenant, that the mortgagor, notwithstanding any act done by him, was, at the time of the execution of such deed, seized of the hereditaments, and premises thereby granted, of an indefeazable estate of inheritance, free from incumbrances, the rents, so as aforesaid to be discovered to the said Trustees, only excepted.

SECT. 15. *And be it further enacted by the authority aforesaid,* That, together with every of the mortgage deeds aforesaid, the respective mortgagor shall execute a bond of double the mortgage money, conditioned, for the payment of the money borrowed, with the interest, according to the proviso or condition contained in such mortgage deed; and also a Warrant of Attorney, empowering such person or persons, as the respective Trustees shall appoint, to confess or suffer judgment, which the said Trustees are hereby required to cause their Attorney to enter in any of the Courts of Common Pleas of this government against such mortgagor as shall make default in payment of the mortgage money, or any part thereof on the said bonds or mortgages, for non-performance of the conditions thereof, or in such actions of debt, as the said Trustees are required to bring, for the value of the said bills of credit received by the mortgagors, whose titles shall happen to prove defective, together with interest and costs of suit, and in every such Warrant of Attorney shall be inserted a release of errors by the mortgagor.

SECT. 16. *Provided always nevertheless,* That until some default be made in payment of some part of the mortgage monies by the mortgagors respectively, it shall and may be lawful to and for them, and their heirs, to hold and enjoy the mortgaged premises, any thing in this act, or in their mortgage deeds to the contrary notwithstanding; but if default shall be made or suffered in payment of any part of the mortgage monies aforesaid, whether of the principal or interest, which the mortgagors, their heirs, executors, administrators

C. H. A. P.
CLXII.

1759.

Exposition of
the covenants
in the mortgage
deeds.

Mortgagors to
execute bond
and Warrant of
Attorney.

Mortgagors to
enjoy the mort-
gaged premises
until some de-
fault in pay-
ment.

C H A P.
CLXII.

1759.

Trustees may
sell mortgaged
premises after
two months de-
fault in pay-
ment.Good plate may
be taken in se-
curity by the
Trustees.

nistrators or assigns, should or ought to pay, according to the days of payment aforesaid; and as in the respective deeds of mortgage shall be specified, it shall and may be lawful to and for the said Trustees for the time being, after two months after default made as aforesaid, to enter upon the messuages, lands, rents, and hereditaments respectively, in the deeds of mortgage specified, and the same thereupon to sell and convey to the best purchaser, and, out of the monies arising by such sale, to detain and keep the sums thereon due unto them, with all costs and charges relating thereunto, returning the overplus, if any be, to the owners of such lands and hereditaments, who shall thereupon stand for ever foreclosed of, and from all right of redemption of the same.

SECT. 17. *Provided always, and it is hereby further enacted,* That it shall and may be lawful to and for the said Trustees, or any of them, at any time or times before the aforesaid first day of June in the year of our Lord One Thousand Seven Hundred and Seventy-three, to lend out in such manner as to them shall seem best, any sums in the bills aforesaid, not exceeding Sixty Pounds, or less than Twelve Pounds, to one person, on security of good plate, at the value of Six Shillings per ounce, to be repaid to the said Trustees within twelve months, with the interest thereof, at the rate aforesaid, and in case of the non-payment, to sell and dispose of such plate for the most it will yield, returning the overplus, if any be, to the owner, after payment of the sum lent, with the interest aforesaid, and all charges thereupon accruing.

SECT. 18. *Provided always,* That where any part of the mortgage monies hath been paid, the Trustees shall indorse upon the writ of execution the real sum of the principal and interest due to the said Loan Office, and the Sheriff shall thereupon proceed, as in other cases of sale of lands, to sell so much of the mortgaged premises, as near as he can judge, as will be sufficient to pay the whole debt and costs; and if any overplus remain in the Sheriff's hands, after the payment of the whole monies due to the said Loan Officers, with the costs and charges accrued thereupon,
the

the said Sheriff shall render the same to the debtor or defendant, his or their executors or administrators, and put the said purchaser into peaceable and quiet possession of the messuages, lands and tenements, so sold as aforesaid; who shall hold and enjoy the same to him, his heirs and assigns, as fully and amply as he or they for whose debt the same shall be sold, might, could or ought to have done, at any time before the taking thereof in execution, freed and discharged from all claim of dower, by any person claiming under the defendant for whose debt the same was sold.

CHAP.

CLXII.

1759.

SECT. 19. *And be it further enacted by the authority aforesaid,* That the said Trustees shall indorse upon each mortgage deed the receipts for all the yearly quotas to be paid by the respective mortgagors, which they shall also note on the counter parts to them produced when required, for which receipts they shall be paid by the mortgagors Six-pence each, and no more; and upon the last payment thereof the said Trustees shall enter in the margin of the inrollment of the mortgage deed the time of the discharge thereof, for which they shall receive of the mortgagor Six-pence, and no more. And the said Trustees, or the Trustees for the time being, shall keep distinct, fair and true accounts, of all the sums they receive by virtue of this act, and the before recited acts respectively, and of what they shall from time to time re-emit by virtue of this act or pay by orders of Assembly of this government for the time being whether in part of principal or interest-money, and shall have and receive, for their trouble and service the several sums following. *That is to say,* The Trustees of the county of New-Castle shall be allowed each Thirty Pounds per annum during the continuance of their trust; and the Trustees for the county of Kent shall have allowed them each Thirty Pounds per annum during the continuance of their trust; and the Trustees for the county of Suffex shall be allowed each Thirty Pounds per annum during the continuance of their trust, payable to each of them, his executors, administrators or assigns, in bills of credit, out of the interest money arising by this act.

Trustees to
indorse receipts
on the mortgage
deeds, &c.

and shall keep
fair accounts.

Their salary.

C H A P.

CLXII.

1759.

Shall account
once in every
year at least
with the Com-
mittees of As-
sembly.

Interest money
to be disposed of
by the Assembly

Allowance to
Committees of
the Assembly.

Trustees to keep
mortgagors up
to their annual
payments.

SECT. 20. *And be it further enacted by the authority aforesaid,* That the Trustees shall once in every year, or oftener, exhibit their accompts aforesaid unto the Committees of Assembly of this government to be appointed for that purpose, with whom they shall from time to time settle and adjust the same; and all the interest money by them from time to time received being accounted for, and the salaries and charges allowed for by this act, being deducted, the residue thereof shall be disposed of as the Assembly of this government shall direct and appoint; and as for and concerning all yearly quotas and payments in the bills aforesaid (part of the principal sums to be re-emitted upon loans as this act directs) which by virtue hereof, or of any mortgage, or security, heretofore taken, or to be taken as aforesaid, shall be recovered and received, and remaining in the respective Loan Office on the first day of June which will be in the year of our Lord One Thousand Seven Hundred and Seventy-five, the Trustees of the respective Loan Offices aforesaid, for the time being, shall exhibit the said bills of credit to the aforesaid Committees of Assembly, who, having duly examined and compared the same, shall cause the same to be burnt and destroyed in their presence. And the said Committee, of the respective counties within this government, shall have for their service in settling the accompts of the respective Loan Offices, *That is to say,* The Committee for the county of New-Castle, the sum of Five Pounds each; the Committee for the county of Kent, the sum of Four Pounds each; and the Committee for the county of Suffex, the sum of Three Pounds each; to be paid them annually out of the interest money arising in the said offices.

And, the better to prevent inconveniencies arising from indulging mortgagors to be behind in their payments, hereby directed to be made,

SECT. 21. *Be it further enacted by the authority aforesaid,* That the Trustees for the time being shall, and are hereby required to keep the mortgagors, in pursuance of this act, up to their annual payments, as by the same act is directed and appointed. And the Committees of Assembly, to be annually appointed to audit

audit the said Trustees accompts, are hereby directed not to allow of any quotas in arrear and unpaid, which have been due eighteen months, at the time of their settlement with the said Trustees, excepting only such sums for which the Trustees have commenced suit, or otherwise have proceeded according to the directions of this act, for the recovery of the money due.

CHAP.
CEX II.
1759

SECT. 22. *And be it further enacted by the authority* Trustees to choose Clerks, *aforesaid, That the said Trustees shall, for the better regulating of their said offices, choose and employ a fit and able person for their Clerk during their pleasure, for whom they shall be answerable, who shall prepare the deeds of mortgage, with mortgagor's affidavits, bonds, warrants of attorney, and release of errors, and shall have and receive the following fees, and no more, to wit, For every mortgage deed, recording the same, counter part or copy thereof, the mortgagor's oath or affirmation indorsed on the mortgage deed, and the bond, warrant of attorney, and release of errors, the sum of Fifteen Shillings, and no more, to be paid by the said Trustees out of the interest money aforesaid; and the said Clerks shall keep true accounts of the names of all persons applying to borrow on securities, as this act directs, and shall record their deeds of mortgage in the same order of time as they were executed, and shall, once a year, make out a list of the names of all mortgagors, with the sums they borrow, and date of their mortgage deeds, and the same lists shall deliver to the Committees of Assembly to be appointed Auditors of the said Trustees accompts: But before any person so chosen to be Clerk shall enter upon the execution of his office, he shall take an oath or affirmation before some Justice of the Peace, *That he will truly and faithfully perform the office and duty that is directed and required of him by this act, wherein he will make no undue preference, unnecessary delays, or fraudulent practices.* their fees and duty.*

SECT. 23. *And be it further enacted by the authority* Counterfeiting the bills of credit, &c. felony of death without benefit of clergy, *aforesaid, That if any person or persons shall presume to counterfeit any of the said bills of credit, made current by this act, or any law of this government, by printing, or procuring the same to be printed, in the likeness of the said genuine bills of credit; and also*
if

C H A P.
CLXII.

1759.

Informer to re-
ceive Fifty
Pounds.

if any person or persons shall forge the name or names of the signers of the true bills of credit, whether the counterfeiting of the said bills or names be done within this government or elsewhere, or shall utter such bills, knowing them to be so counterfeited as aforesaid, and be thereof legally convicted by confession, standing mute, or by the verdict of twelve men, in any Court of Record within this government, having cognizance thereof, he, she or they, shall suffer death, without benefit of clergy; and the discoverer or informer shall have, as an encouragement for his discovery, the sum of Fifty Pounds, of the goods and chattels, lands and tenements, of the person convicted. And if no such goods and chattels can be found, then the Trustees of the General Loan Office shall pay to such informer or discoverer, his executors, administrators or assigns, the sum of Twenty Pounds. And if any person or persons shall counterfeit any of the said bills of credit of this government, by altering the denomination of the said bills, with design to increase the value of such bills, or shall utter such bills, knowing them to be so counterfeited or altered as aforesaid, and shall thereof be legally convicted in any Court of Record in this government as aforesaid, such person or persons shall be sentenced to the pillory, and to have both his, or her, ears nailed to the pillory, and cut off, and to be publicly whipped on his or her bare back with thirty-one lashes well laid on; and moreover, every such offender shall forfeit the sum of One Hundred Pounds lawful money of this government, to be levied on his or her lands and tenements, goods and chattels, the one half to the use of the Governor, and the other half to the discoverer; and the offender shall pay to the party grieved double the value of the damages thereby sustained, together with the costs and charges of prosecution; and in case the offender hath not sufficient to satisfy the discoverer for his or her damages and charges, and pay the forfeiture aforesaid, in such case the offender shall, by order of the court where he or she was convicted, be sold for any term not exceeding seven years for satisfaction, and in such case the said Trustees shall reward the discoverer of such insolvent offender to the value of

Ten

Ten Pounds; and every such counterfeited bill shall be delivered to any of the said Trustees, to be made use of upon the trial of the person accused or suspected, and afterwards be burnt and destroyed by the said Trustees in the presence of the Committee of Assembly.

CH A. P.
CLXII.
1759.

SECT. 24. *And be it further enacted by the authority aforesaid,* That the sum of Seven Thousand Pounds, the residue of the bills of credit aforesaid, shall be and is hereby given to his Majesty's use. (d)

Seven Thousand Pounds given to the King's use,

SECT. 25. *And be it further enacted by the authority aforesaid,* That the said sum of Seven Thousand Pounds in bills of credit, being signed and numbered as aforesaid, shall be delivered by the said signers to the Trustees of the General Loan Office for the county of New-Castle for the time being, whose receipt shall be a discharge to the said signers for the said bills: But before the Trustees shall receive the said bills they shall enter into a bond, with two good sureties, taken by the said signers, in the name of the Governor, or Commander in Chief of this government, for the time being, and his successors in trust for the public, in the sum of Fourteen Thousand Pounds, conditioned, that they will not emit or pay any of the said bills of credit to any person or persons but to the Commissioners herein after appointed to receive the same, or to their order, or the order of the majority of them, or the survivors of them, which bond the said signers shall lodge in the Prothonotary's Office for the county of New-Castle, and take the receipt of the Prothonotary for the time being for the same, which receipt shall be returned by the said signers to the next Assembly of this government.

Trustees of New-Castle county to receive the said bills;

to give bond, &c.

SECT. 26. *And be it further enacted by the authority aforesaid,* That the said Trustees, after their receipt of the said bills of credit signed and numbered as aforesaid, shall pay the same into the hands, or unto the order, of John Finney, George Monro, Cæsar Rodney, Joseph Caldwell, David Hall and Jacob Kollock,

Trustees to pay to the Commissioners by this act appointed the said bills.

(d) See after in chap. 178. a. sect. 12. for a repeal of so much hereof as relates to this grant and the fund herein after provided for sinking the same.

CHAP.
CLXII.
1759.

Forces to be
raised.

Kollock, jun. gentlemen, who are hereby appointed Commissioners, for receiving the same; the which said Commissioners, or a majority of them, or the survivors of them, with the consent and approbation of the Governor, or Commander in Chief of this government, for the time being, and not otherwise, shall order and appoint the disposition of the said sum of Seven Thousand Pounds arising by virtue of this act, for and towards the levying, cloathing and paying, one hundred and eighty men, officers included, to be employed in conjunction with a body of his Majesty's British troops, and the forces of the colonies to the southward of New-Jersey, under the Commander in Chief in those parts, in such offensive operations as shall be judged by the said Commander most expedient for annoying the enemy, and most efficacious towards removing and repelling the dangers that may threaten this, or any of the said colonies, during the present campaign.

Camp equipage
to be purchased
for the Officers.

SECT. 27. *Provided always, and it is hereby enacted,* That the said Commissioners, or a majority of them, or the survivors of them, shall dispose of the sum of Two Hundred and Forty Pounds, part of the said Seven Thousand Pounds to be raised by this act, towards the purchasing camp equipage for the commissioned officers only, allowing to each Captain the sum of Thirty Pounds, and to each Subaltern the sum of Twenty-five Pounds. And in case of the death, malfeazance, incapacity or removal, of any of the said Commissioners, by this act appointed, or of any other that shall be appointed and nominated hereafter, it shall and may be lawful, to and for the Assembly of this government, for the time being, to nominate and appoint some other fit person or persons in his or their place and stead, who shall have the same power and authority as if they had been nominated and appointed by virtue of this act; but until such appointment be made, the surviving or remaining Commissioners, already appointed by this act, or a majority of them, shall be and are hereby impowered to execute the aforesaid duty and trust.

SECT. 28. *And be it further enacted by the authority aforesaid,* That the said Commissioners, or the survivors

vers of them, or a majority of the said survivors, shall at least once in every year exhibit their accompts of the aforesaid Seven Thousand Pounds unto a Committee of Assembly of this government, to be appointed for that purpose, with whom they shall from time to-time settle and adjust the same.

And, to the end that the said sum of Seven Thousand Pounds in bills of credit, hereby given to his Majesty's use, may be sunk and destroyed within the term of five years,

SECT. 29. *Be it enacted by the authority aforesaid*, That the Justices, Grand Jurymen and Assessors, of each respective county, at the usual time of holding their Levy Courts, shall, over and above the tax laid for discharging the county rates and levies upon the freeholders and inhabitants, lay an additional tax of Six-pence in the Pound, and in every other respect shall act and proceed in the same manner as by an act of Assembly of this government, intituled, *An act for striking Four Thousand Pounds in bills of credit, and granting the same to his Majesty's use, and providing a fund for sinking the same*, they are enjoined and directed. (e)

SECT. 30. *Provided always, and it is hereby enacted by the authority aforesaid*, That the aforesaid additional tax of Six-pence in the Pound shall not commence, or take place, until the first day of June in the year of our Lord One Thousand Seven Hundred and Sixty-three, and shall be continued from that time, yearly, until the first day of June One Thousand Seven Hundred and Sixty-eight, any thing herein contained to the contrary notwithstanding. (e)

SECT. 31. *And be it further enacted by the authority aforesaid*, That all the sum or sums of money, levied by the Collectors of the several counties by virtue of this act, shall be paid by the said Collectors to the Trustees of the General Loan Office of the said county in bills of credit made current by this act, which said bills shall be yearly produced by the said Trustees to the

CHAP.
CLXII.
1759.

Commissioners to account once at least in every year with a Committee of Assembly.

The manner of sinking the Seven Thousand Pounds.

Tax to commence June 1, 1763.

(e) This sect. 29, and to sect. 34, inclusive, repealed and supplied in chap. 178. p. sect. 5, 6, to the end of the act.

C. H. A. P.
CLXII.
1759.

the Committee of Assembly for that purpose appointed, and in their presence to be burned and destroyed. (e)

SECT. 32. *And be it further enacted,* That the said Trustees shall give to the said Collectors their receipts for all such sums as shall be so as aforesaid paid to them, which receipts, produced by the said Collectors to the next Levy Court, shall be allowed of, and adjudged sufficient to discharge the said Collectors for the sums therein specified. (e)

Collectors allowance.

SECT. 33. *And be it further enacted by the authority aforesaid,* That the Collectors shall have and retain in their hands, for all sums of money by them respectively collected as aforesaid, the sum of Five Pounds per cent. and no more; and the said Collectors, before they enter on the execution of their offices, shall enter into bonds to the Trustees of each county respectively, with good security, in such sum as they shall direct, for the faithful performance of the duties required of them by this act. (e)

SECT. 34. *And be it further enacted by the authority aforesaid,* That if the five yearly taxes, to be levied by virtue of this act, shall not be sufficient to sink the said sum of Seven Thousand Pounds, in bills of credit, and defray all incident charges, then a further additional tax or taxes of Six-pence in the Pound shall be laid and levied in manner as is herein before directed, until the sum of Seven Thousand Pounds in bills of credit is completely sunk and destroyed. But if the said yearly tax shall raise more than the sum of Seven Thousand Pounds within the said term of five years (incident charges included) the overplus shall be disposed of by the joint consent of the Governor and Commander in Chief of this government, for the time being, and the Assembly, and not otherwise. (e)

Officers, &c.
disabled to be
maintained by
the public,

SECT. 35. *And be it further enacted by the authority aforesaid,* That if any person or persons, either officers or soldiers, shall be wounded or disabled in any engagement, or in any military service under this act, he or they shall be taken care of, supported and maintained, according to his rank and dignity, at the public charge of this government, according to the

the proportion act, during the time of his or their disability.

CHAP.
CLXII.

And, for the due regulation of the forces to be raised in this government,

1759.

SECT. 36. *Be it further enacted by the authority aforesaid,* That all officers to be commissioned and in pay, by virtue of this act, and such soldiers as shall voluntarily engage, or be enlisted, at any time after the publication of this act, and be paid and maintained by the crown at the charge of this government, shall be subject to the same laws, rules, duties and trials, and be liable to the same punishment, during the continuance of this act, whether within this government or out of the same, as they would by an act of Parliament passed in the twenty-ninth year of the present reign, intituled, *An act for punishing mutiny and desertion, &c.* if joined by any of his Majesty's British forces.

Officers and soldiers to be subject to same laws, &c. as his Majesty's British forces.

SECT. 37. *And it is hereby declared and enacted by the authority aforesaid,* That this act shall be taken and allowed in all courts and places within this government as a public act; and all judges and justices, and other persons concerned, are hereby required to take notice thereof as such, without pleading the same specially.

Passed May 7, 1759.

C H A P. CLXIII. a.

An ACT for the better relief of the poor in the county of Kent.—Repealed by chap. 179. a. but see the note at chap. 88. a. 15 Geo. II.

1759.

C H A P. CLXIV. a.

An ACT for keeping in good repair the causey and bridge over the Broadkill creek in Suffex county, and for regulating the toll for passing the same.—Repealed and supplied in chap. 64. b. passed June 16, 1780.

1759.

VOL. I.

2 Z

CHAP.

C H A P.
CLXV.

1759.

An ACT for reviving, amending and continuing, an act of Assembly of this government, made in the seventeenth year of his Majesty's reign, intituled, "An act for the more easy and speedy recovery of small debts." Temporary—again revived, and the whole re-enacted, chap. 185. a.

C H A P. CLXVI. a.

1759.

An ACT for the better regulation of the King's roads in Kent county.—Repealed. See after in chap. 176. a. sect. 9.

C H A P. CLXVII. a.

1760.

An ACT for the better regulation of the Supreme Court within this government.

WHEREAS an act of the Assembly of this government, intituled, *An act for the establishing Courts of Law and Equity within this government*, (a) has not answered all the good purposes intended by the said act;

SECTION 2. *BE it therefore enacted by the honorable James Hamilton, esq. (b) Lieutenant Governor, and Commander in Chief of the government of the counties of New-Castle, Kent and Sussex, on Delaware, and province of Pennsylvania, under the honorable Thomas Penn, and Richard Penn, esquires, true and absolute proprietaries of the said government and province aforesaid, by and with the*

(a) In chap. 54. a.

(b) James Hamilton, esquire, came into the government a second time in November 1759, and continued until October 29, 1763.

the advice and consent of the Representatives of the free-men of the said government, in General Assembly met, and by the authority of the same, That from and after the publication of this act, the Supreme Court of this government shall be held and kept twice in every year in each county of this government, *That is to say,* At New-Castle, for the county of New-Castle, on the twenty-seventh day of April, and twenty-third day of October; at Dover, for the county of Kent; on the twenty-eighth day of October, and the Monday before the Court of Common Pleas in May; and at Lewes, for the county of Suffex, on the Monday before the County Court of Common Pleas in May and November; and if the same days, or either of them, (in the said months of April and October) shall happen to be Sunday, then, and in every such case, the said court shall be held on the next day following; (c) which said court shall be called and stiled, the Supreme Court of the government of the counties of New-Castle, Kent and Suffex, on Delaware. And that there shall be four persons of known integrity and ability commissioned by the Governor for the time being, by several distinct patents, or commissions, under the Great Seal of this government, to be judges of the said court; one of whom shall be distinguished in his commission by the name of Chief Justice: (d) And each of the said judges shall have full power and authority, when and as often as there shall be occasion, to issue forth writs of *Habeas Corpus*, *Certiorari*, and writs of error, and all remedial writs, or other process necessary for bringing the causes in the said court to trial, and for carrying the judgments or decrees of said court into execution. (e) and (f)

E. H. A. P.
CLXVII.
1760.

Supreme Court
to be held twice
in every year.

Stile of the
courts

to be four
judges thereof.

SECT.

(c) See chap. 177. a. An alteration of the days for holding this court in the several counties. And for subsequent alterations see chap. 193. a.—chap. 5. b. passed Feb. 22, 1777.—chap. 19. c.—passed June 14, 1793, and chap. 61. c. passed February 7, 1794.

(d) See art. 12. of the system of government for this state, framed in September 1776.—And art. 6. sects. 1, 2, 3, of the constitution adopted in June 1792, for after regulations as to the stile of this court and number of the judges, &c.

(e) See also sects. 5, 6, p. of the said art. 6. for other powers of a single judge.

CHAP.
CLXVII.
1760.

Any two have
power to hear
and determine
causes, &c.

and to correct
the errors of
justices, punish
the defaults,
&c. of officers,
award process
for levying
fines, &c.

and generally
minister justice
as in the King's
Bench, Com-
mon Pleas and
Chancery in
England.

Any person may
appeal from
their judgment.

SECT. 3. *And be it further enacted by the authority aforesaid,* That the said judges, or any two of them, shall have full power and authority to hold the said court, and 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 County Courts of Common Pleas, or from any other court of law or equity within this government, by virtue of any of the said writs, or by appeal; and to examine and correct all and all manner of errors of the justices, or magistrates, within this government, in their judgments, process or proceedings, in the said courts, as well in all pleas of the crown, as in all pleas real, personal or mixt, and their decrees in suits in equity; and thereupon to reverse or affirm the said judgments, or decrees, as the law doth or shall direct, or shall be agreeable to equity; and also to examine, correct and punish; the contempts, omissions, neglects, favours, corruptions and defaults, of all, or any, of the Justices of the Peace, Sheriffs, Coroners, Clerks, and other officers, within this government; and also shall award process for levying all such fines, forfeitures and amerciaments, as shall be taxed, imposed or set, in the said Supreme Court, or estreated there; and generally shall minister justice to all persons, and exercise the jurisdictions and powers hereby granted them, concerning all and singular the premises, according to law and equity, as fully and amply to all intents and purposes whatsoever, as the Justices of the King's Bench and Common Pleas, at Westminster, or the Chancellor of England, may or can do; saving to all, and every person or persons, his, her or their heirs, executors, and administrators, their right of appeal from the final sentence, judgment or decree of the said court, to his Majesty in council, or to such court or courts, judge or judges, as by our lord the King, his heirs or successors, shall be appointed in that part of Great Britain called England,

to

to receive, hear and judge of appeals from his majesty's plantations; (f)

C. H. A. P.
CLXVII.

SECT. 4. *Provided* the person or persons appealing shall, upon entering his, her or their appeal in the said court, pay all the costs before that time expended in the prosecution or defence of the said suit, and shall enter into bond, with two good and sufficient sureties, in the double the sum recovered in the said court, to the defendant or defendants in the appeal, conditioned, to prosecute the said appeal with effect, within the space of eighteen months next after the entry of such appeal, and to satisfy the judgment of the court from whence he or they shall appeal, and further to pay all such costs and damages as shall be adjudged to be paid, by him, her or them, 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 execution shall be suspended until the final determinations of such appeals, unless good and sufficient security be given by the appellee to make ample restitution of all that the appellant shall have lost by means of such judgment or decree, in case upon the determination of such appeal such judgment or decree should be reversed, and restitution awarded to the appellant. (f)

1760.
Appellant to pay costs and give bond, &c.

Execution to be suspended, unless the appellee gives security, &c.

SECT. 5. *And be it further enacted*, That all the said writs shall be granted of course, and made in the name and stile of the King, his heirs and successors, and shall bear test in the name of the Chief Justice for the time being; but if he be the plaintiff or defendant, in the name of one of the other justices, and shall be sealed with the judicial seal of the said court, signed by one of the judges, and made returnable to the next court after the date of such writ. (f)

Stile of the writs.

SECT. 6. *Provided always*, That none of the Judges of the said Supreme Court shall sit judicially in any of

None of said judges shall sit in inferior courts.

(f) For the existing alterations in the last paragraph of sect. 2. and of sects. 3, 4, 5, 7, of this act. see chap. 227. b. sect. 2. passed January 29, 1791.—The constitution of the State of Delaware adopted in June 1792. arts. 6, 7.—The "act to regulate the courts in this state," passed June 14, 1793. chap. 19. c.—And the act to amend the same. passed Feb. 7, 1794. chap. 61. c.

CHAP.
CLXVII.

1760.

The said judges
to deliver gaols,
&c.

of the said Courts of Common Pleas, Quarter Sessions, or any other inferior court of this government.

SECT. 7. *And be it further enacted by the authority aforesaid,* That the said Judges of the said Supreme Court, or any two of them, shall have power, and are hereby authorized and impowered, from time to time, when there shall be occasion, to deliver the gaols of all persons which now are, or shall hereafter be committed for treasons, murders, and such other crimes as by the laws of this government now are, or hereafter shall be, made capital, or felonies of death; and for that end, from time to time, to issue forth such necessary precepts and process, and force obedience thereunto, as Justices of Assize, Justices of Oyer and Terminer and Gaol Delivery, may or can do in the realm of Great Britain. (f)

Fees in Supreme
Court to be
double of what
is taken in Quar-
ter Sessions.

SECT. 8. *Provided always,* That the fees due to the judges (g) and officers of the said court, for hearing any of the said capital offences, or any thing done there, shall be double the fees usually taken in the General Quarter Sessions held in any of the said counties in this government, (h) any thing herein contained, or in any other law of this government, to the contrary notwithstanding.

No cause now
depending to be
discontinued by
this act, &c.

SECT. 9. *And be it further enacted by the authority aforesaid,* That no plea, cause or action, now depending in the Supreme Court of this government, shall be discontinued, but that the same may be heard, tried and determined, before the judges to be appointed in pursuance of this act, as fully as the same could have been heard, tried and determined, before the making of this act; and that no action of trespass and ejectment, now depending therein, shall be determined by the expiration of the term set forth in the demise mentioned in the declaration, but that the plaintiff in such action may prosecute the same, and, if judgment should be given for him, recover his possession,
in

(g) By art. 6. sect. 2. of the constitution of this state of June 1792, the judges are not to receive any fees or perquisites, except such as shall be fixed by law, for business to be done out of court; for which see chap. 27. c. sects. 3. 4. passed June 15, 1793.

(h) See chap. 27. c. sects. 7, 9, 13, 15, 25, 28.

in the same manner that he might or could have done if the said term had not expired.

CHAP.
CLXVII.

1760.

SECT. 10. *And be it further enacted by the authority aforesaid,* That no cause, hereafter to be removed into the said Supreme Court, shall, upon any pretence whatsoever, depend or continue therein longer than till the third term after that to which the writ or process removing the same shall be returnable, or to which an appeal shall be made as aforesaid, and then the parties shall be obliged to come to trial; unless the party, plaintiff or defendant, desiring to put off the same, shall make an affidavit before one of the judges, That some material witness for him, her or them, without whom he, she or they, cannot safely go on trial, is sick and unable to travel, or out of the reach of the court's process; and in such case only, the judges may direct the trial of the said cause to be put off to the next succeeding court, and no longer.

No cause to depend longer in said court than three terms, unless, &c.

SECT. 11. *And be it further enacted by the authority aforesaid,* That the Chief Justice, and other Judges, of the said Supreme Court, for the time being, shall be allowed the same salaries and expences, besides the common court fees, as in and by an act of Assembly, intituled, *An act allowing a salary to the Justices of the Supreme Court within this government,* are allowed to the said justices. (i)

Salary to the judges.

SECT. 12. *And be it further enacted by the authority aforesaid,* That the Attornies at Law, to be hereafter admitted to practise in the said Supreme Court, shall take the same qualifications, and have the same privileges as they would have done, or might have had, by the laws of this government, if they had been admitted to practise in the Supreme Court before the making of this law. (k)

Attornies at Law hereafter to be admitted to have same privileges as those already admitted, &c.

SECT. 13. *And be it further enacted by the authority aforesaid,* That the act of Assembly, intituled, *An act for establishing Courts of Law and Equity within this government,* so far as the same relates to the establishing a Supreme Court within this government, and every clause concerning the same be, and is hereby repealed, annulled and made void.

Repeal of former act about Supreme Court

Passed April 28, 1760.

CHAP.

(i) See the note at (f) before.

(k) See before in chap. 13. a. and chap. 54. a. sects. 26, 27.

LAWS OF THE STATE

C H A P.
CLXVIII.

C H A P. CLXVIII. a.

1760.

An ACT for appointing an Agent, (a) residing in England, for this government. Obsolete.

(a) David Barclay, jun. of the City of London, Merchant.

C H A P. CLXIX. a.

1760.

An ACT for striking Four Thousand Pounds in bills of credit, and giving the same to the King's use, and for the providing a fund for sinking the same. Repealed.

C H A P. CLXX. a.

1760.

A further Supplement to the act, entitled, An act for the better regulation of servants and slaves within this government. (a)

Preamble.

WHEREAS the children of white women by Negro or Mulatto fathers, and the descendants of such children and Negroes, entitled to their freedom, are frequently held and detained as servants, or as slaves, by persons pretending to be their masters and mistresses, when they ought not by the laws of this government to be so held and detained, and frequently are sold as slaves by such pretended masters or mistresses to persons who reside in other governments, with a fraudulent design to prevent their procuring proof of their being entitled to their freedom; and whereas the laws of this government are defective in not prescribing any mode for settling and determining,

(a) For the original act see chap. 77. a. 13 Geo. II.—A supplementary act thereto, chap. 129. a. 25 Geo. II.—Another supplement hereafter in chap. 188. a. passed October 31, 1767.

determining, in a short and summary manner, the claim, or right, of any persons pretending to be entitled to their liberty;

CHAP.
CLXX.

1760.

SECTION 2. *BE it enacted by the honorable James Hamilton, esq. with his Majesty's royal approbation, Lieutenant Governor, and Commander in Chief of the counties of New-Castle, Kent and Sussex, upon Delaware, and province of Pennsylvania, under the honorable Thomas Penn and Richard Penn, esquires, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same,* That the Justices of the respective County Courts of Common Pleas within this government, upon any petition to them to be preferred by any person, or his or her parent, or friend, setting forth that such person is kept, held or detained as a servant or slave, by his or her pretended master, or mistress, masters or mistresses, and that such person apprehends that he or she is entitled to his or her freedom, the said justices shall issue a summons against such master or mistress, masters or mistresses, commanding him, her or them, to come before the said justices at a certain day therein to be appointed, to answer the said complaint; and to issue *Subpœnas*, to the Sheriff of the county directed, for summoning and bringing any person or persons before them at the said day, to give evidence in and upon the matters in such petition contained, under such pains and penalties, as by the rules and practice of the said court in other cases are usually appointed, and after hearing the proofs and allegations of the parties in a summary way, it shall and may be lawful to and for the said justices, if they are satisfied that the person so petitioning, or on whose behalf such petition shall be presented, is entitled to his or her freedom, to discharge such person from the service of his or her pretended master or mistress, masters or mistresses, and to adjudge, and decree, that such person is and shall be free and at liberty, and shall and may enjoy all the benefits and advantages that a free Negro, or free Mulatto, may or can do within this government: And if the pretended master or mistress, masters or mistresses, of any person so petitioning, being summoned as

Courts of Common Pleas may, upon petition, hear complaints of persons unjustly detained as servants or slaves in a summary way,

and set them free;

CHA P.
CLXX.
1760.

And grant execution to the Sheriff for that purpose.

aforesaid, shall not appear, it shall and may be lawful for the said justices to proceed as aforesaid in his, her or their absence, on hearing the proofs and allegations on the part of the said petitioner only.

SECT. 3. *And be it further enacted by the authority aforesaid,* That after the judgment or decree given in any such case as aforesaid, the justices of the court that gives the same shall thereupon grant an execution, directed to the Sheriff of the county, commanding him to take the person so discharged from the custody of his or her pretended master or mistress, and to set such person at liberty; and in case such person shall be concealed or detained by such pretended master or mistress, so that the Sheriff cannot find such person, in order to set him or her at liberty, then, upon return being made thereof to the said justices, and proof thereof made to their satisfaction, they shall immediately issue a precept to the said Sheriff, commanding him to attach and seize such pretended master or mistress, and him or her in safe and close custody keep, until the person so discharged by the court, and concealed or detained as aforesaid, shall be produced in the said court by such pretended master or mistress: And in case the said Sheriff shall not keep such pretended master or mistress in safe and close custody as aforesaid, such Sheriff, for such default, shall be liable to pay One Hundred Pounds, lawful money of this government, to the party aggrieved, to be recovered, by him or her, in an action of debt to be brought by the said party against the said Sheriff, his executors or administrators, in any Court of Record within this government; in which action, or in any other action or proceeding, this law shall be construed, deemed, taken and allowed, as and for a public act of Assembly, though the same be not pleaded; and the justices of the said court shall accordingly take notice thereof as such.

A public act.

The person so freed may maintain an action against the pretended master, &c.

SECT. 4. *And be it further enacted by the authority aforesaid,* That any person so freed and discharged shall and may thereupon bring and maintain an action of trespass and false imprisonment, or any other action in the law, that may be proper in such case; against such pretended master or mistress, for unlawfully

fully holding and detaining such person as aforesaid, before or after his or her discharge, and the judgment or decree by which such person shall be discharged as aforesaid shall be admitted and allowed in every Court of Record within this government as good proof, and sufficient evidence, that such person is entitled to his or her liberty.

C H A P.
CLXX.
1769.

SECT. 5. *And be it further enacted by the authority aforesaid,* That if any person entitled to his or her liberty has been, or hereafter shall be, sold by his or her pretended master or mistress to any person who resides, or at the time of such sale did reside, out of this government, such master or mistress respectively shall forfeit the sum of One Hundred Pounds, lawful money of this government, for such offence, one moiety thereof to go to the Governor towards the support of government, and the other moiety thereof to the party grieved, to be recovered by bill, plaint or information, in any Court of Record within this government, wherein no effoin, protection, or wager of law, shall be allowed.

Penalty on any persons selling a free man out of this government.

SECT. 6. *Provided nevertheless,* That where any person entitled to his or her liberty has been sold out of this government before the making of this act, the pretended master or mistress who sold such person shall not incur the penalty aforesaid, if he or she shall within six months after the making such judgment or decree as aforesaid bring back the person so sold into this government, or make sufficient proof that such person is dead.

SECT. 7. *And be it further enacted by the authority aforesaid,* That all costs accruing, or to accrue, for or by reason of any action or proceeding by virtue of this law, shall be paid and defrayed by the master or mistress of any person applying or suing as aforesaid, to be levied of the goods and chattels of such master or mistress, on an execution to be issued against him or her, to the Sheriff of the said county directed, by the justices who give any decree or judgment as aforesaid; and in case such master or mistress has not goods and chattels sufficient to pay the said costs, then the person of such master or mistress shall be taken in execution by the said Sheriff, and he or she shall remain

All costs by virtue of this law to be paid by the master, &c.

C H A P.
CLXX.
1760

main in the said Sheriff's custody until the same be paid.

Passed October—1760.

C. H. A. P. CLXXI. a.

1760. *An ACT for repealing an act of Assembly of this government, intituled, An act empowering the Magistrates of New-Castle county to view and direct the removal of obstructions to the fishery of Brandywine. (a)*

WHEREAS the principal end of the said act was the preservation of peace, and promoting harmony between the inhabitants of this government and the Indians, then residing near Brandywine creek, who are now all entirely removed from thence: *And whereas* the building of good mills within this government has been found a public benefit, and ought therefore to be encouraged; and the said recited act is found by experience to be prejudicial thereto,

BE it enacted by the honorable James Hamilton, esq. with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent and Sussex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same, That the said act, intituled, An act empowering the Magistrates of New-Castle county to view and direct the removal of obstructions to the fishery of Brandywine," and every matter, clause and thing, therein contained, is hereby repealed, and declared to be null and void,

Passed October—1760.

CHAP.

(a) Chap. 36, 2.

C H A P. CLXXII. a.

CHAP.
CLXXII.
1760.

A Supplement to an act, intituled, "An act to encourage the building of good mills within this government." Repealed in chap. 221. a. passed November 6, 1773.

Note. For this act see the appendix.

C H A P. CLXXIII. a.

A Supplement to an act, intituled, "An act for the better regulation of the King's roads in Kent county. Repealed.

1760.

Note. For the original see chap. 166. a.

C H A P. CLXXIV. a.

An ACT to authorize and empower Benjamin Chew, and William Plumstead, esquires, of the City of Philadelphia, to draw for the sum of Three Thousand and Seventy-five Pounds, Nine Shillings and Eleven-pence, sterling, now in the hands of the Agent of this government residing in London, and to direct the appropriation of the said money.

1761.

WHEREAS, by an act of General Assembly of Preamble. this government, passed in the thirty-third year of his late Majesty, intituled, *An act for appointing an Agent, residing in England for this government, (a) David Barclay, junior, of the City of London, merchant, was nominated, constituted and appointed Agent for this government, and empowered to receive, from any person or persons who should have the payment thereof in England, such proportionable share or part of the money given, or to be given, by the Parliament, as a compensation for such expences as the respective colonies in North-America should*

(a) Ante chap. 168. a.—and see after chap. 178. a.

CHAP. CLXX. main in the said Sheriff's custody until the same be paid.
1760

Passed October—1760.

C. H. A. P. CLXXI. a.

1760. An ACT for repealing an act of Assembly of this government, intituled, An act empowering the Magistrates of New-Castle county to view and direct the removal of obstructions to the fishery of Brandywine. (a)

WHEREAS the principal end of the said act was the preservation of peace, and promoting harmony between the inhabitants of this government and the Indians, then residing near Brandywine creek, who are now all entirely removed from thence: *And whereas* the building of good mills within this government has been found a public benefit, and ought therefore to be encouraged; and the said recited act is found by experience to be prejudicial thereto,

BE it enacted by the honorable James Hamilton, esq. with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent and Sussex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same, That the said act, intituled, *An act empowering the Magistrates of New-Castle county to view and direct the removal of obstructions to the fishery of Brandywine,* and every matter, clause and thing, therein contained, is hereby repealed, and declared to be null and void.

Passed October—1760.

CHAP.

(a) Chap. 36, 2.

C H A P. CLXXII. a.

C H A P.
CLXXII.

1760.

A Supplement to an act, intituled, "An act to encourage the building of good mills within this government." Repealed in chap. 221. a. passed November 6, 1773.

Note. For this act see the appendix.

C H A P. CLXXIII. a.

A Supplement to an act, intituled, "An act for the better regulation of the King's roads in Kent county. Repealed,

1760.

Note. For the original see chap. 166. a.

C H A P. CLXXIV. a.

An ACT to authorize and empower Benjamin Chew, and William Plumstead, esquires, of the City of Philadelphia, to draw for the sum of Three Thousand and Seventy-five Pounds, Nine Shillings and Eleven-pence, sterling, now in the hands of the Agent of this government residing in London, and to direct the appropriation of the said money.

1761.

WHEREAS, by an act of General Assembly of Preamble.
this government, passed in the thirty-third year of his late Majesty, intituled, *An act for appointing an Agent, residing in England for this government,* (a) David Barclay, junior, of the City of London, merchant, was nominated, constituted and appointed Agent for this government, and empowered to receive, from any person or persons who should have the payment thereof in England, such proportionable share or part of the money given, or to be given, by the Parliament, as a compensation for such expences as the respective colonies in North-America should

(a) Ante chap. 168. a.—and see after chap. 178. a.

CHAP.
CLXXIV.
1761.

should be put to, in levying, cloathing and paying the forces. raised by them, as his said Majesty in his wisdom should think the said colonies, according to the active vigour and strenuous efforts of each should justly appear to merit: And that all such sum or sums of money as the said David Barclay should receive, by virtue of the said act, should remain in his hands until the same should be thereafter disposed of by an act of the General Assembly of this government, and then should be paid by him to such persons, and to such purposes, as should be thereby named and directed.

SECTION. 2. *And whereas*, by two letters from the said David Barclay, junior, laid before the House by the honorable James Hamilton, esq. Lieutenant Governor and Commander in Chief of the government of the counties of New-Castle, Kent and Suffex, on Delaware, and province of Pennsylvania, it appears, that the said David Barclay, jun. as Agent of this government, hath, some time since, received, as the distributive share or proportion of the money allotted to this government, in virtue of the Parliamentary grant for the year One Thousand Seven Hundred and Fifty-eight, the net sum of Three Thousand and Seventy-five Pounds, Nine Shillings and Eleven-pence, sterling, after deducting the fees and charges by him paid at the treasury and exchequer :

SECT. 3. *Be it therefore enacted by the honorable James Hamilton, esq. Lieutenant Governor and Commander in Chief of the government of the counties of New-Castle, Kent and Suffex, upon Delaware, and province of Pennsylvania, under the honorable Thomas Penn and Richard Penn, esquires, true and absolute proprietaries of the said government and province, by and with the consent of the Representatives of the freemen of the said government in General Assembly met, and by the authority of the same,* That the said David Barclay, jun. shall have and retain one half per cent. for his care and trouble in receiving, and one half per cent. for paying, the said sum of Three Thousand and Seventy-five Pounds, Nine Shillings and Eleven-pence, sterling, and no more.

SECT. 4. *And the said Benjamin Chew and William Plumstead,*

Plumstead, or either of them, are hereby authorised, impowered and directed, within the space of six weeks, after the passing of this act, to draw bills of exchange in their own names, or either of them, but for the uses and purposes herein after directed, on the said David Barclay, jun. payable at thirty days sight, for the whole residue and remainder of the said sum of money in his hands, and shall sell, vend and dispose of, the said bills of exchange to the best advantage, and for the most that can be had or procured for the same.

CHAP.
CLXXXIV.
1761.

Bills of exchange to be drawn on Agent in England for Three Thousand and Seventy-five Pounds Nine Shillings and Eleven pence Sterling.

SECT. 5. And the said Benjamin Chew and William Plumstead, or either of them, shall, within the further space of six weeks after drawing the said bills of exchange, pay and deliver over all the money which they, or either of them, shall receive for the said bills of exchange, (deducting thereout one half per cent. for receiving, and one half per cent. for paying the same, which is hereby allowed them for their care and trouble, and no more) to the several Trustees of the General Loan Offices of this government, in the several shares and proportions following; *That is to say*, one half part, or five tenths, of the said money; to the Trustees of the General Loan Office for the county of New-Castle; three tenths to the Trustees of the General Loan Office for the county of Kent; and the remaining two tenths to the Trustees of the General Loan Office for the county of Suffex; (b) and take their respective receipts for the same, which shall be a full discharge to the said Benjamin Chew and William Plumstead, or either of them, for the same.

And the money received for the same bills to be paid to the Trustees of the Loan Offices, according to the proportion aforesaid.

SECT. 6. And be it further enacted by the authority aforesaid, That the Trustees of the General Loan Office for the county of New-Castle shall enter into bond, with two sufficient sureties, in the sum of Five Thousand Pounds, in the names of William Till and John Finney, esquires, their, and either of their heirs, executors and administrators: And that the Trustees of the General Loan Office for the county of Kent shall enter

Trustees to give bond, &c.

(b) For the names of these respective Trustees see before in chap. 102. a. sect. 4.

C H A P.
CLXXIV.

1761.

enter into bond, with two sufficient sureties, in the sum of Three Thousand Pounds, in the name of John Caton, esq. Treasurer of Kent county, and his successors: And that the Trustees of the General Loan Office for the county of Suffex shall enter into bond, with two sufficient sureties, in the sum of Two Thousand Pounds, in the name of David Hall and Jacob Kollock, jun. esquires, their heirs, executors or administrators, before they, or either of them receive the said monies, or any part or parcel thereof, in trust nevertheless for the public, that they will dispose of, and apply, the said money, and every part and parcel thereof, in such manner as by this act they are enjoined and required, and not otherwise; which bonds shall be lodged in the hands of the respective persons to whom the said bonds are payable, in trust as aforesaid, or either of them.

Part of the said money to be applied in sinking Four Thousand Pounds given to the King's use. &c.

SECT. 7. *And be it further enacted by the authority aforesaid,* That the said Trustees shall, and are hereby required and enjoined to exchange the sum of Four Thousand Pounds in the proportions above mentioned, part of the money that shall be paid to them by the said Benjamin Chew and William Plumstead, or either of them, for the like sum of Four Thousand Pounds of the bills of credit of this government, struck, emitted and made current by an act of General Assembly of this government made in the thirty-third year of his late Majesty's reign, intituled, *An act for striking Four Thousand Pounds in bills of credit, and giving the same to the King's use, and for the providing a fund for sinking the same,* (c) and shall, in case of the taxes imposed on the inhabitants of this government by the said act, burn, sink and destroy, in the proportions aforesaid, the said sum of Four Thousand Pounds of the said bills of credit, in the presence of a Committee of Assembly of this government to be for that purpose appointed.

SECT. 8. *And for the more speedy collecting the bills of credit as aforesaid, made current by the act, intituled, An act for striking Four Thousand Pounds of bills*

(c) Chap. 16g. &c.

CHAP.
CLXXIV.
1761.

bills of credit, and giving the same to the King's use, and for providing a fund for sinking the same, (c) the Trustees of the Loan Offices of the several counties, immediately after receiving from the said Benjamin Chew, or William Plumstead, or either of them, the sum or sums hereby directed to be paid to them respectively, in order to their being sunk as aforesaid, shall publish and notify to the public, for four weeks successively, in the Pennsylvania Gazette, That the act of Assembly aforesaid, by which the said bills were emitted, is repealed, and the said bills no longer current by law; and that they are ready to exchange the same at their respective offices for other legal bills of credit. And the said Trustees shall have and receive for their trouble in exchanging and sinking the said bills one per cent. and no more.

SECT. 9. *And be it further enacted*, That the said act of Assembly, intituled, *An act for striking Four Thousand Pounds in bills of credit, and giving the same to the King's use, &c.* (c) and every part thereof, shall be repealed, and is hereby declared to be null and void

SECT. 10. *And be it further enacted by the authority aforesaid*, That the surplus of the said money, that shall remain in the hands of the said Trustees, after sinking the said sum of Four Thousand Pounds of the bills of credit of this government aforesaid, shall be by them disposed of and applied towards sinking the sum of Twelve Hundred Pounds in bills of credit, which by an act, intituled, *An act for raising the sum of Twelve Hundred Pounds, for the King's use, and providing a fund for sinking the same, (d)* passed in the thirty-second year of his late Majesty's reign, was paid into the hands of John Finney, Vincent Lockerman and David Hall, to discharge several public services therein expressed, in bills of credit then remaining in the respective Loan Offices of the said government, for exchanging worn and defaced bills of credit, and by the said act made current for four years.

SECT. 11. *And be it further enacted by the authority aforesaid*, That so much of the said act, intituled, *An act for raising the sum of Twelve Hundred Pounds for*

VOL. I. 3 B
(d) Chap. 261. a.

and the surplus towards sinking the Twelve Hundred Pounds struck in the thirty second year of his late Majesty's reign.

C H A P.
CLXXIV.

1761.

enter into bond, with two sufficient sureties, in the sum of Three Thousand Pounds, in the name of John Caton, esq. Treasurer of Kent county, and his successors: And that the Trustees of the General Loan Office for the county of Suffex shall enter into bond, with two sufficient sureties, in the sum of Two Thousand Pounds, in the name of David Hall and Jacob Kollock, jun. esquires, their heirs, executors or administrators, before they, or either of them receive the said monies, or any part or parcel thereof, in trust nevertheless for the public, that they will dispose of, and apply, the said money, and every part and parcel thereof, in such manner as by this act they are enjoined and required, and not otherwise; which bonds shall be lodged in the hands of the respective persons to whom the said bonds are payable, in trust as aforesaid, or either of them.

Part of the said money to be applied in sinking Four Thousand Pounds given to the King's use. &c.

SECT. 7. *And be it further enacted by the authority aforesaid,* That the said Trustees shall, and are hereby required and enjoined to exchange the sum of Four Thousand Pounds in the proportions above mentioned, part of the money that shall be paid to them by the said Benjamin Chew and William Plumstead, or either of them, for the like sum of Four Thousand Pounds of the bills of credit of this government, struck, emitted and made current by an act of General Assembly of this government made in the thirty-third year of his late Majesty's reign, intituled, *An act for striking Four Thousand Pounds in bills of credit, and giving the same to the King's use, and for the providing a fund for sinking the same,* (c) and shall, in case of the taxes imposed on the inhabitants of this government by the said act, burn, sink and destroy, in the proportions aforesaid, the said sum of Four Thousand Pounds of the said bills of credit, in the presence of a Committee of Assembly of this government to be for that purpose appointed.

SECT. 8. *And for the more speedy collecting the bills of credit as aforesaid, made current by the act, intituled, An act for striking Four Thousand Pounds of bills*

(c) Chap. 169. a.

bills of credit, and giving the same to the King's use, and for providing a fund for sinking the same, (c) the Trustees of the Loan Offices of the several counties, immediately after receiving from the said Benjamin Chew, or William Plumstead, or either of them, the sum or sums hereby directed to be paid to them respectively, in order to their being sunk as aforesaid, shall publish and notify to the public, for four weeks successively, in the Pennsylvania Gazette, That the act of Assembly aforesaid, by which the said bills were emitted, is repealed, and the said bills no longer current by law; and that they are ready to exchange the same at their respective offices for other legal bills of credit. And the said Trustees shall have and receive for their trouble in exchanging and sinking the said bills one per cent. and no more.

C H A P.
GLXXIV.
1761.

SECT. 9. *And be it further enacted, That the said act of Assembly, intituled, An act for striking Four Thousand Pounds in bills of credit, and giving the same to the King's use, &c. (c)* and every part thereof, shall be repealed, and is hereby declared to be null and void

SECT. 10. *And be it further enacted by the authority aforesaid, That the surplus of the said money, that shall remain in the hands of the said Trustees, after sinking the said sum of Four Thousand Pounds of the bills of credit of this government aforesaid, shall be by them disposed of and applied towards sinking the sum of Twelve Hundred Pounds in bills of credit, which by an act, intituled, An act for raising the sum of Twelve Hundred Pounds, for the King's use, and providing a fund for sinking the same, (d)* passed in the thirty-second year of his late Majesty's reign, was paid into the hands of John Finney, Vincent Lockerman and David Hall, to discharge several public services therein expressed, in bills of credit then remaining in the respective Loan Offices of the said government, for exchanging worn and defaced bills of credit, and by the said act made current for four years.

and the surplus
towards sinking
the Twelve
Hundred
Pounds struck in
the thirty second
year of his late
Majesty's reign

SECT. 11. *And be it further enacted by the authority aforesaid, That so much of the said act, intituled, An act for raising the sum of Twelve Hundred Pounds for*

VOL. I.

3 B

the

(d) Chap. 261. 2.

C H A P.
CLXXIV.
1761.

the King's use, and providing a fund for sinking the same(d) as makes the said bills of credit current, and provides funds for sinking the same by taxes or otherwise, be, and is hereby repealed, and declared null and void, [any thing therein contained to the contrary notwithstanding] of which the same public notice shall be given as is herein before directed with respect to the other act herein before repealed.

Passed October 31, 1761.

C H A P. CLXXV. a.

1761. An ACT for killing of squirrels in the counties of Kent and Sussex. Temporary and expired.

C H A P. CLXXVI. a.

1761. An ACT for the better regulation of the King's roads within the counties of Kent and Sussex. (a)

Preamble.

WHEREAS an act of Assembly of this government, made in the twenty-fifth year of his late Majesty's reign, intituled, *An act for erecting public bridges and causeways, and laying out and maintaining highways, (b)* is found not to answer all the good purposes thereby intended:

SECTION 2. *BE it therefore enacted, by the honorable James Hamilton, esq. with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the government of the counties of New-Castle, Kent and Sussex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives*

(a) See "An act for the better regulation of the roads in the county of Kent," chap. 99. c.—And "An act for the better regulation of the roads in the county of Sussex," chap. 100. c. passed Feb. 9, 1796, for divers alterations of this act, with many additional provisions.

(b) Chap. 131. s. 25 Geo. III.

representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same, That the following roads within the counties of Kent and Suffex, being heretofore deem'd and taken to be King's roads, altho' no sufficient proof appears that the same were laid out by lawful authority, (*to wit*) In Kent county, the roads beginning at a run near Duck-creek or Salisbury town, that divides New-Castle from Kent county, and running from thence the several courses of the said road through Dover town, until it comes to where the said road separates and divides, about one mile to the southward of the said town of Dover, near to the place where Thomas Nixon now dwells; and from thence the roads known by the name of the Draw-bridge, or Lower and Upper King's roads, shall severally continue their respective courses until they intersect each other near to a branch called the Three Runs, and from thence on the several courses of the said road to the Three Runs. And in Suffex county, the roads beginning at the Three Runs, and running from thence on the several courses thereof until it comes to the place where John Clows, jun. now dwells, and running from thence on the several courses thereof to the Court-House in the town of Lewes, and so along the bank of Lewes Town creek to the Canary Kiln; and beginning at the said Court-House and running on the several courses to a mill known by the name of Frame's Saw-mill, being at this time the utmost limits of the said county of Suffex, next to Maryland; thence running from the said mill on the several courses to the said John Clows's, where the said King's roads meet, as is herein described, shall from henceforth be deemed, taken and allowed, to be public or King's roads within the said counties.

SECT. 3. *And be it further enacted by the authority aforesaid,* That the said roads shall be of the same breadth as the other King's roads within this government are, or ought to be, according to the said act, and shall be made, cleared, grubbed, maintained and repaired, in the same manner as in and by the said act is directed and appointed for making, clearing,

CHAP.
CLXXVI.
1761.

Roads leading from Salisbury to Dover and from thence to Lewes, &c. to be deemed King's roads.

To be of same breadth as other King's roads.

C H A P.
CLXXVI.

1761.

Bridges, &c. to
be maintained
as usual.

ing, grubbing, maintaining and repairing the King's roads, laid out by virtue of the said act.

SECT. 4. *And be it further enacted by the authority aforesaid,* That all causeways, or bridges, over creeks, waters, runs, swamps, or sunken lands, through which the said roads pass, shall be made, built, erected, maintained and repaired, in the same manner as in and by the said act is directed and appointed for the making, building, erecting, maintaining or repairing, causeways and bridges, in the King's roads or highways.

Overseers to re-
pair them.

SECT. 5. *And be it further enacted by the authority aforesaid,* That all and every the Overseer and Overseers of each and every hundred within the said counties, who now are, or hereafter may be nominated and appointed, may and are hereby respectively impowered and required to proceed in the same manner, for the maintaining and repairing the said roads, as any Overseer or Overseers might or could do by virtue of the said act for maintaining and repairing the King's roads and highways, or any causeways or bridges in the same, within the said counties.

Penalty on ob-
structing the
said roads, and
on Overseers for
neglect of duty.

SECT. 6. *And be it further enacted by the authority aforesaid,* That if any person or persons shall presume to turn, alter, or any ways obstruct, the aforesaid roads, or any of them, by this act appointed to be the King's roads as aforesaid, or if any person or persons shall refuse or neglect to perform such services and labours as any Overseer or Overseers, in the discharge of his or their duty in pursuance of this act, shall direct, or if any Overseer or Overseers shall refuse or neglect the performance of his or their duty by this act required, all and every such person or persons, Overseer or Overseers, shall, respectively, for every such offence, refusal or neglect, forfeit the several sums of money respectively forfeited for the like offences or neglects by virtue of the first mentioned act of Assembly, to be recovered, levied, paid and appropriated, as in the said act in such cases respectively is directed and appointed.

SECT. 7. *Provided always, and be it further enacted by the authority aforesaid,* That where application shall
be

be made to the Justices in their Court of Quarter Sessions, to be held for the said counties respectively, by any person or persons, setting forth, that it is necessary, for the convenience and benefit of the public in general, that the said King's roads, or any of them, should at any time be altered from the place or places where they now pass, the said justices are hereby required and impowered to nominate and appoint five good and substantial freeholders, of the neighbourhood, to view and examine, whether such road or roads, so to be altered, would be necessary: And if, upon viewing the premises, the said freeholders, or a majority of them, shall be of opinion that such road or roads might be altered for the public ease and advantage, Then they are hereby ordered to lay out and alter the same, and make a return to the succeeding Court of Quarter Sessions to be held in the county where such application shall be made, describing in writing, under their hands, the said roads so by them laid out and altered, with courses and distances, as near as can be estimated; and if the said return shall be accepted and approved of by the said justices, they shall cause the same to be entered on record; which said roads, when so laid out and altered, and the return made and approved of by the justices as aforesaid, shall then be deemed, taken and allowed, to be the King's road, and shall be cleared, grubbed, maintained and repaired, in the same manner that the act of Assembly first mentioned directs and appoints in the like cases. And whenever it shall be found necessary and convenient, by such five freeholders, or any three of them, that such road shall run or go through the improved lands of any person or persons, then, and in such case, such five freeholders, or any three of them, shall, together with the return of the view of such roads, make return to the Courts of Quarter Sessions in each county respectively, upon oath or affirmation, to be taken before any Justice of the Peace of the county where such lands lie, of the damage that may be sustained by such person or persons as shall be the owner or owners of such improved lands by reason or means of laying out such road through the same; and the said

CHAP.
CLXXVI.

1761.
How the said
roads may be
altered, &c.

CHA P.
CLXXVI,
1761.

said freeholders, or any three of them, so nominated and appointed by the justices as aforesaid, shall receive Five Shillings per day for every day they shall attend in viewing and laying out the same.

Damages and
costs to be paid
by the county.

SECT. 8. *And be it further enacted by the authority aforesaid,* That the damages that may be sustained by such person or persons as shall be owner or owners of such improved lands as aforesaid, together with the allowance to such freeholders, and the other charges that may lawfully accrue thereon, shall be raised and paid by the county where such lands lie, in the same manner that other county levies are raised and paid.

Former act re-
pealed.

SECT. 9. *And be it further enacted by the authority aforesaid,* That an act of Assembly of this government, made in the thirty-third year of his late Majesty's reign, intituled, *An act for the better regulation of the King's roads within the county of Kent,* (c) shall be, and is hereby repealed, and made null and void, any thing therein contained to the contrary in anywise notwithstanding.

Passed October 31, 1761.

C H A P. CLXXVII. a.

1761.

A Supplement to the act of Assembly of this government, intituled, An act for the better regulation of the Supreme Court within this government. (a)

Preamble.

WHEREAS the days for holding the Supreme Court within the respective counties of this government, as by the said act appointed, have been found (by experience) to be improper times for holding of the said court, particularly in the counties of Kent and Sussex, where the days interfere with the days by law appointed for holding of courts of Quarter

(c) Chap. 166. a.

(a) Chap. 167. a.

ter Sessions, Common Pleas, and inferior Courts of Equity. For remedying wherof for the future,

CHAP.
CLXXVII.
1761.

SECTION 2. *BE it enacted by the honorable James Hamilton, esq. with his Majesty's royal approbation, Lieutenant Governor, and Commander in Chief of the government of the counties of New-Castle, Kent and Suffex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same, That,* from and after the publication of this act, the Supreme Court of this government shall be held and kept twice in every year in each county of this government, *That is to say,* At New-Castle, for the county of New-Castle, on the fifth day of April, and the fifth day of September; at Dover, for the county of Kent, on the fifteenth day of April, and the fifteenth day of September; and at Lewes, for the county of Suffex, on the Friday before the Courts of Quarter Sessions, and Common Pleas, in the months of May and November. But if any or either of the days herein appointed for holding the Supreme Court at New-Castle, or at Dover, aforesaid, should happen to be on the Lord's Day (commonly called Sunday) then the said Supreme Court shall be held on the next day following the aforesaid appointed days. (b)

The days for holding the Supreme Court in the several counties.

SECT 3. *And be it further enacted by the authority aforesaid, That the aforementioned act of Assembly, intituled, An act for the better regulation of the Supreme Court within this government, (a) so far as the same relates to the days in the said act appointed for holding the Supreme Court in the respective towns of New-Castle, Dover, and Lewes, and every clause concerning the same, be and is hereby repealed, annulled and made void.*

How far the former law is repealed.

SECT. 4. *Provided always, That no plea, cause or action, now depending in the Supreme Courts of this*

No actions to be discontinued by this act, &c.

(b) For subsequent alterations of the days for holding this court in the said respective counties, see chap. 5 b. passed Feb. 23, 1777.—chap. 19. c. passed June 14, 1792,—and chap. 61. c. passed Feb. 7, 1794.

C H A P.
CLXXVII.
1761.

this government, shall be discontinued, but that the same may be heard, tried and determined before the judges of the court for the time being, on the days, and at the places aforementioned, in as full and ample a manner as they could have been tried, heard and determined, at the times and places in the aforesaid act of Assembly appointed.

Passed October 31, 1761.

C H A P. CLXXVIII. a.

1762.

An ACT to authorize and empower Benjamin Chew, esq. of the City of Philadelphia, and in case of his death, William Plumstead, esq. of the City of Philadelphia, to draw for the sum of Three Thousand Seven Hundred and Forty-five Pounds, Seventeen Shillings and Ten-pence, sterling, now in the hands of the Agent of this government residing in London, and to direct the appropriation of the said money.

Preamble.

WHEREAS by an act of General Assembly of this government, passed in the thirty third year of his late Majesty, intituled, *An act for appointing an Agent, residing in England, for this government*, (a) David Barclay, junior, of the City of London, merchant, was nominated, constituted and appointed Agent for this government, and empowered to receive, from any person or persons who should have the payment thereof in England, such proportionable share or part of the money given, or to be given, by the Parliament, as a compensation for such expences as the respective colonies in North America should be put to, in levying, cloathing and paying the forces raised by them, as his said Majesty in his wisdom should think the said colonies, according to the active vigour and strenuous efforts of each should justly appear to merit. And that

(a) Chap. 168. a.—and see chap. 174. a.

that all such sum or sums of money as the said David Barclay should receive, by virtue of the said act, should remain in his hands until the same should be thereafter disposed of by an act of the General Assembly of this government, and then should be paid by him to such person or persons, and to such purposes, as should be thereby named and directed.

C H A P.
CLXXXVIII.

1762.

SECT. 2. *And whereas* it appears, by advice from David Barclay, junior, Agent for this government, that he hath received, as the distributive share or proportion of the money allotted to this government, in virtue of the Parliamentary grants for the years One Thousand Seven Hundred and Fifty-nine, and One Thousand Seven Hundred and Sixty, the net sum of Three Thousand Seven Hundred and Forty-five Pounds, Seventeen Shillings and Ten-pence, sterling, after deducting the fees and charges by him paid to the treasury and exchequer.

SECT. 3. *Be it therefore enacted by the honorable James Hamilton, esq. Lieutenant Governor, and Commander in Chief of the government of the counties of New-Castle, Kent and Sussex, on Delaware, and province of Pennsylvania, under the honorable Thomas Penn and Richard Penn, esquires, true and absolute proprietaries of the said government and province, and by and with the advice and consent of the Representatives of the freemen of the said government, in General Assembly met, and by the authority of the same,* That the said David Barclay, junior, shall have and retain one half per cent. for his care and trouble in receiving, and one half per cent. for paying, the said sum of Three Thousand Seven Hundred and Forty-five Pounds, Seventeen Shillings and Ten-pence, sterling, and no more : And the said Benjamin Chew, and, in case of his death, William Plumstead, is hereby authorized, impowered and directed, within the space of six weeks after the passing of this act, to draw bills of exchange in his own name, but for the uses and purposes herein after directed, on the said David Barclay, junior, payable at thirty days sight, for the whole residue and remainder of the said sum of money in his hands, and shall sell and dispose of the said bills of exchange to the best ad-

Bills of Exchange to be drawn on the Agent for Three Thousand Seven Hundred and Forty-five Pounds, Seventeen Shillings and Ten-pence, sterling.

C H A P:
CLXXVIII.
1762.

vantage, and for the most that can be had or procured for the same. And the said Benjamin Chew, and, in case of his death, William Plumstead, shall, within the further space of six weeks after drawing the said bills of exchange, pay and deliver over all the money which he shall receive for the said bills of exchange (deducting thereout one half per cent. for receiving, and one half per cent. for paying the same, which is hereby allowed him for his care and trouble, and no more) to the Trustees of the General Loan Offices of this government, in the several shares and proportions following, *That is to say*, One half part, or five tenths, of the said money to the Trustees of the General Loan Office of the county of New-Castle; three tenths to the Trustees of the General Loan Office for the county of Kent; and the remaining two tenths to the Trustees of the General Loan Office for the county of Suffex; (b) and take their respective receipts for the same, which shall be a full discharge to the said Benjamin Chew (and in case of his death, William Plumstead) for the same.

The money received therefore to be paid to the Trustees of the Loan Offices in proportion, &c.

Trustees to give bond, &c.

SECT. 4. *And be it further enacted by the authority aforesaid*, That the Trustees of the General Loan Office for the county of New-Castle shall enter into bond, with two sufficient sureties, in the sum of Six Thousand Pounds, in the names of William Till and John Finney, esquires, their, or either of their heirs, executors and administrators: And that the Trustees of the General Loan Office for the county of Kent shall enter into bond, with two sureties, in the sum of Three Thousand Five Hundred Pounds, in the name of John Caton, esq. Treasurer of Kent county, and his successors: And that the Trustees of the General Loan Office for the county of Suffex shall enter into bond, with two sufficient sureties, in the sum of Two Thousand Four Hundred Pounds, in the names of David Hall and Jacob Kollock, junior, their, or either of their heirs, executors or administrators, before they, or either of them, receive the said monies, or any part or parcel thereof, in trust nevertheless

(b) For the names of those respective Trustees see before in chap. 162, s. sect. 4.

nevertheless for the public, that they will dispose of, and apply the said money, and every part and parcel thereof, in such manner as by the said act they are enjoined and required, and not otherwise; which bonds shall be lodged in the hands of the respective persons to whom the said bonds are payable, in trust as aforesaid, or either of them.

C H A P.
CLXXVIII.
1762.

SECT. 5. *And be it further enacted by the authority aforesaid,* That the whole sum of money, which shall be paid and delivered over into the hands of the said Trustees by the said Benjamin Chew, and in case of his death, William Plumstead, shall be by them disposed of and applied towards the sinking the sum of Seven Thousand Pounds in bills of credit, which are made current by an act, intituled, *An act for re-printing, exchanging and re-emitting, Twenty Thousand Pounds of the bills of credit of this government to be let out on loan; and for striking the further sum of Seven Thousand Pounds in such bills, and giving the same to his Majesty's use, and for providing a fund for sinking the same.* (c) And the said Trustees shall, and are hereby required, and enjoined, to exchange the said sum that shall be paid into their hands by the said Benjamin Chew, or in case of his death, William Plumstead, for the like sum of money of the bills of credit made current by the act of Assembly aforesaid; and shall, in case of the taxes imposed on the inhabitants of this government by the said act, burn, sink and destroy, in the proportions aforesaid, the said bills of credit, that the said Trustees shall so receive in exchange, in the presence of a Committee of Assembly of this government, to be for that purpose appointed.

Appropriation of
the said money.

And, to the end that the residue and remaining part of the aforesaid sum of Seven Thousand Pounds may be sunk and destroyed in one year,

SECT. 6: *Be it enacted by the authority aforesaid,* That the Justices, Grand Jurymen and Assessors, of each respective county, at the usual time of holding their Levy Courts, shall, over and above the tax laid for discharging the county rates and levies upon the freeholders

An additional
tax to be laid
for one year.

(c) Chap. 162. 2.

C H A P.
CLXXVIII.
1762.

freeholders and inhabitants, lay an additional tax of Three-pence in the Pound on the estates of all persons that shall be returned as taxables by the Assessors in each respective county, to be paid by them according to the several sums at which they are assessed or rated in the said Assessors lists; which said tax shall be levied and paid to the Collectors of each respective county in the same manner as other county rates and levies are ordered and directed to be paid by an act of Assembly of this government, passed in the sixteenth year of his late Majesty, intituled, *An act for raising county rates and levies.*

Commencement
of said tax,

SECT. 7. *Provided always, and it is hereby enacted by the authority aforesaid,* That the aforesaid additional tax of Three-pence in the Pound shall not commence or take place until the first day of November, in the year of our Lord One Thousand Seven Hundred and Sixty-three, and shall be continued from that time until the first day of November, One Thousand Seven Hundred and Sixty-four, and no longer.

Money levied
by Collectors to
be paid to Trustees
in bills of
credit, &c.

SECT. 8. *And be it further enacted by the authority aforesaid,* That all the sum or sums of money levied by the Collectors of the respective counties, by virtue of this act, shall be paid by the said Collectors to the Trustees of the General Loan Offices of the said counties, in bills of credit made current by the aforesaid act of Assembly, intituled, *An act for reprinting, exchanging, &c.* which said bills shall be produced by the said Trustees to the Committee of Assembly for that purpose to be appointed, and in their presence to be burnt and destroyed.

SECT. 9. *And be it further enacted,* That the said Trustees shall give to the said Collectors their receipts for all such sums as shall be so as aforesaid paid to them; which receipts, produced by the said Collectors to the next Levy Court, shall be allowed of, and adjudged sufficient to discharge the said Collectors from the sums therein specified.

Allowance to
Collectors;

SECT. 10. *And be it further enacted by the authority aforesaid,* That the Collectors shall have and retain in their hands, for all sums of money by them respectively collected as aforesaid, the sum of Five Pounds per

per cent. and no more. And the said Collectors, before they enter on the execution of their office, shall enter into bonds, to the Trustees of each county respectively, with good surety, in such sum as they shall direct, for the faithful performance of the duties required of them by this act: And that the said Trustees shall have and retain in their hands, for receiving, sinking and destroying, the said bills, one per cent. for their trouble, and no more.

CHAP.
CLXXVIII.
1762.

who are to give
bond, &c.

SECT. 11. *And be it enacted by the authority aforesaid,* That if the said tax of Three-pence in the Pound for one year, to be levied by virtue of this act, shall raise more than may be sufficient to sink and destroy the residue and remaining part of the said Seven Thousand Pounds as aforesaid (incidental charges included) the overplus shall be disposed of by the joint consent of the Governor and Commander in Chief of this government for the time being and the Assembly, and not otherwise.

If more than
will sink the
Seven Thousand
Pounds be raised,
in what manner
to be disposed of.

SECT. 12. *And be it further enacted by the authority aforesaid,* That so much of the said act, intituled, *An act for re-printing, exchanging and re-emitting Twenty Thousand Pounds of the bills of credit of this government, to be let out on loan, and for striking the further sum of Seven Thousand Pounds in such bills, and giving the same to his Majesty's use, and for providing a fund for sinking the same,* (c) as grants the said sum of Seven Thousand Pounds to his Majesty's use, and provides a fund for sinking the same, and no more, be, and is hereby repealed, and declared null and void, any thing therein contained to the contrary in anywise notwithstanding.

Repeal of former act.]

Passed November 2, 1762.

C H A P. CLXXIX. a.

An ACT for repealing an act of Assembly of this government hereafter mentioned, and for reviving an act, intituled, "An act for the relief of the poor within the county of Kent." Repealed: See the note at chap. 88. a. 15 Geo. II. CHAP.

1762.

(c) See before chap. 162, a, from sect. 25, to sect. 34, inclusive.

C H A P.
CLXXX.

C H A P. CLXXX. a.

1762.

An ACT for the better regulation of the roads in New-Castle county.

Preamble.

WHEREAS an act made in the twenty-fifth year of his late Majesty's reign, intituled, "*An act for erecting public bridges, causeways, and laying out and maintaining highways* (a) has not been found agreeable to the inhabitants of New-Castle county, nor to answer all the good purposes intended by the said act. *And whereas*, straight roads are a credit and ornament to a country, as well as an ease and advantage to travellers;

SECTION 2. *BE it therefore enacted by the honorable James Hamilton, esq. with his Majesty's royal approbation, Lieutenant Governor, and Commander in Chief of the counties of New-Castle, Kent and Sussex, upon Delaware, and province of Pennsylvania, under the honorable Thomas Penn and Richard Penn, esquires, true and absolute proprietaries of the counties and province aforesaid, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same,* That a public road or highway shall be laid out, leading through the said county, Beginning at the road leading from Chester at the line between the counties of Chester and New-Castle, and from thence over Naaman's Creek to Brandywine Creek; and from thence two public roads or highways shall be laid out, the one over Christiana ferry, near the house of Thomas Jaquet, and from thence to New-Castle; and from thence to the inn called the Red-Lion, where John Rankin now dwells; and from the said Red-Lion to the village called St. George's; and from thence to Appoquinimink bridge; and from thence over Blackbird Bridge to the town of Salisbury, commonly called Duck-Creek: And the other from Brandywine aforesaid to Wilmington; and from thence to Newport; and from thence to Christiana Bridge;

Highway to be laid out through Brandywine hundred. Two highways through the county.

(a) Chap. 131. a. 25 Geo. II.

Bridge; and from thence to the Red Lion aforesaid; and from thence to the inn now kept by Walter Crow; and from thence to the inn now kept by Joseph Jaquet; and from thence to Blackbird bridge aforesaid: And also a public road or highway shall be laid out from New-Castle to Christiana Bridge aforesaid.

CHAP.
CLXXX,
1762.

SECT. 3. *And be it enacted by the authority aforesaid,* That the said roads shall be of the breadth of sixty feet; forty feet whereof shall be grubbed and cleared: And after the said roads shall be laid out as aforesaid, the persons herein after mentioned for laying out the same, or any three of them, shall make a return thereof into the Office of the Clerk of the Peace for the said county, with a fair map or platt of the same, and the several courses and distances of the said roads; which shall be entered on record without delay in the said office, and from thenceforth they shall be deemed, taken and allowed to be King's roads. *(b)* *And if any of the said roads or highways shall be laid out through the improved lands of any person or persons, then and in such case the persons herein after named and appointed to lay out the same, or any three of them, shall, together with their said return, set down, upon oath or affirmation, truly and faithfully, the damages sustained by the owner or owners of such improved lands by reason or means of the said roads or highways being laid out through the same; all which damages, together with the expence and charge of laying out, returning and recording the roads aforesaid, shall be paid and satisfied by orders, drawn by the Justices of the Quarter Sessions, on the Treasurer of the said county, who is hereby required to pay the same, and to bring an account thereof into the next succeeding court to be held for raising county levies,*

Breadth of the
said highways.

Damages to im-
proved lands
how to be as-
certained.

Damages and
costs to be paid
by the county.

(b) See a supplementary act hereto, chap. 184. a. for a review of such roads and their establishment, with additional provisions therein.—A further supplement, chap. 195. a. altering that part of the then King's road from Whiteclay-creek bridge to Christiana bridge—and another supplement, chap. 211. a. directing the payment of Six Pounds annually, to the owners of the mill-dam at the village of St. Georges, the better to enable them to keep it in good order as a road.—That the water wheels of mills near the roads be concealed by sheds, &c.—That Overseers may open drains through lands adjoining—and that gravel, sand or stones may be taken therefrom.

C H A P.

CLXXX.

1762

Names of the
Commissioners.

levies, in order that the same may be assessed and levied on the inhabitants of the county aforesaid.

SECT. 4. *And be it further enacted by the authority aforesaid,* That the said King's roads or highways shall be laid out by the persons following, *That is to say,* David Finney John Evans and William Williams, esquires, and David Ferriss and Empson Bird, gentlemen, or any three of them, who are hereby authorized, impowered and required to lay out the same accordingly, in such manner as they shall judge to be most advantageous to the public, and least injurious to the owners of the adjoining lands, without favour to any person or persons whatsoever; and to employ such surveyor or surveyors, labourers and workmen, as they shall think necessary in platting or laying out the said roads or highways. *And if any person or persons hereby appointed for laying out the said roads shall refuse to act or happen to die, before the roads shall be completely laid out and returned as aforesaid, then, and in every such case, the Representatives of the freemen of the county aforesaid, or a majority of them, shall nominate and appoint by some writing signed by them, some other suitable person or persons in the room of such as shall refuse or die as aforesaid; which said person or persons, so to be nominated and appointed, are hereby impowered and required to act in the premises as fully as any person or persons herein mentioned may or can do.*

Vacancies how
to be supplied.

Allowance to
Commis-
sioners, Survey-
ors, &c.

SECT. 5. *And be it further enacted by the authority aforesaid,* That each of the persons hereby appointed, or hereafter to be nominated and appointed as aforesaid, for laying out and returning the said roads and highways, or any part thereof, shall receive for their trouble in attending on the said business Seven Shillings and Six-pence per day, each of the surveyors Ten Shillings per day, and the chain-carriers and markmen Three Shillings and Six-pence per day each; which said sums shall be paid to them respectively by the Treasurer of the said county, by orders drawn by the justices as aforesaid, who are hereby required to draw the same.

The said roads
not to be altered.

SECT. 6. *And be it further enacted by the authority aforesaid,* That the Justices of the Peace, in their
Court

Court of Quarter Sessions for the county aforesaid, shall not by virtue of any act of General Assembly of this government now in force, have any power or authority, in any manner whatsoever, to change or alter such roads or highways, to be laid out and returned as aforesaid, or any part of the same; *But* that all such acts, so far as they or any of them give, or might be construed to give, such justices power to change or alter such roads or highways, or any part thereof, or to appoint and order a new road or roads to be laid out and made, instead of the King's roads or highways herein before directed to be laid out, be and are hereby repealed, annulled and made void, any thing therein contained to the contrary notwithstanding.

C H A P.
CLXXX.
1762.

SECT. 7. *And be it further enacted by the authority aforesaid,* That all private roads, leading from the plantation or dwelling-place of any person or persons to or from the King's highways or common highways, within the said county of New-Castle, shall be laid out at the expence of the petitioners for the same; and that all common highways or public roads hereafter to be applied for to the Court of Quarter Sessions for the county aforesaid, and laid out in manner as by the act of Assembly aforesaid is directed, shall be laid out at the expence of the said county; and the costs, damages and charges, accruing from the obtaining said roads, shall be raised as other county rates and levies are, and paid by orders, drawn by the justices of the said court, upon the Treasurer: And the freeholders, appointed to view and examine whether roads petitioned for are necessary and convenient, or any three of them, shall, together with their return thereof, certify to the justices of the court aforesaid, whether such road so laid out is a private road, or a common highway: And the said justices are to determine accordingly.

Private roads to be laid out at the expence of the petitioners.

Common highways to be laid out at the expence of the county.

SECT. 8. *And be it enacted by the authority aforesaid,* That the Overseers of the highways within each of the hundreds of the said county, are hereby empowered and required to employ labourers and workmen to repair and amend all King's highways, common highways, roads, bridges and causeways, (except bridges lying over creeks and deep waters as are directed,

All roads to be repaired at the charge of the hundred through which they run, &c.

C H A P.
CLXXX.

1762.

rected, or to be erected and supported at the common expence of the said county; (c) within the limits of the said hundred; which said labourers and workmen shall be paid by orders drawn by any of the said Overseers; and one Justice of the Peace of the said county, on the Collector of the taxes for said hundred; and the account of the charges thereof shall be brought in at the same time and place that the Overseers of the Poor of the said hundred respectively meet to lay the poor rates, and then and there be assessed and levied by a tax on the inhabitants of the said hundreds, by any two Justices of the Peace, together with the said Overseers. (d)

Allowance to
Overseers of the
roads.

SECT. 9. *And be it further enacted by the authority aforesaid,* That every Overseer or Surveyor of the highways within the said county shall, for every day they shall necessarily attend in opening, repairing and amending the said roads and highways, be allowed the sum of Five Shillings, to be paid by the Treasurer of the said county; the said Overseers accounts being first taxed by any one Justice of the Peace of the hundred where such Overseer resides, or otherwise by the Judges of the Levy Court.

Penalty on
Overseers for ne-
glect of duty.

SECT. 10. *And be it further enacted by the authority aforesaid,* That if any Overseer or Overseers, of the county of New-Castle aforesaid, shall neglect or refuse to do his or their duty by this act required, or shall permit and suffer any of the said roads, bridges and causeways, within their respective hundreds, to remain unpassable, incumbered or unrepaired, for the space of fifteen days together, every such Overseer or Overseers, for every such neglect, being duly convicted thereof, in any Court of Quarter Sessions for the said county, shall be fined the sum of Five Pounds, to be paid to the Collector of the said hundred towards defraying the charge of repairing the roads within the same.

SECT. 11. *And be it further enacted by the authority aforesaid,*

(c) For this see chap. 131. a. sect. 6. 25 Geo. II.

(d) See chap. 187. a. sect. 11. passed November 2, 1766.—and see also chap. 249. b. sect. 13. where it is provided that Constables shall perform the duties theretofore assigned to Overseers of the Poor, passed Feb. 4, 1792.

1762
1763

OF DELAWARE!

CHAP.
CLXXX.

1762.

Penalty on ob-
structing, &c.
the said high-
ways.

aforesaid, That if any person or persons shall presume to obstruct any of the *aforesaid* King's highways, to be laid out by the persons herein named, or to turn the same, or shall commit any nuisance therein, and do not remove the same forthwith, such person or persons so offending, and being duly convicted thereof in manner *aforesaid*, shall be fined in the sum of Five Pounds, to be applied for the removing such nuisances, and repairing and clearing other roads within the hundred, where the offence shall be committed.

SECT. 12. *And be it enacted by the authority aforesaid*, That an act of Assembly of this government, intituled, "*An act for repairing and amending the highways, roads, causeways and bridges within the hundred of New-Castle,*" (e) shall be, and is hereby repealed, made null and void. *Provided always*, That all and every other part and clause in the act of Assembly of this government, intituled, "*An act for erecting public bridges, causeways, and laying out and maintaining highways,*" (f) shall continue in full force, save only such parts as are hereby altered and amended.

Act for repairing
roads in New-
Castle hundred
repealed.

Passed November 2, 1762.

C H A P. CLXXXI. a.

A Supplement to the act of Assembly of this government, intituled, "*An act for the better regulation of the Supreme Court within this government, and for aiding the discontinuance of the process therein.*" — Repealed in Chap. 193. a.

1764.

CHAP.

(e) Chap. 111, a. 20 Geo. II.

(f) Chap. 131, a. 25 Geo. II.

C H A P.
CLXXXII.

1764.

C H A P. CLXXXII. a.

An ACT for suppressing idleness, drunkenness, and other debaucheries, within this government.—Expired.

C H A P. CLXXXIII. a.

1764.

An ACT for the more easy and speedy recovery of legacies.

Preamble.

WHEREAS the proceedings in the Courts of Chancery, within this government, for the recovering of legacies are tedious and expensive,

SECTION 2. *BE it enacted by the honorable John Penn, esq. (a) with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the government of the counties of New-Castle, Kent and Sussex, on Delaware, and province of Pennsylvania, under the honorable Thomas Penn and Richard Penn, esquires, true and absolute proprietaries of the said government and province, and by and with the advice and consent of the Representatives of the freemen of the said government in General Assembly met, and by the authority of the same,* That from and

Legatees may sue in the Common Pleas for their legacies.

after the publication of this act, it shall and may be lawful for any person or persons, to whom any legacy, or bequest of any sum or sums of money, or other goods or chattels, have been, or may be, made, by the last will and testament of any other person or persons legally made, to commence, sue and prosecute, an action of debt, detinue or account render, as the case may require, for such legacy after it becomes due, in any of the Courts of Common Pleas within this government: And if it shall appear that the legacy or legacies is or are due, and there be sufficient assets in the hands of the executors, or administrators, with testaments annexed, to discharge the just debts of the testator, and the legacy or legacies

(a) John Penn, esq. began his government in November 1763, and continued until 1774.

cies bequeathed, the plaintiff or plaintiffs shall recover, with costs of suit, any law, usage or custom, to the contrary notwithstanding.

CHAP.
CLXXXIII.

1764.

SECT. 3. *Provided always*, That where it shall so happen that there are assets in the hands of any executors, or administrators, with testaments annexed, to discharge all the debts of the testator, with an overplus not sufficient to discharge all the legacies which may be given, then an abatement shall be made in proportion to the legacies so given, unless it shall otherwise be provided by the will. And where any legatee or legatees are or may be under age at the time when such legacy or legacies shall become due, in such case such legatee or legatees shall and may maintain an action for their respective legacies by guardian, or next friends, as fully and effectually, as by law they may do in any other actions whatsoever.

If not assets enough, abatement to be made.

Infant legatee may sue by guardian, &c.

SECT. 4. *And be it further enacted by the authority aforesaid*, That the respective courts where the said actions shall be commenced, upon the plea of the want of assets to pay all the debts and legacies, shall appoint Auditors to examine the accounts of the executors and administrators, with testaments annexed; who, after full hearing of the parties, at such times and places as by them the said Auditors shall be appointed, with notice to the parties, shall report how the accounts of the executors or administrators do stand, what assets will remain after payment of all the debts, and what part of the remainder is the proportion that ought to go towards paying of the plaintiffs legacies, having regard to all such settlements as have been, or shall hereafter be made, before any court, or proper officer or officers, that may have jurisdiction and power to settle the same; for which proportion only, unless it be otherwise provided by the will, the court shall then award execution upon the judgment to be had in the said suit; which judgment shall remain a security for the payment of the remainder of the said legacies and costs, when sufficient assets for the payment thereof come to the executors or administrators hands: And where any exception shall be taken by either of the parties to the

Upon plea of want of assets, Auditors shall be appointed.

report

CHAP.
CLXXXIII.

1764.

report of the Auditors, it shall and may be lawful for the court in which the action shall be depending, on hearing of the parties, to correct and amend any mistakes or errors which may happen in the accounts so to be reported.

Court may
award costs, or
no costs, &c.

SECT. 5. *And be it further enacted by the authority aforesaid,* That the justices of the courts aforesaid respectively, upon consideration of the report of the Auditors aforesaid, shall, according to justice and equity, either award no costs or costs out of the testators estate; or in case the executors or administrators have been faulty in delaying to pay the legacy demanded, or a proportional part thereof, without sufficient excuse, then out of the proper estate of the executor or executors, administrator or administrators; any thing herein contained to the contrary notwithstanding.

No suit to be
maintained un-
til demand
made and bond
given to refund,
&c.

SECT. 6. *Provided always,* That no such suit shall be maintained for any such legacy until reasonable demand made of the executor or executors, or administrators, with testaments annexed, who ought to pay the same, and an offer made of two sufficient sureties to the said executor or executors, administrator or administrators aforesaid, who, if they think proper to accept thereof, shall become bound to them the said executor or executors, administrator or administrators aforesaid, in double the sum of the legacy given, with condition under written, that if any part, or the whole thereof, shall at any time after appear to be wanting to discharge any debt or debts, legacy or legacies, which the said executor or executors, administrator or administrators, shall not have other assets to pay, that then the said legatee will return his said legacy, or such part thereof as shall be necessary for the payment of the said debts, or the payment of a proportional part of the said legacies. And if the said executors or administrators shall not think proper to accept of such bond, then the said legatees shall file the same with the Clerk of the Court before obtaining any process against the executor or executors, administrator or administrators; otherwise, and in default thereof, the process issued shall abate.

SECT. 7. *Provided also,* That where there are or may

may be several legatees, and a return of part of the said legacy sued for appears necessary, in such case, each legatee shall only be compelled to return a proportionable part of his legacy so as to make up the whole sum wanting.

C. H. A. P.
CLXXXIII.

1764.
Each legatee to return proportionably.

SECT. 8. *Provided also*, That where no time, in and by any last will and testament, is limited for the payment of any such legacies, that then and in such case the said executors or administrators shall have the space of one year to discharge the same.

Where no time limited, executors, &c. to have a year to pay.

Passed March 31, 1764.

C H A P. CLXXXIV. a.

A Supplementary ACT for the amendment of an act of General Assembly of this government, intituled, An act for the better regulation of the roads in New-Castle county.

WHEREAS the proceedings of a majority of the Commissioners, appointed by an act of Assembly of this government, intituled, *An act for the better regulation of the roads in New-Castle county*, (a) in laying out the two King's roads therein particularly mentioned, and returned into the Office of Clerk of the Peace at New-Castle, have occasioned some discontent and dissatisfaction to divers of the inhabitants of the said county; For remedying whereof,

Preamble.

SECTION 2. *BE it enacted by the honorable John Penn, esq. with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent and Sussex, on Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same*, That John Stapler and Thomas Tobin, esquires, David Stewart, George Monro, and John M'Kinly, gentlemen, or any three of them, are hereby

Names of the Commissioners.

(a) Chap. 180. a. ante. See after in chap. 195. a. and chap. 211. a.

CHAP.
CLXXXIV.
1764.

Return to be
made to the
Justices of the
Supreme Court.

The Clerk of
the Peace to de-
liver the former
return to the
Justices of the
Supreme Court.

The Justices to
establish one of
the returns, or
part of either,
&c.

The roads esta-
blished to be
King's roads.

Damages thro'
improved lands,
how to be ascer-
tained.

by authorized, impowered and required, to review the King's roads aforesaid, and lay out the same through the county of New-Castle; touching at the several places mentioned and set down in the said act, in such manner as they shall judge to be most advantageous to the public, and least injurious to the owners of the adjoining lands, without favour or respect to any person or persons whatsoever, and to employ such surveyor or surveyors, labourers and workmen; as they shall think necessary in platting and laying out the same: *And* that the persons herein named, or any three of them, shall make a return thereof to the Justices of the next Supreme Court to be held at New-Castle, for the county of New-Castle aforesaid, describing the said roads, in writing, under their hands, with courses and distances, with a fair map or platt of the same.

SECT. 3. *And be it further enacted by the authority aforesaid,* That the map of the aforesaid roads, and the return thereof made, by three of the persons named in the said law, into the Office of the Clerk of the Peace for the said county, shall, by the said Clerk, be delivered to the Justices of the Supreme Court aforesaid, at the time aforesaid; *And* that the same justices shall and may then and there take both the aforesaid returns into their consideration, and establish, ratify and confirm either of them, or such parts of both of them, as will make a complete road or roads through the said county; in such manner and form as to them shall seem best, and shall order the same to be entered upon the records of the same court without delay, describing by course and distance the roads so established and confirmed; and shall cause the maps and returns aforesaid, or one of them, to be altered agreeable to the opinion and judgment of the same court, and filed with the Clerk thereof: *And* that the same roads, so established and recorded, shall, from thenceforth, be deemed, taken and allowed to be King's roads, any thing in the aforesaid act contained, or any other law, usage or custom, to the contrary in anywise notwithstanding. *And* if any of the said roads or highways, so established, confirmed and recorded, shall be laid out or pass through the improved lands of

of any person or persons, then, and in such case, the justices aforesaid shall make an order to direct the persons herein before named, or hereafter to be named and appointed, to review and lay out the roads aforesaid, and they, or any three of them, are hereby authorised, impowered and required, to set down in writing, under their hands, upon their oath or affirmation, to be taken before any Justice of the Peace of the said county, truly and faithfully, the damages sustained by the owner or owners of such improved land, by reason or means of the aforesaid roads or highways being laid out through the same, and shall make return thereof to the succeeding Supreme Court, after the order as aforesaid made, there to be entered on record; *All* which damages, together with the expence and charge of laying out, returning and recording the said roads, shall be paid and satisfied by orders drawn by the Justices of the said Supreme Court, or any two of them, on the Treasurer of the said county, who is hereby required to pay the same, and to bring an account thereof unto the next succeeding court to be held for raising county levies, in order that the same may be assessed and levied on the inhabitants of the county aforesaid.

C H A P.
CLXXXIV.
1764.

Damages and costs to be paid by the county.

SECT. 4. *And* if any person or persons hereby appointed for laying out the said roads shall refuse to act, or happen to die before the roads shall be completely laid out and returned as aforesaid, then, and in every such case, the other Commissioners before named, or a majority of them, shall nominate and appoint, by some writing signed by them, some other suitable person or persons in the room of such as shall refuse, or die as aforesaid; which said person or persons, so to be nominated and appointed, are hereby impowered and required to act in the premises as fully as any person or persons herein mentioned may or can do.

Vacancies how to be supplied.

SECT. 5. *And be it further enacted by the authority aforesaid,* That each of the persons hereby appointed, or hereafter to be nominated and appointed as aforesaid, for laying out and returning the said roads and highways, or any part thereof, shall receive for their trouble in attending on the said business Seven Shil-

Allowance to Commissioners, Surveyors, &c.

CHAP.
CLXXXIV.

1764.

lings and Six-pence per day, each of the Surveyors Ten Shillings per day, and the chain-carriers and mark-men Three Shillings and Six-pence per day each; which said sums shall be paid to them respectively by the Treasurer of the said county, by orders drawn by the justices as aforesaid, who are hereby required to draw the same.

The said roads
not to be al-
tered.

SECT. 6. *And be it further enacted by the authority aforesaid,* That the Justices of the Peace, in their Court of Quarter Sessions for the county aforesaid, shall not, by virtue of any act of General Assembly of this government now in force, have any power or authority, in any manner whatsoever, to change or alter such roads or highways to be laid out and returned as aforesaid, or any part of the same; *But that all such acts, so far as they or any of them give, or might be construed to give, such justices power to change or alter such roads or highways, or any part thereof, or to appoint and order a new road or roads to be laid out and made, instead of the King's roads or highways herein before directed to be laid out, be and are hereby repealed, annulled and made void; any thing therein contained to the contrary notwithstanding.*

No delay in
opening and
clearing the
roads for want
of money, &c.

SECT. 7. *And, in order that no delay may happen in grubbing, clearing and opening the said roads, or in repairing and amending the King's roads, common highroads, bridges and causeways, within the said county of New-Castle (except bridges lying over creeks and deep waters, as are erected or to be erected and supported at the common expence of the said county) (b) for want of money to pay the labourers and*

To establish a
sufficient fund in
the hands of the
Collector to pay
the Overseers
and workmen
their wages for
making and re-
pairing the roads
by each hundred.

workmen aforesaid, Be it enacted by the authority aforesaid, That any two Justices of the Peace, together with the Overseer or Overseers of the Poor of the respective hundreds in the said county, shall and may make a rate, when they shall judge necessary, according to the rate of county assessments for the current year, (c) of such sum or sums of money, in each respective hundred

(b) For this see chap. 131. a. sect. 6. 25 Geo. II.

(c) See chap. 187. a. sect. 11. passed November 1, 1766.—And see also chap. 249. b. sect. 13. where it is provided that Constables shall perform the duties theretofore assigned to Overseers of the Poor, passed Feb. 4, 1792.

dred, as they the said two Justices and Overseer or Overseers of the Poor shall judge sufficient to establish a fund in the hands of the Collector for the time being; to pay the Overseer or Overseers of the roads, their workmen and labourers, as soon as their service shall be performed, by orders drawn as aforesaid.

S H A P.
CLXXXIV.
1764.

SECT. 8. *And be it further enacted by the authority aforesaid,* That the Overseers of the highways, within each of the hundreds of the said county, are hereby impowered and required, to employ labourers and workmen to repair and amend the aforesaid King's roads, common highways, and any bridges and causeways that may be erected thereon (except as before excepted) within the limits of said hundred; which said labourers and workmen shall be paid by orders, drawn by any one Justice of the Peace of the said county, on the Collector of the taxes for said hundred. *And if any person or persons, rated or assessed as by this act is directed, shall refuse to pay the sum or sums on them charged; by the space of ten days after demand, That then it shall and may be lawful for the said Collectors respectively to levy the same by distress and sale, or commitment of the party, in such manner as by an act, intituled, An act for raising county rates and levies, (d) he is impowered to do. And for the faithful performance of the trust by this act in the Collectors respectively reposed, the bonds by them respectively to be given, according to the directions of the act aforesaid, for raising county levies aforesaid, shall be and remain as a security.*

The Overseers to employ labourers and workmen to repair the roads, &c. Labourers and workmen to be paid by orders drawn by one Justice of the Peace of the said county on the Collector.

Any person refusing to pay his rate, the Collector to distress,

SECT. 9. *And be it further enacted by the authority aforesaid,* That the Justices of the Peace, within the county of New-Castle aforesaid, or any two of them, shall and may, at any time and times when new Collectors of the county rates and levies are to be appointed, annually examine and settle the accounts of the said Collectors going out of their office (so far as such accounts relate to their proceedings under this act) and to order the then last Collectors to pay the balances.

The Justices of the Peace of said county or any two of them to settle the Collectors accounts;

(d) Chap. 102. a, sect. 9. 16 Geo. II.

CHAP.
CLXXXIV.
1764.

Penalty on
Overseers for
neglect of duty.

lances in their hands to the Collectors of the respective hundreds for the ensuing year.

SECT. 10. *And be it further enacted by the authority aforesaid,* That if any Overseer or Overseers, of the said county of New-Castle, shall neglect or refuse, as soon as conveniently may, to grub, clear and open the King's roads aforesaid, so to be established and confirmed, or shall after permit or suffer any part of the said roads, or any bridges or causeways over the same, within their respective hundreds, to remain unpaffible, incumbered or unrepaired, for the space of fifteen days together, every such Overseer or Overseers, for every such neglect, being duly convicted thereof in any Court of Quarter Sessions for the said county, shall be fined the sum of Five Pounds, to be paid to the Collector of the said hundred towards defraying the charge of repairing the roads within the same.

Penalty on ob-
structing &c.
the said King's
highways, &c.

SECT. 11. *And be it further enacted by the authority aforesaid,* That if any person or persons shall presume to obstruct any of the aforesaid King's highways, to be laid out and confirmed as aforesaid, or to turn the same, or shall commit any nuisance therein, and do not remove the same forthwith, such person or persons so offending, and being duly convicted thereof in manner aforesaid, shall be fined in the sum of Five Pounds, to be applied for the removing such nuisances, and repairing and clearing other roads within the hundred where the offence shall be committed.

The old roads to
be repaired until
the new ones are
altered and open-
ed,

SECT. 12. *And be it further enacted by the authority aforesaid,* That until the said King's roads are cleared and opened, the following roads, in the same county shall be deemed, taken and allowed to be public roads, and no longer; *That is to say,* The road leading from Chester, beginning at the line between the counties of Chester and New-Castle, and running from thence the several courses of the said road over Naaman's Creek bridge to Vendiver's bridge over Brandywine Creek; and from thence over Christiana Ferry, near the house of Thomas Jacquet, to New-Castle, and from thence to the inn called the Red-Lyon, where John Rankin now dwells, and from the said Red-Lyon to the village called St. Georges, and from thence

thence to Appoquinimink bridge, and from thence over Blackbird bridge, to the town of Salisbury, commonly called Duck-Creek: And the road leading from Vendiver's Bridge, over Brandywine Creek aforesaid, according to the several courses heretofore used to Wilmington, and from thence to Newport, and from thence over White Clay Creek new bridge to Christiana bridge, and from thence to Red-Lyon aforesaid, and from thence to the inn lately kept by Walter Crow, now by Jacob Ham, and from thence to the inn kept by Joseph Jacquet, and from thence to Blackbird bridge aforesaid; and also the road leading from New-Castle according to the several courses heretofore used to Christiana bridge aforesaid.

CHAP.
CLXXXIV.
1764.

SECT. 13. *Provided always*, That all and every other part and clause in the act of Assembly aforesaid, and every proceeding under the same, shall continue in full force, save only such parts and proceedings as hereby are altered and amended. The former act confirmed, &c.

Passed March 31, 1764.

C H A P. CLXXXV. a.

An ACT for the more easy and speedy recovery of small debts. Expired by its own limitation for five years—Re-enacted with alterations in chap. 197. a. without limitation.

1764.

C H A P. CLXXXVI. a.

An ACT for the amending the laws relating to testamentary affairs, and for the better settling intestates estates.

1766.

WHEREAS the laws of this government relating to testamentary affairs, and the act, intitled, *An act for the better settling intestates*, (a) are by experience found to be deficient, SECTION

Preamble.

(a) Chap: 119. a, 24 Geo. II

CHAP.
CLXXXVI.
1766.

Justices of the
Orphans Courts
may make par-
tition of the
lands of intes-
tates amongst
minors, assign-
ees, &c.

SECTION 2. *BE it enacted by the honorable John Penn, esq. with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent and Sussex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same, That the Justices of the Orphans Courts of the county in which the lands and tenements of the intestate shall lie, upon application to be made by the widow of the intestate, or by any guardian or guardians of any of the children, or other heirs of the intestate under age, or by any assignee or assignees of any children or other heirs of the intestate which were of age before such assignment, shall have the same power and authority to make partition and division of the lands of the intestate, or where partitions and divisions cannot be made without prejudice to, or spoiling the whole, in that case to value, adjudge and order the premises (the widow's thirds thereof during her natural life always excepted) to the legal representatives of the children of the intestate, or their assigns, successively, being of full age, as they may or can do to or amongst the sons and daughters of an intestate under the act for the better settling intestates estates above mentioned, he, she or they, to whom the premises shall be adjudged, paying the respective shares of the valuation money, or giving sufficient security for the same, as in the said act is directed and appointed. (b)*

Proceedings
where lands can-
not be divided,
&c.

SECT. 3. *And be it further enacted by the authority aforesaid, That where any valuation shall be made of the lands and tenements of the intestate, there being no child, or children, nor any legal representatives or assignees of them, then and in such case the Orphans Court of the county, where the said lands and tenements lie, shall order the whole thereof (the widow's moiety during her natural life always excepted) to the eldest brother, or his legal representatives, or assignees, if he or they will accept it, or on his or their refusal, to any other of the brothers, or their legal representa-
tives,*

(b) Chap. 119. a, sects. 6, 7, 8.

tives, or assignees successively; and if all of them refuse, or there should be none such, then to the eldest sister, or her legal representatives or assignees; or on her or their refusal, to every other of the sisters or their legal representatives or assignees successively; and if there should be none such, then to the most worthy of blood amongst the next of kindred of the intestate, or his or her legal representatives or assignees; or on his, her or their refusal, to every other of the next of kindred (who are in equal degree) or their legal representatives or assignees successively; he, she or they, to whom the premises shall be adjudged, being of full age as aforesaid, and paying or securing the payment of the respective shares of the valuation-money, as in and by the same act for the better settling of intestates estates is directed and appointed. (c) *Provided always*, That in the division of intestates real estates there be no representatives admitted amongst collaterals after brothers and sisters grand-children.

SECT. 4. *And be it further enacted by the authority aforesaid*, That where any person shall make his or her last will and testament, and afterwards shall marry or have a child or children born after making such will, not provided for in any such will, or otherwise, by the said testator, and die, every such person so far as shall regard the wife, and child or children after born, shall be deemed and construed to die intestate, and such wife, and child or children, shall be intitled to like purparts, shares and dividends of the estate, real and personal, of the deceased, as if he or she had died intestate, and no such will had ever been made; and in such cases, the Justices of the respective Orphans Courts, so far as regard the wife after married, or child or children after born, or any child or children *in ventre sa mere*, and born after the death of their father, the testator, shall have the same power and authority to make distributions, partitions and divisions; or where partitions and divisions cannot be made without prejudice to, or spoiling

C H A P.
CLXXXVI.
1766.

Wife married
and children
born after the
making a will,
how provided
for.

C H A P.
CLXXXVI.

1766.

Costs of parti-
tion or valuation
by whom to be
paid.

What an inven-
tory shall con-
tain.

No debt to be
paid by an ex-
ecutor or admin-
istrator before
proved by oath
or affirmation.

ing the whole of, that part of the estate devised to any child or children aforesaid, in that case to value, adjudge and order the premises (the widow's third during her natural life always excepted) to the devisee or devisees of such part of the estate as cannot be divided as aforesaid, and on the refusal of such devisee or devisees to the children successively, as they may or can do where a person dies wholly intestate, and the devisee or devisees, or the child to whom the premises shall be adjudged, shall pay the money, or give sufficient security for the same, as in the said act for the better settling intestates estates is directed, where the person dies intestate as aforesaid. And the same justices are hereby further impowered to ascertain and tax the costs and charges that may arise and accrue on any partition and division or valuation of lands to be made either in pursuance of this act, or of the said act for the better settling of intestates estates, and award the payment of the same by all the parties concerned according to their respective purparts in such division or valuation.

SECT. 5. *And* that every executor or administrator in his inventory shall return a list of all the outstanding sperate and desperate debts due and owing to the deceased at the time of his death that shall come to his knowledge.

SECT. 6. *And* forasmuch as many frauds may be committed by permitting specialties, or other securities for the payment of money or goods, to be sufficient evidence of the sums of money, or quantity of goods, due thereon against the executors or administrators, of persons dying within this government, without any affidavit made by the creditor, his executor or administrator that the whole thereof was due; for prevention whereof, *Be it enacted by the authority aforesaid,* That every creditor having any sum of money, quantity of grain, or other goods or debts due from the estate of any deceased person, by judgment, statute, recognizance, mortgage, obligation, promissory note, protested bill of exchange, or other writing, shall be obliged, before the executor or administrator pay the same, to make a solemn oath, or affirmation (if they conscienciously refuse to take an oath)

oath) before some Judge, Justice of the Peace, or other person duly authorized to administer oaths and take probates, that no part of their said debts hath been paid, nor any thing else given or delivered towards satisfaction thereof, more than is taken notice of in such oath or affirmation: (d) And every executor or administrator of a creditor shall, before the receipt of any debt due as above, make oath or affirmation (if they conscienciously refuse to take an oath) *That to their knowledge, nor by any book, writing, or other thing appearing to them, the creditor in his life-time, or such his executor or administrator after his decease, did not receive any part or parcel of the debt, or other security, or satisfaction for the same more than is mentioned in their oath or affirmation.* And if any suit be brought against any executor or administrator for the recovery of any debt due as above, and the plaintiff or plaintiffs shall refuse so to swear or affirm, they shall be nonsuit, and pay full costs of suit. *Provided always,* That such nonsuit shall not bar against the bringing of a new action, the plaintiff or plaintiffs proving as above directed. And whoever shall wittingly and willingly swear or affirm falsely in the premises shall suffer as guilty of wilful perjury.

SECT. 7. *And be it further enacted by the authority aforesaid,* That the several and respective Orphans Courts, within this government, may and shall, and they are by this act required and directed, upon the choice of any guardian or guardians by any orphan or minor, who shall be of age to choose a guardian, or upon the appointment by the said courts of any guardian or guardians over such orphans or minors as are too young, or incapable according to the rules of the common law to make choice themselves, to cause such guardian or guardians, upon their acceptance of the guardianship, to enter into bond, in a sufficient penalty, with one or more able sureties, in the names of the orphans or minors, for securing and delivering their estates to them, their heirs, executors or administrators, when thereunto legally called. And no

Guardians to
give bonds for
minors estates
coming to their
hands.

VOL. I.

3 F

executor

(d) As to proving accounts in such case, see chap. 136. a. sect. 3. 25 Geo. II. —and chap. 248. b. sect. 3. passed February 4, 1792.

CHAP.
CLXXXVI.
1766.

Justices of the
Orphans Court
to enquire into
the sufficiency
of their securi-
ties, &c.

executor, administrator or former guardian, shall pay or deliver to such guardian, so chosen or appointed, the estate of such orphan or minor, until such security be so given, and a copy of such order, under the hand of the Clerk of such Court, delivered unto such administrator or former guardian.

SECT. 8. *And be it further enacted by the authority aforesaid,* That the Justices in their respective Orphans Courts aforesaid, shall once in every year, or oftener, enquire into the sufficiency of the security so to be given by guardians as aforesaid; and the said justices, in their said courts, shall have power and authority, as often as they shall find it necessary, to oblige such guardian or guardians to give new or better security: And in case of refusal or neglect, it shall and may be lawful for them, and they are by this act required, immediately to remove the person and estate of such orphan or minor into other hands; and in case the guardian or guardians as aforesaid, shall not obey such order of removal, then the said justices shall and may force obedience thereto, by sending their attachment, imprisonment of body, or sequestration of lands and goods, as fully and amply as they, or any Court of Equity in this government, in any other case may or can do.

The bonds of
guardians and
indentures of
minor appren-
tices to be re-
corded in the
Orphans Court.

SECT. 9. *And be it further enacted by the authority aforesaid,* That the Justices of the respective Orphans Courts of this government shall cause the bonds they take from guardians or other persons having the care or trust of minors estates, and likewise all indentures from minor apprentices bound or put to trades, husbandry or other employments, by order and direction of the same courts, to be recorded in such court.

An estimate of
the annual va-
lue &c. of Or-
phans lands to
be made, within
six months after
guardianship
committed, by
three freehold-
ers.

SECT. 10. *And be it further enacted by the authority aforesaid,* That all guardians of orphans or minors, who shall have any real estates in land, with the orphans or minors to whom the same belong, committed to them (other than such whom the testator in his life-time hath otherwise ordered and disposed of) shall, within six months after taking upon themselves the guardianship, with three freeholders of the county where the lands lie, of good repute and well skilled
in

in building and plantation affairs, neither of them being of kin, indebted or otherwise interested in orphan or guardian (such freeholders being to be nominated and appointed by the respective Orphans Courts of the county where the lands lie) enter into the land or plantation of such orphan or minor, and view the dwelling-houses, out-houses, lands, orchards and fences; and before such entry, the said freeholders shall take their corporal oaths, or affirmations (if they or either of them shall conscientiously refuse to take an oath) by any justice to be administered, that according to their best skill and judgment they will make a just estimate of the annual value of the said lands and plantations, what dwelling-houses, out-houses and orchards are upon the same; and what repair they are in, what part of the said lands the said guardian may be further permitted to clear, as well to raise the yearly rent so valued, as towards his yearly charge in keeping the said dwelling-houses, orchards and fences in repair, and so by him to be left, always having regard to leave a proportionable part both for quantity and quality of uncleared land for the benefit and advantage of the orphans or minors when at age; and the same to certify under their hands, or the hands of any two of them, to the Orphans Court next ensuing, there to remain on record till the orphan or minor comes to be of age; which certificate so entered on record shall be sufficient evidence in law for recovering double damages in an action of waste, sale or destruction, in any of the premises, committed by the said guardians, or by their procurement or consent, other than what is certified and thought necessary, with due respect had to all circumstances.

SECT. IV. *And be it further enacted by the authority aforesaid,* That the guardian neglecting to do what is above directed shall forfeit the sum of Fifty Pounds; and the said freeholders neglecting or refusing to do what is above enjoined them, being thereunto demanded, shall forfeit the sum of Five Pounds each; one moiety of said fines to the orphan or minor, and the other moiety to the person who will sue for the same, to be recovered with costs by any action of debt,

CHAP.
CLXXXVI.
1766.

Penalty on
guardians, &c.
neglecting, &c.

C H A P.
CLXXXVI.

1766.

No person to enter into, possess, &c. the lands of minors without licence from their Guardians, or Orphans Court.

debt, bill, plaint or information, in any Court of Record within this government wherein no effoine, protection or wager of law, nor more than one imparlance shall be allowed.

SECT. 12. *And be it further enacted by the authority aforesaid,* That it shall not be lawful for any person, not being guardian, or without licence from a guardian, to enter into, possess or occupy any lands or tenements belonging to any orphan or minor, without applying to and obtaining leave from the respective Orphans Courts of the county where such lands and tenements lie, for such rent as the court shall think reasonable, to be paid to the orphan or minor, on pain of being trespassers, paying treble damages and full costs, to be recovered by the guardian during minority, or by the orphan or minor at full age.

Wards when of age may take possession of their lands, &c.

SECT. 13. *And be it further enacted by the authority aforesaid,* That when any orphan or minor shall attain his or her full age, it shall and may be lawful for such orphan or minor to enter into all lands, tenements or hereditaments whatsoever, which the guardian of such orphan or minor shall come to the possession, or receive the rents, issues or profits of, under, or by colour of the right or title of such orphan or minor, or in virtue or by occasion of his or her guardianship of such orphan or minor. And in case the guardian aforesaid, obtaining the possession, or coming into the perception of the rents, issues and profits in manner aforesaid, shall refuse, upon demand of his orphan or minor, ward under his or her care (upon the said orphan or minor attaining his or her age as aforesaid) to yield or give up quiet possession of the same, such orphan or minor shall or may have or maintain his or her action, in which he or she shall recover possession of the same without shewing or being obliged to disclose any other title thereto than that the defendant came into the possession thereof in his or her right as guardian, together with treble damages and full costs of suit.

and if hindered by their guardians may recover the same without disclosing their title, other than that the guardians entered in their right.

Administration or guardian bonds to be sued within six years, saving, &c.

SECT. 14. *And be it further enacted by the authority aforesaid,* That all actions upon administration or guardian bonds hereafter executed shall be commenced within six years after the passing the said bonds; and

and all actions to be commenced on any such bonds already given shall be brought within six years after the publication of this act, and not after, saving the right of any person or persons who shall be within the age of twenty-one years, *Feme Covert, non Compos Mentis*, imprisoned, beyond sea, or out of this government, of bringing such action or actions within three years after their coming to or being of, full age, discoverture of found memory, at large, or returning into this government.

C H A P.
CLXXXVI.
1766.

SECT. 15. *And be it further enacted by the authority aforesaid,* That the several Orphans Courts within this government, when petitioned by the sureties in administration or guardian bonds, or their representatives, and upon making it appear that they are in danger of suffering by such surety, are hereby empowered and required to cause the administrators or guardians to give the petitioners sufficient counter security to indemnify them from such bonds, and in case they refuse so to do, to issue an attachment against their bodies to compel them thereto. And in case such administrator or guardian shall not be able, or refuse, to give such security, the said Orphans Courts are also empowered and required to order such estate, or such part thereof as shall be left in the hands of such administrator or guardian, to be delivered into the hands of such sureties, or either of their legal representatives, who are empowered, by process of attachment or distress, to be issued out of the said court, to take and possess themselves of the same; and on receipt thereof shall be obliged to return an account of what they receive to the Orphans Court next ensuing, appraised upon oath or affirmation by two indifferent persons to be appointed by the court, and the said administrator or guardian shall be discharged of so much as the said sureties or their representatives shall receive by virtue of such order or process.

Remedy for
sureties in admi-
nistration or
guardian bonds.

SECT. 16. *Provided always, and be it enacted by the authority aforesaid,* That the said sureties, or their representatives, before they obtain an order of any Orphans Court for the delivering any estate into their hands, shall enter into a bond to the Governor for the time being, and his successors, before that court, with

one

CHAP.
CLXXXVI,
1766.

one or more sufficient sureties, in such sum as the same court shall judge necessary, under condition to be void on the said sureties, or their representatives, their delivery or payment of all goods and chattels which shall or may come to their possession by virtue of or under such order, or the value of them, as the laws of this government require, to any person or persons who have right to demand the same when thereunto required; which bonds shall be filed or lodged in the Orphans Court wherein they are made, and shall and may be sued by any creditor or other person or persons who shall be injured by the non-performance of their conditions, in such manner as administration bonds now are sued.

All acts of administrators before notice of a will, to remain good, &c.

SECT. 17. *And be it further enacted by the authority aforesaid,* That all lawful acts done, or to be done *bona fide*, by any administrator, before notice of a will, and all purchases made of such administrator *bona fide*, before such notice, shall remain good, and shall not be impeached or altered by any executor or executors, devisee or devisees, legatee or legatees, on such will after appearing. *Provided always,* That when at any time after such will shall appear, the executor or executors, devisee or devisees, legatee or legatees therein named, shall have the same remedy against such administrator or administrators for the goods and chattels, rights and credits, remaining unadministred, and against the person or persons in possession of the same, otherwise than by purchase made as aforesaid, as he, she or they, ought to have had before the making of this act.

Husbands to have administration of their wives estates:

SECT. 18. *And for the explaining the said act of Assembly, intituled, An act for the better settling intestates estates,* Be it declared by the authority aforesaid, That neither the said act, nor any thing here or therein contained, shall be construed to extend to the estates of *Feme Coverts* that shall die intestate, but that their husband may demand and have administration of their rights and credits, and other personal estates, and recover and enjoy the same as they might have done before the making of the said act, or of any former intestate act of this government.

SECT. 19. *And be it further enacted by the authority aforesaid,*

aforesaid, That so much of the act before mentioned, intituled, *An act for the better settling of intestates estates*, as is hereby altered, shall be and is hereby repealed, declared null and void, but that all other clauses, matters and things, in the said act contained, shall be and are hereby declared to be in full force, strength and virtue, as fully to all intents, constructions and purposes, as if this present act had not been made.

CHAP.
C.LXXXVI.
1766.

SECT. 20. *And forasmuch* as there is at present no court instituted for the hearing appeals from the sentence of the Registers for the probate of wills and granting letters of administration within the several counties of this government,

Be it therefore enacted by the authority aforesaid, That there shall be a Court of Record erected, held and kept in each of the counties within this government, as often as occasion shall require, at the places where the respective Courts of Common Pleas are now held, which shall be stiled, *The Court of Delegates*; and that there shall be three persons of known integrity, learning and ability, commissioned by the Governor, or his Lieutenant for the time being, under the Great Seal of this government, to be Judges of the said Court; which said judges, or any two of them, shall and may hear and determine all such appeals as shall be made unto them from the Register or Registers for the probate of wills and granting letters of administration within the county for which they are appointed judges. (e)

Courts of Delegates instituted to hear appeals from the Registers.

SECT. 21. *And be it further enacted by the authority aforesaid*, That the Governor, or Lieutenant Governor for the time being, shall also appoint a Clerk to each of said Courts of Delegates, by commission under the Great Seal of this government, and that the costs and charges of the said commissions to the said Judges and Clerk, shall be paid by the said counties respectively. (e)

Clerks of said courts to be commissioned by the Governor.

SECT. 22. *And be it further enacted by the authority aforesaid*, That the sentence of the Registers respectively,

Sentence of Registers to be of force until reversed.

(e) Note that no commission ever issued under the sects. 20, 21. and that they, as sects. 23, 24. are repealed and supplied in art. 6, sect. 17. of the constitution of this state adopted in June 1792.

C H A P:
CLXXXVI.
1766.

Appeal to be
entered with the
Clerks within
thirty days.

tively shall be of full force and effect, to all intents and purposes, until the same is reversed by the Court aforesaid, any thing herein contained to the contrary notwithstanding. (e)

SECT. 23. *And be it further enacted by the authority aforesaid,* That every person appealing from the sentence of the Registers aforesaid respectively, shall, within thirty days at farthest after such sentence given, if the appelland resides within this government, and three months at farthest when such person so appealing as aforesaid shall dwell out of this government, enter his or her appeal with the Clerk of the said Court of Delegates, who shall give notice thereof to the Judges of the said Court in such convenient time as that the said judges may, on a day by them to be appointed in the week for holding the County Court of Common Pleas in and for each county respectively, next after the said appeal, entered as aforesaid, meet to hear and determine the same (due notice having been first given to the parties concerned in interest) upon a petition presented to them for that purpose. (e)

Fees to the
Judges and
Clerks.

SECT. 24. *And be it enacted by the authority aforesaid,* That the fees of the said court shall be as is herein ascertained, limited and appointed, *to wit,* To the first named of the said judges, for every days attendance in the said court, the sum of Twenty-five Shillings, and to each of the other judges, Twenty Shillings, to be paid by the county, where such court is held, and to be raised in the same manner as other county rates and levies are: For every final sentence given by them, Eight Shillings, to be paid by the party against whom the same is given. To the Clerk of the said Court, to be paid by the party, for entering every appeal, Ten Shillings: Filing the petition, Two Shillings: Reading the petition, Two Shillings: For minuting and drawing up the proceedings and final sentence, Twenty Shillings: For a copy or exemplification thereof, for every line, (not less than twelve words) One Penny: For every search, One Shilling and Six-pence: Affixing the seal of the said court, with a certificate, One Shilling and Six-pence: and for any other services, not herein mentioned,

tioned, such fees as the Judges of the said court shall think equitable and just, and no more. (e)

C H A P.
CLXXXVI.
1766.

SECT. 25. *And be it further enacted by the authority aforesaid,* That this act shall continue and be in force for the term of seven years, and from thence to the end of the next Session of Assembly, and no longer. (f)

Passed, November 1, 1766.

C H A P. CLXXXVII. a.

An ACT directing the choice of Inspectors and Assessors in this government, and for the amendment of an act, intituled, An act for raising county rates and levies.

1766.

WHEREAS the present method of choosing Inspectors and Assessors (a) is found by experience to be attended with many inconveniencies, and often createth great delay in the General Elections; and the aforesaid act, for raising county rates and levies, (b) doth not answer all the good purposes thereby intended, Preamble;

SECTION 2. *BE it enacted by the honorable John Penn, esq. with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent and Sussex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same,* That the freeholders and others who are duly qualified to elect, and be elected Members of Assembly in each hundred, within this government, shall yearly and every year hereafter meet on the fifteenth day of September, or if the same should happen on Sunday, then the next day following, at some convenient place within their said respective

Time, place and manner, of choosing Inspectors and Assessors.

VOL. I.

3 G

hundreds

(f) Made perpetual in chap. 222. a. passed Nov. 6, 1773.

(a) As in chap. 61. a. sect. 37 Geo II.

(b) Chap. 102, a. 16 Geo. II.

C H A P.
CLXXXVII.

1766.

hundreds, to be appointed by the Collector of the Public Taxes for said hundred; and in case of his death, absence, neglect or refusal, then at such convenient place within such hundred as the Overseers of the Poor, (c) shall appoint; and the said Electors shall between the hours of twelve in the forenoon, and six in the afternoon the same day, during all which time the election shall continue, in the presence of the Collector, and such two freeholders as he shall call to his assistance, or in case of his death, absence, neglect or refusal, the Overseers of the Poor, proceed to choose by balloting one able and discreet freeholder, residing within the said hundred, who may be supposed to be the best acquainted with the estates and circumstances of the inhabitants, to be the Inspector, and also the same, or some other freeholder to be the Assessor for the year ensuing.

Collectors to
give notice
where the Hun-
dred Election
shall be held, &c.

SECT. 3. *And be it further enacted by the authority aforesaid,* That the Collectors of the respective hundreds, or in case of their death, absence, neglect or refusal, then the Overseers of the Poor of such hundred, (c) or one of them, shall, at least ten days before the said fifteenth day of September, in every year, give notice of the place where such election shall be made, by affixing advertisements for that purpose in five of the most public places at the least, in their several hundreds, upon pain of forfeiting the sum of Twenty Pounds each; and that the said Collector, or Overseers of the Poor, shall call to their assistance two substantial freeholders of the said hundred, being there present, who shall assist them in judging of the said election, and in taking the votes; and who, together with the Collector or Overseers aforesaid, shall, as soon as the election is closed, certify under their hands and seals the names of the persons so chosen; and the said Collector, or other Judges of the said Hundred Election, shall immediately give notice to the person so elected to be Inspector, that he may give his attendance at the next election for Members of Assembly

(c) See chap. 249. b. sect. 13. passed Feb. 4, 1792, where it is provided that Constables shall perform the duties theretofore assigned to Overseers of the Poor.

sembly accordingly, and shall likewise at the same time furnish him with an alphabetical list of the names of all taxables within the said hundred, to enable him the better to judge of the qualifications of the electors at the next election for Members of Assembly, under the penalty of Three Pounds: And the certificates aforesaid shall be delivered by the Collectors, or Overseers of each hundred, to the Sheriff, or other Judge or Judges of the Election of the county to which they belong, before the hour of ten in the forenoon of the day whereupon the election of Members of Assembly shall happen, and the names of the Inspectors therein named shall be declared and published by the Judge of the said County Election in the presence of the electors, or so many of them as shall be present; and the persons so named shall be for that year Inspectors of the said election.

SECT. 4. *Provided always,* That the Inspectors of the several hundreds within this government, shall receive the votes or tickets of the electors of the hundreds for which they are chosen and no other, and that the name of every person shall be marked off by the Inspectors aforesaid at the time of his voting, by writing the word *voted* in the margent of the lists of the taxables of their respective hundreds, to be lodged in the hands of the said Inspectors for the purposes aforesaid.

SECT. 5. *Provided also,* That if any of the said Inspectors should be dead, or not attend at the said County Election, then and in such case the electors present of the hundred for which such Inspector was chosen, shall forthwith proceed to choose another freeholder, in his stead, in the same manner as is directed by the act of Assembly of this government, intituled, *An act for regulating elections, and ascertaining the number of the Members of Assembly,* (d) and that the person so chosen shall be Inspector for said hundred at the said County Election.

SECT. 6. *And be it further enacted by the authority aforesaid,* That the Sheriffs, or other Judges of the respective

CHAP.
CLXXXVII.

1766.

Collectors,
&c. to deliver
certificates of the
names of persons
chosen Inspectors,
&c. to the
Sheriff.

Duty of Inspectors.

(d) Chap. 61. 2, sect. 3. 7 Geo. II.

CHAP.
CLXXXVII.
1766.

Penalty on Inspectors and Assessors not serving, and the vacancies of Assessors, how to be supplied.

respective County Elections for this government, shall within three days after said election return, or cause to be returned, the certificates aforesaid into the Office of the Clerk of the Peace for the said county, there to be filed and kept; and every Inspector and Assessor so chosen shall serve in said offices respectively, under the penalty of Five Pounds; and in case of the death, removal out of this government, refusal or disability to serve in said office of any such Assessor, others shall be appointed in their stead, and for such time as by the act, intituled, *An act for raising county rates and levies*, is prescribed; (e) and every of the said Inspectors and Assessors, before they enter upon the service and duty of their said offices, shall take the qualifications prescribed to be taken by Inspectors (f) and Assessors (g) respectively by the laws of this government, under the penalty of Fifty Pounds.

Authority of Inspectors and Assessors,

SECT. 7. *And be it further enacted by the authority aforesaid*, That the said Inspectors and Assessors, so chosen, shall and may perform and execute every act, matter and thing, that any Inspector or Assessor can or ought to do respectively before the making of this act by virtue of any law now in force.

Penalty on Sheriffs, &c. neglecting, &c.

SECT. 8. *And be it further enacted by the authority aforesaid*, That if any Sheriff or Coroner, Collector or Overseer of the Poor, being judges of such elections as aforesaid, shall neglect to do the duties hereby enjoined them respectively, or shall wilfully misbehave themselves in the execution of the same, and be thereof legally convict, such person so offending shall forfeit the sum of Twenty Pounds.

List of taxables to be delivered by the Collectors to the Assessor of each hundred, &c.

SECT. 9. *And*, the better to enable the Assessors to judge of the estates and circumstances of the inhabitants, and assess them equally and impartially, *Be it enacted by the authority aforesaid*, That the Clerk of the Peace in each county shall, and he is required, at every August Sessions, to issue forth precepts, directed to the

(e) Chap. 102. a. sect. 2. 16 Geo. II.—See also chap. 98. c. sect. 12. passed February 9, 1796.

(f) For this see chap. 207. 2. passed June 13, 1772.

(g) For this see said chap. 98. c. sect. 29.

C H A P.
CLXXXVII.
1766.

the Collectors of every hundred, requiring them to deliver to the Assessors, on or before the tenth day of October next after the date of such precepts, fair and true lists in writing, upon their oaths or affirmations, of the names and surnames of all and every the persons residing, dwelling and sojourning, within the limits of the hundreds with which they shall be charged; together with an account of all the tracts or parcels of land and tenements which belong to any other person or persons not residing within the same hundred, and how many and what parts of those tracts are settled, improved and cultivated, and the names of the tenants or persons in the actual possession of the the same, without concealment, fear, malice, favour or affection, upon pain of forfeiting any sum not exceeding Five Pounds, to be levied and appropriated as by the said act for raising county rates and levies is appointed. And every of the said Collectors shall have and receive of the Treasurer of the respective counties for the time being, the sum of Five Shillings for every hundred taxable persons residing within their respective hundreds for their care and trouble in making and returning the said lists in manner aforesaid. (b)

Penalty on neglect.

SECT. 10. *And be it enacted by the authority aforesaid,* That the Assessors of the respective counties shall, and they are hereby required to meet together, as by the aforesaid act is directed, and unite in rating and assessing every inhabitant and taxable within their respective counties; and shall allot and ascertain the rate and assessment of every freeholder in some one hundred where his lands lie, to be paid to the Collector of such hundred, and no other, in full of his levy for that year within the said county. (b)

All the Assessors of a county to unite in rating each taxable,

and ascertain his rate in the hundred where his lands lie.

SECT. 11. *Provided always, and it is hereby enacted,* That the Assessors of the several hundreds within the county of New-Castle, may, and shall in their rates to be made as aforesaid, particularly insert the sum at which they assess every freeholder for the real estate belonging to him in each hundred, in order that his lands

Assessors in the county of New-Castle to set down the sum they assess every freeholder for his real estate in each hundred.

(b) See said chap. 98. c. from sect. 4 to 10 both inclusive, and sects. 16, 17, 20, 22. further and other provision made, and various other duties to be performed by Assessors.

CHAP.
CLXXXVII.
1766.

lands may be assessed for the repairing and maintaining the public roads and highways in the hundred where the same lie as heretofore; and that the Assessors may and shall, and they are hereby authorized and required to rate and assess the lands aforesaid, or poor persons, within the said county, at such sum or sums as they shall think reasonable and just, any thing herein, or in the act of Assembly aforesaid for the raising county rates and levies to the contrary notwithstanding: And the said Assessors shall not sit, nor have any voice, in hearing and determining any appeal from their rates or assessments. (b)

Penalty Clerk
of the Peace for
neglect, &c.

Penalties how to
be recovered,
&c.

SECT. 12. *And be it enacted by the authority aforesaid,* That if any Clerk of the Peace within this government shall neglect or refuse to do the duties required of, and enjoined him by this, or by the aforesaid act, he shall forfeit and pay the sum of Twenty Pounds. (i) And all the penalties and forfeitures mentioned in this act, where no mode is prescribed for recovering the same, may and shall be recovered in any Court of Record within this government, by action of debt, bill, plaint, or information, wherein no essoine, protection or wager of law, or more than one imparlance shall be allowed; and the same shall be paid, one half to the Treasurer for the time being, for the use of the poor of the said county where such neglect or offence is committed, and the other half to him or them that shall sue for the same.

SECT. 13. *And be it enacted by the authority aforesaid,* That the said Assessors for their time and labour in the premises shall, besides the allowance now made by the aforesaid act, have and receive the sum of Fifteen Shillings each. (k) And the said Collectors or Overseers of the Poor shall be allowed for the service required of them by this act, as judges of the aforesaid elections, the sum of Ten Shillings, each, and no more; which said sums the Treasurer is hereby required to pay them accordingly.

SECT.

(i) See said chap. 98, c. sects. 18, 19, 23, 24. for other duties enjoined the Clerk of the Peace, &c.

(k) See said chap. 98, c. sect. 23. other compensation provided—and also chap. 18. c. passed June 14, 1793.

SECT. 14. *And whereas* the oaths taken by Assessors and Grand Jurors do not relate to their duty as Members of the Levy Court within this government; *Be it enacted by the authority aforesaid*, That the Assessors and Grand Jurors respectively, before they enter upon the duties required of them as Judges of the Levy Court by the aforesaid act for the raising county rates and levies, shall take an oath or affirmation to the effect following, *viz.* (1)

CHAP.
CLXXXVII,
1766.

I A. B. *will well and faithfully discharge the trust in me reposed by virtue of the act of Assembly of this government, intituled, An act for raising county rates and levies, as one of the members of this court, according to the best of my skill and knowledge, without prejudice or partiality.*

Qualifications of
Assessors and
Grand Jurors as
Judges of the
Levy Court.

SECT. 15. *Provided always*, That all and every part of the said act for raising county rates and levies, and the supplement thereto passed in the twenty-fifth year of his late Majesty's reign, shall be and continue in full force, save only those parts which by this present act are altered and amended.

Passed November 1, 1766.

C H A P. CLXXXVIII. a.

A Supplement to an act for the further and better regulation of servants and slaves within this government.

1767.

WHEREAS it is found by experience, that free Negroes and Mulattoes are idle and slothful, and often prove burthenfome to the neighbourhood wherein they live, and are of evil example to slaves: *And whereas* the abovementioned act, for the further and better regulation of servants and slaves, has not been

Preamble.

(1) By "An act to amend the laws of this state for raising county rates and levies" passed June 14, 1793. The powers of the Levy Court are vested in Commissioners to be chosen as therein directed, whereby the Assessors and Grand Jurors are excluded from being members of that court.

C H A P.
CLXXXVII.

1767.

been found to answer all the good purposes thereby intended, We pray that it may be enacted;

SECTION 2. *And be it enacted by the honorable John Penn, esq. with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent and Sussex, upon Delaware, and province of Pennsylvania, under the honorable Thomas Penn and Richard Penn, esquires, true and absolute proprietaries of the said counties and province, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same,* That if any master or mistress shall, by will or otherwise, discharge or set free any Mulatto or Negro slave or slaves, he or she, or his or her executors or administrators, at the next respective County Court of Quarter Sessions, shall enter into a recognizance with sufficient sureties, to be taken in the name of the Treasurer of the said county for the time being, in the sum of Sixty Pounds for each slave so set free, to indemnify the county from any charge they or any of them may be unto the same, in case of such Negro or Mulattoe's being sick, or otherwise rendered incapable to support him or herself; and that until such recognizance be given, no such Negro or Mulatto shall be deemed free. (a)

One slave assaulting another how punished.

SECT. 3. *And be it enacted by the authority aforesaid,* That if any Negro or Mulatto slave in this government, shall at any time, after the passing of this act, assault or beat any other Negro or Mulatto slave, and be convicted thereof by one credible witness, before two Justices of the Peace for the county where such offence shall be committed, such Negro or Mulatto slave so offending, and convicted as aforesaid, shall be adjudged by the said justices to be publicly whipt, with any number of lashes not exceeding thirty nine, on his, her or their bare back, well laid on; and the master or owner of such Negro or Mulatto slave, so convicted as aforesaid, shall pay the costs of such conviction, to be

(a) This clause altered and supplied in chap. 145. b. sects. 3, 4, 5, 6. passed Feb. 3, 1787.

be levied of his goods and chattels by warrant, under the hands and seals of the said justices.

C H A P.
CLXXXVIII.

1767.

SECT. 4. *And be it enacted by the authority aforesaid,* That an act of Assembly of this government, for the better regulation of servants and slaves, so far as the same extends to the manumitting slaves, is hereby repealed and declared to be null and void, to all intents and purposes whatsoever.

Passed October 31, 1767.

C H A P. CLXXXIX. a.

An ACT for obliging the Sheriffs within this government, to give sufficient sureties for the faithful execution of their trust.—Repealed and supplied in chap. 178. b. passed June 11, 1788.

1767.

C H A P. CXC. a.

A Supplement to the act, intituled “ An act for the relief of the poor.”—Repealed and supplied in chap. 225. a. Passed March 29, 1775.

1767.

C H A P. CXCI. a.

An ACT for the new appointment of Trustees for the several General Loan Offices within this government.

1769.

WHEREAS by an act of Assembly of this go- Preamble.
vernment, intituled, *An act for the new ap-
pointment of Trustees for the several General Loan Offices
within this government,* passed in the fourth year of
the reign of his present Majesty, Evan Rice, Tho-
mas M'Kean, and Richard M'William, gentlemen,
were constituted and appointed Trustees of the Gene-
ral

CHAP.
CXCI.
1769.

ral Loan Office of New-Castle county, and John Vining and Cæsar Rodney, gentlemen, were constituted and appointed Trustees of the General Loan Office of Kent county, and Jacob Kollock and John Rodney, gentlemen, were constituted and appointed Trustees of the General Loan Office of the county of Suffex. *And whereas* the time limited by the said act for the continuance of the said Trustees in the exercise of their respective offices will expire at the end of this Session of Assembly, whereby a new appointment of Trustees to execute said offices is become necessary ;

New Trustees
appointed;

SECTION 1. *BE it therefore enacted by the honorable John Penn, esq. with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent and Suffex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same,* That Evan Rice, Thomas M'Kean, and Richard M'William, gentlemen, are hereby nominated and appointed Trustees of the General Loan Office, of the county of New-Castle; and John Vining and Cæsar Rodney, of Kent county, gentlemen, are hereby nominated and appointed Trustees of the General Loan Office of the county of Kent; and Jacob Kollock (a) and John Rodney, of Suffex county, gentlemen, are hereby nominated and appointed Trustees of the General Loan Office of the county of Suffex; which said Trustees shall and may have, hold and enjoy the same offices for and during the term of four years next after their entering into the execution of their respective trusts as aforesaid, and from thence to the end of the next Session of Assembly, or until a new nomination and appointment of Trustees of the said General Loan Office shall be made. (b)

their Power and
duty.

SECT. 2. *And* the said Trustees are hereby authorized and impowered, immediately after the end of this

(a) See chap. 209. a. wherein David Hall is appointed a Trustee, in the place of Jacob Kollock then deceased.

(b) See chap. 230. a. sect. 8. for a new appointment, then see sect. 24. and the note (c) there.

this Session of Assembly, to enter upon the execution of their trust to which they are hereby appointed in their respective counties, and to receive, re-emit and exchange all bills of credit of this government, according to the directions of the act of Assembly, intituled, *An act for reprinting, exchanging and re-emitting Twenty Thousand Pounds of the bills of credit of this government, to be let out on loan; and for striking the further sum of Seven Thousand Pounds in such bills, and giving the same to his Majesty's use, and for providing a fund for sinking the same,* passed in the thirty-second year of the reign of his late Majesty King George the Second, and to do and perform all other matters and things enjoined and required to be done and performed by the several Trustees in their respective counties by an act of Assembly heretofore made or hereafter to be made during their continuance in the said office, as fully and amply to all intents and purposes as the present or former Trustees of the several Loan Offices within this government now can, or might, or would have done, by virtue of any acts of Assembly by which the said Trustees therein named were appointed, and as fully as if the said Evan Rice, Thomas M'Kean and Richard M'William, for the county of New-Castle, John Vining and Cæsar Rodney, for the county of Kent, Jacob Kollock and John Rodney, for the county of Suffex, had been nominated, constituted and appointed Trustees of the respective General Loan Offices within this government in the bodies of the said acts of Assembly.

SECT. 3. *Provided always,* That before any of the Trustees hereby nominated and appointed, or such as shall be hereafter appointed Trustees, shall enter upon the execution of their trust, or of any part thereof, they shall enter into bond with good security for the sums delivered into their hands respectively; *That is to say,* Each and every of the Trustees of the Loan Office of New-Castle county to George Read and George Monro, of New-Castle county, gentlemen, or the survivor of them, their executors and administrators, in the penal sum of Ten Thousand Pounds; and each and every of the Trustees of Kent county to John Caton and Charles Ridgeley, of Kent county, gentlemen, or the survivor of them, their

C H A P.
CXCI.
1769.

But before they enter upon the execution of their trust shall give bond, &c ;

executors

C H A P.
CXCI.
1769.

executors and administrators, in the penal sum of Six Thousand Pounds; and each and every of the Trustees of Suffex county to David Hall and Jacob White, of Suffex county, gentlemen, or the survivor of them, their executors and administrators, in the sum of Four Thousand Pounds; who are hereby nominated and appointed Trustees and Agents for the public for that end and purpose, conditioned for the due and faithful execution of their trust and performance of all things required of them by this act, with further condition to deliver up to their successors in the said trust the mortgage deeds, bonds and warrants of attorney, plate, bills of credit, and other money remaining in the said offices, or when they shall be removed from their trust, and shall take the oath or affirmation enjoined by the laws of this government to be taken by the Trustees of the Loan Offices within this government, for the due performance of their respective trusts as aforesaid, before some Justice of the Peace.

and shall take
an oath or affir-
mation, &c.

And in case of
any of their
deaths, &c. others
shall be ap-
pointed.

SECT. 4. *And* if any of the above Trustees shall happen to die, or be removed for any cause whatsoever, it shall and may be lawful to and for the General Assembly of this government, so often as need may require, to nominate and appoint some other fit person or persons in the place and stead of such Trustee or Trustees so dead or removed as aforesaid, who shall, upon entering into the same bond, and taking such oath or affirmation as is before mentioned, have the same power and authority, as if he or they had been nominated and appointed by this act.

Passed June 16, 1769..

CHAP.

C H A P. CXCH. a.

C H A P.
CXCH.

1769.

An ACT for extending an act, intituled, An act to prevent swine running at large without rings and yokes in certain parts of New-Castle county, within this government, to a certain part of Appoquinimink hundred, in the county aforesaid.

WHEREAS by an act of Assembly, passed in Preamble. the twentieth year of the reign of his late Majesty George the second, intituled, *An act to prevent swine running at large, without rings and yokes, in certain parts of New-Castle county, within this government,* (a) it is provided, that no swine shall run at large (unless sufficiently ringed, to prevent them from rooting, and yoked to prevent them from creeping or breaking through fences,) on any of the improved lands, meadows or marshes of the inhabitants of New-Castle county aforesaid, except in the several hundreds of Pencader and Appoquinimink.

SECTION 2. *And whereas,* Since the making of the same act, great quantities of marsh within the said hundred of Appoquinimink have been embanked and considerably improved, and when completed, will be of great benefit as well to the inhabitants of the same hundred as to the owners thereof: But inasmuch as such improvements already have been and hereafter may be much injured and impeded by herds of swine, without rings and yokes, running at large over the same, and the owners greatly discouraged from going on with these improvements; to prevent which damages and inconveniencies for the future, and for the security and encouragement of the owners, as well of the said marshes as of the meadows and improved lands lying to the eastward of the upper King's road running through Appoquinimink hundred aforesaid, it is prayed to be enacted,

SECT. 3. *And be it enacted by the honorable John Penn,*

(a) Chap. 113. a. 20 Geo. II.—See after chap. 226. a. 14 Geo. III. the said original act extended to Pencader hundred.

C H A P.
CXCVII.

1769.

All Swine are to be ringed and yoked that run at large to the eastward of the upper King's road in Appoquinimink hundred.

Penn, esq. by and with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent and Sussex, upon Delaware, and province of Pennsylvania, under the honorable Thomas Penn and Richard Penn, esquires, true and absolute proprietaries of the said counties and province, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same, That from and after the first day of January, which will be in the year of our Lord One Thousand Seven Hundred and Seventy, the said recited act, and every clause, matter and thing therein contained shall extend, and be deemed, construed and taken to extend to that part of Appoquinimink hundred lying to the eastward of the upper King's road leading through New-Castle county aforesaid from Church-branch at the head of Appoquinimink Creek to Duck Creek, any thing contained in the said recited act of Assembly to the contrary notwithstanding.

Passed June 16, 1769.

C H A P. CXCVIII. a.

1769.

An ACT for aiding the discontinuance of the process of the Supreme Court in the county of New-Castle, and for appointing other days for holding the said court within this government.

Preamble.

WHEREAS the process and proceedings in the Supreme Court for the county of New-Castle, in this government, are now discontinued, and put without day by occasion of the non-coming of the justices thereof at the days appointed by law for holding the said courts within the said county.

SECTION 2. *And whereas* The days appointed by law (a) for holding the Supreme Courts within the several counties of this government are found by experience

(a) See before in chap. 127, a. sect. 2.

perience to be improper times for holding the said courts,

C H A P.
CXIII.

1769.

SECT. 3. *Be it therefore enacted by the honorable John Penn, esq. with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent and Sussex, on Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same, That every indictment, presentment, action, suit, plea, process, or other matter whatsoever, that were depending in the Supreme Court within the county of New-Castle aforesaid, and are now become discontinued, abated and put without day by reason of the non-coming of the justices thereof as aforesaid, shall be, and are hereby revived and continued, and shall and may be heard, tried and determined, before the justices of the said court for the time being, on the days and times, and at the places herein after appointed and directed, in as full and ample manner to all intents and purposes whatsoever as they might or could have been if such suit, action or other matter, had not been determined by the means aforesaid.*

All causes and matters discontinued in the Supreme Court for the county of New-Castle by reason of the non-coming of the justices shall be revived, &c.

SECT. 4. *And be it further enacted by the authority aforesaid, That, from and after the publication of this act, the Supreme Courts for this government shall be held twice in every year; That is to say, At New-Castle, for the said county of New-Castle, on the fourteenth day of October, and on the fifteenth day of April; and at Dover, for the county of Kent, on the seventh day of October, and on the twenty-second day of April; and at Lewes, for the county of Sussex, on the Friday next after the General Quarter Sessions of the Peace there in November, and on the twenty-eight day of April: And if any of the days hereby appointed for holding the said Supreme Courts in the months of October and April should happen to be on Sunday, then on the next day following the said appointed days. (b)*

The days on which said Courts shall be held in future.

SECT.

(b) For subsequent alterations of the days for holding this court in the several counties, see chap. 5. b. passed February 22, 1777—chap. 19. c. passed June 14, 1793—and chap. 61. c. passed February 7, 1794.

CHAP.
CXCIH.

1769.

Repeal of former acts as far as they relate to the days of holding said courts.

SECT. 5. *And be it further enacted by the authority aforesaid,* That all acts of Assembly of this government heretofore made, and the supplements thereto, so far as the same relate to days and times for holding the said Supreme Courts, and every clause therein contained concerning the same be and are hereby repealed, annulled and made void.

Passed June 16, 1769.

C H A P. CXCIV. a.

1769.

An ACT for amending an act, intituled, An act for the relief of insolvent debtors within this government.

Preamble.

WHEREAS the act of Assembly of this government, intituled, *An act for the relief of insolvent debtors within this government*, passed in the thirteenth year of his late Majesty's reign, is, by experience, found deficient, and not to answer all the good ends and purposes thereby intended, in providing against poor persons being arrested and imprisoned within the same, who oftentimes become immediately chargeable to the county where they are so imprisoned: (a) For remedy whereof,

SECTION. I. *BE it enacted by the honorable John Penn esq. with his Majesty's royal approbation, Lieutenant Governor, and Commander in Chief of the counties of New-Castle, Kent and Suffex, upon Delaware, and province of Pennsylvania, under the honorable Thomas Penn and Richard Penn, esquires, true and absolute proprietaries of the said government and province, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same,* That after the publication of this act, if any poor person shall be imprisoned for debt, or in any civil suit, within any of the counties of this government, it shall and may be lawful to and for such person

Any poor person imprisoned in any civil suit may apply to the court out of which the process issued for relief.

(a) For this see chap. 76. a. sect. 22. 13 Geo. II.

C H A P.
C X C I V.
1769.

person or persons so imprisoned, by petition, to apply to the Justices of the respective Courts of Common Pleas where he or she shall be so imprisoned; in the term next after his or her confinement, or in any subsequent term, setting forth his or her condition, and containing a just and true state of his or her affairs; whereupon the said court are hereby empowered to examine into the allegations set forth in the said petition, by such ways and means as to them shall seem most likely for discovering the truth thereof; and after such examination, if it shall appear to the said court that the said petitioner hath not estate sufficient to maintain him or herself in prison, and his or her family, and that they are likely to become chargeable to the hundred or county whereof he or she is an inhabitant, that in such case, the court in their discretion may and shall direct and order the creditor or creditors, at whose suit the said petitioner is arrested and imprisoned, forthwith to enter into a recognizance in the name of the Treasurer of the said county or of the Overseers of the Poor of the hundred likely to become charged as aforesaid, with one good and sufficient surety at the least, to indemnify such hundred or county of and from all costs and charges that may arise by reason of such imprisonment, either for the maintenance or by the sickness of the person so imprisoned, or of his or her family; and the said recognizance shall be taken by the Prothonotary of the court aforesaid.

which after hearing the party, &c. may order the plaintiff to enter into a recognizance with one surety at least to indemnify the hundred or county, &c.

SECT. 2. *And be it further enacted by the authority aforesaid,* That upon the refusal or neglect of such creditor or creditors complying therewith within twenty days next after such order, and producing a certificate thereof under the hand of the said Prothonotary (who is hereby required and enjoined upon request to give the same gratis) to the Sheriff or Gaoler of the county where such person shall be imprisoned, then and in such case the said Sheriff or Gaoler may and shall release, discharge and set at liberty, such prisoner, he or she first filing common bail in all and every action or actions depending against him or her.

and upon his refusal or neglect to do the same: within twenty days after, the Sheriff or Gaoler shall discharge such prisoner upon his filing common bail.

SECT. 3. *And be it further enacted by the authority aforesaid,* That if any action or suit shall be commenced against any person or persons for any thing

CHAP.
CXCV.

1769.

If Sheriff or other person is sued for complying with the duty required of him by this act, he may plead the general issue, and if judgment pass for him he shall recover treble costs.

done in pursuance of this act, the defendant or defendants in any such action or suit may be plead the general issue, and give this act and the special matter in evidence at any trial to be had thereupon, and that the same was done in pursuance and by the authority of this act; and if it shall appear so to have been done, the jury shall find for the defendant or defendants; and if the plaintiff shall be nonsuited, or discontinue his action, after the defendant or defendants shall have appeared; or if judgment shall be given upon any verdict or demurrer against the plaintiff, the defendant or defendants may and shall recover treble costs; and have the like remedy for the same, as any defendant or defendants hath or have in any other cases by law.

SECT. 4. *And be it further enacted by the authority aforesaid,* That all and every clause and clauses in the act of Assembly aforesaid, (b) so far as the same relate to the requiring, directing and ordering the officer, who grants a writ against any poor person, to take security of the person or persons applying for the same, before the same is granted, is hereby repealed and made void.

SECT. 5. *Provided always,* That all and every other part of the said act of Assembly for the relief of insolvent debtors within this government, and the supplement thereto, passed in the twenty-fourth year of his late Majesty's reign, (c) shall be and continue in full force, save only those parts which by this present act are altered and amended.

Passed June 16, 1769.

(b) Chap. 76. a. 13 Geo. II.

(c) Chap. 118. a. 24 Geo. II.

CHAP.

C H A P. CXC. a.

C H A P.
CXC.

A further additional Supplementary ACT to the act, intituled, An act for the better regulation of the roads in New-Castle county. (a)

1769.

WHEREAS part of the King's road laid out and confirmed by the Justices of the Supreme Court for this government, beginning at the bridge erected over Whiteclay Creek, near Finney-terre, in Whiteclay Creek hundred, in the county of New-Castle to Christiana bridge, in the same hundred, hath been found to be upon bad ground, and likely to prove very expensive to the inhabitants of the said hundred to make, and keep in good order and repair. *And whereas* There is ground very suitable for a road within a few perches of the place where the present road is established,

Preamble.

SECTION 2. *BE it enacted by the honorable John Penn, esq. with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent and Sussex; upon Delaware, and province of Pennsylvania, under the honorable Thomas Penn and Richard Penn, esquires, true and absolute proprietaries of the said counties and province; by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same,* That the King's road from the bridge over

Whiteclay Creek aforesaid, to the bridge over Christiana Creek, shall be opened, and is hereby declared to be laid out, established and confirmed; upon the courses and distances following; *That is to say,* Beginning at Whiteclay Creek bridge aforesaid, and running from thence south eleven degrees east one hundred and fifty-seven perches, thence south seventeen degrees west four hundred and thirty-five perches 'till it intersects the King's road aforesaid as heretofore confirmed and now opened, then along the said confirmed

How the King's road shall be opened from Whiteclay Creek bridge to Christiana bridge.

(a) For this see chap. 180. a. Anno 1762. And for a supplement thereto, see chap. 184; a. And for another supplement see after chap. 211. a. passed June 13, 1772.

C H A P.
CXC.V.

1769.

confirmed road south eight and an half degrees west three hundred and twenty perches to the meeting-house on the hill above the village of Christiana bridge, then along the same confirmed road south twenty-five and one quarter degrees east thirty-six perches, then south fifty degrees east thirty-three perches to the bridge over Christiana Creek aforesaid.

SECT. 3. *And be it enacted by the authority aforesaid,* That that part of the King's road leading from the said Whiteclay Creek bridge to Christiana bridge aforesaid, as heretofore laid out and confirmed, and hereby altered, shall be null and void, any law of this government to the contrary in anywise notwithstanding.

Passed June 16, 1769.

C H A P. CXC.VI. a.

1769,

An ACT concerning wills made by persons residing out of this government.

Preamble.

WHEREAS many persons residing out of this government have been seized or possessed of lands, tenements and hereditaments within this government, and having disposed thereof by their last wills, have died, but by reason of the said wills being lodged in some office out of this government, persons claiming under the same cannot produce them in any court of law or equity within this government, to the great injury of the persons so claiming; For the remedying whereof for the future,

Wills and testaments duly made and proved out of this government shall be good and available in law to pass lands, &c. in the same.

SECTION I. *BE it enacted by the honorable John Penn, esq. with his Majesty's royal approbation; Lieutenant Governor, and Commander in Chief, of the counties of New-Castle, Kent and Sussex, upon Delaware, and province of Pennsylvania, under the honorable Thomas Penn and Richard Penn, esquires, true and absolute proprietaries of the counties and province aforesaid, by and with the advice and consent of the Representatives of the freemen of the said counties*

counties in General Assembly met, and by the authority of the same, That any will in writing wherein or whereby any lands, tenements or hereditaments within this government, have been, or shall be, given or devised, which has been, or shall hereafter be, proved in the Chancery in England, Scotland or Ireland, or in the Court of Chancery in any colony, plantation or island in America belonging to his Majesty, or which has been, or hereafter shall be, proved in the Hustings or Mayor's Court, in London, or in some Manor Court, or before such person or persons as hath, had, have, or shall have, power or authority at the time of proving such will in England, Scotland or Ireland, or in any colony, plantation or island aforesaid, to take probates of wills, shall be good and available in law for the granting, conveying and assuring of the lands, tenements or hereditaments thereby given or devised, as well as of the goods and chattels thereby bequeathed; and that the copies of every such will, and of the bill, answer, depositions and decree, where the same hath been or shall be proved in any Court of Chancery, or of every such will, the probate whereof, where the same hath been or shall be proved in any other court, or in any office as aforesaid, being transmitted hither and produced under the Public or Common Seal of the court or office where the same probate hath been or shall be taken or granted respectively, or under the Great Seal of the kingdom, colony, plantation or island within which such will hath been or shall be proved (other than copies of such wills and probates as shall appear to be annulled, disapproved or revoked) shall be judged and deemed, and are hereby declared and enacted, to be matter of record, and to be good evidence in any Court of Law or Equity within this government to prove the gift or devise therein or thereby made; And that all such probates granted out of this government being produced here, under the seals of the courts or offices granting the same, shall be as sufficient to enable the executors by themselves or Attornies to bring their actions in any court within this government as if the same probates or letters testamentary were granted here and produced under the seal of any of the Register's offices within this government.

SECT.

C. H. A. P.
CXCVI.

1769.

And copies of such wills, &c. duly authenticated shall be matter of record and may be given in evidence in any court.

CHAP.
CXCVI.

1769.

But wills for lands must be in writing signed by the party, or by his direction, and subscribed by two witnesses, &c. if made since May 1st. 1754.

And such copies shall be recorded in the county where given in evidence, and there safely kept by the Register.

SECT. 2. *Provided nevertheless, and be it enacted by the authority aforesaid,* That nothing herein contained shall be deemed, or construed to confirm or establish any gift or devise of lands, tenements or hereditaments within this government in a will made since the first day of May in the year of our Lord One Thousand Seven Hundred and Fifty-four by any person residing out of this government, unless such will shall be in writing and signed by the party so devising the same, or by some other person in his or her presence, and his or her express directions, and shall be attested and subscribed in the presence of the said devisor by two or more credible witnesses. (a)

SECT. 3. *And be it further enacted by the authority aforesaid,* That the copies of every such will and probates, so produced and given in evidence, shall be recorded in the Register's office of the county where the same shall be so given in evidence at the expence of the person who produces the same, and the fees for recording shall be recovered in the same manner as other fees due to the said office are by law recoverable, and the said copies shall not be returned by the court wherein the same are so produced and given in evidence to the person producing them, but the said court shall order the same to be recorded as aforesaid, and after to be safely kept by the said Register; and if any of the wills (whereof copies or probates shall be so as aforesaid produced or given in evidence) shall afterwards appear to be disproved or annulled before any judge or officer having cognizance thereof, or shall happen to be revoked, or altered, by the testator either by a latter will or codicil, in writing, duly proved as aforesaid, that then, and in every such case, it shall and may be lawful for the party aggrieved, or his or their heirs, executors, administrators or assigns, to have their action for what shall be taken or detained from them by occasion of such wills, or have their writ or writs of error for reversing the judicial proceedings thereupon, as the case shall require, any thing

(a) See the act concerning written and nuncupative wills to which this hath reference, chap. 145. 2. passed October 30, 1753.

thing herein contained to the contrary notwithstanding.

CHAP.
CXCVI.
1769.

Passed June 16, 1769.

C H A P. CXCVII. a.

An ACT for the more easy and speedy recovery of small debts. Repealed and supplied in Feb. 1792. chap. 250. b.

1769.

C H A P. CXCVIII. a.

A Supplement to an act, intituled, An act for regulating fences within this government.

1770.

WHEREAS the act, intituled, *An act for regulating fences within this government*, passed in the thirteenth year of the reign of his late Majesty George the Second, (a) hath made no provision for making ditches, hedges or stone walls, inclosing lands, lawful fences; For remedying whereof, and for the encouraging of such species of inclosures,

Preamble.

SECTION I. *BE it enacted by the honorable John Penn, esq. with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent and Sussex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same, That all ditches or drains having a post and rail fence, or a worm fence well staked and ridered at least five feet of a perpendicular height from the top of the upper rail or rider to the bottom of such ditch or drain, or a hedge of thorn*
close

What shall be deemed a lawful fence.

(a) Chap. 70, s. 13 Geo. II.

C H A P.
CXCVII.

1770.

close set of the height aforesaid erected or planted within two feet from the edge of such ditch or drain, and all stone walls of the height of four feet and an half from the ground, or otherwise three feet high, with a fence thereon of rails well staked and ridged, at least one foot and an half above the said wall, shall be deemed, taken and held as and for sufficient and lawful fences, to all intents and purposes whatsoever.

Owners of
horses, &c. tres-
passing on such
inclosures to
make good the
damage.

SECT. 2. *And be it further enacted by the authority aforesaid,* That if any horses, kine, sheep, hogs, goats or any kind of cattle, shall break into any person's inclosure [the same being found to be of the height and sufficiency aforesaid by the persons appointed or hereafter to be appointed viewers, according to the directions of the said act] the owner of such horses, kine, sheep, hogs, goats, or any kind of cattle, shall be liable to make satisfaction for the damage done to the owner of such inclosure, in such sort, and to be levied in such manner, as in the aforesaid act is mentioned and ordered in other cases.

A division fence
to be maintain-
ed by both
parties.

SECT. 3. *And be it further enacted by the authority aforesaid,* That where any person or persons have already inclosed, or shall hereafter inclose any land, with a fence and ditch, or hedge and ditch, of the height and sufficiency aforesaid, and so declared and determined by the fence-viewers, and the same fence and ditch, or hedge and ditch, or any part thereof, are or may become a partition between them and any other person or persons having improved or inclosed lands adjoining the same, in such case the charge of such division fence and ditch, or hedge and ditch, so far as is improved or inclosed on both sides, shall be equally borne, repaired and maintained by both parties, and may be ascertained, recovered and paid in such manner and form as by the aforesaid act of Assembly is directed concerning other fences: (b) And that where any stone wall of the height and sufficiency aforesaid is, or shall be erected, on the line between any two persons having lands improved or inclosed.

(b) Said chap. 70. sect. 3.

C H A P.
C X C V I I I.

1770.

enclosed adjoining thereto, by, or at, the expence of any one of them, the person or persons having so erected such wall may and shall apply to the fence-viewers of the hundred where the same is so erected, who are thereupon authorized, impowered and required, to fix and determine the charge or expence of making a good and sufficient fence of posts and rails of the length of such wall, and of maintaining and repairing the same annually thereafter, according to the best of their skill and judgment, of which they shall without delay give notice to the parties concerned, and the owner or possessor of the land improved or inclosed and adjoining such partition wall shall be liable to pay to the person or persons erecting the same the moiety of the sum which a fence of posts and rails as aforesaid would in such their opinion cost, to be levied in manner aforesaid; and that the moiety of the annual expence of supporting such a fence, according to the estimate made by them as aforesaid, shall be a charge upon the person or persons holding the lands adjoining such wall, during the continuance of the same, unless he, she or they shall pay to the person or persons who erected such wall, or to such person or persons who may hereafter purchase or inherit the same, a moiety of the value of the same, to be determined by the viewers for the time being.

SECT. 4. *Provided always, and be it further enacted* Division-drains in marshes to be cut and fences to be made thereon at the joint expence of the owners, by the authority aforesaid, That on all division-lines between owners or possessors of meadow, marsh or cripple, inclosed by a bank or dyke from the waters of any river, creek or run, where any owner or possessor shall think proper to improve his said meadow, marsh or cripple, and to have the same divided from the meadow, marsh or cripple adjoining, that the owner or possessor of the adjacent meadow, marsh or cripple [be the same improved or unimproved] shall, and he is hereby ordered, to join with the adjacent owner or possessor in cutting a drain or ditch of the width of eight feet, and the depth of two feet and an half or upwards, and making a post and rail fence, or a worm fence well staked and ridged, at least two feet high from the top of upper rail or rider to the ground, and within one foot from the edge of such

C H A P.

CXCVIII.

1770.

close set of the height aforesaid erected or planted within two feet from the edge of such ditch or drain, and all stone walls of the height of four feet and an half from the ground, or otherwise three feet high, with a fence thereon of rails well staked and ridged, at least one foot and an half above the said wall, shall be deemed, taken and held as and for sufficient and lawful fences, to all intents and purposes whatsoever.

Owners of horses, &c. trespassing on such inclosures to make good the damage.

SECT. 2. *And be it further enacted by the authority aforesaid,* That if any horses, kine, sheep, hogs, goats or any kind of cattle, shall break into any person's inclosure [the same being found to be of the height and sufficiency aforesaid by the persons appointed or hereafter to be appointed viewers, according to the directions of the said act] the owner of such horses, kine, sheep, hogs, goats, or any kind of cattle, shall be liable to make satisfaction for the damage done to the owner of such inclosure, in such sort, and to be levied in such manner, as in the aforesaid act is mentioned and ordered in other cases.

A division fence to be maintained by both parties.

SECT. 3. *And be it further enacted by the authority aforesaid,* That where any person or persons have already inclosed, or shall hereafter inclose any land, with a fence and ditch, or hedge and ditch, of the height and sufficiency aforesaid, and so declared and determined by the fence-viewers, and the same fence and ditch, or hedge and ditch, or any part thereof, are or may become a partition between them and any other person or persons having improved or inclosed lands adjoining the same, in such case the charge of such division fence and ditch, or hedge and ditch, so far as is improved or inclosed on both sides, shall be equally borne, repaired and maintained by both parties, and may be ascertained, recovered and paid in such manner and form as by the aforesaid act of Assembly is directed concerning other fences: (b) And that where any stone wall of the height and sufficiency aforesaid is, or shall be erected, on the line between any two persons having lands improved or inclosed.

(b) Said chap. 70. sect. 3.

CHAP.
CXCVIII.

1770.

inclosed adjoining thereto, by, or at, the expence of any one of them, the person or persons having so erected such wall may and shall apply to the fence-viewers of the hundred where the same is so erected, who are thereupon authorized, impowered and required, to fix and determine the charge or expence of making a good and sufficient fence of posts and rails of the length of such wall, and of maintaining and repairing the same annually thereafter, according to the best of their skill and judgment, of which they shall without delay give notice to the parties concerned, and the owner or possessor of the land improved or inclosed and adjoining such partition wall shall be liable to pay to the person or persons erecting the same the moiety of the sum which a fence of posts and rails as aforesaid would in such their opinion cost, to be levied in manner aforesaid; and that the moiety of the annual expence of supporting such a fence, according to the estimate made by them as aforesaid, shall be a charge upon the person or persons holding the lands adjoining such wall, during the continuance of the same, unless he, she or they shall pay to the person or persons who erected such wall, or to such person or persons who may hereafter purchase or inherit the same, a moiety of the value of the same, to be determined, by the viewers for the time being.

SECT. 4. *Provided always, and be it further enacted by the authority aforesaid,* That on all division-lines between owners or possessors of meadow, marsh or cripple, inclosed by a bank or dyke from the waters of any river, creek or run, where any owner or possessor shall think proper to improve his said meadow, marsh or cripple, and to have the same divided from the meadow, marsh or cripple adjoining, that the owner or possessor of the adjacent meadow, marsh or cripple [be the same improved or unimproved] shall, and he is hereby ordered, to join with the adjacent owner or possessor in cutting a drain or ditch of the width of eight feet, and the depth of two feet and an half or upwards, and making a post and rail fence, or a worm fence well staked and ridged, at least two feet high from the top of upper rail or rider to the ground, and within one foot from the edge of such

Division-drains
in marshes to be
cut and fences
to be made
thereon at the
joint expence of
the owners;

C H A P.
CXCVIII.

1770.

and to be deemed
lawful fences.

drain or ditch, so far as the same is a line between them, at a moiety of the expence and labour necessary in cutting and making the same; and it is further ordered and directed, That all such division-drains or ditches shall be well and sufficiently scoured and cleansed, at least once in every year, and the fence erected thereon in manner aforesaid repaired as often as necessary by the owners or possessors of the meadow, marsh and cripple adjoining both sides of the same, and shall be deemed, taken and held as and for lawful fences; and if any owner or possessor of the same shall refuse or neglect to unite in cutting such drain or ditch, and making such fence, or hereafter to scour and cleanse his proportionable part of the same drain or ditch, and to repair his share of the same fence to be made as aforesaid; it shall and may be lawful for the owner or possessor of the adjoining meadow, marsh or cripple, to cut such drain or ditch, and make such fence on the same line as far as it divides the property of the said owners or possessors, and afterwards once in every year to scour, cleanse and repair the same; and to exhibit an account of the expence and labour in doing thereof to the fence-viewers of the hundred for their approbation; and if the said fence-viewers shall think the works aforesaid sufficient for the intended purposes, according to the directions of this act, they shall forthwith proceed to ascertain the real cost and value of the same under their hands, and deliver the same to the aforesaid owner or possessor, who having first proved the same by oath or affirmation, is hereby authorized and empowered after ten days from the time of producing the same account to, and demanding payment from, the owner or possessor of such adjacent meadow, marsh or cripple, if the same shall not be discharged or satisfied, to recover the same with lawful interest and double costs, by a summons or warrant [as the case may require] from under the hand and seal of any Justice of the Peace, if the debt amounts to Five Pounds or under, otherwise by action of debt or general *indebitatus assumpsit* for so much money paid, laid out and expended for the use of such owner or possessor, in any County Court of Common Pleas with-
in

Manner of proceeding against
delinquent
owners.

CHAP.
CXCVIII.
1770.

in this government; before which justice, or any court and jury, the account aforesaid, allowed and proved as aforesaid, shall be sufficient evidence. And if any person possessing such lands, meadows, marsh and cripple, or either of them; be a guardian to any minor, he shall be allowed the sum or sums so expended or paid in his account with his ward; and if a lessee or renter, he may deduct the same out of his annual rent, unless otherwise stipulated by contract.

SECT. 5. *Provided also,* That this act shall not extend to, or be construed to repeal or alter any act of Assembly of this government for the imbanking and improving of any meadow, marsh or cripple, within the same, whereby any other provision is made for the regulation of division-drains, canals, or fences, any thing herein contained to the contrary notwithstanding.

This act not to extend to or alter any act making provision for regulating division-drains or fences.

SECT. 6. *Provided also,* That all and every other part of the said act for regulating fences within this government shall be and continue in full force, save only those parts which by this act are altered and supplied.

SECT. 7. *Provided also,* That this act shall continue in force for the space of three years, and from thence to the end of the next Session of Assembly and no longer. (c)

To be in force three years.

Passed March 24, 1770.

CHAP. CXCIX. a.

An ACT for the making divers copies of records duly authenticated under the Great Seal of the province of New-York, and other copies, public records; and for rendering real estates within this government more secure.

1770.

WHEREAS these counties, before the twenty-fourth day of August in the year of our Lord

Preamble.

One

(c) Made perpetual by chap. 215. a. 12 Geo. III.

C H A P.
CXCIX.
1770.

One Thousand Six Hundred and Eighty-two, were under the jurisdiction and government of the province of New-York, and the lands within the same were granted by the Governor and Commander in Chief of the said province, and many of the orders of the Governors, minutes of Council, warrants, surveys, patents and deeds for the same, were filed and recorded in the Secretary's Office there.

SECTION 2. *And whereas* The said original papers are entered in the books and records in the said office promiscuously with other original papers for and relating to lands, tenements and hereditaments, lying within that province, so that the said original papers and records cannot be obtained from thence.

SECT. 3. *And whereas* The Assembly of this government, considering the grievous hardships many of the inhabitants thereof have borne in going near two hundred miles for copies of such original papers and records, and that the fees for the same were not ascertained by law, have, at a considerable expence, procured as many of the orders of Governors, minutes of Council, survey's, patents, deeds, wills, and original papers, there filed and recorded, to be transcribed under the direction of Thomas M'Kean, esquire, one of the Members of said Assembly, as in any wise related to lands, tenements and hereditaments, within these counties, and could there be found by him, which, being compared with the originals, authenticated by the oaths of Goldsbrow Banyar, esq: deputy Secretary of the said province, and Rudolphus Ritzeza, Attorney at Law, taken before his excellency sir Henry Moore, Baronet, Captain General and Governor in Chief in and over the said province of New-York, and the territories depending thereon in America, Chancellor and Vice Admiral of the same, and under the Great Seal of the said province, wrote on two hundred and eighty-one sides or pages, and certified and signed by the said Thomas M'Kean, are bound up in one book in folio.

SECT. 4. *And whereas* It appeared to the said Assembly, that the records of divers transactions and proceedings in the several courts within these counties, and of warrants, surveys, patents, deeds and wills

wills, registered and recorded in the public offices before the year One Thousand Seven Hundred, relating to lands, tenements and hereditaments within the same, were, through time and for want of proper care, greatly defaced, and must very soon become unintelligible, to the great injury of the inhabitants thereof; they have also at a great expence caused the same to be transcribed; it is prayed that it may be enacted;

C H A P.
CXCI.
1770.

SECT. 5. *And be it enacted by the honorable John Penn, esq. with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent and Sussex, upon Delaware, and province of Pennsylvania, under the honorable Thomas Penn and Richard Penn, esquires, true and absolute proprietaries of the said government and province, by and with the advice and consent of the Representatives of the freemen of the said government in General Assembly met, and by the authority of the same,* That from and after the publication of this act the aforesaid book, certified and authenticated as aforesaid under the Great Seal of the province of New-York, shall be and is hereby declared and made, a public record of this government to all intents and purposes whatsoever, and that the same shall be lodged in the Office of the Master of the Rolls in the town of New-Castle, and there kept safe with the other records in the same. (a)

Copies of records at New-York under Great Seal, &c. established as originals. The book to be kept in the Rolls Office at New-Castle.

SECT. 6. *And be it further enacted by the authority aforesaid,* That the following books, remaining in the several offices in these counties, *to-wit,* one book in folio, in the Prothonotary's Office for the county of New-Castle, marked *A*, commencing the tenth day of October, One Thousand Six Hundred and Seventy-six, and ending the twenty-first day of November, One Thousand Six Hundred and Ninety-nine, and wrote on five hundred and thirty sides or pages, containing entries of orders, grants, surveys, actions and acknowledgments of deeds, &c. for lands in the said county of New-Castle; and one other book, in folio, remaining

Books containing copies of records in the several public offices of this government declared public records.

(a) See chap. 45. c. sect. 14. passed June 19, 1793. The place of deposit changed to Dover.

C H A P.
CXCIX.
1770.

ing in the office for recording of deeds in the said county of New-Castle, marked *A*, containing patents and deeds, beginning with a deed dated the thirtieth day of January, One Thousand Six Hundred and Seventy-three, and ending with a patent dated the twenty-third day of May, One Thousand Six Hundred and Eighty-four, and wrote on one hundred and eighty-five sides or pages; And one other small book, in folio, remaining in the Office of the Register for the probate of wills and granting letters of administration for the said county of New-Castle, marked *A*, beginning with a will dated the sixteenth day of February, One Thousand Six Hundred and Seventy-nine, and ending November the fourteenth, One Thousand Six Hundred and Eighty-seven, and wrote on one hundred and five sides or pages; [the said books respectively being certified under the hands of Evan Rice and Thomas M'Kean, esquires, a Committee of the said Assembly appointed for that service, to have been by them carefully compared with the original records, and to be true copies thereof:] And one other book, in folio, remaining in the office for recording of deeds in the county of Kent, marked *A*, beginning in June, One Thousand Six Hundred and Eighty, and ending the twelfth day of December, One Thousand Six Hundred and Ninety-four, wrote on fifty-seven sides or pages; And one other book, in folio, remaining in the Office of the Register for the probate of wills and granting letters of administration for the said county of Kent, marked *A*, and beginning with letters of administration, dated the twenty-first day of December, One Thousand Six Hundred and Eighty, and ending with such letters, dated the fifth day of May, One Thousand Seven Hundred and ten, and wrote on one hundred and seventy-three sides or pages; [the said books being transcribed under the direction of John Brinkle and Cæsar Rodney, esquires, another Committee of said Assembly appointed for that service, and certified by the said Cæsar Rodney, to have been carefully compared with the original records, and to be true copies thereof:] And one other book, in folio, remaining in the Office of the Prothonotary for the county of Suffex, marked,

A,

C H A P.
CXCI X.
1770.

A, and wrote on three hundred and thirty-five sides or pages, containing entries of grants, surveys, acknowledgments of deeds, &c. for lands in the said county of Suffex; and one other book, in folio, remaining in the office for recording of deeds in the said county of Suffex, marked B, and wrote on one hundred and eighty one sides or pages, [the said books being respectively certified under the hands of David Hall and Jacob Kollock, junior, esquires, another Committee of the said Assembly appointed for that service, to have been by them carefully compared with the original records, of which they are true copies;] from and after the publication of this act shall be, and are hereby declared and made public records to all intents and purposes whatsoever.

SECT. 7. *And be it further enacted by the authority aforesaid,* That all copies of the book authenticated as aforesaid under the Great Seal of the province of New-York, or any particular therein contained, attested under the hand and seal of office of the officer, who now hath, or hereafter may have, the custody thereof, may and shall be given in evidence, and considered as good and available in law, as any copies of the originals themselves might or could be; and that the said officer may and shall be allowed to take the like fees for the same; any law, custom or usage, to the contrary notwithstanding.

Copies from
book of records
brought from
New-York
Good evidence;

SECT. 8. *And be it further enacted by the authority aforesaid,* That all copies of the other books, herein enumerated and particularly described, or of any particular therein contained, attested under the hand and seal of the proper officer, who now hath, or hereafter may have the custody thereof [it being also by him certified that the original record of the same is lost, defaced or unintelligible] may and shall be given in evidence, and considered as good and available in law, as any copies of the same original records might or could be; and that the said officer may and shall be allowed to take the like fees for the same, any law, custom or usage to the contrary, in any wise, notwithstanding.

and also of the
other books, it
being certified
that the originals
are lost, &c.

Passed March 24, 1770.

CHAP.

C H A P.
CC.

C H A P. CC. a.

1770.

An ACT directing the manner of suing out attachments within this government.

Preamble.

WHEREAS an act of General Assembly of this government, passed in the twenty-fifth year of the reign of his late Majesty George the Second, intituled, *An act for regulating attachments within this government*, (a) hath been found by experience to be defective, and not to answer all the good ends and purposes thereby proposed ;

SECTION 2. *BE it therefore enacted by the honorable John Penn, esq. with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent and Sussex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same,* That no writ of attachment shall issue out of any court within this government for any sum to the amount of Forty Shillings and upwards against a residenter in the government, until two *non est inventus's* are successively returned by the Sheriff or Coroner, upon two writs taken out against him, and such proof made of the cause of action as the court shall think fit ; or until the person or persons requesting such writ of attachment, or some other credible person for him, her or them, shall upon oath or affirmation declare, that the said defendant is justly indebted to the plaintiff in the sum of Forty Shillings and upwards, and absconded from the place of his or her usual abode, or is gone out of the government with an intent to deceive and defraud his or her creditors, as it is believed, which oath or affirmation may be administered by the officer that grants the writ, or by any judge of the court out of which it may issue, and shall be filed in the court to which such attachment is returnable ; whereupon a writ of attachment shall be granted, directed to the Sheriff or Coroner, as the case may

Writ of attachment not to issue against a residenter, until, &c.

(a) Chap. 125. a. 25 Geo. II.

CHAP.
CC.
1770

may require, commanding him to attach the defendant or defendants by all his, her, or their goods and chattels, rights and credits, lands and tenements, in whose hands or possession soever the same may be found in his bailiwick or county, so that he, she or they, be and appear at the next Court of Common Pleas, to be held, &c. to answer, &c. and that he summon the garnishee or garnishees to appear at the court to which the said writ is returnable, then and there to declare what goods, chattels or effects, he, she or they, hath or have in his, her or their hands.

SECT. 3. *And be it further enacted by the authority* Attachments to be served by the Sheriff or Coroner;
afore said, That all writs of attachment to be issued as
 afore said, shall be served by the Sheriff, or other officer of the proper county, as the case may require, who shall attach all the lands and tenements, goods and chattels, rights and credits of the defendant that he can find, and take into his hands all the said goods and chattels, rights and credits, and cause the same to be appraised and inventoried, and be answerable for the same; but if he cannot come at the actual possession of such goods and chattels, rights and credits, he shall go to the person or persons in whose hands or possession the same are supposed to be lodged, and there declare, that he attacheth all the goods and chattels, rights and credits of the defendant in his, her or their hands, at the suit of the plaintiff, for the use of the creditors of the defendant, and that he doth summon the garnishee or garnishees to appear at the next court to which the said writ is returnable, to declare on oath or affirmation, what goods, chattels or effects he, she or they hath or have in his, her or their hands or possession, belonging to the defendant; from and after which declaration, the goods, chattels or effects, so attached, shall be delivered to the Sheriff and be by him secured for the use of the creditors, unless the garnishee or garnishees will give security for the same; but if the defendant or defendants in the attachment, or some sufficient person or persons for him, her or them, will, at any time before judgment be entered, put in special bail to the plaintiff's action and to all other actions that his, her or their may be dissolved upon putting in special bail.
 creditor

C H A P.
C C.

1770.

creditor or creditors shall enter against him, her or them, to the value of the lands and tenements, goods and chattels, rights and credits of the defendant so attached, and the costs of suit, then the garnishees and the lands, goods, chattels and effects of the defendant, shall thereupon be immediately discharged.

No second writ of attachment to issue against a residenter, unless, &c.

SECT. 4. *Provided always, and be it further enacted,* That no second writ of attachment shall issue against a residenter out of any court within this government, unless the first attachment shall happen not to be executed, or otherwise shall be dissolved by the court, or discontinued by the plaintiff, with the consent of the majority of the defendant's creditors, and that if the person or persons in whose name or names any such writ of attachment may be taken out against a residenter shall happen to die before a final end of the proceedings thereon, the same shall not abate by reason of such dying, but it shall and may be lawful for the court to order a suggestion of the death of such plaintiff or plaintiffs to be entered of record, and substitute the name of any other of the creditors, consenting thereto, in his or their stead.

Sheriff, &c. to make return into court, &c.

SECT. 5. *And be it further enacted,* That the Sheriff or Coroner, as the case may require, shall return into court a particular account, as well of all the lands and tenements, as of the goods, chattels and effects, rights and credits of the defendant by him attached, and the appraised value of the goods, chattels and effects, together with the name or names of such person or persons as he shall summon as garnishee or garnishees, and if any of the goods, chattels or effects, so attached, are of a perishable nature, or such as will create any expence in the keeping of them, the court, or in the vacation, three Justices of the Court of Common Pleas of the county, may and shall order the said officer, after reasonable public notice given, to sell them (b) and retain the money in his hands, or deliver the same into court there to remain, until judgment shall be obtained against the defendant in the attachment.

Perishable goods, &c. may be sold by order of court, &c.

SECT.

(b) A similar provision in case of goods, &c. taken in execution, in case of a perishable article.—See also in chap. 201, a. sect. 33.

C. H. A. P.
C. C.

1770.

Proceedings
against the gar-
nishee, &c.

SECT. 6. *And be it further enacted,* That if the garnishee or garnishees, summoned as aforesaid, shall fail or neglect to appear and declare upon oath or affirmation what goods, chattels or effects, rights or credits, of the defendant, he, she or they had in his, her or their hands, custody or possession, at the time of the attachment laid, or at any time after, an attachment or attachments of contempt shall issue out of the said court against such garnishee or garnishees to compel him, her or them to appear: And if the garnishee or garnishees do appear, and at the request of the plaintiff, or any other creditor, shall declare on his, her or their oath or affirmation, that he, she or they, had no money, goods, chattels, rights, credits or effects, of the defendant in his, her or their hands, custody or possession, at the time of the attachment laid, or at any time after, then such garnishee or garnishees shall be discharged, but if the plaintiff in the attachment, or any other creditor or creditors of the defendant, shall require the garnishee or garnishees to the plead that he, she or they, had no money, goods, chattels, rights, credits or effects, of the defendant in his, her or their hands, custody or possession, at the time of laying the attachment, or at any time after, then such garnishee or garnishees shall not be admitted to make oath or affirmation as aforesaid, but shall be obliged to plead such plea, and the plaintiff, or any other creditor or creditors as aforesaid, may take issue thereon and proceed to trial. And if it shall appear to the jury on the trial of such issue, that the garnishee or garnishees had any money, goods, chattels and effects, of the defendant in his, her or their hands, custody or possession, they shall find a verdict for the plaintiff, or such other creditor or creditors, and assess damages to the value of such money, goods, chattels and effects, with costs of suit; whereupon judgment shall be entered against the garnishee or garnishees, and the plaintiff, or such other creditor or creditors, shall at his, her or their election have an execution against such garnishee or garnishees, his, her or their bodies, goods and chattels, lands and tenements, as for his, her or their proper debt or debts; and the money levied thereon, shall be distributed among all

C H A P.
CC.

1770.

all the creditors of the defendant, in manner and form as is herein after directed.

Proceedings
where garnishee
is not an inha-
bitant or is about
to depart, &c.

SECT. 7. *And whereas* It frequently happens, that the persons or garnishees in whose hands the defendant's goods, chattels or effects are attached reside in another county or government, or are likely to depart this government, or remove out of the county where the attachment is served, and the plaintiff loses the benefit of his writ; for remedying which inconvenience, *Be it further enacted by the authority aforesaid,* That if any plaintiff in any writ of attachment prosecuted within this government as aforesaid, or any creditor claiming any benefit by or under such writ of attachment, shall, upon oath or affirmation declare, that the garnishee is not an inhabitant of this government, or of the county where the attachment is depending; or in case the garnishee is an inhabitant, that he or she verily believes such garnishee is about to depart this government, or the county where such attachment is depending; and that he or she does also believe that such garnishee hath some of the defendant's goods, chattels or effects in his or her hands or possession, or is indebted to the defendant in any sum of money, although the same shall happen at that time not to be due, then and in such case, it shall and may be lawful for the plaintiff or creditor to take a writ against the said garnishee or garnishees, and oblige him, her or them, to find sureties to appear at court, and make answer as by this act is required, and further to abide the judgment of the court.

Three freehold-
ers to be ap-
pointed to audit
accounts, and
adjust demands.

SECT. 8. *And be it further enacted by the authority aforesaid,* That the justices of the respective courts to which the said writ of attachment is returnable, as soon as the officer hath returned the same, shall and may and are hereby authorized, impowered and required, to nominate and appoint three honest and discreet freeholders of the county to audit the accounts of all the defendant's creditors [except such of them as have taken out warrants of attachment from any Justice of the Peace within this government for debts under Forty Shillings, and caused the goods and chattels of the defendant to be attached thereby, who are utterly barred and excluded hereby from claiming or receiving

C H A P.
CC.
1770.

receiving any benefit by virtue of this act] and to adjust and ascertain the demands, as well of the plaintiff or plaintiffs in the attachment, as of all the rest of such creditors of the defendant, and make a true and just report of their proceedings therein to the said justices at the court next after such appointment, who shall have power to control and correct any errors that shall appear to them in such report, either in the allowance of any debts or demands against the defendant, which by law ought not to be allowed, or in the calculations of the dividends to be made of the defendant's estate and effects amongst the creditors, or otherwise howsoever.

SECT. 9. *Provided always*, That the Auditors after such appointment shall give notice to the creditors of the times and places of their meeting, by affixing advertisements at the Court House, and other public places in the respective county, at least thirty days before such time; and all and every creditor and creditors neglecting or refusing to attend in person, or by attorney, according to such notice, and then and there to make proof of his, her or their debt or debts or other demands, in manner as by this act is directed, shall be debarred from receiving any share or dividend on the distribution herein after specified. And, for the avoiding of frauds, *Be it enacted*, That the Auditors so to be appointed shall and may examine upon oath or affirmation, or by any other ways or means as to them shall seem meet, all or any of the creditors of the defendant for the finding out and discovery of the truth and certainty of the several debts due and owing to such creditor or creditors, and if any person or persons, either by subornation, unlawful procurement, or means of any other, or by his own act, consent or agreement, shall wilfully and corruptly commit any manner of wilful perjury before such Auditors, the party or parties so offending, being duly convicted thereof, shall incur such forfeiture and receive and suffer such pains and punishments as are limited by the law and statutes of that part of Great Britain called England concerning perjury.

Auditors to give notice of their meeting;

and may examine on oath, &c.

SECT. 10. *And be it further enacted by the authority aforesaid*, That judgment shall be given for the plaintiff

Judgment to be given the third court, unless, &c.

H A P.
CC.

1770.

iff in the attachment the third court after issuing of the writ unless the defendant shall enter special bail as aforesaid; whereupon the justices of the court shall immediately make an order of court for the Sheriff, to proceed to the sale of the defendant's goods and chattels, lands and tenements, in such manner and for as is directed by the laws of this government in other cases, and to deliver the money arising upon such sales [all costs and charges being first deducted] into the hands of the Auditors aforesaid, who on the receipt thereof are hereby required and directed to calculate and settle the shares, proportions and dividends, due to the several creditors of the defendant [except as before excepted] and to distribute and pay to the said creditors, their executors, administrators or assigns respectively, their rateable or proportionable parts of the said money, according to the quantity of their respective debts, allowing to the person or persons, suing out such writ of attachment, and prosecuting the same to condemnation and distribution, a double share, proportion and dividend of the said money, so as the same do not exceed his, her or their debt.

Auditors to take
an oath, &c.

SECT. 11. *Provided always*, That every Auditor to be appointed as aforesaid, shall, before he enter upon the execution of his office, take an oath or affirmation in open court, or before any Justice of the Peace of the respective county, that he will well and faithfully discharge his duty in the said office according to the best of his skill and knowledge.

Sales made pur-
suant to this act
shall be good,
&c.

SECT. 12. *And be it further enacted*, That all sales of the goods and chattels, lands and tenements of the defendant in any attachment, to be made pursuant to this act, shall be good and available in law against the said defendant, his heirs, executors and assigns; and if any action shall be brought against any officer, or other person having any power or authority to do or perform any matter by virtue of this act, he may plead the general issue and give this act in evidence in his justification.

SECT. 13. *Provided always*, That the overplus of the defendant's or debtor's estate [if any be] remaining after all his, her or their debts, and the lawful costs

costs and charges are paid and deducted, be returned to such defendant or defendants, his, her or their executors, administrators or assigns.

CHAP.
CC.
1770.

SECT. 14. *And be it further enacted by the authority aforesaid,* That if the creditor or creditors of any such debtor or defendant be not fully satisfied, or otherwise contented, for his, her or their debts and duties by the ways and means before specified and declared, that then the said creditor or creditors, and every of them, shall and may have the same remedy for the recovery and levying of the residue of their said debts or duties against the debtor or debtors in the like manner and form as they should and might have had before the making of this act; and that the said creditor or creditors and every of them shall be only barred and excluded by virtue of this act of and for every such part and portion of the said debts and duties as shall be paid, satisfied, distributed or delivered unto him, her or them, by order of the Auditors aforesaid, and of no more portion or parcel thereof, any thing herein specified that may be taken or construed to the contrary notwithstanding.

Creditors not fully paid may have remedy for the residue of their debts, &c.

SECT. 15. *And be it further enacted by the authority aforesaid,* That all and every person or persons, who are or shall become surety or sureties for the debt or debts of any person or persons absenting themselves, or residing out of this government as aforesaid, either by recognizance, bond, bill, assumption or otherwise, and shall make proof thereof in manner aforesaid to the satisfaction of the Auditors to be appointed as aforesaid, shall come in for an equal or distributive share or shares of the estate of such person or persons with the rest of his, her or their creditors, in like manner as if the debts for which such surety or sureties are or shall be bound as aforesaid were originally due to them, except as before is excepted.

Sureties for persons absenting to have a share of the effects, &c.

SECT. 16. *And be it enacted by the authority aforesaid,* That no writ of attachment shall issue out of any court within this government, for any sum to the amount of Forty Shillings and upwards, against persons residing out of this government, until one *non est Inventus* is returned by the Sheriff or Coroner upon a writ taken out against such non-resident, and delivered

Writ of attachment not issue against a non-resident until, &c.

C H A P.

CC:

1770.

vered' to such Sheriff or Coroner at least ten days before the return thereof, and such proof made of the cause of action as the court shall think fit, or until the person or persons requesting the said writ of attachment, or some other credible person for him, her or them, shall upon oath or affirmation declare, that the said defendant is justly indebted to the plaintiff in the sum of Forty Shillings and upwards, and avoids coming into this government lest he or she be taken to answer his or her just debts, as it is believed, which oath or affirmation shall and may be taken and filed in the manner as is herein before directed in the case of residenters; whereupon a writ of attachment shall be granted to each and every such person requiring the same, directed to the Sheriff or Coroner, as the case may require, and shall be by him executed, and like proceedings had against the defendant and defendants therein, and the garnishees summoned thereon, as herein before is also directed, without the subsequent steps of appointing Auditors and making distribution; but that every plaintiff in an attachment against a non-resident shall have the benefit of his own discovery, and after judgment had, the court shall award execution to be made by *feri facias, capias ad satisfaciendum*, or otherwise, as on other judgments.

Creditors to enter into recognizance, &c.

SECT. 17. *Provided always, and be it further enacted by the authority aforesaid,* That before any creditor or creditors shall receive his, her or their dividend or proportionable share of the debtor's estate, he, she or they shall be obliged to enter into a recognizance to the debtor or debtors, with surety or sureties, before the Prothonotary of the court where such judgment shall be obtained, that if such debtor or debtors shall within a year and a day next following come into court either in person or by attorney, and disprove or avoid his, her or their debt, or debts, or any part thereof, that then he, she or they will make restitution of the said money by him, her or them received, or of so much thereof as shall be disproved; and for each recognizance Eighteen-pence shall be paid, and no more. Which said attachments, judgments or executions may be pleaded by, and shall be a sufficient

ent bar for, the garnishees in any action brought by the said defendants against them for the same.

CHAP.
CC.
1770.

SECT. 18. *And be it enacted by the authority aforesaid,* That it shall and may be lawful for any person or persons, obtaining or having obtained judgment in any Court of Record, to take out an attachment thereon, as well as any other execution, in which attachment there shall be an order of summons, and the same proceeded on as above directed, without the previous or subsequent steps of one or two *non ests*, oath or affirmation, appointing Auditors, making distribution, or finding security as above; and the said attachment, condemnation or judgment thereon, shall be pleadable in bar by the garnishee as aforesaid, in any action against him at the instance of the defendant. *Provided always,* That no attachment shall issue, by virtue of this act upon any judgment whatsoever in the nature of an execution until the first day of September next, any thing herein contained to the contrary notwithstanding.

Attachment may be taken out after judgment in any court instead of other execution;

after the first of September, 1770.

SECT. 19. *Provided always, and be it enacted by the authority aforesaid,* That no writ of attachment, or any entry under such writ now depending in any court within this government, shall be discontinued or abated for or by reason of this act, but the Justices of the respective courts within this government shall proceed to trial and judgment, and awarding execution thereon, as if this act had never been made, any thing herein contained to the contrary notwithstanding.

Writs of attachment now depending not to abate by reason of this act.

SECT. 20. *And whereas* It often happens, that persons, who are indebted in considerable sums of money to the inhabitants of this government, remove themselves and their effects out of the same before the days of payment of their said debts, and the creditors, without all relief, except in a course of equity, which is both tedious and expensive; for the remedying which evil, and the better to secure the inhabitants of this government against such dishonest practices, *Be it enacted by the authority aforesaid,* That if any person be indebted to an inhabitant of this government in any sum of money exceeding Forty Shillings, and the day of payment is not then come, and the credi-

Proceedings in case debtors are about to remove before day of payment.

C H A P.
CC.
1770.

vered to such Sheriff or Coroner at least ten days before the return thereof, and such proof made of the cause of action as the court shall think fit, or until the person or persons requesting the said writ of attachment, or some other credible person for him, her or them, shall upon oath or affirmation declare, that the said defendant is justly indebted to the plaintiff in the sum of Forty Shillings and upwards, and avoids coming into this government lest he or she be taken to answer his or her just debts, as it is believed, which oath or affirmation shall and may be taken and filed in the manner as is herein before directed in the case of residents; whereupon a writ of attachment shall be granted to each and every such person requiring the same, directed to the Sheriff or Coroner, as the case may require, and shall be by him executed, and like proceedings had against the defendant and defendants therein, and the garnishees summoned thereon, as herein before is also directed, without the subsequent steps of appointing Auditors and making distribution; but that every plaintiff in an attachment against a non-resident shall have the benefit of his own discovery, and after judgment had, the court shall award execution to be made by *feri facias*, *capias ad satisfaciendum*, or otherwise, as on other judgments.

SECT. 17. *Provided always, and be it further enacted by the authority aforesaid,* That before any creditor or creditors shall receive his, her or their dividend or proportionable share of the debtor's estate, he, she or they shall be obliged to enter into a recognizance to the debtor or debtors, with surety or sureties, before the Prothonotary of the court where such judgment shall be obtained, that if such debtor or debtors shall within a year and a day next following come into court either in person or by attorney, and disprove or avoid his, her or their debt, or debts, or any part thereof, that then he, she or they will make restitution of the said money by him, her or them received, or of so much thereof as shall be disproved; and for each recognizance Eighteen-pence shall be paid, and no more. Which said attachments, judgments or executions may be pleaded by, and shall be a suffi-

ent

Creditors to enter into recognizance, &c.

ent bar for, the garnishees in any action brought by the said defendants against them for the same.

C H A P.
C C.

1770.

SECT. 18. *And be it enacted by the authority aforesaid,* That it shall and may be lawful for any person or persons, obtaining or having obtained judgment in any Court of Record, to take out an attachment thereon, as well as any other execution, in which attachment there shall be an order of fummons, and the same proceeded on as above directed, without the previous or subsequent steps of one or two *non ests*, oath or affirmation, appointing Auditors, making distribution, or finding security as above; and the said attachment, condemnation or judgment thereon, shall be pleadable in bar by the garnishee as aforesaid, in any action against him at the instance of the defendant. *Provided always,* That no attachment shall issue, by virtue of this act upon any judgment whatsoever in the nature of an execution until the first day of September next, any thing herein contained to the contrary notwithstanding.

Attachment may be taken out after judgment in any court instead of other execution;

after the first of September, 1770.

SECT. 19. *Provided always, and be it enacted by the authority aforesaid,* That no writ of attachment, or any entry under such writ now depending in any court within this government, shall be discontinued or abated for or by reason of this act, but the Justices of the respective courts within this government shall proceed to trial and judgment, and awarding execution thereon, as if this act had never been made, any thing herein contained to the contrary notwithstanding.

Writs of attachment now depending not to abate by reason of this act.

SECT. 20. *And whereas* It often happens, that persons, who are indebted in considerable sums of money to the inhabitants of this government, remove themselves and their effects out of the same before the days of payment of their said debts, and the creditors, without all relief, except in a court of equity, which is both tedious and expensive; for the remedying which evil, and the better to secure the inhabitants of this government against such dishonest practices, *Be it enacted by the authority aforesaid,* That if any person be indebted to an inhabitant of this government in any sum of money exceeding Forty Shillings, and the day of payment is not then come, and the credi-

Proceedings in case debtors are about to remove before day of payment.

CHAP.

CC.

1770.

tor, or some credible person for him or her, will, on oath or affirmation, declare, that the defendant or debtor is indebted to him or her in a sum of money exceeding Forty Shillings, and that the day of payment is not then come, and that such deponent or affirmant doth verily believe upon good grounds that the debtor is about to depart this government, and to remove his or her effects, and that such debtor hath refused to give better security for the payment of the money when the same shall become due, it shall then be lawful for such creditor or creditors, to take out a writ against such debtor or debtors, and cause him, her or them to be arrested, and the said debtor or debtors, on his, her or their appearance in court, at the return of the writ, shall be obliged to give better security for such debt or debts, if the court shall see cause on the hearing the allegations of the parties so to order it; in which case the defendant shall pay the costs of such suit; but if the court shall be of opinion, that there was not a sufficient cause for demanding better security of the defendant or defendants, and for causing him, her or them to be arrested, then judgment shall be given against the plaintiff or plaintiffs, who shall be adjudged to pay to the defendant or defendants such costs and charges as the court shall think fit to allow.

Former acts repealed.

SECT. 21. *And be it further enacted by the authority aforesaid,* That all acts of Assembly of this government, heretofore made, so far as the same acts relate to attachments to the amount of Forty Shillings and upwards, shall be, and are hereby repealed, made null and void.

Passed March 24, 1770.

CHAP.

C H A P. CCI. a.

C H A P.
CCI.

1770.

An ACT for repealing so much of an act of Assembly of this government, intituled, "An act for killing of squirrels in the counties of Kent and Suffex," as relates to the county of Kent. Reciting that the same act so far as it related to the said county of Suffex expired on the first day of January, 1765.

C H A P. CCII. a.

1770.

An ACT, for amending an act, passed in the seventeenth year of the reign of his late Majesty George the Second, intituled, "An act for the better relief of the poor of the county of New-Castle," and for extending the same to the counties of Kent and Suffex; and for other purposes herein after mentioned. Repealed in chap. 225. a. sect. 31. passed March 29, 1775.

C H A P. CCIII. a.

1770.

An ACT for the appointment of rangers, and regulation of strays. Temporary and expired, but re-enacted with some alterations. See chap. 130. b. passed February 2, 1786.

C H A P. CCIV. a.

An ACT for regulating and establishing fees.

1770.

FOR preventing extortion and undue exaction of fees by the several officers and Attornies at law, and other persons within this government, and to the end

C H A P.
CCIV.
1770.

end that all fees may be reduced to a certainty, and established, We, the House of Representatives of the said government, do pray that it may be enacted,

SECTION I. *AND be it enacted by the honorable John Penn, esq. with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent and Sussex, upon Delaware, and province of Pennsylvania, under the honorable Thomas Penn and Richard Penn, esquires, true and absolute proprietors of the said counties and province, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same,* That the fees of the several officers, Attornies at law, and other persons within this government, shall be as is herein ascertained, limited and appointed, *viz.*

SECT. 2. To the Governor.

SECT. 3. Governor's Secretary.

SECT. 4. Proprietaries Secretary.

SECT. 5. Justices of the Supreme Court.

SECT. 6. Justices of the County Courts of Common Pleas.

SECT. 7. Justices of the Peace.

SECT. 8. Attorney General.

SECT. 9. Master of the Rolls and Recorder of Deeds.

SECT. 10. Sheriff.

SECT. 11. Clerk of the Supreme Court.

SECT. 12. Clerk of the Common Pleas.

SECT. 13. Registers in Chancery.

SECT. 14. Clerks of the Peace.

SECT. 15. Registers for the probate of wills.

SECT. 16. Justices for the trial of Negroes.

SECT. 17. Clerks of the Orphans Court.

SECT. 18. Attornies at Law.

SECT. 19. Notary and Tabellion Public.

SECT. 20. Clerk of the Assembly.

SECT. 21. Sergeant at Arms.

SECT. 22. Door-keeper.

SECT. 23. Naval-officer.

SECT. 24. Coroners.

SECT. 25. Cryers of the Courts,

SECT.

SECT. 26. Surveyors of land and chain carriers.

SECT. 27. Jurors. (a)

Provided always, That said juror attends the whole term, unless excused by the court, and answers to his name when called upon by order of court. *Provided also*, That if any juror has any matter of fact at issue depending for trial at the same court, the same shall be a sufficient cause of challenge to him, and he shall receive no reward for his attendance, nor be compellable to serve that term.

C H A P.
C O U R T.
1770.

Proviso relating to jurors.

SECT. 28. *And be it enacted by the authority aforesaid*, That if any Grand or Petit Juror, legally summoned to appear at any County Court, ten days before holding such court, shall neglect or refuse to give his attendance accordingly, he may and shall be fined by the said court any sum not exceeding Thirty Shillings; (b) and if any juror, so summoned to attend the ~~Supreme Court, or any Court of Oyer and Terminer and General Gaol Delivery~~ for any county of this government, shall neglect or refuse to give his attendance accordingly, such juror may and shall be fined by the said courts respectively any sum not exceeding Forty Shillings; which said fines shall be levied by the Sheriff by an order of the said court, and afterwards paid to the Treasurer of the county, for the use of the said county, where such juror inhabits, to be applied towards the public allowance to jurors.

Penalty on jurors for non-attendance.

SECT. 29. *And be it enacted by the authority aforesaid*, That the Auditors or Referees, appointed by the consent of parties under a rule of court to determine any matter in controversy, shall have and receive for the report or award by them made, Five Shillings each; and if the business necessarily requires more time than one day, Two Shillings and Six-pence each for every day more. (c)

Auditors appointed by the courts,

SECT.

(a) The said foregoing sections with others herein after noted were altered, supplied and repealed first in chap. 191 b. passed February 3, 1789, and after in chap. 27. c. passed June 15, 1793.—chap. 42. c. passed June 19, 1793.—chap. 58. c. passed February 7, 1794, and chap. 104. c. passed February 9, 1796, see also chap. 194. b. sects. 3, 4 passed February 3, 1789.

(b) See also chap. 48. a. 2 Geo. II.—chap. 94. a. 15 Geo. II, and chap. 8. c. sects. 6, 7, passed Feb. 2, 1793.

(c) See a similar provision in chap. 27. c. sect. 28. passed June 15, 1793.

C. H. A. P.
CCIV.

1770.

made liable, to a
fine for neglect
or refusal of the
duty;

SECT. 30. *And* if the said Auditors or Referees [who are not privileged from serving on juries] being notified by either of the parties of the time and place of meeting, shall neglect or refuse to appear, and proceed to hear and determine the matters in controversy, such Auditor or Referee, so neglecting or refusing, shall be fined by such court next after such neglect or refusal any sum not exceeding Thirty Shillings, unless excused by the said court; which fines shall be levied, paid and applied towards the public allowance to jurors as aforesaid.

to be sworn or
affirmed before
signing their
report.

SECT. 31. *Provided always, and be it enacted by the authority aforesaid,* That each and every Auditor, before signing an award or report, shall be duly sworn or affirmed, by some judge of the court, faithfully and impartially, to determine the matters in controversy according to the best of his skill and judgment; which oath or affirmation shall be certified by such judge on the said rule of court, *ex officio.* (d)

Appraisers.

SECT. 32. *And* that the two freeholders appointed by the Sheriffs or Registers for the probate of wills and granting letters of administration within the several counties of this government, for any goods or chattels, not exceeding Fifty Pounds, by them appraised or valued, shall have and receive Four-pence in the pound, and for all other sums above Fifty, and not exceeding One Hundred Pounds, Two-pence in the pound, and for all other sums One Penny in the pound, and no more. (e)

SECT. 33. Bailiffs fees.

SECT. 34. Fees to witnesses.—Altered and supplied in chap. 27. c. sect. 28. Anno 1793.—and in chap. 104. c. passed Feb. 9, 1796.

No sale of
goods, &c. ta-
ken in execution
until thirty
days thereafter,

SECT. 35. *And be it further enacted by the authority aforesaid,* That no goods or chattels, taken in execution by any Sheriff or Coroner, shall be sold or disposed of, until thirty days after they are appraised, as aforesaid, to the end the party or parties concerned may,

(d) In chap. 89. b. passed Feb. 5, 1782. any one Justice of the Peace or Burgefs of Wilmington is so authorised and required.

(e) Altered and supplied as to Appraisers appointed by the said Registers in said chap. 27. c. sect. 31. but no provision made for those appointed by Sheriffs.

may, if they think fit, relieve the same, by payment of the money due, or the amount of the sum at which they were appraised, unless the said goods or chattels are of a perishable nature, or such as will create a charge in the keeping; in which cases, the plaintiff, or plaintiffs, or the said Sheriff or Coroner, may apply to the court, or in the vacation, to any three justices of the said court, for an order to sell the same after reasonable public notice given, and if obtained, to proceed accordingly.

CHAP.

CCIV.

1770.

unless of a perishable nature,

SECT. 36. Directs seals to be procured, &c. by every public officer, and established the same as the seals of their said offices respectively.

SECT. 37. Provides that successors in office reimburse their predecessors for said seals on their delivery. Both of which were altered and supplied in chap. 131. b. passed Feb. 2, 1786; and further in chap. 5. c. sects. 12, 13. passed Feb. 2, 1793.

SECT. 38. For the punishing of extortion by any of the officers or persons before mentioned in taking more, greater or other fees than there limited and appointed. First altered and supplied in chap. 191. b. sect. 27. passed Feb. 3, 1789. Again in chap. 27. c. sect. 35. passed June 15, 1793. See also chap. 58. c. sect. 4. passed Feb. 7, 1794.

SECT. 39. *And be it further enacted by the authority aforesaid,* That an act of Assembly, intituled, *An act for appraisement of goods taken in execution, (f)* and one other act, intituled, *An act for regulating and establishing fees; (g)* and all other laws or acts of Assembly heretofore made in this government for regulating and establishing fees, *(h)* and every matter, clause and thing therein contained, so far as they relate to any officer or other person for any service or services herein mentioned, shall be, and are hereby declared to be repealed, made null and void; any thing in the said laws, acts, or any of them to the contrary, notwithstanding.

Former laws repealed.

SECT.

(f) Chap. 47. a.

(g) Chap. 103. a.

(h) Chaps. 115. a. 135. a. 151. a.

C H A P.
CCIV.

1770.

Penalties for a
breach of this
act, to be sued
for in six
months.Commencement
of this act.

SECT. 40. *Provided also*, That all actions, prosecutions and suits, for the forfeitures and penalties incurred by virtue of this act, shall be brought and commenced within six months time after the offence or offences committed, and not afterwards.

SECT. 41. *Provided also, and be it further enacted by the authority aforesaid*, That this act shall commence, and be of full force and effect, from and after the first day of August next, and not before.

Passed March 24, 1770.

C H A P. CCV. a.

1770.

An ACT obliging persons returned and appointed for Constables, to serve accordingly, and for ascertaining their fees.

SECTION 1. **B**E it enacted by the honorable John Penn esq. with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent and Sussex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same, That from and after the publication of this act, all Constables of hundreds in the several counties of this government shall and are hereby commanded to return to the Justices of the Quarter Sessions, to be holden in May annually for each respective county, (a) three good and sufficient freeholders out of their respective districts, that the justices aforesaid may choose and nominate one out of every such district as aforesaid, to serve in the said office for the ensuing

Constables to re-
turn three free-
holders to Quar-
ter Sessions, who
are to appoint
one,

(a) In chap. 61. c. sect. 6, passed February 7, 1794. "It is provided that all appointments to be made by the General Sessions or Common Pleas that usually were made by the said courts in the months of February and May shall be made at the Spring Term of the said courts, and that all appointments made as aforesaid, by said courts in the months of August and November shall be made at the Fall Term of the said courts."

ensuing year; (b) and the Constables so nominated and appointed shall, before entering on their office, take the oath or affirmation, for faithfully executing the office of Constable, before some Justice of the Peace of the county.

C H A P.
CCV.
1770.

SECT. 2. *And be it enacted by the authority aforesaid,* That the Clerk of the Peace in every county shall, within three days after such appointment, signify and deliver the same under his hand to the Sheriff of the said county under the penalty of Five Pounds: And the said Sheriff shall, within ten days after such delivery, deliver the same to each person so appointed, or leave the same at his usual place of residence, under the like penalty of Five Pounds: And every person so appointed, who shall not, within seven days after such notice, take the oath or affirmation as aforesaid, or provide some other sufficient person, to be approved of by the two next Justices of the Peace in the county, to supply his place, and for whose conduct he shall be accountable, shall forfeit and pay the sum of Five Pounds.

Clerk of the Peace to certify the appointment and deliver it to Sheriff, who is to serve the party therewith.

SECT. 3. *And whereas,* from the increase of inhabitants in many of the hundreds within this government, a greater number of Constables is become necessary in those hundreds than have heretofore been appointed, *Be it therefore enacted by the authority aforesaid,* That the Justices of the Peace, in the several Courts of Quarter Sessions within this government, are hereby authorized and impowered, in the May Session in some one year hereafter, to nominate and appoint one other of the three freeholders, to be returned by the Constables for the time being as aforesaid, to be a Constable for such hundred where they shall adjudge an additional one necessary; and the person so appointed shall, within seven days after notice of such appointment, under the hand of the Clerk of the Peace, to be served upon him by the Sheriff as aforesaid, qualify himself as before directed,

Quarter Sessions authorized to appoint in some one Year an additional Constable when necessary.

VOL. I.

3 N

under

(b) See chap. 190. b. sects. 5, 6, 7. passed February 3, 1789, and chap. 219. b. passed January 29, 1791, specially limiting the number of Constables for each hundred in the respective counties of the state, and the time and manner of appointment.

C H A P:
CCV.
1770.

under the penalty of Five Pounds, and shall at the next succeeding May Sessions return to the justices three good and sufficient freeholders out of his district, that the said justices may nominate one to serve in his stead, to the end that an annual succession of such additional Constables may be kept up hereafter. (c)

In case of death removal, &c. three next Justices to appoint.

SECT. 4. *And be it further enacted by the authority aforesaid,* That when any person appointed a Constable aforesaid shall die or remove out of the county, either before or after his qualification, or shall neglect or refuse to qualify on his being appointed, then and in that case it shall and may be lawful for any three of the next Justices of the Peace in the county where such death, removal, refusal or neglect happens, and they are by this act required forthwith to appoint another sufficient freeholder to be Constable in the hundred in his place; upon the certificate of which justices, the person so appointed, on the delivering the same to him, shall, within seven days as before limited, qualify himself, or provide a deputy as before directed, under the like penalty of Five Pounds.

Cryers of courts, Constables as heretofore.

SECT. 5. *Provided always,* That the Justices of the Quarter Sessions for each respective county may, as heretofore, appoint the Cryers of the said courts Constables, any thing herein before contained to the contrary in anywise notwithstanding.

Persons exempted unless others not to be found.

SECT. 6. *Provided also,* That no person above the age of sixty years, or who hath heretofore served in the said office within any of the counties of this government, or provided an approved person to serve in his stead, or paid the sum of Five Pounds in lieu of his service, shall be obliged to serve in the same office without his own consent, unless other sufficient freeholders cannot be found within the said hundred or district; and that no person being under the age of twenty-one years shall be capable of serving in that office. *And* if any Constable shall refuse to execute any legal precept, directed to him by any Justice of the Peace, or be guilty of any breach of duty

Penalty for breach of duty.

or

(c) See the preceding note (b)

or neglect in his said office, (d) and shall be convicted thereof in manner herein after directed, he shall forfeit any sum not exceeding Five Pounds for such offence.

C H A P.
CCV.
1770.

SECT. 7. *And be it enacted by the authority aforesaid,* That the present Constables, and those here-in after appointed, shall continue in their said office and do all the duties thereof, until the Constables returned and nominated to serve in their stead respectively shall be qualified, any thing herein contained to the contrary notwithstanding.

Continuance in office.

SECT. 8. *And be it enacted by the authority aforesaid,* That all the fines imposed by this act, together with the costs, shall be recovered by distress and sale of the offender's goods and chattels respectively, by warrant under the hands and seals of any three Justices of the Peace before whom the said offender or offenders shall be convicted, and be paid to the Treasurer of the county where the offence shall be committed, for the use of the said county.

Fines how recoverable

SECT. 9. *And be it further enacted by the authority aforesaid,* That no Negro or Mulatto shall be employed, by any Constable or other Officer within this government, to whip or inflict any corporal punishment on any white person or persons in any case whatsoever.

No Negro or Mulatto to be employed as a Whipper.

SECT. 10. *And be it further enacted by the authority aforesaid,* That the fees of the several Constables within this government shall be as is herein after ascertained, limited and appointed, viz.

FOR { Serving every warrant, Nine-pence.
travelling charges, One Penny per mile to and from the place of serving a warrant to the nearest justice.
serving a summons, from the place of service to the place where the same is returnable, Nine pence, and mileage.
summoning every witness, Nine-pence, and mileage, as above.

Serving

(d) See chap. 259. b. sect. 13. passed February 4. 1792. wherein it is provided, that Constables shall perform the duties theretofore assigned to Overseers of the Poor.

C H A P.
CCV.
1779.

under the penalty of Five Pounds, and shall at the next succeeding May Sessions return to the justices three good and sufficient freeholders out of his district, that the said justices may nominate one to serve in his stead, to the end that an annual succession of such additional Constables may be kept up hereafter. (c)

In case of death removal, &c. three next Justices to appoint.

SECT. 4. *And be it further enacted by the authority aforesaid,* That when any person appointed a Constable aforesaid shall die or remove out of the county, either before or after his qualification, or shall neglect or refuse to qualify on his being appointed, then and in that case it shall and may be lawful for any three of the next Justices of the Peace in the county where such death, removal, refusal or neglect happens, and they are by this act required forthwith to appoint another sufficient freeholder to be Constable in the hundred in his place; upon the certificate of which justices, the person so appointed, on the delivering the same to him, shall, within seven days as before limited, qualify himself, or provide a deputy as before directed, under the like penalty of Five Pounds.

Cryers of courts, Constables as heretofore.

SECT. 5. *Provided always,* That the Justices of the Quarter Sessions for each respective county may, as heretofore, appoint the Cryers of the said courts Constables, any thing herein before contained to the contrary in anywise notwithstanding.

Persons exempted unless others not to be found.

SECT. 6. *Provided also,* That no person above the age of sixty years, or who hath heretofore served in the said office within any of the counties of this government, or provided an approved person to serve in his stead, or paid the sum of Five Pounds in lieu of his service, shall be obliged to serve in the same office without his own consent, unless other sufficient freeholders cannot be found within the said hundred or district; and that no person being under the age of twenty-one years shall be capable of serving in that office. *And if any Constable shall refuse to execute any legal precept, directed to him by any Justice of the Peace, or be guilty of any breach of duty*

Penalty for breach of duty.

or

(c) See the preceding note (b)

or neglect in his said office, (d) and shall be convicted thereof in manner herein after directed, he shall forfeit any sum not exceeding Five Pounds for such offence.

C H A P.
CCV.
1770.

SECT. 7. *And be it enacted by the authority aforesaid,* That the present Constables, and those here-in after appointed, shall continue in their said office and do all the duties thereof, until the Constables returned and nominated to serve in their stead respectively shall be qualified, any thing herein contained to the contrary notwithstanding.

Continuance in office.

SECT. 8. *And be it enacted by the authority aforesaid,* That all the fines imposed by this act, together with the costs, shall be recovered by distress and sale of the offender's goods and chattels respectively, by warrant under the hands and seals of any three Justices of the Peace before whom the said offender or offenders shall be convicted, and be paid to the Treasurer of the county where the offence shall be committed, for the use of the said county.

Fines how recoverable

SECT. 9. *And be it further enacted by the authority aforesaid,* That no Negro or Mulatto shall be employed, by any Constable or other Officer within this government, to whip or inflict any corporal punishment on any white person or persons in any case whatsoever.

No Negro or Mulatto to be employed as a Whipper.

SECT. 10. *And be it further enacted by the authority aforesaid,* That the fees of the several Constables within this government shall be as is herein after ascertained, limited and appointed, viz.

FOR { Serving every warrant, Nine-pence.
travelling charges, One Penny per mile to and from the place of serving a warrant to the nearest justice.
serving a summons, from the place of service to the place where the same is returnable, Nine pence, and mileage.
summoning every witness, Nine-pence, and mileage, as above.

Serving

(d) See chap. 259. b. sect. 13. passed February 4. 1792. wherein it is provided, that Constables shall perform the duties theretofore assigned to Overseers of the Poor.

C H A P.
CCV.
1770.

under the penalty of Five Pounds, and shall at the next succeeding May Sessions return to the justices three good and sufficient freeholders out of his district, that the said justices may nominate one to serve in his stead, to the end that an annual succession of such additional Constables may be kept up hereafter. (c)

In case of death removal, &c. three next Justices to appoint.

SECT. 4. *And be it further enacted by the authority aforesaid,* That when any person appointed a Constable aforesaid shall die or remove out of the county, either before or after his qualification, or shall neglect or refuse to qualify on his being appointed, then and in that case it shall and may be lawful for any three of the next Justices of the Peace in the county where such death, removal, refusal or neglect happens, and they are by this act required forthwith to appoint another sufficient freeholder to be Constable in the hundred in his place; upon the certificate of which justices, the person so appointed, on the delivering the same to him, shall, within seven days as before limited, qualify himself, or provide a deputy as before directed, under the like penalty of Five Pounds.

Cryers of courts, Constables as heretofore.

SECT. 5. *Provided always,* That the Justices of the Quarter Sessions for each respective county may, as heretofore, appoint the Cryers of the said courts Constables, any thing herein before contained to the contrary in anywise notwithstanding.

Persons exempted unless others not to be found.

SECT. 6. *Provided also,* That no person above the age of sixty years, or who hath heretofore served in the said office within any of the counties of this government, or provided an approved person to serve in his stead, or paid the sum of Five Pounds in lieu of his service, shall be obliged to serve in the same office without his own consent, unless other sufficient freeholders cannot be found within the said hundred or district; and that no person being under the age of twenty-one years shall be capable of serving in that office. *And* if any Constable shall refuse to execute any legal precept, directed to him by any Justice of the Peace, or be guilty of any breach of duty

Penalty for breach of duty.

or

(c) See the preceding note (b)

or neglect in his said office, (d) and shall be convicted thereof in manner herein after directed, he shall forfeit any sum not exceeding Five Pounds for such offence.

CHAP.
CCV.
1770.

SECT. 7. *And be it enacted by the authority aforesaid,* That the present Constables, and those here-in after appointed, shall continue in their said office and do all the duties thereof, until the Con-stables returned and nominated to serve in their stead respectively shall be qualified, any thing herein contained to the contrary notwithstanding.

Continuance in office.

SECT. 8. *And be it enacted by the authority aforesaid,* That all the fines imposed by this act, together with the costs, shall be recovered by distress and sale of the offender's goods and chattels respectively, by war-rant under the hands and seals of any three Justices of the Peace before whom the said offender or of-fenders shall be convicted, and be paid to the Trea-surer of the county where the offence shall be com-mitted, for the use of the said county.

Fines how re-
coverable

SECT. 9. *And be it further enacted by the authority aforesaid,* That no Negro or Mulatto shall be em-ployed, by any Constable or other Officer within this government, to whip or inflict any corporal punish-ment on any white person or persons in any case whatsoever.

No Negro or
Mulatto to be
employed as a
Whipper.

SECT. 10. *And be it further enacted by the authority aforesaid,* That the fees of the several Constables with-in this government shall be as is herein after ascer-tained, limited and appointed, viz.

FOR

- Serving every warrant, Nine-pence.
- travelling charges, One Penny per mile to and from the place of serving a warrant to the near-est justice.
- serving a summons, from the place of service to the place where the same is returnable, Nine pence, and mileage.
- summoning every witness, Nine-pence, and mileage, as above.

Serving

(d) See chap. 259. b. sect. 13. passed February 4. 1792. wherein it is provided, that Constables shall perform the duties theretofore assigned to Overseers of the Poor.

C H A P.
CCV.
1770.

Sale of goods
within what
time.

FOR { Serving every execution against the body, One Shilling, and mileage.
every execution against goods and chattels, one Shilling and Six-pence, and mileage.
advertising, selling the same, and making return, One Shilling and Six-pence more. (e)

Provided always, That no goods or chattels shall be sold by virtue of any execution for a debt under Forty Shillings in less than six days after service of the same.

FOR { Serving every warrant of attachment in the hands of one garnishee, One Shilling, and mileage.
every other garnishee, Six-pence, besides mileage.
whipping a criminal by order of the Justices, Four Shillings and Six-pence.
putting any person in the stocks, and attending, One Shilling.
conveying any person to the County Goal by mittimus, One Shilling, and mileage.— (e)

Repeal of former acts.

SECT. 11. *And be it further enacted by the authority aforesaid,* That the several acts of Assembly of this government, obliging persons returned and appointed for Constables to serve accordingly, shall be and are hereby repealed.

Passed November 3, 1770.

CHAP.

(e) The fees here prescribed are altered and supplied in chap. 27. c. sect. 33. passed June 15, 1793, and in sect 34, so much of this act as relates to fees repealed. See also chap. 58. c. passed Feb. 7, 1794. A further provision of fees.

C H A P . CCVI. a.

C H A P .
CCVI.

1772.

An ACT for the better regulating the wharffs, public streets, buildings, party walls and partition fences, in the Borough of Wilmington, in the county of New-Castle, upon Delaware, and for raising money on the inhabitants of the said Borough for the public use and benefit thereof.

WHEREAS the honourable George Thomas, Preamble.
esq. Lieutenant Governor of the counties of New-Castle, Kent and Suffex, upon Delaware, and province of Pennsylvania, by Letters Patent, under the Great Seal of the said government, bearing date the sixteenth day of November, in the year of our Lord One Thousand Seven Hundred and Thirty-nine, did erect the Town of Wilmington aforesaid into a Borough, with privilege to the freeholders and inhabitants thereof annually to meet at the time and place in the said letters patent mentioned, and to elect by ballot two able men, inhabitants of the said borough, to be Burgeses, one to be High Constable, one to be Town Clerk, and six to be Assistants, for assisting the Burgeses in the management of the affairs of the said borough, and for keeping of the peace in the said borough, and did thereby grant and declare that the Burgeses first chosen or having the majority of votes should be called Chief Burgeses of the said borough, and that the Burgeses so from time to time to be chosen, taking the qualifications in the said letters patent directed and enjoined, were thereby authorized and empowered to be conservators of the peace within the said borough, with power by themselves, and upon their own view, or in other lawful manner, to remove all nuisances and incroachments on the streets and highways within the borough aforesaid, as they should see occasion, and also to arrest, imprison and punish rioters and other breakers of the peace, and to bind them, and all other offenders and persons of evil fame, to the court of General Quarter Sessions of the Peace of the said county of New-Castle, there to be proceeded against

as

CHAP.
CCVI.
1772.

as occasion might or should require, and to do and perform all and singular other matters and things within the said borough, as fully and effectually to all intents and purposes, as Justices of the Peace in their respective counties could or might lawfully do.

SECT. 2. *And whereas* divers inconveniencies, irregularities and controversies, have heretofore arisen and still subsist in relation to the situation and direction of the public streets, and about party walls, and laying the foundation of buildings in the aforesaid borough of Wilmington; for the remedying whereof for the future, and for the better regulation, uniformity and gracefulness of the streets and buildings in the same,

SECT. 3: *Be it enacted by the honorable Richard Penn, esq. (a) with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent and Sussex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same,* That the extent of the said Borough

Boundaries of
the Borough.

of Wilmington shall be comprized within the following boundaries, *to wit*, beginning at the mouth of Brandywine creek, where it emptieth itself into Christiana river; thence extending by the same creek upwards by the several courses thereof, to the old Fording place, across the said creek; thence along the old King's road leading from the said fording place on the several courses thereof to a corner stone opposite to Jonas Peterfon's house; thence on a parallel line with the streets of the said borough extending southward and northward until the same line comes to the road leading from the said borough towards the house of William Armstrong, esq. thence south twenty-six degrees east about one hundred and eighty-five perches to a white-oak tree standing on a point of fast land on the north-east side of the fast land drain in the marsh of Andrew Crips and wife; thence
continuing

(a) Note. Richard Penn, esq. began his government in October 1771, and continued until 1773.

continuing the same course to the channel of Christiana river; thence extending by the same downwards on the several courses thereof to the place of beginning; and that all the streets and squares of said borough shall be and remain as they are now laid out and regulated, agreeable to a map or plan of said borough made from an actual re-survey thereof, and signed, by order of the Burgeſſes and Aſſiſtants of ſaid borough, by John Stapler, eſq. Griffith Minſhall and William Poole, gentlemen, which is hereto annexed; notwithstanding that the original conveyances for lots on each ſide of High-ſtreet, to the eaſtward of Market-ſtreet, and on the eaſt ſide of Market-ſtreet to the ſouthward of Third-ſtreet, generally include one perch of ſaid High and Market-ſtreets; and that the original conveyances for lots on each ſide of moſt of the other ſtreets in ſaid borough generally include eight feet of ſaid ſtreets reſpectively, which heretofore were laid off to widen them, and commonly paſſed under the name of pavements; the ſituations and directions of all which ſtreets, as repreſented in the aforeſaid map or plan, are aſcertained by red cedar poſts and ſtones fixed in the earth in the center or middle of ſaid ſtreets reſpectively, where they interſect one another.

C H A P.
CCVI.

1772.

The extent, ſituation and direction of the ſtreets, &c.

SECT. 4. *And be it further enacted by the authority aforeſaid,* That the ſeveral poſts and mark-ſtones, now ſet and fixed in the earth in the middle of the ſtreets as aforeſaid, as well as all ſuch other poſts and mark-ſtones as ſhall from time to time hereafter be ſo ſet and fixed in the earth by the Borough Surveyors or Regulators, ſhall, in all caſes and in all courts of law within this government, be deemed, taken, eſtabliſhed and allowed as land-marks.

Land-marks
eſtabliſhed :

SECT. 5. *And if any perſon or perſons ſhall, at any time hereafter, wilfully pluck up or remove any of the ſaid poſts or mark-ſtones, and ſhall be thereof convicted in the Court of Quarter Sessions of the county of New-Caſtle, he or they ſhall ſeverally forfeit the ſum of Twenty Pounds, beſides the coſt of proſecution, to the uſe of the Burgeſſes and inhabitants of the ſaid borough, to be employed in and towards the repairing the ſtreets of the ſaid borough; and it ſhall*

Penalty on removing them,

and

C H A P.
CCVI.
1772.

and may be lawful for the said Burgeſſes to reward the informer, out of the ſaid penalty to be incurred, according to their diſcretion, not exceeding a moiety thereof.

Burgeſſes and
Aſſiſtants to ap-
point regula-
tors.

Their authority
and duty.

How party walls
are to be erected,
and the firſt
builder reim-
burſed.

Penalty on
building without
or contrary to
the directions of
the Regulators.

SECT. 6. *And*, in order that the ſaid ſtreets, and ſuch other ſtreets, lanes and alleys as ſhall be hereafter laid out, may be duly regulated, made, opened, amended and repaired, and irregularities and controverſies in relation to party-walls and laying the foundation of buildings in the ſaid borough may be prevented, *Be it enacted by the authority aforeſaid*, That the Burgeſſes and Aſſiſtants of the ſaid borough ſhall and may from time to time elect, nominate and appoint, three or more diſcreet and ſkilful perſons to be Surveyors or Regulators, who, upon application made to them, ſhall have full power and authority, and they are hereby required and directed, to regulate and lay out the proper gutters, channels and conduits, for carrying off the waters in the ſaid borough; and to enter upon the lands of any perſon or perſons in order to ſet out the foundation and regulate the walls to be built between party and party within the ſaid borough, as to the breadth or thickneſs thereof; which foundation ſhall be laid equally upon the lands of the perſons between whom ſuch party wall is to be made, and the firſt builder ſhall be reimbursed one moiety of the charge of ſuch party wall, or for ſo much thereof as the next builder ſhall have occaſion to make uſe of, before ſuch next builder ſhall anyways uſe or break into the ſaid wall; and that the charge or value thereof ſhall be ſet by the ſaid Regulators, or any two of them.

SECT. 7. *And be it further enacted by the authority aforeſaid*, That if any perſon or perſons ſhall begin, or lay, the foundation of any party wall, or other building as aforeſaid, before the ſame be viewed and directed by the ſaid Regulators, or ſome two of them, or ſhall build contrary to ſuch directions, every ſuch perſon, as well employer as maſter-builder, ſhall forfeit and pay the ſum of Twenty Pounds each, beſides the coſts of proſecution, to be recovered in the name of the Burgeſſes and inhabitants of Wilmington, by bill, plaint or information, in any Court of Record within

within this government; wherein no cfoign, protection or wager of law shall be allowed, nor any more than one imparlance, and all such forfeitures shall be paid to the Treasurer of the said borough for the time being, one moiety thereof for the use of the said borough, and the other moiety for the prosecutor.

C. H. A. P.
C. VI.
1772.

SECT. 8. *Provided always, and be it further enacted by the authority aforesaid,* That if either of the parties, between whom any foundation or party wall is to be made, shall think himself aggrieved by the order or direction of the said Regulators, he, she or they, may appeal to the Burgesses and Assistants of the said borough at their next meeting, who, upon deliberate hearing of both sides, shall finally adjust and settle the same, without further or other appeal; and the costs thereof shall be paid as the Burgesses and Assistants shall direct and order.

Persons aggrieved by such directions may appeal to the Burgesses and Assistants,

SECT. 9. *And be it further enacted by the authority aforesaid,* That the Regulators or Surveyors, for their pains and trouble in and about the premises, shall be paid by the party or parties concerned in such foundation, or erecting such party wall or other building, the sum of Three Shillings each, and no more.

Wages of the Regulators.

SECT. 10. *And be it further enacted by the authority aforesaid,* That the Surveyors or Regulators, or any two of them, shall have full power to regulate all partition fences within the said borough; and where the adjoining owners or possessors do improve or inclose their lots, such fences shall be made in the manner generally used, and kept in good repair at the equal costs of the parties; so that the price for making the same exceed not Four Pounds for every hundred feet in length, and so in proportion for a greater or lesser quantity, unless the owners or possessors, between whom such fence shall be erected, do agree otherwise.

Partition fences to be made and repaired at the equal costs of the adjoining owners.

SECT. 11. *And be it further enacted by the authority aforesaid,* That if either party, between whom such partition fence is or shall be made, shall neglect or refuse to pay his, her or their share or proportion of the expence of such partition fence, and of keeping the same afterwards in repair, that then the party, at whose cost the same was made or so repaired, may recover the same before either of the Burgesses, as

which are to be recovered before either of the Burgeses,

CHAP.
CCVI.

1772.

The manner of
extending and
laying out
streets;

debts under Forty Shillings or Five Pounds are recovered before other Justices of the Peace by the laws of this government.

SECT. 12. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful to and for the freeholders, and persons having a vote at the election, within the said borough, from time to time, and as often as occasion shall or may require, further to extend those streets laid down in the aforesaid plan; and likewise to lay out all other necessary new street or streets within the said borough; *Provided always,* That no streets shall be hereafter extended, or any new streets laid out, but by virtue of; or pursuant to, an ordinance of the said borough for that purpose made, by the general consent of the freeholders and persons aforesaid in a General Town's-Meeting assembled.

and how the
ground over
which they are
laid is to be va-
lued and the
owner thereof
paid.

SECT. 13. *Provided also, and it is hereby enacted,* That before any of the said streets so extended or laid out shall be opened, the owner or owners of the ground over which the same shall be laid shall be paid or tendered the value of the said ground, to be ascertained by three impartial freeholders of the county of New-Castle, not inhabitants of the said borough, or a majority of them, to be summoned by the Sheriff of the said county for the time being, in pursuance of a warrant or precept under the hands and seals of the Burgesses, who are hereby authorized and required to grant the same, and to which the said Sheriff is hereby ordered and required to pay due obedience; and the said freeholders or any two of them, are to make and return their inquisition or report in the premises, on their respective oaths or affirmations, to be administered by the said Sheriff, to the said Burgesses, who are to cause the same to be entered by the Town Clerk upon the books or minutes of the said borough, and the sum or sums mentioned in such inquisition or report shall be assessed and raised, as other public monies are directed by this act, on the inhabitants and taxables within the same borough.

SECT. 14. *And be it further enacted by the authority aforesaid,* That whenever it shall appear that any house;

or

or part of any house, pump, draw well or other valuable improvement, that cannot be removed, hath been erected or made by any person or persons, on land within the said borough, that was the property of any other person or persons, it shall and may be lawful to and for the owner or owners of the said house so built, or of such improvement made as aforesaid, his, her or their heirs or guardians, or upon his, her or their neglect or refusal, it shall and may be lawful to and for the owner or owners of the said land so built or improved upon, his, her or their heirs or guardians, to apply by petition to any Court of Common Pleas to be held for the county of New-Castle, and if it shall appear to the said court, upon the testimony of any two or more credible witnesses, that the said house was built, or such improvement made as aforesaid before the passing of this act, and that the walls of the said house are of brick or stone, and that such improvement cannot be removed without considerable loss to the owner or owners thereof, the said court, after notice given to the parties interested, if they can be found, shall then nominate and appoint five judicious disinterested freeholders, residing within the said borough, to meet and view the premises, and calling before them the respective owners and claimers of the said improvements or land, if they can be found, to enquire and assess such damage and recompence as they shall judge fit to be awarded to the owner or owners of the land thus built or improved upon, and to ascertain the quantity and bounds of the adjacent land which they the said five freeholders, or any three of them, may adjudge necessary to accommodate the same houses with light and yard room backwards, together with the value of the land so ascertained; and to make report of their proceedings in the premises in writing, under their hands and seals, or under the hands and seals of any three of them, with a certificate of their qualification, to the next Court of Common Pleas, where it shall remain upon record, and shall forever transfer the property of the said lands so valued to the owner or owners of the said buildings and improvements in fee, and also shall create a debt upon the

C H A P.
CCVI.

1772.

The manner of proceeding when a house, &c. hath been erected on the land of another person.

C H A R.
CCVI.

1772.

the estate of the owher or owners of the said build-
ings for the said determined value unto him or them
or his and their heirs from whom the said lands were
so adjudged and taken. *And*, if the said valuation
money be not paid within six months next after any
such return shall be made, execution shall issue from
the said court for the same in like manner as upon
judgments in the said court, any law, custom or usage
to the contrary in anywise notwithstanding.

How certain
messuages on
West-street are
to be regulated.

SECT. 15. *But* forasmuch as the brick messuages
and improvements now belonging to Captain John
Lea, Esther Jolly, widow, and Simon Johnston, on
the square formed by West-street, Pasture-street, Se-
cond-street and Third-street, and erected several years
since on the said West-street, on that part of the said
square adjoining unto Third-street, will be more af-
fected and injured by the regulation in the plan herein
before mentioned than any other buildings and im-
provements in the said borough, as the fronts of
the said brick messuages under that regulation will
stand three feet and more in and upon the said West-
street, and the lots back of the same messuages instead
of running to Pasture-street in a direction parallel
with the gable walls of the said messuages, will nearly
cross the lines of each other;

SECT. 16. *And whereas* the other part of the square
aforesaid, next unto Second-street, is yet open and
unimproved, therefore for the accommodation of the
messuages aforesaid, and for the more easy determin-
ing of all controversies relating to the propriety in the
lots now held as belonging to the same messuages;
It is hereby further enacted by the authority aforesaid,
That it shall and may be lawful for the Justices of
the Court of Common Pleas aforesaid, upon the pe-
tition of the said John Lea, Esther Jolly and Simon
Johnston, or any of them, or any of their heirs or
assigns, within one year after the publication of this
act, and not after, and notice given to the owners of
the open part of the square aforesaid, or guardians of
minor owners, or such of them as may be found, to
nominate and appoint five judicious and disinterested
freeholders as aforesaid, to meet, view and ascertain
the bounds, as well of the several lots so built upon,
allowing

C H A P.
CCVI.

1772.

allowing them to extend from the back parts of their respective messuages by lines continued in the direction of the gable walls of the same messuages, to Pasture-street aforesaid, as the two slips or small parcels of land that will remain to the northward of the messuage of the said John Lea, and to the southward of the messuage of said Simon Johnston, by allowing the lots aforesaid their said direction to Pasture-street, and afterwards to value the recompence and satisfaction, that shall be made and given by the said John Lea, his heirs and assigns, for the land so added to the northward of his messuage aforesaid, and by the said Simon Johnston, his heirs and assigns, for the lands so added to the southward of his messuage aforesaid, and to make report as in the preceding clause is directed: Which report in that behalf to be made, shall bind all parties concerned therein, their heirs, executors, administrators or assigns, to the intent that the three several owners of the messuages aforesaid may preserve their respective lots as now improved: And the said John Lea and Simon Johnston, their heirs or assigns, paying to the Treasurer for the time being of the said borough the valuation monies for the parcels of land so to be added to their messuages severally as aforesaid, shall and may forever respectively hold and enjoy the same by virtue of this present act. And the owner or owners of the said two slips or small parcels of land to the northward of the messuage of the said John Lea, and to the southward of the messuage of the said Simon Johnston, shall respectively receive from the Treasurer, for the time being, the several sums of money to be paid by the said John Lea and Simon Johnston as aforesaid; and the said Treasurer is hereby authorized and required to pay the same, after the same shall have been paid unto him as aforesaid.

SECT. 17. *And whereas* several other proprietors of lots within the said Borough of Wilmington may by the present regulation of the streets have an addition of ground to their said lots, for which they ought to pay, and others of the same proprietors may lose some of the ground to them granted and conveyed, for which reasonable satisfaction ought to be given, *Be it*
further

CHAP.
CCVI.

1772.

By whom and
in what manner
those who have
lost any ground
by the late regu-
lation are to be
paid.

further enacted by the authority aforesaid, That it shall and may be lawful to and for the Sheriff of the county of New-Castle, and he is hereby required, upon a warrant or warrants, precept or precepts, to be issued and directed to him for this purpose by the Burgessees of the said borough [which warrants or precepts the said Burgessees are hereby impowered, authorised and directed to issue within one year from and after the passing this act] to impanel and return a competent number of substantial and disinterested persons qualified to serve on juries, not less than twelve nor more than twenty-four, whose names shall be wrote on separate pieces of paper and put into a box, and out of such names, so written as aforesaid, a jury of six persons shall be drawn by some person to be by the said Burgessees appointed; which persons so impanelled, summoned and drawn, are hereby required to come and appear before the said Burgessees at such time and place as in such warrant or warrants, precept or precepts, shall be directed or appointed, and to attend the said Burgessees from day to day, till discharged by them; and that the said jurors shall have the same allowance from the said borough for every day they attend, as jurors have in other cases attending the courts of law in this government; and the said Burgessees are hereby authorised and impowered by precept or precepts to call before them all and every person and persons whomsoever, who shall be thought proper or necessary to be examined as witnesses before them, on their oaths or affirmations, concerning the premises: And the said Burgessees, if they think fit, shall and may likewise authorise the said jury to view the place or places in question in such manner as they shall direct; and the said Burgessees shall have power to command such jury, witnesses and parties to attend, until all such affairs for which they were summoned shall be concluded: And the said jury upon their oaths or affirmations [which oaths and affirmations, as also to all witnesses so called upon, the said Burgessees are hereby impowered and required to administer] shall enquire of the value of such ground so added or diminished by the regulation aforesaid, and shall assess and award the sum or sums to be paid by every such person

person or persons to whose lots any ground may be added by regulating the streets as aforesaid; and also the sum or sums to be paid to every such person or persons, whose ground shall be taken away and occupied by the said streets, or otherwise, by means of the said regulation; and the said Burgessees shall give judgment or judgments for such sum or sums of money so to be assessed; which said verdict, or verdicts, and the said judgment, decree or determination thereupon [notice in writing being given to the person or persons interested, at least six days before the time of such assessment, declaring the time and place of meeting of the said Burgessees and jury, by leaving such notice at the dwelling house of such person or persons, or at his, her or their usual place or places of abode, or with some tenant or occupier of some of the said lands intended to be valued and assessed, in case such party cannot otherwise be found out to be served with such notice] shall be binding and conclusive to all intents and purposes whatsoever against all and every person and persons whomsoever; and the said verdicts, judgments and decrees, and all other proceedings of the said Burgessees and jury, so to be made, given and pronounced as aforesaid, shall be fairly written in the books of the said borough, and signed by the Town Clerk for the time being.

SECT. 18. *And it is hereby further enacted and declared,* That all and every sum and sums of money so to be assessed and awarded to be paid by any person or persons, who shall have any ground valued to them as aforesaid, may and shall be recovered by execution to be issued for the same, together with the costs of the said execution, by either of the said Burgessees, at the expiration of thirty days after the said judgments or determinations shall be given, in the name of the Treasurer, who is hereby empowered to recover and receive the same; and is hereby required to give a receipt or receipts for such sum or sums, mentioning and specifying for what premises, to such person as shall pay the same; which receipts shall be entered by the Town Clerk in the public books, and the same receipts shall transfer the property of the ground so assessed to such person or persons in fee, and

CHAP.
CCVI.
1772.

How those who have gained any ground thereby may obtain a title for the same.

C H A P.
CCVI.

1772.

and shall, or the entry thereof as aforesaid, or a copy of such entry, which shall be deemed and taken to be a record, be sufficient evidence at all times to prove the title for him, her or them, their heirs or assigns, in the premises. And the person or persons to whom any sum or sums of money shall be awarded for the injury they may sustain as aforesaid, may and shall demand and receive the same from the said Treasurer, who is hereby authorised and required to pay the same out of any monies in his hands; *Provided always*, That such demand be made in one year after such assessment or valuation.

Burgeffes and Assistants to meet annually, and calculate what sums should be raised for public uses.

High Constable to deliver lists of taxables to the Assessor.

SECT 19. *And be it further enacted by the authority aforesaid*, That the Burgeffes and Assistants of the said borough for the time being, shall on the eighth day of October yearly [except that day should happen on Sunday, and then on the next day following] meet together, and calculate the public debts and charges of the said borough, and estimate and determine what sum and sums of money may be necessary to be raised on the persons and estates of the freeholders and inhabitants of the said borough, for repairing and regulating the public streets and highways, and to and for such other public uses as the said Burgeffes and Assistants shall judge necessary for the year ensuing; which said respective sums, with the particular uses whereunto they shall be agreed to be appropriated as aforesaid, shall be entered in a book to be provided and kept for that purpose by the Town Clerk, which said Burgeffes, or one of them, shall, within five days after such estimate, issue forth his or their precept, directed to the High Constable of the said borough, requiring him to bring to the Assessor of the said borough, within twenty days next after the date of such precept, fair and true lists in writing, upon oath or affirmation (which one of the said Burgeffes is hereby impowered and directed to administer) of the names and surnames and estates of all persons within the said borough, without concealment, fear, malice, favour or affection, upon pain of forfeiture of any sum not exceeding Five Pounds, to be levied as by this act is directed. And the said High Constable shall have and receive from the

the Treasurer of the said borough Two-pence per Pound out of the sums to be collected from the persons and estates by him returned for his care and trouble in executing and returning the said precept in manner aforesaid.

CHAP.
CCVI.
1772.

SECT. 20. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful to and for the freeholders and electors within the said borough, at their annual election, to choose one substantial inhabitant of the said borough to be Assessor of the several sums of money so from time to time agreed to be raised, which Assessor, so to be appointed, shall, within six weeks next after such lists returned to him as aforesaid, lay a just rate or assessment upon himself, and all other persons and estates within the borough aforesaid, to and for the uses aforesaid; but before such Assessor shall take upon himself the said service and duty, he shall be qualified before one of the Burgessees of the said borough by taking the following oath or affirmation.

who is to be chosen yearly by the electors.

I. A. B. will well and truly lay or cause the rates and sums of money, by virtue of this act to be imposed or raised, duly and equally to be assessed and laid, according to the best of my skill and knowledge; and I will spare no person for favour or affection, or grieve any for hatred or ill will.

Qualification of the Assessor.

SECT. 21. *Provided always,* That no such assessment or assessments to be made in any one year shall exceed the value of One Shilling in the Pound.

No assessment to exceed one Shilling in the Pound.

SECT. 22. *Provided also,* That those who are not ratable or liable to be taxed for the relief of the poor shall not be taxed or assessed by this act.

SECT. 23. *And be it further enacted by the authority aforesaid,* That the said Assessor shall, after the assessments made as aforesaid, cause fair duplicates of them to be drawn, one part thereof to be delivered to the Burgessees, and the other part thereof to the High Constable of the said borough, who is hereby appointed Collector of the said assessments from time to time; (a) which Burgessees and two or more of the As-

High Constable appointed Collector, who is to publish the assessments and the day of appeal.

VOL. I.

3 P

sistants.

(a) See chap. 123. b. passed June 4, 1785, authorising the Burgessees and Assistants to appoint a Collector of the said assessments on the eighth of October annually, except, &c. and to take security from him for the payment of the sums assessed in his duplicate.

CHAP.
CCVI.
1772.

Method of proceeding on the day of appeal.

Assistants may and shall sign an order on the said duplicate, or annexed thereunto, requiring him forthwith to set up and publish at each market house in the said borough true copies in writing of such duplicate, together with notice of the day and place of appeal, which shall be appointed by the said Burgessees and Assistants within twenty days after the said assessments are so published; at which day of appeal, if any person or persons shall find him, her or themselves aggrieved with any of the said assessments, supposing the same to be unequal, he, she, or they, may appeal to the Burgessees and Assistants, who are hereby required to meet on the said day of appeal, where the Assessor shall attend: Whereupon the said Burgessees and Assistants shall have due regard to the said appeals, and may, if they think proper, examine the persons appealing upon oath or affirmation concerning the cause of their appeal; and upon such examination or other proof they are hereby impowered to diminish or add to such persons rate or assessment, as to them shall seem just and reasonable; with power also to call before them such persons, and take notice of such estates, as they find omitted in the said assessment; and if the persons so omitted refuse or neglect to appear, and give an account of the value of their estates, they shall be rated and assessed according to their estates by the judgment of the said Burgessees and Assistants, or a majority of the said Assistants, with one of the said Burgessees. And the Town Clerk shall within five days after the appeal deliver to the Treasurer a true account of the sum total, which the Collector aforesaid shall be charged with. And the said Burgessees and Assistants shall cause the Town Clerk to draw a fair duplicate of the assessments, so rectified as aforesaid, within five days after the said day of appeal, with an order, under the hands of at least one of the said Burgessees and two Assistants, requiring the said Collector forthwith to collect and receive from the persons assessed the several sums in the said duplicate mentioned; and in case any person or persons, so rated or assessed by virtue of this act, shall neglect or refuse to pay the sum or sums

Collector to levy the taxes,

sums so assessed for the space of six days after demand made, the said Collector shall by a warrant, under the hand and seal of one of the Burgeffes, for that purpose, levy the same by distress and sale of the offender's goods and chattels, rendering the overplus, if any be, after reasonable charges deducted, to the owner or owners thereof; but if no distress can be found by the Collector, and the party refuses or neglects to shew him goods or chattels of his own forthwith to satisfy the money due, with the reasonable charges, then the same shall be levied by imprisonment of the person so neglecting or refusing to pay as aforesaid, until the same shall be paid; or the same may be levied on the goods and chattels of any of his tenants, if such there be, and the delinquent shall be obliged to discount it out of the first rent that shall afterwards accrue from the estate rented.

C H A P.
CCVI.
1772.

SECT. 24. *And be it further enacted by the authority aforesaid,* That the said Collector shall once in four weeks at least render a true account of and bring in and pay unto the Treasurer of the said borough all such sums of money as he shall have received, and shall pay the whole and every of the sums of money assessed in his duplicate within six months next after the day of appeal, [such deficiencies as the said Burgeffes and any three of the Assistants shall allow being first deducted] and the said Treasurer shall give receipts to the Collector for what he shall so bring in and pay from time to time, which receipts shall be the Collector's discharges for so much; and when the said Collector is negligent, or refuses to do his duty in the premises, the Treasurer is hereby required forthwith to signify the same by way of complaint to the Burgeffes; and if thereupon it shall appear to them that the said Collector hath refused or neglected to pay the said sums of money, which he is charged to collect within the times limited by this act, then and in such case he the said Collector shall forfeit and pay to the Treasurer the sum of Ten Shillings, and shall also pay all the arrearages of such assessment which he was appointed to collect, to be levied by a warrant under the hands and seals of the said Burgeffes, directed

and pay them to the Treasurer.

Penalty on neglect.

C H A P.
CCVI.

1772.

directed to the Sheriff of the county of New-Castle, who is hereby authorized and required to execute such warrant upon the goods and chattels of the said Collector, and in case no goods or chattels can be found, then to imprison such Collector until payment be made; and the said Collector, having made satisfaction, is hereby impowered, without any further warrant, to distrain for his own use upon all such as shall have neglected or refused to pay him the arrearages due. And the said Collector shall, for his trouble and service enjoined him as Collector, retain in his hands a Shilling per Pound for all sums of money by him collected, and no more.

Electors to
chuse a Treasur-
er yearly:

his duty:

SECT. 25. *And be it further enacted by the authority aforesaid,* That the freeholders and electors within said borough shall, at every annual election, chuse one substantial inhabitant of the said borough to be Treasurer for the said borough, who shall provide a suitable book, and therein enter a particular account of all the rates and assessments made as aforesaid, and all the monies to him paid by virtue of this act; and also of all disbursements and payments that he shall make by orders from the Burgesses, or either of them, whose order to the said Treasurer, from time to time, shall be sufficient for the payment of such monies as shall come into his hands.

He is to give
bond for perfor-
mance of his
duty,

SECT. 26. *And be it further enacted by the authority aforesaid,* That the said Treasurer shall, before he enters on the execution of his office, give a bond in double the sum that doth or probably may come to his hands as Treasurer, and, if required by the Burgesses and at least three of the Assistants, one sufficient surety, to be by them approved, with condition for the payment of all such monies which shall come to his hands by virtue of this act, according to the orders drawn on him as aforesaid, and not otherwise, and for the due performance of his duty in the trust hereby committed to him. And the said Treasurer shall on or before the seventh day of September yearly, or oftener if required, bring in his accounts and settle and make up the same before the Burgesses and Assistants aforesaid, and any of the said freeholders and electors,

and to settle his
accounts yearly,
or oftener if re-
quired,

who

who shall be willing, may be present; and the said Treasurer and Assessor shall have for their trouble in the premises such sum or sums of money as the said Burgeses and Assistants shall from time to time think reasonable and allow.

CHAP.
CCVI.
1772.

SECT. 27. *And be it further enacted by the authority aforesaid,* That if any person or persons shall hereafter be chosen Assessor or Treasurer at any such annual election as aforesaid, or shall be appointed Assessor or Treasurer in manner as is herein after mentioned, and shall neglect or refuse to execute such office to which he shall be elected as aforesaid, every such person shall forfeit and pay the sum of Five Pounds, to be recovered by distress and sale of his goods and chattels, by warrant under the hand and seal of one of the Burgeses for the time being, and paid to the Treasurer for the use of the said borough; or in case of death or other inability, the said Burgeses and Assistants, from time to time, may and shall appoint another suitable person to be Assessor or Treasurer, as the case may or shall require; who shall execute the power and trust of an Assessor or Treasurer until the next annual election; the said Treasurer giving bond and if required a surety therein, as herein before directed; and the Treasurer so removed, disabled or going out of office, or the executors or administrators of the Treasurer so dying shall deliver to the succeeding Treasurer all books, public accounts and papers, belonging to the said office, whole, entire and undefaced, and shall likewise pay to the succeeding Treasurer all such sum and sums of money as he may have received, or have been paid to him, in pursuance of this act, under the forfeiture of the whole penalty of his bond, against which there shall be no relief.

Assessor or
Treasurer refusing or neglecting their duty, the penalty:

How to supply such deficiencies,

SECT. 28. *And be it further enacted by the authority aforesaid,* That all the penalties, fines and forfeitures to become due and payable by this act, the manner of levying and recovering of which is not before or herein after directed, shall be recovered, together with the costs of prosecution, before one of the Burgeses of the said borough, and shall be levied by warrant, under the hand and seal of one of the same Burgeses

Penalties to be recovered in the name of the Treasurer before one of the Burgeses for the use of the borough.

C H A P.
GCVI.
1772.

to any Constable of the said borough directed, who is hereby impowered and required to execute the same by distress and sale of the offender's goods and chattels; and where goods and chattels sufficient cannot be found, then the party or parties offending shall be committed to the common gaol of the county, there to remain until payment made: All which recoveries shall be had in the name of and by the Treasurer for the time being, to whom the sums recovered shall be paid, to be by him applied towards defraying the public debts of the said borough.

Commissioners
to regulate
wharffs and
sluices in the ri-
ver Christiana.

SECT. 29. *And, whereas* the owners of wharffs, on Christiana river, in the said borough, may and do carry out their wharffs into the same river as far as they respectively please, to the prejudice of each other, and of the navigation in said river, *Be it further enacted by the authority aforesaid,* That Griffith Minshall, William Poole, Daniel Byrnes, Job Harvey, Joseph Shallcross, Rumford Dawes and Hezekiah Niles, gentlemen, or any four of them, are hereby authorized, impowered and required, to view the river Christiana aforesaid, and consider how far it may be necessary and convenient to build or extend the wharffs into the aforesaid river within the said borough, and to fix and determine how far the said wharffs at any time hereafter may be built or extended into the said river, by limiting the several distances or extent thereof in feet and inches, to be computed and measured from the southerly side of Water-street, or of any other street or streets within the said borough, or from other certain land-marks, where such street or streets may not be convenient to determine the said distances or extent from; and also to determine the size, direction and form of all the sluice-ways to be left open in the said wharffs so hereafter to be built or extended in the aforesaid river within the borough aforesaid, which determination and limitation, made by the aforesaid viewers, or any four of them, shall be recorded in the town-books, with the particular distances and limitations from the said street or streets and other certain land-marks, at large expressed, that all persons may govern themselves accordingly. And if any person or persons whatsoever, at any time after

after such determination and limitation shall be made and recorded as aforesaid, shall build or extend any wharff, wharffs or landing-places, filled up with mud, earth or other materials, solid from the foundation, into the aforesaid river, further than by such determination and limitation they shall be allowed to do, or shall neglect or refuse to put or leave such sluice-way in the said wharffs or landing-places in the proper place thereof, according to such determination and limitation aforesaid, that then every such person or persons, builder or builders, being thereof convicted in any Court of General Quarter Sessions within this government, shall for every such offence severally forfeit and pay the sum of One Hundred Pounds, besides the costs of prosecution, one moiety thereof for the use of the said borough, and the other moiety for the use of the person or persons that shall sue for the same; and the same wharff, extended beyond the limitation aforesaid, may and shall be abated and removed by the Burgesses and Assistants for the time being.

C H A P.
CCVI.
1772.

Penalty on such as may build contrary to such regulation.

SECT. 30. *Provided always, and it is hereby enacted,* That nothing herein contained shall prevent or hinder, or be construed to prevent or hinder, any person or persons whatsoever, being the owners of ground, bounded on Christiana river, within the said borough, from building, making, erecting and carrying out, a wharff or wharffs thereupon, constructed in the following manner; *That is to say,* To be raised on piles of wood to be placed in rows, in the same direction with the sluice-ways, at the distance of ten feet the one row from the other; so always, that the same wharffs do not extend into the said river so far as to obstruct the navigation thereof, but leave the channel of the same in all places one hundred feet in breadth at the least.

Provision made for wharffs erected on piles of wood.

SECT. 31. *And be it further enacted by the authority aforesaid,* That all and every matter and thing whatsoever made cognizable, or to be done or performed, before or by a Justice of the Peace of the county, by any law of this government, shall and may be heard, adjudged, done, executed and performed, by or before either of the Burgesses within the said borough,
who

The authority of the Burgesses and Constables.

C H A P.
CCVI.

1772.

(b) who are hereby authorized and empowered to commit offenders and debtors to the county gaol; and further, it shall and may be lawful to and for the Constables of the said borough for the time being, and they are hereby enjoined and required duly to execute every such precept by delivering the same, with the persons that shall be so committed, to the keeper of the county gaol for the time being, who is hereby enjoined and required to receive and keep them pursuant to the tenor of such precepts, under the like penalties as for suffering escapes in other cases.

SECT. 32. *And be it further enacted by the authority aforesaid,* That this act shall be deemed and taken to be a public act, and shall be judicially taken notice of as such, by all judges and justices, and other persons whatsoever, without specially pleading the same.

Passed June 13, 1772.

C H A P. CCVII. a.

1772.

A Supplementary ACT to an act, entitled, An act for regulating elections and ascertaining the number of the Members of Assembly. (a)

Preamble.

WHEREAS the laws for regulating elections in this government have not proved effectual in providing for the impartiality thereof, and in preventing frauds therein;

SECTION I. *BE it enacted by the honorable Richard Penn, esq. with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent and Sussex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties in General Assembly met, and by the authority of the same,* That from and after the publication of this act, every Sheriff,

(b) See chap. 89, b, passed Feb. 5, 1782, whereby a Burgess of the said borough is authorized to administer the oath or affirmation directed to be taken by an Auditor appointed under a rule of court in chap. 204, a, sect. 31. Antic.

(a) See the original act, chap. 61, a. 7 Geo. II.

Sheriff, or in his absence the Coroner, shall be the Judge of the Election; (b) and the said Sheriff, or Coroner, or in his absence any Justice of the Peace, in the morning of the day of Election and before the same is begun, may and shall administer to the Inspectors the following oath or affirmation, *That they shall and will duly attend the ensuing election during the continuance thereof; and truly and faithfully assist the Sheriff or Coroner to prevent all frauds and deceits whatsoever of electors or others in carrying on the same; and do and perform all other matters and things of them required by law; according to the best of their skill and knowledge; who, when so qualified, shall have concurrent power, jurisdiction and authority with the Sheriff or Coroner, as well in preserving good order and keeping the peace, as in deciding all questions respecting the same election; and if on any such question they shall be equally divided, the Sheriff or Coroner shall have a double voice: And after the Representatives to serve in the General Assembly of this government are chosen, their names shall be written in a pair of indentures, sealed between the said Sheriff or Coroner and at least two of the said Inspectors, together with four of the electors then present.*

CHAP. CCVII.

1772.

The Sheriff or Coroner shall be the Judge of the Elections.

Qualification of the Inspectors;

who shall be concurrent judges.

SECT. 2. *And be it further enacted by the authority aforesaid, That it shall and may be lawful for the Sheriff, or in his absence the Coroner, or in his absence the Inspectors, or a majority of them, to appoint two or more Clerks, as he or they shall think proper, each of whom shall be of the full age of twenty-one years, and shall be duly sworn or affirmed by the Sheriff or Coroner, or in his absence by one of the said Inspectors, That he will truly and impartially write the name of each candidate, and mark down the number of votes he may have, as the names shall be read unto him by the said Sheriff, Coroner, Inspectors, or one of them.*

Clerks their Qualification.

SECT. 3. *Provided always, and be it enacted, That each and every Inspector, at the time of taking every vote or ticket, shall call out aloud the name of the*

The Inspectors shall call out aloud the names of the electors;

VOL. I.

3 Q

person

(b) See after in chap. 44. b. passed June 5, 1779, what persons in the absence of Sheriff and Coroner are empowered to hold elections; and for some further provisions for the better securing of elections in this State.

C H A P.
CCVII.
1772.

and shall severally put the tickets into the box marked for the respective hundred.

person from whom he took the same, so as to be heard by the other Judges of the said Election.

SECT. 4. *And be it further enacted by the authority aforesaid,* That every Sheriff, at the expence of his county, shall provide as many boxes as there are hundreds in the same, and shall cause the name of the hundred, for which each of them is designed, to be painted thereon, and on the day of election shall deliver the same severally to the Inspector for the hundred which shall be so painted thereon; and each of the said Inspectors, after having called out the name of each elector presenting his ticket or vote as aforesaid, and after the same is approved, shall put the same carefully into the box, having the name of the hundred for which he is Inspector thereon, and no other.

When all appearing have voted, the boxes are to be opened and the votes ascertained and put into one box, after which no vote is to be taken.

SECT. 5. *And be it further enacted by the authority aforesaid,* That after all the electors then appearing have delivered in their respective tickets, or the names of the persons they vote for, the said boxes shall be opened successively by the Sheriff or Coroner, or one of the said Inspectors appointed to that service by the rest of the said Inspectors, or a majority of them, and the votes in each box counted and ascertained, and in like manner the names of the persons in each hundred who have voted shall be counted and ascertained, and after the same shall be compared with each other, shall be all put into one box and mixed together; after which no more tickets or votes shall be received on any pretence whatsoever; and then and not before the said papers or votes shall be taken out of the box aforesaid by the Sheriff or Coroner, or one of the said Inspectors, and by them read or delivered one by one to the Clerks to be appointed as aforesaid.

Penalty on offering to vote a second time;

SECT. 6. *And be it further enacted by the authority aforesaid,* That all and every person or persons having voted at any election, who shall vote a second time at the said election, or offer a vote again to any of the said Inspectors, being thereof convicted by the testimony of one lawful witness, or confession of the party, before any one Justice of the Peace of the county where such offence shall be committed, shall forfeit and pay the sum of Twenty Shillings, to be levied together

together with the costs of prosecution, by warrant under the hand and seal of such justice, upon the goods and chattels of the offender, to be applied to the relief of the poor of the said county; and if no such goods and chattels can be found, execution shall be awarded against the body of the said offender, and he shall be committed to the gaol of the said county, there to remain until the said penalty and costs shall be satisfied.

C H A P.
CCVII.

1772.

how to be recovered.

SECT. 7. *And* the better to enable the House of Assembly to judge of the elections of their Members, in case of any contest about the same, and to secure the freemen of this government their just rights, *Be it further enacted by the authority aforesaid,* That every Sheriff or Coroner, at the time by law appointed for making the returns of the persons elected to serve as Representatives, shall also return to the House of Assembly, if required, all the lists of the names of taxables which are delivered to the Inspectors by the Collectors of the several hundreds, and used by the said Inspectors in ascertaining the persons voting at the same election; together with the lists and tallies of their Clerks, and the votes or tickets delivered in, and read at the same election, under the penalty of Fifty Pounds; which said lists the Inspectors respectively shall deliver to the said Sheriff or Coroner, for that purpose, undefaced, and the number of the persons voting ascertained in words at length in a certificate thereof, on the said lists, signed by them respectively, under the penalty of Twenty Pounds each; and which said lists and tallies of the said Clerks shall be by them respectively delivered in like manner cast up, and the number of votes for each candidate mentioned in words at length, and signed with their names respectively, and also by two or more of the said Inspectors, under the like penalty; which said penalties may be recovered by any person who will sue for the same, by action of debt, bill, plaint or information, in any Court of Record in this government, with costs of suit.

Returns to be made by the Judges and Clerks of the election:

Penalties on neglect.

SECT. 8. *Provided always,* That nothing herein contained shall be deemed or taken to alter or make void the said act of General Assembly, made in the seventh

C H A P.
CCVII.

1772.

Former laws not
hereby altered
to remain in
force.

Limitation.

seventh year of the reign of his late Majesty George the Second *(c)* nor the act passed in the sixth year of his present Majesty, *(d)* nor any thing therein or in either of them, but that every clause and article in the said acts, or in either of them contained, except what is hereby expressly altered or supplied, shall be and remain in full force and virtue.

SECT. 9. *Provided also,* That this act shall be and continue in force for the term of three years, and from thence to the end of the next Session of Assembly, and no longer. *(e)*

Passed June 13, 1772.

C H A P. CCVIII. a.

1772.

An ACT for the restraining and preventing lotteries.

WHEREAS lotteries in general are pernicious and destructive to frugality, industry, trade and commerce, are introductive of idleness and immorality, and against the common good and welfare of a people: *And whereas* lotteries for the disposal of private property at an over-rated value, for the sole benefit of the proprietors, and other selfish and illaudable purposes, have lately been set up and drawn in these counties, and are become very frequent; For the restraining whereof in future,

SECTION 1. *BE it enacted by the honorable Richard Penn, esq. by and with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief, under the honorable Thomas Penn and John Penn, esquires, true and absolute proprietaries of the counties of New-Castle, Kent and Sussex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties in General Assembly met, and by the authority of the same, That*

from

(c) See before chap. 61. a.

(d) See before chap. 187. a.

(e) Made perpetual, see after chap. 223, a. passed September 2, 1775.

from and after the publication of this act, no person or persons shall publicly or privately set up, erect, make, keep open, shew, or expose, to be played at, drawn at, or thrown at within these counties, any lottery, or game or device in nature of a lottery, or shall cause or procure the same to be done, either by dice, lots, cards, balls, tickets, or any numbers or figures, or in any other manner or way whatsoever; and that every person that shall set up, erect, make, keep open, shew, or expose, to be played at, drawn or thrown at, any such lottery, game or device, or that shall cause, or procure the same to be done, and shall be thereof legally convicted in any Court of Quarter Sessions, within the jurisdiction whereof the said offences shall be committed, or in the Supreme Court, if thereunto removed from any of the said Courts of Quarter Sessions, shall forfeit and pay the sum of Five Hundred Pounds, lawful money of the counties aforesaid.

C H A P.
CCVIII.
1772.

Persons setting up public or private lotteries, &c. to be fined on conviction, &c.

Penalty.

SECT. 2. *And be it further enacted by the authority aforesaid,* That all and every person and persons whatsoever that shall buy, sell, or expose to sale, or that shall advertise, or cause to be advertised, the sale of any ticket or tickets, or device whatsoever, in such lotteries or games, or that shall be aiding, assisting, or in any ways concerned in managing, conducting, or carrying on such lotteries or games, by whatsoever name the same may be called, and be thereof legally convicted in either of the courts aforesaid, shall forfeit and pay the sum of Ten Pounds, lawful money aforesaid, for every such offence.

Persons selling tickets, &c. or aiding, &c. in carrying on lotteries, to be fined, &c.

Penalty.

SECT. 3. *And be it further enacted by the authority aforesaid,* That all and every person and persons whatsoever that shall within these counties buy, sell, or expose to sale, or shall advertise or cause to be advertised, the sale of any ticket or tickets, or other device whatsoever, in any lottery, or game in nature of a lottery, which shall be hereafter set up, erected, made, kept open, shewn, or exposed, to be drawn at, played at, or thrown at, in or at any place or places out of this government [state-lotteries; erected and licensed by act of Parliament in Great Britain, only excepted and foreprized] and be thereof legally convicted

Exception.

in

C. H. A. P.
CCVIII.
1772.

Penalties, &c.
to go in Over-
seers of
Poor.

Lotteries now
published ex-
cepted,

in manner aforesaid, shall forfeit and pay the sum of Ten Pounds, lawful money aforesaid, for every such offence.

SECT. 4. *And be it further enacted by the authority aforesaid,* That all the fines, forfeitures and penalties hereby inflicted, shall be paid to the Overseers of the Poor for the time being, for the use of the poor of the hundred where any of the said offences shall be committed.

SECT. 5. *Provided always nevertheless,* That nothing herein contained shall be deemed or taken to extend to any lottery advertised, or the scheme whereof hath been printed and published, on or before the publication hereof, nor to the selling or buying any ticket or tickets in such lottery, any thing herein contained to the contrary notwithstanding.

Passed June 13, 1772.

C H A P. CCIX. a.

1772.

An ACT for the new appointment of a Trustee of the General Loan Office in, Suffex county.

WHEREAS by an act of Assembly of this government, intituled, *An act for the new appointment of Trustees for the several General Loan Offices within this government,* passed in the eighth year of the reign of his present Majesty, Jacob Kollock and John Rodney, gentlemen, were constituted and appointed Trustees of the General Loan Office of the county of Suffex :

And whereas the said Jacob Kollock is since dead, whereby a new appointment of a Trustee to execute said office in the said county of Suffex is become necessary ;

SECTION 2. *BE it therefore enacted by the honorable Richard Penn, esq. with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief, of the counties of New-Castle, Kent and Suffex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the*
Representatives

C H A P.
CCIX.
1772.

Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same, That David Hall, esq. is hereby nominated and appointed a Trustee of the General Loan Office of Suffex county in the place and stead of Jacob Kollock, esq. deceased; which said David Hall, shall and may have, hold and enjoy the same office for and during the residue of the term of four years next after the passing of the said act yet unexpired, and from thence to the end of the next Session of Assembly, or until a new nomination and appointment of Trustees of the said General Loan Office shall be made.

SECT. 3. *And the said David Hall is hereby authorized and impowered forthwith to enter upon the execution of the trust to which he is hereby appointed in the said county, and to receive, re-emit and exchange all bills of credit of this government, according to the directions of the act of Assembly, intituled, An act for re-printing, exchanging and re-issuing Twenty Thousand Pounds of the bills of credit of this government, to be let out on loan, and for striking the further sum of Seven Thousand Pounds in such bills, and giving the same to his Majesty's use, and for providing a fund for sinking the same, passed in the thirty-second year of the reign of his late Majesty King George the Second, and to do and perform all other matters and things enjoined and required to be done and performed by the several Trustees in their respective counties, by any act of Assembly heretofore made or hereafter to be made, during his continuance in the said office, as fully and amply to all intents and purposes, as the present or former Trustees of the several Loan Offices within this government now can, or might or would have done, by virtue of any acts of Assembly by which the said Trustees therein named were appointed, and as fully as if the said David Hall had been nominated, constituted and appointed, a Trustee of the said county of Suffex in the bodies of the said acts of Assembly.*

SECT. 4. *Provided always, That before the said David Hall shall enter upon the execution of his trust, or of any part thereof, he shall enter into bond, with good security, in the penal sum of Four Thousand Pounds*

C H A P.
CCIX.
1772.

Pounds to Jacob White and John Wiltbank, of Sussex county, gentlemen, or the survivor of them, their executors and administrators; who are hereby nominated and appointed Trustees and Agents for the public for that end and purpose, conditioned for the due and faithful execution of his trust and performance of all things required of him by this act, with further condition to deliver up to his successor in the said trust the mortgage deeds, bonds and warrants of attorney, plate, bills of credit, and other money remaining in the said office, or when he shall be removed from his trust; and shall take the oath enjoined by the laws of this government to be taken by the Trustees of the Loan Offices within this government, for the due performance of their respective trusts as aforesaid, before some Justice of the Peace.

SECT. 5. *And if the said David Hall shall happen to die, or be removed for any cause whatsoever, it shall and may be lawful to and for the General Assembly of this government to nominate and appoint some other fit person in the place and stead of the said David Hall, who shall, upon entering into the same bond, and taking such oath or affirmation as is before mentioned, have the same power and authority as if he had been nominated and appointed by this act.*

Passed June 13, 1772.

C H A P. CCX. a.

1772. *An ACT to prevent swine running at large in the town of Dover.*

WHEREAS the inhabitants of the town of Dover, in Kent county, upon Delaware, have heretofore received and suffered great spoil and damage in their several inclosures from swine, by reason of their running at large within the limits of the said town; for prevention whereof for the future,

SECTION I. *BE it enacted by the honorable Richard Penn, esq. with his Majesty's royal approbation, Lieutenant*
ant

CHAP.
CCX.
1772.

and Governor, and Commander in Chief of the counties of New-Castle, Kent and Sussex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same, That from and after the first day of August

Swine not to run at large in Dover.

next ensuing the publication of this act, no inhabitant or inhabitants of the said town, or other person or persons whatsoever, shall suffer or permit any of their hogs or swine to run at large within the limits or bounds of said town; and if any person or persons shall keep or suffer any of their hogs or swine to run at large after the said first day of August within the bounds or limits aforesaid, the owner or owners of all such hogs or swine shall forfeit the same, or forfeit and pay the sum of Ten Shillings for each hog kept or suffered to run at large as aforesaid, to be levied with costs by distress and sale of the offender's goods and chattels, by warrant under the hand and seal of any one Justice of the Peace of the said county of Kent, one half whereof to be paid to any person or persons who will sue for the same; and the other half to the Overseer or Overseers of the Poor of Murther-kill hundred, for the use of the poor of the said hundred.

Penalty,

how to be recovered and applied.

SECT. 2: And be it further enacted by the authority aforesaid, That it shall and may be lawful to and for any person or persons whatsoever, to shoot or kill all such hogs or swine so kept or permitted or suffered to run at large as aforesaid within the bounds or limits of the said town of Dover, and to give notice thereof to the keeper of the public gaol of Kent county aforesaid, for the time being, for whom it shall and may be lawful to take all such hogs or swine so shot or killed as aforesaid for the use and maintenance of such poor prisoners as shall or may be in or under his custody. And if any suit or action shall be commenced, brought or prosecuted against any person or persons whatsoever for any act or thing by him, her or them done in pursuance of this act, it shall and may be lawful to and for the defendant or defendants in such suit or action, to plead the general issue, and on the trial thereof to give this present act in evidence; whereof

May be killed by any person,

and delivered to gaoler for use of prisoners.

In case of suit, general issue may be pleaded, and this act given in evidence.

CHA.P.
CCX.

1772.

Former act re-
pealed, chap.
45. a.

all justices of the severall courts of law and other persons whatsoever within this government are hereby strictly required and enjoined to take notice, and govern themselves accordingly.

SECT. 3. *And be it further enacted by the authority aforesaid,* That an act of General Assembly of this government, intituled, *An act to prevent swine running at large in the town of Dover,* shall be and is hereby repealed and declared to be null and void.

Passed June 13, 1772.

C H A P. CCXI. a.

1772.

A Supplementary ACT to the act, intituled, An additional supplementary act for the amendment of an act of General Assembly of this government, intituled, an act for the better regulation of the roads in New-Castle county. (a)

WHEREAS the King's road leading from the village called St. George's to Appoquinimink bridge in the county of New-Castle, hath been laid out and confirmed over the mill dam adjoining to the said village, and the owners or possessors of the mill and the said dam for the time being by the said act of Assembly, passed in the sixth year of his Majesty's reign, are obliged to keep the said dam and the bridges erected thereon at all times in good order and repair, at their sole charge and expence, which hath since been found too great a burthen upon them, as the ancient road leading from the village aforesaid to Appoquinimink bridge ran below the said mill and dam, and the carriages and travellers passing along the road over the said dam have of late greatly increased. Now, for the relief of the present and future owners

(a) For the preceding laws for the better regulation of the roads in New-Castle county, see chap. 180. a. chap. 184. a, and chap. 195. a.—For the original general law, see chap. 131. a.

owners and possessors of the said mill and dam, and for their encouragement to keep the said dam and bridges thereon at all times, in good order,

CHAP.
CCXI.
1772.

SECTION I. *BE it enacted by the honorable Richard Penn, esq. with his Majesty's royal approbation, Lieutenant Governor and Comtmander in Chief of the counties of New-Castle, Kent and Suffex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same,* That the Treasurer of the said county of New-Castle for the time being, may and shall, yearly, and every year hereafter, pay or cause to be paid to the owners and possessors of the mill and dam at St. George's afore said the sum of Three Pounds, on the fourth Tuesday in November; and that the Collectors of the public tax or assessment for the time being for the hundreds of Redlion and St. George's, in the said county, may and shall, on the same day forever, severally pay or cause to be paid unto the said owner or owners of the mill and dam afore said the several sums of Thirty Shillings, out of the public money in the hands of the said Treasurer and Collectors respectively; which said sums being paid as afore said shall be allowed to them at the settlement of their accounts.

By whom the owners of St. George's Mill-dam are to be paid Six Pounds yearly.

SECT. 2. *And whereas divers mills are situate so near the roads and highways within this government that the water-wheels belonging to the same mills when going round are apt to fright and scare the horses of travellers and others passing and repassing there, whereby many dangerous accidents may be occasioned: For prevention whereof, Be it enacted by the authority afore said,* That each and every owner or possessor of any mill or mills already built, or which hereafter may be built near to any of the roads and highways within this government, the water wheels of which mills are or may be exposed to the view of horses passing and repassing on the same roads and highways as afore said, shall and he is hereby required and directed, within four months after the publication of this act, or immediately upon the erection of any mill hereafter to be built, to make, set up and erect between such water-wheel and road, at such distance from the road that

Water wheels to be concealed by cover, &c.

C H A P.

CXXI.

1772.

Penalty on neglect.

Renters to be reimbursed.

Overseers of roads may open drains through lands adjoining,

no obstruction of the passage thereof will be occasioned, a shed, cover or blind to hide and conceal the view of the said water-wheel, under the penalty of Ten Pounds for every such neglect or refusal; to be sued for and recovered by any one of the Overseers of the highways in the hundred where the same offence shall be committed before any three Justices of the Peace of the county, to be applied to the repairing the roads in the said hundred; and if the said owner or possessor shall refuse or neglect to make, set up and erect, or after to repair such shed, cover or blind, in manner aforesaid, for and during the space of ten days after notice and demand made by any one Overseer of the highways of the hundred, that then and in such case the Overseers of the highway, or any of them, shall make, set up and erect and after repair such shed, cover or blind, and defray the expence out of the monies of the said hundred, and shall recover the money so expended, together with double costs, of the respective owner or possessor, as is herein before directed; *Provided always, and be it further enacted by the authority aforesaid,* That if the same erection shall be made by a possessor being a tenant, or done at his expence, that the value of the same shall be retained by such tenant out of his rent, or reimbursed to him by his landlord.

SECT. 3. *And,* in order to enable the Overseers of the roads and highways in the respective hundreds within this government the more effectually to do their duty in the opening, clearing, amending and repairing the same, *Be it enacted by the authority aforesaid,* That it shall and may be lawful for the Overseers aforesaid, or any other person or persons by his or their order and direction, to enter upon any lands adjoining to or lying near the public roads and highways within their respective hundreds, and to cut or open such drains and ditches through the same as he or they shall judge necessary completely to carry off and drain the water from such roads, provided the same be done with as little injury and damage as may be to the owner of such lands, which drains and ditches so cut and opened, shall be kept open by the said Overseers if necessary for amending the said road,
and

and shall not be stopped or filled up by the owner or owners thereof or any other person or persons whatsoever under the penalty of Four Pounds for every such offence.

C H A P.
CCXI.
1772.

SECT. 4. *And be it further enacted by the authority* and carry from such lands, stones, &c.
aforsaid, That the said Overseers shall have full power and authority in any ground or lands adjoining the said public roads or highways within their respective hundreds to dig or cause to be dug any gravel, sand or stones, or to gather any loose stones lying on the said lands, as he or they shall think necessary for the purposes aforsaid, provided the same be done with as little damage as may be to the owner or owners of such land, and the same gravel, sand or stones so dug and gathered to carry off, without the lett, hindrance or controul of the owner, he the said Overseer paying or tendering to the said owner so much purchase money as they shall agree the same to be worth, and if the said Overseer and owner cannot agree upon the price of the materials so wanted for repairing the roads aforsaid, then and in every such case, so much money shall be paid by the said Overseers respectively as any two indifferent freeholders of the hundred where such public roads and highways do lie, to be chosen by the parties, shall estimate and adjudge the value of the materials so wanted for repairing the said roads in their respective hundreds as aforsaid.

Passed June 13, 1772.

C H A P. CCXII. a.

An ACT for vesting the State House, and other public buildings, with the lot of ground whereon the same are erected, together with other ground, situate in the town of New-Castle, in Trustees for the uses therein particularly mentioned.

1772.

WHEREAS the lot of land, situate in the square, Preamble.
called the Market Square, in the center of the town of New-Castle, and contained within the bounds following, *to wit,* Beginning at a stone placed for a corner

C H A P.
CCXII.

1772.

corner on the north-east side of the Market-street and at the north-west end of the state-house, and extending thence north fifty-one degrees east fifteen perches to a stone placed for a corner in the said square [the said line running two perches from the north-west end of the said state-house] thence south thirty nine degrees east eight perches to another stone placed for a corner in the said square, thence south fifty-one degrees west fifteen perches to another stone placed for a corner on the north-east side of Market-street aforesaid, and from thence along the said street and bounded therewith north thirty-nine degrees west eight perches to the place of beginning, hath at all times been considered, taken and held, as ground dedicated to the use of the public, and accordingly a state-house, gaol, and other buildings, have been erected thereon at the charge of the county of New-Castle: Now, to the end and intent that the said state-house, gaol, buildings and lot of land described as aforesaid, may be effectually secured for the public, and that the legal estate and inheritance therein may be vested in Trustees to and for the uses and purposes herein after mentioned and specified;

SECTION I. *BE it enacted by the honorable Richard Penn, esq. with his Majesty's royal approbation, Lieutenant Governor, and Commander in Chief, of the counties of New-Castle, Kent and-Sussex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties in General Assembly met, and by the authority of the same,* That the said state-house, buildings and lot of land, and all the immunities, improvements, advantages, hereditaments and appurtenances to the same belonging or in anywise appertaining, and the remainder and remainders, reversion and reversions thereof, shall, from and after the passing of this act, be settled upon, and vested in Thomas M^cKean, George Read, John M^cKinly, Alexander Porter, George Monro, John Evans and David Thompson, gentlemen, and the survivors and survivor of them, and the heirs and assigns of such survivor for ever; upon the trusts nevertheless, and to and for the ends, intents and purposes, and subject to the uses herein after mentioned,

The state-house,
&c. vested in
Trustees.

Names of the
Trustees.

tioned, expressed and declared, *That is to say*, As to the said state-house, That the same shall be to and for the use of the Representatives of the freemen of these counties, which now are, and from time to time hereafter shall be duly elected by the freemen aforesaid, at all times when in Assembly met, and to and for such other uses, intents and purposes, as the said Representatives, during the time they shall be so convened in Assembly, shall direct and appoint; and to and for the use of the Justices of the Supreme Court of this government, for the holding of said court as long as the said court shall from time to time be adjourned and continue; and at all other times, the said state-house, and the wings adjoining the same, for the use of the Justices of the County Court of Common Pleas and Justices of the Court of Quarter Sessions for the said county of New-Castle, for the holding courts therein, and to and for such other uses, intents and purposes, as they the said Justices of the Court of Quarter Sessions at the General Sessions to be holden at New-Castle for the county of New-Castle on the third Tuesday in May (*a*) yearly and every year shall direct and appoint; and as to the Under Sheriff's and Gaoler's houses, the gaol, work-house and yards, with the appurtenances, to the use of the Sheriff of the said county of New-Castle for the time being, for the residence of himself, his Under-Sheriff and Gaoler, and for the safe custody of all and every person and persons to him legally committed, and for such other purposes as the same have been usually applied to, for the service of the said county: And upon this further trust and confidence, and to this further end, intent and purpose, that the said Thomas M'Kean, George Read, John M'Kinly, Alexander Porter, George Monro, John Evans and David Thompson, and the survivors and survivor of them, and the heirs of such survivor, shall from time to time, and at all times hereafter, permit and suffer such suit and suits, action and actions, to be commenced and prosecuted in his or their names, and also make, seal, deliver,

C H A P.
CXXII.

1772.
For the use of
the Assembly,

Supreme Court,

Common Pleas
and Quarter
Sessions.

Gaol, &c. for
the use of the
Sheriff of New-
Castle county
for the time be-
ing.

(*a*) See chap. 61, c. sect. 6. passed February 7, 1794;

G H A P.
CCXII.

1772.

deliver, execute and acknowledge, such deed or deeds, conveyance or conveyances, fines, recoveries or assurances in the law whatsoever for the said lot of land, buildings, tenements and hereditaments, settled and vested in the said Trustees as aforesaid, or any part or parcel thereof, to such person or persons, and in such manner and form, but to the uses aforesaid, as the Justices of the Court of Quarter Sessions for the county of New-Castle aforesaid, shall at any time or times hereafter direct and appoint: So always, that the said Thomas M^cKean, George Read, John M^cKinly, Alexander Porter, George Monro, John Evans and David Thompson, and their heirs, executors and administrators, and every of them, be well and truly indemnified, saved and kept harmless of and from any costs, charges, trouble or molestation whatsoever, which may arise for or by reason of such suits, deeds, conveyances, fines, recoveries or assurances, so to be commenced, prosecuted, made and executed.

SECT. 2. *And whereas* another lot of land situate in the Market-square in the town of New-Castle aforesaid, and bounded as follows, *to wit*, Beginning at a stone placed for a corner on the south-west side of Mary-street, being also the north-west corner of the graveyard or burying-ground belonging to Immanuel Church, and extending from thence north forty-six degrees thirty minutes west five perches and three tenths of a perch to the street or road leading from Wilmington, leaving the said street forty feet for width; thence along the same street or road south forty-five degrees west ten perches to a stone placed for a corner; thence extending south forty-six degrees, thirty minutes east five perches and three-tenths of a perch to another stone placed for a corner; and from thence along the pale fence of the grave yard aforesaid north forty-five degrees east ten perches to the place of beginning, hath at all times been considered, taken and held, as ground dedicated and set apart for the use of the said town; *And whereas* the inhabitants of the said town intend to erect a school-house thereon, and are desirous of having the same appropriated and applied to that use; *Be it enacted by the authority aforesaid*, That the said lot of land last described, and all the

A piece of
ground vested in
Trustees for the
use of a school.

G H A P:
CCXII.
1772.

the immunities, advantages, hereditaments and appurtenances to the same belonging, or in anywise appertaining; and the remainder and remainders, reversion and reversions thereof, shall, from and immediately after the passing of this act, be settled upon and vested in David Finney, John Thompson, George Read, Thomas M'Kean and George Monro, gentlemen; and the survivors and survivor of them, and the heirs and assigns of such survivor, in trust nevertheless for the erecting a school-house or school-houses thereon, and to be for that use forever.

Names of the
Trustees.

SECT. 3. *And whereas* another lot of ground situate also in the Market-square, in the town of New-Castle, whereon Immanuel Church stands, and the grave yard or burying ground of the said church is laid out, bounded as follows, *to wit*, Beginning at a corner stake of the herein before described school-house lot, being also the north-west corner of the grave yard or burying ground belonging to Immanuel Church aforesaid, on the south-west side of Mary-street, and running thence south forty-five degrees west ten perches along the line of the said school-house lot to another stake set for a corner; thence south forty-six degrees east ten perches and eight tenths of a perch to a post in the Market-square; thence north forty-seven degrees east ten perches to Mary-street aforesaid; and thence along said Mary-street north forty-six degrees thirty minutes west to the place of beginning, hath been and is now set apart and appropriated to and for the use of the members of the Episcopal Church of England, residing and dwelling in and about the said town of New-Castle, who being desirous that the same should be forever hereafter confirmed to and for the uses aforesaid,

SECT. 4. *Be it enacted by the authority aforesaid*, That the legal estate and inheritance of and in the said church, burying ground and last described lot, with the appurtenances thereto belonging, shall be and is hereby declared to be from henceforth vested in the reverend Æneas Ross, Richard M'William and Joseph Tatlow, and the survivors and survivor of them, and the heirs of the survivor forever, in trust nevertheless, to and for the use, benefit and behoof of the

Immanuel
Church and
grave-yard-vested
in Trustees.

Names of the
Trustees.

C H A P.
CCXII.

1772.

The residue of
the Market-
square vested in
Trustees for the
use of the inha-
bitants of New-
Castle for ever.

Names of the
Trustees.

A public act.

members of the Episcopal Church of England, residing and hereafter to reside in and about the said town of New-Castle, as a place of worship and burial-ground forever, and to no other use, intent or purpose whatsoever.

SECT. 5. *And whereas* the remaining part of the aforesaid Market-square hath at all times been considered, taken and held as ground belonging to the inhabitants of the said town of New-Castle for holding of fairs, markets and other public uses, and a market-house hath accordingly been erected thereon at the charge of the said inhabitants; *Be it enacted by the authority aforesaid,* That from and after the passing of this act, the residue or remaining part of the said Market-square, not herein before settled on Trustees, and all the immunities, improvements, advantages, hereditaments and appurtenances to the same belonging or in anywise appertaining, and the remainder and remainders, reversion and reversions thereof, shall be settled upon and vested in David Finny, John Thompson, George Read, Thomas M'Kean and George Monro, gentlemen, and the survivors and survivor of them, and the heirs and assigns of such survivor, in trust nevertheless for the use of the inhabitants of the said town of New-Castle forever.

SECT. 6. *And be it further enacted by the authority aforesaid,* That this act shall be deemed, adjudged and taken to be a public act, and shall be judicially taken notice of as such by all judges, justices and other persons whatsoever, without specially pleading the same.

Passed June 13, 1772.

C H A P. CCXIII. a.

1772.

An ACT for establishing the market in the town of Newark, and for regulating the same.

Preamble.

WHEREAS the honorable William Denny, esq. Lieutenant Governor of the counties of New-Castle,

Castle, Kent and Suffex, upon Delaware, and province of Pennsylvania, by letters-patent, under the Great Seal of the said counties, bearing date the thirteenth day of April in the year of our Lord One Thousand Seven Hundred and Fifty-eight, did grant unto James M^cMechen and others, inhabitants of the town of Newark, in Whiteclay-creek hundred, and county of New-Castle, liberty, power and authority, to hold two fairs, *to wit*, On the third Thursday in the month of April and October annually for ever, and one market on the Thursday of every week, with certain other privileges therein particularly mentioned. *And whereas* from the increase of inhabitants in the said town two markets in the week are become necessary—*And whereas* the said inhabitants have at all times hitherto given and paid the profits and emoluments arising from the letting of tents, booths and stalls, at the times of holding the fairs and markets in the said town, unto the Trustees of Newark academy for the public use and benefit of the said academy in the said town, and are desirous of having the same secured to the same use in future; It is therefore prayed that it may be enacted,

CHAP.

CCXIII.

1772.

SECTION 2. *And be it enacted by the honorable Richard Penn, esq. with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent and Suffex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties in General Assembly met, and by the authority of the* same, That from and after the publication of this act, there may and shall be two markets held weekly in the said town of Newark, *to wit*, On every Tuesday and Friday, forever, and on no other day or days whatsoever.

Market days appointed.

SECT. 3. *And be it further enacted by the authority aforesaid,* That no person or persons whatsoever shall presume either to buy or sell any kind of provisions [fish, milk and bread, excepted] on market days within any other part of the said town of Newark than in the market house of the said town, under the penalty of forfeiting both by the buyer and seller all such provisions so sold or bought, or the value thereof, to be levied together with costs by the Clerk of the

No provisions to be bought or sold but in market, &c. except, &c.

Penalty.

C H A P.
CCXIII,
1772.

the Market of the said town, by distress and sale of the offenders goods and chattels, by warrant under the hand and seal of any one Justice of the Peace of the said county of New-Castle, and to be paid to the Trustees of Newark academy for the use of the said academy.

How poor or
unsound meat
is to be disposed
of.

SECT. 4. *And be it further enacted by the authority aforesaid,* That if any person or persons shall presume to bring or carry to the said market, and sell, or offer to sale, any poor or lean meat or flesh or carrion, or any other provision or provisions, not sound and wholesome, every person so offending shall forfeit the same; if too poor or lean for sale, to the use of the poor of Whiteclay-creek hundred; if unwholesome or unsound to be burnt or otherwise destroyed.

Penalty on
slaughtering in
the market-
house.

SECT. 5. *And be it enacted by the authority aforesaid,* That no person or persons whatsoever shall presume to slay or kill any cattle, sheep, calves or hogs within the said Academy-square or market-house, in the said town, on penalty of forfeiting the sum of Five Shillings for every such offence, to be levied, together with costs as aforesaid, and paid to the Trustees aforesaid for the use of the same academy.

Provisions, &c.
sold by false
weights, &c.
shall be for-
feited.

SECT. 6. *And be it enacted by the authority aforesaid,* That if any person or persons whatsoever shall by themselves or others either sell, or offer to sale, any butter, cheese, tallow or any sort of provisions, by any false weights, or for more weight than the same shall be found to be, on trial by the Clerk of the said market for the time being, upon complaint made to him, such person or persons shall for every such offence forfeit such butter, cheese, tallow, or provisions so sold, or offered to sale, and the Clerk of the said market is hereby empowered and required to seize the same, to be applied to the use of the poor of the said hundred.

None to be sold
on Monday or
Thursday, ex-
cept, &c.

SECT. 7. *And be it further enacted by the authority aforesaid,* That no person or persons whatsoever shall presume to hawk or carry about the said town of Newark, or to expose to sale in the market-house of the said town, any flesh meat on the Monday or Thursday in each week, except in the month of June, July and August, on pain of forfeiting such flesh meat,

meat, or the value thereof, to be recovered in like manner as other forfeitures are herein before directed to be recovered by this act, and paid to the Trustees aforesaid for the use of the academy aforesaid.

C H A P.
CCXIII.

1772.

SECT. 8. *And for preventing frauds that may be committed by bakers of bread for sale in the said town of Newark, Be it enacted by the authority aforesaid,* That from and after the publication of this act all and every baker and bakers of bread for sale, within the said town of Newark, shall and are hereby directed and required to make or impress some mark, letter or name of such baker or bakers on all such bread as he, she or they shall bake for sale as aforesaid, on penalty of paying for every such neglect the sum of Five Shillings, to the Trustees aforesaid for the use aforesaid, and to be recovered in manner aforesaid.

Bakers shall
mark their
bread.

Penalty on ne-
glect.

SECT. 9. *And be it further enacted by the authority aforesaid,* That the Clerk of the said market is hereby strictly charged and commanded to put this act, and every part thereof, in execution, and impowered to demand, recover and receive, all such penalties, fines and forfeitures as in this act are directed to be forfeited and paid; and to examine the weights and try the same for the purposes in this act before directed. And the said Clerk is hereby directed and required to keep fair and just accounts of all fines, forfeitures and penalties, that he shall receive by virtue of this act, and settle such accounts once in every year with the said Trustees, or such person as they shall appoint, and pay to them all such sum and sums of money as shall by him be received as aforesaid and not herein otherwise appropriated.

Clerk of the
market his
power.

Duty and

SECT. 10. *And be it further enacted by the authority aforesaid,* That the Clerk of the said market before he shall presume to enter upon the said office, or execute the trust reposed in him, shall take an oath or affirmation before some Justice of the Peace of the said county of New-Castle, *That he shall and will well and truly demean and behave himself in his said office of Clerk of the Market aforesaid, and impartially discharge the trust reposed in him by virtue of this act.*

qualification.

SECT. 11. *And be it further enacted by the authority aforesaid,*

G H A P
CCXIII.

1772.

He is likewise
to build and
hire the stalls,
&c. at the fairs.

aforefaid, That the Clerk of the faid market, for the time being, shall have the sole and exclusive right of providing materials for, and building or setting up stalls, tents or booths, within the faid town, and to hire or let the same at such reasonable rates as shall be fixed by the Trustees of Newark academy aforefaid in the market-house or elfewhere, at the time of holding fairs in the faid town, to such persons as may be willing to use or take them, and shall account for and pay to the Trustees of the faid academy, for the use of the faid academy, all such sum and sums of money as he shall from time to time receive for stalls, tents or booths so by him set up as aforefaid.

Boundaries of
the town.

SECT. 12. *And* for preventing all uncertainty and disputes that may arise touching or concerning the limits of the faid town of Newark; *Be it enacted by the authority aforefaid*, That the lines and bounds herein after mentioned are and always hereafter shall be reputed, deemed, allowed and taken to be the boundaries and limits thereof, *That is to say*, Beginning at the junction of the public roads near an inn now known by the name of the sign of Saint Patrick, and extending thence along the road leading to New-London township, in Chester county, to a small stream or run, and by the same stream or run to the mouth thereof, where it empties into Whiteclay-creek; and from thence down the faid creek to the most easterly line of the land now of Doctor Samuel Platt; and by the lines of the faid Samuel Platt and of land now of James Simpson, to include the faid lands within the faid town, to the land now of David M'Mechen; and from the corner of the faid James Simpson and David M'Mechen their land to the end of James Anderson's lane, and thence by a right line to the place of beginning.

Passed June 13, 1772.

CHAP.

C H A P. CCXIV. a.

C H A P.
CCXIV.

1772.

An ACT for the repairing and keeping up the causeway, adjoining the creek called the Murther-kill, in Kent county. Obsolete—The road leading thereto being since altered and laid out through the Village of Frederica.

C H A P. CCXV. a.

An ACT for continuance of a former act, intituled, A supplement to an act, intituled, An act for regulating fences within this government. (a)

1773.

WHEREAS an act of Assembly was made in the ninth year of the reign of his present Majesty George the Third, intituled, *A supplement to an act, intituled, An act for regulating fences within this government*, to continue in force for the space of three years, and from thence to the end of the next Session of Assembly, and no longer; Now forasmuch as it hath since by experience appeared, that the same is a beneficial law,

BE it enacted by the honorable Richard Penn, esq. with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent and Suffex, on Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same, That the same act remain, continue and be perpetual from the end of this Session of Assembly.

Passed April 12, 1773.

(a) For this Supplement see before chap. 198. a.

CHAP.
CCXVI.

1773.

C H A P. CCXVI. a.

A Supplementary ACT to an act, intituled, An act for limitation of actions, and proving accounts against the estates of persons dying within this government.

Preamble.

WHEREAS by the act of Assembly, (a) to which this act is a supplement, made in the fifteenth year of his late Majesty George the Second, it is declared and enacted, that persons having right of entry into any lands, tenements or hereditaments, held from them, shall not thereinto enter, or maintain actions for recovery of such right, after twenty years from the making of the said act, or after their right shall first descend or accrue *And whereas* there is no express saving in the said act made for persons that were or should be infants, *feme covert*s, *non compos mentis*, imprisoned or beyond sea, at the time of such right or title of entry descending or accruing to them. *And whereas* some doubts have arisen, whether it was the intent and meaning of the Legislature, that the rights of such persons should be saved during the time of such their disability; for the removal of which doubts,

SECTION 2. *BE it enacted by the honorable Richard Penn, esq. with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent and Sussex, on Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same, That if any person or persons that hath, or shall have, such right or title of entry, or that hath, or shall bring, his or their action or actions of or for any lands, tenements or hereditaments, whereunto he or they hath or have any title, or cause to have or pursue such action or actions, were or shall be at the time of the said right or title first descended, accrued,*
come

(a) Chap. 86. a.

come or fallen, within the age of twenty-one years, *feme covert*s, *non compos mentis*, imprisoned or not within any of his Majesty's dominions in America, that then such person or persons, and his and their heir and heirs, shall or may notwithstanding the said twenty years be expired, make his entry or bring his action; so as such person or persons, or his or their heir or heirs, shall within ten years next after his and their full age, discovery, coming of sound mind, enlargement out of prison, or coming into any of his Majesty's dominions in America, (b) take benefit of and commence the same, and at no time after the said ten years: (c)

SECT. 3. *And whereas* by the said act, to which this act is a supplement; it is also declared and enacted, That all actions of trespass *vi et armis*, *quare clausum fregit*, all actions of detinue, trover, and replevin, for taking away goods or cattle, all actions upon account and upon the case, (other than accounts between merchant and merchant, their factors and servants, relating to merchandise, and other than actions upon the case for words) all actions of debt, grounded upon any leading or contract without specialty, all actions of debt for arrearages of rent, (the proprietaries quitrent excepted) and all other actions of trespass, other than for assault, battery, menace, wounding or imprisonment, shall be commenced and sued within three years after the cause of such actions or suits, and not after; which, upon experience, hath

VOL. I.

3 T

been

C H A P.
CCXVI.

1773.

Infants, &c. may enter into their lands or bring actions within ten years after the impediments are removed,

Limitation of personal actions heretofore,

(b) Then including the continent of America, New Britain, or the country lying round Hudson's Bay, Canada, or the province of Quebec, that which is now Upper and Lower Canada, New Scotland, otherwise Nova Scotia, then bounded by the river and gulph of St. Lawrence, the Atlantic Ocean, and by Canada and New England; all of the United States of America, and East and West Florida, and of the islands, Newfoundland, Cape Breton and St. John's, in the gulph of St. Lawrence, the Bermuda isles, the Bahama isles, Jamaica, Barbadoes, St. Christophers, Antigua, Nevis, Montserrat, Barbuda, Anguilla, Dominica, St. Vincent, Granada, Tobago and Falkland islands.

(c) See also an additional supplementary act, chap. 40. c. passed June 19, 1793, declaring that no persons shall make an entry into any lands, &c. but within twenty years after right or title descended or accrued, nor maintain any Writ of Right, or other action for, or make any prescription or claim to, or in, any lands, &c. and alledge any seisin, but only an actual one within twenty years; with a proviso in favour of the persons, at the time of passing the said supplementary act, having a right of entry to bring suit within ten years thereafter; and a further proviso in favour of an infant, Feme Covert, Non Compos Mentis, or a prisoner, for ten years after the removal of such disability, and of the heirs of such as die under the said disabilities.

CHAP.
CCXVI.

1773.

in what time
they are to be
commenced in
future.

been found to be too short a time for a limitation of such actions; For remedy thereof in future,

SECT. 4. *Be it enacted by the authority aforesaid,* That the said actions of trespass *vi et armis*, *quare clausum fregit*, and the said actions of detinue, trover and replevin, for taking any goods or cattle, and the said actions upon account, and upon the case, other than such accounts as concern the trade of merchandife between merchant and merchant, their factors and servants, and other than actions upon the case for words, and the said actions of debt grounded upon any lending or contract without specialty, and the said actions of debt for arrearages of rent, (the proprietaries quitrent excepted) and the said other actions of trespass, except for assault, battery, wounding and imprisonment, shall be commenced and sued within six years next after the cause of such actions or suits, and not after. (*d*)

Saving to mi-
nors, &c.

SECT. 5. *Provided always nevertheless,* That if any person or persons, who is or shall be entitled to any such actions of trespass, other than as aforesaid, actions of detinue, trover, replevin, actions of account and upon the case, other than as aforesaid, and actions of debt, other than as aforesaid, are or at the time of any cause of such action given or accrued, fallen or come, shall be within the age of twenty-one years, *feme covert*, *non compos mentis*, imprisoned or out of this government; that then and in such case, such person or persons shall be at liberty to bring the same actions so as the same be brought within three years

(*d*) By another additional supplementary act, chap. 248. b. passed Feb. 4, 1792. every of the actions enumerated in this section (other than actions between merchant and merchant, their factors and servants, relating to merchandife) are to be, and may be, sued within three years after the cause of action shall accrue, and not after; with a saving in sect. 2. to Minors, Feme Coverts, persons Non Compos Mentis, imprisoned, beyond sea, or out of this state, and for one year after such disability removed. And in sect. 7. of all actions or causes of actions arisen or accrued before the passing of the same act of chap. 248. b.—And in sect. 3, as to persons against whom any of the causes of action abovesaid do arise who may be out of the state at the time thereof, or after before the time of bringing the same be expired, three years are given next after their return. By a supplement to said chap. 248. b. to wit, chap. 35. c. passed June 18, 1793, it is declared "that nothing in the said chap. 248. b. shall extend to any intercourse of traffic between merchant and merchant, according to the usual course of mercantile business, nor to any demands founded on mortgages, bonds, bills, promissory notes or settlements under the hands of the parties concerned."

years^(e) next after their coming to or being of full age, discoverture, of sound memory, at large, or returning into this government.

G. H. A. P.
ECXVI.
1773.

SECT. 6. *And if any person or persons, against whom any of the causes of action herein before mentioned do arise, shall at the time of the cause of suit or action arising, or afterwards before the time of bringing such action be expired, be beyond the seas, or go out of this government, then the person, entitled to such suit, may bring an action after the return of such person, so as he bring the same within three years after the return.*

Saving to persons beyond sea.

SECT. 7. *And be it enacted by the authority aforesaid, That no person or persons whatsoever, who do or shall keep regular books of accounts, shall be admitted to prove or require payment of any account or demand against the estates of persons dying within this government, if such account or demand shall appear to be older or of any longer standing than six years next before the death of such person or persons so dying or deceased as aforesaid; saving the rights of infants, feme coverts, persons insane, imprisoned or out of this government, until such impediments shall be removed, and until three years next after: And if any executor, whose testator shall not have made provision in his last will for the payment of his debts, or administrator, shall pay any such account, no allowance shall be made to him therefor in his administration account when settled before any Orphans Court, or other jurisdiction having cognizance thereof within this government.* (f)

Accounts against persons deceased which shall be due six years next before their death shall not be proved or paid, unless, &c.

SECT. 8. *And be it further enacted by the authority aforesaid, That so much of the said herein before recited*

Repeal of former act so far as altered hereby.

(e) One year in chap. 248. b. sect. 2.

(f) See said chap. 248. b. other provision made, that no person not keeping a day-book, or regular book of accounts, shall be admitted to prove or require payment of any account of longer standing than one year against the estate of any person dying within the state, or if it consist of many particulars, unless every charge therein shall have accrued within three years next before the death of the deceased, and unless the truth and justice thereof shall be made appear by one sufficient witness; and, in case of a regular book of accounts, unless such account shall have accrued or arisen within three years before the death of the deceased person: With a saving in sect. 6. of the rights or demands of infants, Feme Coverts, persons of insane memory, imprisoned or out of the state, so that their accounts be proved, and their claims prosecuted within one year after the removal of such disability: And in sect. 7. a saving also as to accounts arisen before the passing of the same act.

CHAP.
CCXVI.
1773.

ed act of Assembly, intituled, *An act for limitation of actions, and proving accounts against the estates of persons dying within this government*, as is hereby altered, contradicted or supplied, shall be repealed and become null and void; and that all other parts of the same act, shall remain, continue and be in as full force and virtue as if this act had never been made.

Passed April 12, 1773.

C H A P. CCXVII. a.

1773.

An ACT to repeal so much of an act, intituled, "An act for regulating and establishing fees," as relates to the imposing a fine of Six-pence on defaulting jurors. Repealed in chap. 191. b, sect. 28. February 3, 1789.

C H A P. CCXVIII. a.

1773.

A Supplementary ACT to an act, intituled, A Supplement to an act of this government, intituled, An act for the better confirmation of the owners of lands, &c. in their just rights and possessions.

Preamble.

WHEREAS by the act of Assembly, passed in the seventh year of his late Majesty, intituled, *A supplement to an act of this government, intituled, An act for the better confirmation of the owners of lands, &c. in their just rights and possessions,* (a) or by any other law of this government, there is not any express provision made, how or in what manner the private examination of any *feme covert* named as a grantor, bargainor or donor, in such grants, bargains and sales, mentioned in the said act, for conveying lands within this government, belonging to such *feme covert* in her own right, where

(a) For this see chap. 60. a, sect. 9,

where she resides out of the county in which such lands lie, shall be so taken: For remedy whereof,

SECTION 2. *BE* it enacted by the honorable Richard Penn; esq. with his Majesty's royal approbation, Lieutenant Governour and Commander in Chief of the counties of New-Castle, Kent and Suffex, on Delaware, and province of Pennsylvania; by and with the advice and consent of the Representatives of the freemen of the said counties in General Assembly met, and by the authority of the same,

That all grants, bargains or sales, heretofore or hereafter to be made and executed by husband and wife, of the lands belonging to the wife in her own right, lying within any of these counties, where the husband and wife do not reside within the county in which such lands are, the examination of such *feme covert* apart from her husband, being taken in the manner directed by the said act (whereto this is a supplement) before any of the Justices of the Court of Common Pleas, or any Mayor, Chief Magistrate or officer of the city, town or county, where such grants, bargains or sales, are or shall be made and executed, and certified under the common or public seal of such city, town or county, shall be as valid and effectual in law, as if the same had been taken and certified by some Judge or Justice of the court where such deed shall be acknowledged; any law, usage or custom to the contrary notwithstanding.

C H A P.
CCXVIII.

1773.

Feme Covert being privately examined before any Justice of the Court of Common Pleas, &c. where they reside, may grant their lands in these counties.

Passed April 12, 1773.

C H A P. CCXIX. a.

An ACT to prevent counterfeiting the paper money of other Colonies,—Obsolete.

1773.

CHAP.

C H A P.
CCXX.

C H A P. CCXX. a.

1773.

An ACT for erecting a bridge and causeway over Lewes Creek, from the town of Lewes to the Cape-side of the said creek, in the county of Sussex. (a)

WHEREAS many inconveniencies would be prevented, and great benefit would arise to the inhabitants of the town of Lewes, in the county of Sussex, and to the public in general, if a bridge was built across the creek at Lewes-town aforesaid: Therefore,

SECTION 1. *BE it enacted by the honorable John Penn, esq. (b) with his Majesty's royal approbation, Governor and Commander in Chief, of the counties of New-Castle, Kent and Sussex, on Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties in General Assembly met, and by the authority of the same, That John Rodney, Henry Fisher and Henry Neil, of the town of Lewes aforesaid, gentlemen, (c) are hereby nominated, authorised and empowered, to build and erect a bridge and causeway over the creek at Lewes-town, formerly called the Whore-kill, to begin at or near the place where the fort in the said town stood, and thence extending in a straight direction to the point of fast land on the cape side of the said creek, nearly opposite to the house now in the occupation of William Arnald; and also to erect, build and make, all proper and necessary abutments, wings, banks, ways and other works for the use, support and preservation of the said intended bridge and causeway.*

Three persons appointed to build a bridge over Lewes-creek;

place where.

SECT. 2. *And for the the better procuring a sufficient*

(a) For the several supplementary acts hereto, see chap. 223. a. passed March 29, 1775. chap. 225. b. passed January 29, 1791. chap. 52. c. passed January 28, 1794. and chap. 110. c. passed Feb. 9, 1796.

(b) John Penn, esquire, came a second time into the government in 1773, and continued until the declaration of independence, July 4, 1776.

(c) See said chap. 52. c. appointing David Hall and Caleb Rodney, in the place of the said John Rodney and Henry Fisher, then deceased, and authorising the Judges of the Court of Quarter Sessions for the county of Sussex to supply future vacancies.

CHAP.
CCXX,
1773.

Fund to be obtained by subscription.

cient stock of money for building the said bridge and causeway, *Be it enacted by the authority aforesaid*, That the said Commissioners, or the survivors, or survivor of them, be and are hereby authorized, empowered and enabled, to receive of, and from, any person or persons, any sum or sums of money, which have been, or hereafter shall be, subscribed and given for and towards defraying the charge and expence of building the bridge and causeway aforesaid; provided the same do not in the whole exceed the sum of One Thousand Pounds; and to apply the same to and for the erecting and building the said bridge and causeway with all convenient speed, and to no other use or purpose whatsoever.

SECT. 3. *And be it enacted by the authority aforesaid*, That in the deepest part of the channel of the said creek, (d) there shall be left clear the space of sixteen feet at least, over which shall be erected and placed a draw or platform, of the breadth of eight feet or more, with good and sufficient chains for raising up the same for the accommodation of all such persons as have occasion to pass and repass with any vessel through the said bridge, who are hereby obliged carefully to raise and lower the said draw-bridge, so as the same receive no damage thereby, under the penalty of Ten Shillings, for every neglect or offence therein, together with the expence of repairing and amending the said bridge, to be recovered, with costs, in the name of the Treasurer of the county for the time being, before any two Justices of the Peace of the said county, and applied to the use of the said bridge.

Passage for vessels in the channel, &c. to be left with a draw or platform to be erected over it.

SECT. 4. *And*, for the providing a fund to maintain and support the said bridge and causeway when erected, and for defraying any arrears that may be due for building the same, *Be it enacted by the authority aforesaid*, That the Justices of the Court of Quarter Sessions for the said county of Suffex shall, and are hereby empowered and required to appoint from time to time,

Justices of the Sessions to appoint a Collector of toll for passing said bridge.

(d) See after in chap, 223. a. provision made for opening a channel along the south-west side of the said creek, and for placing the draw or platform over the same.

C H A P.
CCXX.

1773.

Rates fixed.

time, so often as there shall be occasion, some fit and proper person Collector, (e) to demand, take and receive pontage or toll, according to the rates following; *That is to say*, For every single horse and rider, Three-pence; for every led horse, ox, cow or heifer, One penny; for every foot-passenger, One penny; for every sheep and hog, One penny; for a coach or other four wheeled carriage with a pair of horses and riders, Nine-pence; for a chaise or chair with one horse and the riders, Four-pence; with two horses and riders, Six-pence; for a cart or waggon, loaded, and horses or oxen, One Shilling; empty cart or waggon and horses or oxen, Four-pence. (f)

Such as subscribe
Three Pounds
to be exempted
from toll.

SECT. 5. *Provided always*, That no pontage or toll shall be exacted or demanded of or from any person who shall subscribe and pay toward erecting and building the said bridge and causeway the sum of Three Pounds and upwards; (g) and that all poor persons of the said county, exempted from the payment of public rates and levies, shall have liberty to pass and repass toll-free.

List of subscribers
to be lodged
with Clerk of
the Peace.

SECT. 6. *And* in order to ascertain the subscribers exempted from toll as aforesaid, *It is hereby enacted*, That the said Commissioners, or the survivors or survivor of them shall, as soon as the said bridge and causeway are built, certify and return, into the Court of Quarter Sessions of the said county of Sussex, true lists of the names of the subscribers, with the respective sums of money received from them annexed; which lists shall be lodged with the Clerk of the Peace, who is hereby required to give certified copies to such as may demand the same.

Penalty on Col-
lector taking
greater rate than
herein prescribed.

SECT. 7. *And be it further enacted by the authority aforesaid*, That if the person to be appointed Collector of the pontage or toll aforesaid shall exact or demand any greater or other rates or prices for passing over

(e) This power of appointing a Collector of the Pontage is vested in the Commissioners in chap. 52. c.

(f) See after in chap. 223. a. sect. 3. additional rates prescribed.

(g) See further regulations as to the toll from subscribers in chap. 223. a. sect. 4. and in chap. 225. b. sect. 3.

over the said bridge than what are herein before prescribed and limited, he, she or they, so offending, shall forfeit and pay the sum of Five Pounds, lawful money of this government, for every such offence; one moiety thereof to the Treasurer of the county, for the time being, for the maintaining and supporting the said bridge and causeway, and the other moiety thereof to the party grieved; to be recovered by action of debt, bill, plaint or indictment, in any Court of Record in the said county of Suffex.

C H A P.
CCXX.
1773.

SECT. 8. *And be it further enacted by the authority* *aforsaid*, That the said Collector shall, once in twelve months at least, pay unto the County Treasurer all such sums of money as he shall have then received by virtue of this act, retaining thereout so much as shall be stipulated between him and the Justices of the Quarter Sessions *aforsaid* for his service in receiving the same, and the Treasurer shall give receipts to the Collector for what he shall so bring in and pay from time to time; which receipts shall be the Collector's discharge for so much: *And* that the said Treasurer shall, from time to time, signify in writing to the Justices of the Court of Quarter Sessions of the said county, how much the Collector brings in and pays as *aforsaid*; and when the said Collector is negligent or refuses to do his duty in the premises, the Treasurer is hereby required to signify the same, by way of complaint to the justices *aforsaid*.

Collector to account with Treasurer once a year, &c.

SECT. 9. *And be it further enacted by the authority* *aforsaid*, That the Treasurer of the county for the time being, shall keep a distinct book, containing a particular account of all the monies that shall come into his hands by virtue of this act, as also of all disbursements and payments made by order of the Justices in their Court of Sessions, who are hereby authorized and required to direct the application of the said monies, as well for the maintenance and support of the said bridge and causeway from time to time, as for defraying any arrears that may be due for building the same. (g) *And* the Treasurer shall be allowed for

Treasurer to keep a distinct account of monies by him received and paid.

VOL. I.

3 U

his

Allowance to Treasurer,

(g) See chap. 225. b. directing the appropriation of the toll arising from the said bridge and causeway to the sole use and benefit of the subscribers and Commissioners,

C. H. A. P.
CCXX.
1773.

books to be de-
livered up on
his death, &c.

Commissioners
and Treasurer
to account with
three persons to
be appointed by
Levy Court.

Collector to give
bond, &c.

his trouble, Four Pounds for every Hundred Pounds so by him received and paid, and so in proportion for any greater or lesser sum of money, to be allowed him at settling his accounts as is hereafter directed. And when the said county Treasurer shall be removed from his office or die, the said books and balance of monies then in his hands shall be delivered up and paid to the succeeding Treasurer.

SECT. 10. *And be it further enacted by the authority aforesaid,* That the Commissioners aforesaid, or the survivors or survivor of them, after the said bridge and causeway are finished and compleated, and the Treasurer, for the time being, yearly and every year, after any monies have come into his hands by virtue of this act, shall render and make report of their proceedings and transactions in the premises aforesaid to the Levy Court of the county of Suffex, who shall nominate and appoint, out of their own number, three fit persons to settle accounts with the said Commissioners and Treasurer, who are hereby required to lay before them the true and just state of all the accounts relating to the said bridge and causeway in their hands, which three persons or two of them shall proceed to adjust and settle the said accounts, and make report to the next Court of Appeal after their appointment as aforesaid; which settlement, when so made, shall be signed or subscribed by the parties aforesaid, and then received and filed among the papers of the laid court. And if after such settlement any balance of monies shall be in the hands of the said Commissioners, or any of them, the same shall be paid over to the Treasurer of the county, for the time being, to be applied and accounted for as other monies coming into his hands by virtue of this act.

SECT. 11. *And be it further enacted by the authority aforesaid,* That the Collector of the toll or pontage shall, before he enters upon the execution of his office,

for paying off all arrears due on account of the same bridge and causeway, and reimbursing such persons as may advance monies to the erecting and finishing the same on additional subscriptions, &c.—And chap. 52, c. authorising the Commissioners to apply the collected toll to the uses aforesaid; and by chap. 110, c. to the keeping of the same bridge and causeway in repair.

rice, give bond to the Justices of the Court of Quarter Sessions, with such security as shall be required, in the name of the Treasurer of the county, for the faithful performance of the trust reposed in him by this act. And if the said Collector shall at any time after refuse or neglect to do his duty, or shall happen to remove out of the said town of Lewes, or die, the justices of the court aforesaid shall in every such case appoint another to act in his stead.

C H A P.
CCXX.

1773.

Appointment in
case of his death,
&c.*Passed November 6, 1773.*

C H A P. CCXXI. a.

An ACT for the encouragement of the owners of mills within this government, and for the repealing of an act of Assembly, intituled, An act to encourage the building of good mills in this government, and the supplement thereto, passed in the thirty-fourth year of his late Majesty's reign.

1773.

SECTION I. **B**E it enacted by the honorable John Penn, esq. with his Majesty's royal approbation, Governor and Commander in Chief of the counties of New-Castle, Kent and Sussex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same, That if any owner or owners of a mill, already built or hereafter to be built within this government; shall conceive him, her or themselves, to be injured or aggrieved by any mill-race, mill-dam or mill-pond, hereafter to be made by any other person or persons, upon the petition of such owner or owners, or guardians of minor owners, to the County Court of Common Pleas, setting forth the same, the Justices of the said Court shall issue a writ to the Sheriff of the county, commanding him to summon a jury of twelve honest and lawful men to go with him and view the premises in the presence of the parties interested, if they will attend upon notice given them by the Sheriff

Any person
erecting a mill-
dam, &c. to the
injury of ano-
ther, to pay
such damages as
a jury shall as-
sess.

C. H. A. P.
CCXXI.
1773.

but if so injuri-
ous as it ought
not to continue,
to be pulled
down, &c.

Time limited
for petitioning.

Saving to mi-
nors, &c.

riff for that purpose, and to appear before the Justices of the next County Court of Common Pleas, when and where they shall, upon their oaths or affirmations respectively, after hearing the proofs and allegations of the parties, by their verdict, say and determine whether any, and what damages and loss the person or persons so complaining has or have sustained by reason or means of the said race, dam or pond; And the justices of the said court shall give judgment for or against the person or persons petitioning according to the said verdict, with costs, and may issue an execution thereupon for the damages and costs or for costs only, as the case may require; to be levied by the Sheriff on the goods and chattels, lands and tenements of the person or persons against whom the judgment shall be given as aforesaid. But if the said jury shall be of opinion, that the race, dam or pond, made as aforesaid, is so injurious to any mill above or below it, that such race, dam or pond, ought not to continue, they shall by their verdict say so; and thereupon the justices of the said court shall adjudge and decree, that the erec^tor or maker of any such dam or race shall pull down such dam, or stop such race, as the case may require, so that the water may flow freely in the same course, that it might or could have done before the erecting or making such dam or race. And if the erec^tor or maker of such dam or race will not comply with such judgment or decree, the said court may and are hereby required to enforce obedience to the same, by imprisoning the person or persons so refusing or neglecting to comply therewith, and may and shall order the same dam to be prostrated, or race to be stopped, by the party or parties injured as aforesaid.

SECT. 2. *Provided always* That the person or persons aggrieved in manner aforesaid do prefer their said petition within six years from the time of the injury or damage done to him, her or them, as aforesaid, and not after; *Saving* the rights of infants, *femes covert*, persons *non compos mentis*, imprisoned or out of this government, so as they exhibit their petition within one year after the impediments aforesaid are removed.

SECT. 3. *And be it enacted by the authority aforesaid,*

said, That the aforefaid act of Assembly, intituled, *An act to encourage the building of good mills in this government*, and the supplement to faid act, paffed in the thirty-fourth year of his late Majesty's reign, *(b)* and every claufe, matter and thing in the fame contained, after the tenth day of May next, fhall and are hereby declared to be repealed.

C H A P.

CCXXI.

1773.

Repeal of former acts.

Passed November 6, 1773.

C H A P. CCXXII. a.

An ACT for making perpetual a former act, intituled, An act for the amending the laws relating to testamentary affairs, and for the better settling intestates estates, except such parts thereof as are hereby altered and amended.

1773.

WHEREAS an act of Assembly was made in the sixth year of the reign of his present Majesty George the Third; intituled, *An act for amending the laws relating to testamentary affairs, and for the better settling intestates estates, (a)* to continue in force for the space of seven years, and from thence to the end of the next Session of Assembly, and no longer; *Now* forasmuch as it hath since been found by experience, that the same is in general a beneficial law,

Preamble.

SECTION 2. *BE it enacted by the honorable John Penn, esq. with his Majesty's royal approbation, Governor and Commander in Chief, of the counties of New-Castle, Kent and Suffex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties in General Assembly met, and by the authority of the same,* That the same act, subject to the additions and alterations herein after mentioned, shall remain, continue and

Former act made perpetual, subject to the additions and alterations herein.

(b) Chapters 23. a. 172. a. for both of which see appendix.

(a) Ante chap. 186, a.

C H A P.
CCXXII.

1773.

Right of acceptance on a valuation being in a minor, the next in order of age, to take, &c.

Distribution of lands among collaterals, &c.

Whole and half blood when to take equally;

when not.

and be perpetual from the end of this Session of Assembly.

SECT. 3. *And be it further enacted by the authority aforesaid,* That where any valuation shall be made of the lands and tenements of any intestate, and the person intitled to the preference in taking the same at such valuation, by the act for the better settling intestates estates, and the act before mentioned, shall at the time of such valuation returned to the court, be under the age of twenty-one years, then and in such case the person next in order of succession, who is of age, may and shall have liberty to accept the same, complying with the directions of the acts aforesaid.

SECT. 4. *And be it further enacted by the authority aforesaid,* That where any man shall die intestate, being owner of any real estate within this government, leaving children by different venters, or any woman shall die intestate, being owner of any real estate as aforesaid, leaving children by different fathers, and any of the aforesaid children shall afterwards die intestate without issue, that the real estate of such child so dying, which came from the common parent, may and shall be distributed as follows: *That is to say,* One moiety thereof to the widow of the intestate, if any, during her natural life, and the residue thereof equally to and amongst all the brothers and sisters of the deceased, or their legal representatives, both of the whole and half blood, being the issue of the same parent from whom the said estate came; and in case there be none such, then to and amongst the other brothers and sisters, or their legal representatives; and in case there be none such, then the said residue shall go equally to every of the next of kindred, in equal degree, of the intestate and those who legally represent them. *And* that the lands, tenements and hereditaments, acquired in any other manner by any person or persons dying intestate, and having no child or children, nor any legal representatives of them, shall be allotted and distributed as follows; *That is to say,* One moiety thereof to the widow of the intestate during her natural life, and the residue thereof equally to and amongst the brothers and sisters of the whole blood to the deceased, or their legal representatives; and in case there be

be no brothers or sisters of the whole blood, or legal representatives of them, then the said residue shall be distributed equally to and amongst the brothers and sisters of the half blood of or unto the intestate, or their legal representatives; and in case there be none such then the said residue shall go equally to every of the next of kindred, in equal degree, of the intestate, and those who legally represent them.

SECT. 5. *And*, for the better settling the accounts of executors and administrators in the Orphans Courts, *Be it further enacted by the authority aforesaid*, That every executor or administrator shall file the account, which he intends to exhibit to the said court, with the Clerk thereof, at least three months next before the same is settled, for the inspection of all persons interested; and that every account, that has not been so filed, which shall be settled in the said courts from and after the first day of May next, may be reviewed, and shall remain open to a further examination in the same courts for six months next after. (b)

SECT. 6. *And whereas* by the act of Assembly, intitled, *An act for establishing Orphans Courts*, an appeal is given from any definitive sentence or judgment of the Orphans Courts to the Governor for the time being, in equity, (c) which has been found inconvenient, *Be it therefore enacted by the authority aforesaid*, That from and after the publication of this act, any person or persons, aggrieved by any order, sentence or decree, of any Orphans Court, may appeal from the same to the Supreme Court of this government, and not elsewhere; (d) the person so appealing giving security to prosecute the said appeal with effect, within twelve months after such appeal.

CHAP.
CCXXII.
1773.

Executors or administrators to file accounts with Clerks of Orphans Courts three months before settlement;

or subject to a revision for six months after.

Appeal given to Supreme Court.

Passed November 6, 1773.

CHAP.

(b) Other provision made for settling those accounts by and before the Register of the county, with an appellate jurisdiction to the Orphans Court, in art. 6. sects. 15, 16. of the constitution of June, 1792.

(c) For which see before chap. 30. a. sect. 8.

(d) Such appeal also provided in cases where the Orphans Court has original jurisdiction in said art. 6. sect. 15. of the constitution of June, 1792.

C H A P.
CCXXIII.

C H A P. CCXXIII. a.

1775.

A Supplement to an act, entitled, An act for erecting a bridge and causeway over Lewes-creek, from the town of Lewes to the cape side of the said creek, in the County of Suffex. (a)

Preamble:

WHEREAS it is apprehended that the turning the channel of Lewes-creek, in the county of Suffex, from the place where it now runs, at and near the bridge, in part erected over the said creek at Lewes Town, to the southwest side of the said creek, near the fast land, would be a beneficial improvement; and that the pontage allowed to be paid by an act of General Assembly, intituled, *An act for erecting a bridge and causeway over Lewes-creek, from the town of Lewes to the cape side of the said creek, in the county of Suffex*, will not be sufficient for the maintaining and supporting the bridge and causeway now erecting by virtue of the said act; and that subscribers for the building said bridge are not sufficiently encouraged;

SECTION I. BE it therefore enacted by the honorable John Penn, esq. with his Majesty's royal approbation, Governor and Commander in Chief of the counties of New-Castle, Kent and Suffex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same, That it shall and may be lawful, to and for the Commissioners nominated and appointed by the said act, to erect and build the bridge and causeway aforesaid, or any two of them, to cut, or cause to be cut, a canal of the width of ten feet, and the depth of two feet, from the southwest channel of Lewes-creek aforesaid, adjoining a small island called Kollock's Island, as straight as conveniently may be near the southwest shore of said creek, until it passes

Channel to be cut on southwest side of Lewes-creek.

(a) See before chap. 220. a. the original act—and for other supplementary acts thereto see chap. 225. b. passed Jan. 29, 1791.—chap. 52. c. passed Jan. 28, 1794.—and chap. 110. c. passed Feb. 9, 1796.

passes through the place where a passage of ninety feet is left between two abutments of the bridge now erecting, and from thence in such direction into the present channel of the said creek, below the aforesaid bridge, as they shall judge most proper and convenient for terminating the same; and when the said canal is so cut in manner aforesaid, they the said Commissioners, or any two of them, are hereby authorised and impowered to stop and fill up the present channel of the said creek on the cape side thereof, and to continue the causeway now erecting a-crofs the same, any thing in the said act to the contrary notwithstanding: And also, if they shall find it necessary and convenient, they are hereby impowered and authorised to stop the said channel at the upper end of Shankland's Island to the cape, and that smaller channel situate between White's and Kollock's islands, for the purpose of more readily conveying the waters of the said creek into the canal to be cut in manner aforesaid.

CHAP
CCXXIII.
1775.

Channel on the
cape side to be
stopped.

SECT. 2. *Provided always*, That there shall be left clear in the place where the said canal is to pass, between the abutments of the said bridge the space of ninety feet at all times, for the waters of the said creek to pass through, excepting the piles necessary for supporting the said bridge; and that there shall be left between the rows of said piles the clear space of sixteen feet at least; over which shall be erected and placed a draw or platform of the breadth of eight feet or more, with good and sufficient chains for raising up the same, for the accommodation of all such persons as have occasion to pass and repass with any vessel through the said bridge; who are hereby obliged carefully to raise and lower the said drawbridge, so as the same receive no damage thereby, under the penalty of Ten Shillings for every neglect or offence therein, together with the expence of repairing and amending the said bridge; to be recovered, with costs, in the name of the Treasurer of the county for the time being before any two Justices of the Peace of the said county, and applied to the use of the said bridge.

Drawbridge to
be placed over
the South-West
channel.

SECT. 3. *And be it further enacted by the authority* Additional tolls

aforesaid, That the person appointed to collect the

VOL. I.

3 W

pontage

CHAP.
CGXXXIII.
1775.

pontage or toll, for passing the bridge aforesaid, may and shall demand, take and receive, the additional rates or toll following, more than what is already allowed by the said act *(b)* *to wit*; for every single horse and rider, One penny; for every foot passenger, One penny; for every led horse, ox, cow or heifer, One penny; for a coach, or other four wheeled carriage, with a pair of horses and riders, Nine-pence; for a cart or waggon loaded, and horses or oxen, Six-pence; for a chaise or chair, with one horse and the riders, Four-pence; with two horses and riders, Six-pence; and for an empty cart or waggon, and horses or oxen, Two-pence.

Who exempt
from toll.

SECT. 4. *And be it further enacted by the authority aforesaid*, That no pontage or toll shall be demanded and knowingly taken of or from the wife, or children, or servants of any person who hath subscribed and paid, or shall hereafter subscribe and pay towards the erecting the aforesaid bridge and causeway, the sum of Three Pounds or upwards; *(c)* or of or from the servant or servants of any such wife or children, during the life of such subscriber, or for twenty years from and after the passing of this act, under the penalty of Twenty Shillings for every such offence, to be recovered, with costs, and applied in manner as by this act is before directed with respect to persons doing damage to the draw of the aforesaid bridge.

SECT. 5. *Provided always*, That all and every other part of the said act of Assembly, for erecting a bridge and causeway over Lewes-creek, &c. shall be and continue in full force, save only those parts which by this present act are altered and supplied.

Passed March 29, 1775.

CHAP.

(b) Ante chap. 220. a. sect. 4.

(c) See before in chap. 220. a. sect. 5. and see after in chap. 225. b. sect. 3.

C H A P. CCXXIV. a.

C H A P.
CCXXIV.

1775.

An ACT for the easing scrupulous consciences, in the mode
of taking an oath.

WHEREAS there are some persons who declare Preamble.
they cannot take an oath by laying the right
hand upon the book, and kissing the same in the man-
ner now used, for conscience sake, and yet are wil-
ling to take an oath in another mode, and to serve
their country in all cases where an oath is by law ne-
cessary, and are in every respect good subjects :

SECTION 1. BE it enacted by the honorable John Penn,
esq. with his Majesty's royal approbation, Governor and
Commander in Chief of the counties of New-Castle, Kent and
Sussex, upon Delaware, and province of Pennsylvania, by and
with the advice and consent of the Representatives of the
freemen of the said counties, in General Assembly met, and by
the authority of the same, That every person who shall be
hereafter called upon as a witness, or otherwise have
occasion to take an oath, and shall solemnly declare
that he or she is conscientiously scrupulous of taking
the same, by laying the right hand upon the book, and
kissing it according to law, (a) may and shall, instead
thereof, take an oath in the form following, *to wit,*
He or she may and shall lift up the right hand, and swear
by the ever living God, the searcher of all hearts, that,
&c. And at the end of the oath administered, shall
say, *As he or she shall answer to God at the great day ;*
which oath, of such persons, shall be accounted and
deemed in the law to have the full effect of an oath in
any case whatsoever in this government.

Persons scrupu-
lous of taking an
oath in common
form to have it
administered by
holding up of
right hand, &c.

SECT. 2. And be it further enacted by the authority
aforesaid, That all such persons as shall be convicted
of falsely and corruptly declaring and swearing, in
manner aforesaid, any matter or thing, which, if the
same had been upon oath in the present legal form,
would by law amount to wilful and corrupt perjury,
shall

Swearing thus
falsely, perjury,
&c.

(a) See before in chap. 22. a. sect. 4. The solemn affirmation of such persons as
conscientiously refuse to take an oath is directed to be admitted, &c.

C H A P.
CCXXIV.
1775.

shall incur the same penalties, forfeitures and disabilities, as persons convicted of wilful perjury do incur by the laws of this government. And that every person who shall unlawfully and corruptly procure and suborn any witness to testify falsely and corruptly, in any matter, cause or thing judiciously to be determined according to the form prescribed by this act, shall suffer the pains, forfeitures and disabilities, which are inflicted by the laws of this government upon persons guilty of subornation of perjury.

Passed March 29, 1775.

C H A P. CCXXV. a.

1775.

An ACT for the relief of the poor.

Preamble.

WHEREAS the laws hitherto made in this government, respecting the poor, have been defective;

SECTION 1. *BE it enacted by the honorable John Penn, esq. with his Majesty's royal approbation, Governor and Commander in Chief of the counties of New-Castle, Kent and Sussex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same, (a)* That each of the Overseers of the Poor shall, yearly and every year, return in writing the names of three good and sufficient freeholders, residing in their respective hundreds, to the Justices of the Peace of the several counties within this government, at their Quarter Sessions to be held for the said counties respectively in the month of February; to the end, that the said justices, or a majority of them, may choose and nominate one out of every such number to serve in the said office

Overseers of the Poor how to be returned and appointed.

(a) An entire new system for the maintenance and support of the poor in the several counties of this state, adopted and provided in chap. 218. b. passed January 29, 1791, and its supplement, chap. 249. b. passed February 4, 1792; which see.

office of Overseer of the Poor for the ensuing year. And if any Overseer shall refuse or neglect to make such return as aforesaid, or being so chosen and appointed shall refuse to execute the said office, he shall forfeit and pay any sum not exceeding Six Pounds, for the use of the Poor of the hundred in which he dwells.

C H A P.
CCXXV.

1775.

Penalty on neglect to return or refusal to serve.

SECT. 2. *And be it further enacted by the authority aforesaid,* That every Overseer so nominated and appointed shall, before he enters upon the execution of his office, take an oath or affirmation respectively, according to law, before some Justice of the Peace in the respective county, *That he will discharge the Office of Overseer of the Poor faithfully and impartially, to the best of his knowledge and ability.*

To be qualified.

Their qualification.

SECT. 3. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for the Overseers of the Poor so nominated and appointed, having first obtained the approbation and consent of any two Justices of the Peace of the same county, to make a rate, according to the rate of the county assessments for the current year, of such sum or sums of money, in each respective hundred, as shall be sufficient to maintain the poor, indigent and impotent inhabitants of the hundred wherein they have attained their last legal settlement; and to be collected by them at such times as they shall think necessary and convenient; and that the money so collected, for as much thereof as may be wanting, shall be employed for the support of the poor, in providing them proper houses and places, and a convenient stock of hemp, flax, thread and other materials, for such of them to manufacture as are capable of working; and also for the relieving such poor, old, blind, impotent and lame persons or others, who are unable to work within the said hundreds respectively.

The manner in which rates are to be laid, collected and applied for the relief of the poor.

SECT. 4. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful to and for the Overseers of the Poor of the said hundreds to contract with any person or persons for a house or lodging for keeping, maintaining and employing any or all such poor in the said hundreds, respectively, as shall be adjudged proper objects of relief, and there to keep, maintain and employ all such poor persons,

How the poor may be supported.

and

C H A P.
CCXXIV:
1775.

shall incur the same penalties, forfeitures and disabilities, as persons convicted of wilful perjury do incur by the laws of this government. And that every person who shall unlawfully and corruptly procure and suborn any witness to testify falsely and corruptly, in any matter, cause or thing judiciously to be determined according to the form prescribed by this act, shall suffer the pains, forfeitures and disabilities, which are inflicted by the laws of this government upon persons guilty of subornation of perjury.

Passed March 29, 1775.

C H A P. CCXXV. a.

1775.

An ACT for the relief of the poor.

Preamble.

WHEREAS the laws hitherto made in this government, respecting the poor, have been defective;

Overseers of the Poor how to be returned and appointed.

SECTION 1. *BE it enacted by the honorable John Penn, esq. with his Majesty's royal approbation, Governor and Commander in Chief of the counties of New-Castle, Kent and Sussex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same,*(a) That each of the Overseers of the Poor shall, yearly and every year, return in writing the names of three good and sufficient freeholders, residing in their respective hundreds, to the Justices of the Peace of the several counties within this government, at their Quarter Sessions to be held for the said counties respectively in the month of February; to the end, that the said justices, or a majority of them, may choose and nominate one out of every such number to serve in the said office

(a) An entire new system for the maintenance and support of the poor in the several counties of this state, adopted and provided in chap. 218. b. passed January 29, 1791, and its supplement, chap. 249. b. passed February 4, 1792; which see.

office of Overseer of the Poor for the ensuing year. And if any Overseer shall refuse or neglect to make such return as aforesaid, or being so chosen and appointed shall refuse to execute the said office, he shall forfeit and pay any sum not exceeding Six Pounds, for the use of the Poor of the hundred in which he dwells.

C H A P.
CCXXV.

1775.

Penalty on neglect to return or refusal to serve.

SECT. 2. *And be it further enacted by the authority aforesaid,* That every Overseer so nominated and appointed shall, before he enters upon the execution of his office, take an oath or affirmation respectively, according to law, before some Justice of the Peace in the respective county, *That he will discharge the Office of Overseer of the Poor faithfully and impartially, to the best of his knowledge and ability.*

To be qualified.

Their qualification.

SECT. 3. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for the Overseers of the Poor so nominated and appointed, having first obtained the approbation and consent of any two Justices of the Peace of the same county, to make a rate, according to the rate of the county assessments for the current year, of such sum or sums of money, in each respective hundred, as shall be sufficient to maintain the poor, indigent and impotent inhabitants of the hundred wherein they have attained their last legal settlement; and to be collected by them at such times as they shall think necessary and convenient; and that the money so collected, or as much thereof as may be wanting, shall be employed for the support of the poor, in providing them proper houses and places, and a convenient stock of hemp, flax, thread and other materials, for such of them to manufacture as are capable of working; and also for the relieving such poor, old, blind, impotent and lame persons or others, who are unable to work within the said hundreds respectively.

The manner in which rates are to be laid, collected and applied for the relief of the poor.

SECT. 4. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful to and for the Overseers of the Poor of the said hundreds to contract with any person or persons for a house or lodging for keeping, maintaining and employing any or all such poor in the said hundreds, respectively, as shall be adjudged proper objects of relief, and there to keep, maintain and employ all such poor persons, and

How the poor may be supported.

C H A P.
CCXXV.

1775.

and forfeit the
same.

How the rates
are to be reco-
vered from de-
linquents.

What relations
are to maintain
their poor.

and take the benefit of their work, labour and service, for and towards their maintenance and support; and, if any poor person shall refuse to be lodged, kept, maintained and employed in such house or houses, he or she shall be put out of the book, and shall not be entitled to receive relief from the Overseers during such refusal.

SECT. 5. *And be it further enacted by the authority aforesaid,* That if any person or persons, so rated or assessed, shall refuse to pay the sum or sums on them charged, it shall and may be lawful to and for the said Overseers, or any one of them, (having first obtained a warrant under the hand and seal of any Justice of the Peace of the county respectively where the said assessment is made, who is hereby empowered to grant such warrant) to levy the same on the goods and chattels of the person or persons so refusing; and in case such person shall not, within three days after such distress made, pay the sum or sums on him or her charged, together with the costs of such distress, that the said Overseers, or any one of them, may proceed to the sale of the goods distrained, rendering to the owner the overplus (if any) that shall remain on such sale, reasonable charges being first deducted; and in case such person or persons have no goods or chattels whereby they may be distrained, it shall and may be lawful for any Justice of the Peace to commit the delinquent or delinquents to prison, there to remain without bail or mainprize, until they have paid the same. (b)

SECT. 6. *And be it further enacted by the authority aforesaid,* That the father and grand-father, mother and grand-mother, being of sufficient ability, shall maintain every poor, blind, lame or impotent child or children, grand-child or grand-children, not able to work, at his, her or their the said parent or parents own proper costs and charges, as the Justices of the Peace at their General Quarter Sessions shall order or direct; and that the children and grand-children of such, being of ability, shall by such order of the justices

(b) The five preceding sections altered and supplied in chap. 2, § 8. b.

tices aforesaid, at their own charges, relieve and maintain their fathers and mothers, grand-fathers and grand-mothers, not having any estate, nor being of ability to work, on pain of forfeiting Forty Shillings for every month they shall fail therein, for the use of the poor of the hundred wherein they reside. (c)

CHAP.
CCXXV.
1775.

Penalty on failure.

SECT. 7. *And be it further enacted by the authority aforesaid,* That no person or persons shall be admitted or entered into the poor's book, or receive relief from the Overseers of the Poor, before such person or persons have procured an order from two Justices of the Peace for the same; and in case the said Overseers shall enter into their books, or relieve any such poor person or persons, without such orders, they shall forfeit all such money or goods paid or distributed, unless the justices shall approve and allow them the same upon making up their accounts. (d)

No person to receive relief without an order from two justices.

SECT. 8. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for the respective Overseers of the Poor, with the approbation and consent of any two Justices of the Peace of the county, and they are hereby authorized, empowered and required, to bind out apprentices to trades or otherwise, all orphan children likely to become chargeable to the hundred where they reside; and the children of all such, who shall not by the said justices and Overseers be thought of ability to maintain and educate them, for such term or terms, as the said justices and Overseers in their discretion shall see meet; so as that any such male child be not bound longer than until he shall arrive at the age of twenty-one years, and a female until she shall arrive at the age of eighteen years. (e)

Overseers to bind out poor children, &c.

SECT. 9. *And be it further enacted by the authority aforesaid,* That all gifts, grants, devises and bequests hereafter to be made of any houses, lands, tenements, rents,

Gifts and devises for the use of the poor made available, &c.

(c) And in chap. 249. b. sect. 6. Justices of the Court of Quarter Sessions are authorized to make an order on the relations of such poor for reimbursing sums of money expended in their support.

(d) Altered and supplied in chap. 218. b. sect. 19, and in chap. 249. b. sect. 6.

(e) Altered and supplied in chap. 218. b. sect. 18.

CHAP.

CCXXV.

1775.

rents, goods, chattels, sum or sums of money, not exceeding in the whole, including all gifts, grants, devises and bequests heretofore made, the value of One Thousand Pounds to the poor of any hundred within this government, or to any other person or persons for their use, by deed, or by the last will and testament of any person or persons, or otherwise howsoever, shall be good and available in law, and shall pass such houses, lands, tenements, rents, goods and chattels, to the Overseers of the Poor of such hundred, for the use of their poor respectively. (f)

Overseers of the
Poor incorporated.

SECT. 10. *And be it further enacted by the authority aforesaid,* That the said Overseers of the Poor for the hundreds aforesaid for the time being respectively, shall forever hereafter in name and in fact be, and they are hereby declared to be bodies politic and corporate in law to all intents and purposes, and shall have perpetual succession, and by the name of Overseers of the Poor of the said hundreds may sue and be sued, and plead and be impleaded in all Courts of Judicature within this government, and by that name may and shall purchase, take or receive any lands, tenements or hereditaments, goods, chattels, sum or sums of money not exceeding in the whole, including all gifts, grants, devises and bequests heretofore made, and which they are hereby enabled to hold, the aforesaid value of One Thousand Pounds, to and for the use and benefit of the poor of the said hundreds respectively, of the gift, alienation or devise of any person or persons whomsoever, to hold to them the said Overseers and their successors in the said trust, for the use of the said poor for ever. (f)

The importers
of such persons
as are likely to
become charge-
able to give se-
curity, &c.

SECT. 11. *And be it further enacted by the authority aforesaid,* That if any person or persons, who are likely to become chargeable, be imported or brought into any hundred within any of the counties of this government, it shall and may be lawful for any two Justices of the Peace of the said county, and upon complaint to them made, they are hereby required to cause to come before them the master or owner of the vessel

(f) These sects. 9, 10. altered and supplied in chap. 218. b. sects. 5, 6.

vessel wherein such person or persons were imported, or the importer or bringer in of such person or persons, and, if they see cause, oblige them to export or carry back to the place from whence they came any such person or persons so by them imported or brought in, and upon refusal or neglect so to do, or to give sufficient security to the said justices, in the name of the Overseers of the Poor of such hundred where they are so imported or brought in, to bear the hundred harmless and indemnified from any charges that may accrue by means of the person or persons so imported or brought in, then it shall and may be lawful for the said justices to commit such master, owner, importer, or bringer in, to the common gaol, there to remain until he or they shall comply with the order of the said justices. (g)

CHAP.
'CXXV.

1775.

SECT. 12. *And be it further enacted by the authority aforesaid,* That the said Overseers shall yearly, at the Court of Quarter Sessions to be held for the said counties respectively in the month of February, make up their accounts with the Justices of the Peace of their respective county, or any two of them to be there appointed by the rest; which accounts, when settled, shall be signed by the said justices, who shall have full power to allow such parts thereof only as to them shall appear just and reasonable. And if any such Overseer or Overseers shall refuse or neglect to make and yield up such accounts at the said Court of Quarter Sessions, or within one month after, before the two Justices of the Peace there to be nominated for that service, or if any Overseer or Overseers, whose office that year expires, shall refuse or neglect to pay all the monies raised by assessments which shall remain in their hands upon the settlement of their accounts, after deducting Two Shillings in the Pound upon the whole sum by them collected, and also pay all other monies which shall remain in their hands by fines, forfeitures or donations, and deliver up the books and every other thing in their hands concerning their office to their successors, or shall refuse or neglect to

Overseers to
make up their
accounts yearly,
&c.

VOL. I.

3 X

collect

CHAP.
CCXXV.

1775.

Penalty on re-
tatal or neglect.

How Overseers
are to be ap-
pointed when a
deficiency hap-
pens, &c.

What shall gain
a legal settle-
ment.

collect and to pay to such successors all such sums of money as are uncollected on the rate or assessment at the expiration of their office, and which could have been received, and that within thirty days after the settlement of their said accounts, it shall and may be lawful for any two Justices of the Peace of the said county to commit such Overseer to the common gaol, there to remain without bail or mainprize, until such Overseer shall give such accounts, and pay and deliver up such money, books and other things, as he ought in manner aforesaid. (b)

SECT. 13. *And be it further enacted by the authority aforesaid,* That if any person appointed an Overseer in the manner by this act directed, shall refuse to take upon him the said office, or afterwards remove out of the hundred, become insolvent, or die within the year, then and in such case, on due proof thereof made before them, any three Justices of the Peace of the county, in or out of sessions, may and shall nominate any other good and sufficient freeholder, within the said hundred, to be Overseer of the Poor of the same until the next February sessions, in the place and stead of such Overseer so refusing, removing, becoming insolvent or dying. And in case of such removal, the said Overseer shall forthwith deliver over to some other Overseer of the hundred from which he removes his accounts as aforesaid, with all assessments, books, papers, money and other things, concerning his office; and upon the death of any Overseer, his executors or administrators shall, within forty days after his decease, deliver over all things concerning his office to some other Overseer as aforesaid, and shall pay out of the assets all money remaining due, which he received by virtue of his office, before any of his other debts are paid. (b)

SECT. 14. *And, for the ascertaining what shall gain a settlement in this government; Be it further enacted by the authority aforesaid,* That if any person, who shall come to inhabit in any hundred in this government, shall for himself and on his own account execute any public

(b) These sects. 12, 13, altered and suppld. in said chaps. 218, b. and 249. b.

C H A P.
CCXXV.
1775.

public office, being legally placed therein, in the said hundred, during one whole year; or if any person shall be charged with, and pay his or her share towards the public taxes or levies for the poor of the said hundred for two years successively; or if any person shall really and *bona fide* take a lease of any lands or tenements in any hundred of the yearly value of Ten Pounds, and shall dwell in and upon the same for one whole year, and pay the said rent; or shall become seized of any freehold estate in any lands or tenements in any hundred, of the value of Thirty Pounds, and shall dwell in and upon the same for one whole year; or if any unmarried person, not having a child, shall be lawfully bound or hired as a servant in any of the said hundreds, and shall continue and abide in such service during one whole year; or if any person shall be duly bound an apprentice by indenture, and shall inhabit in any hundred with his or her master or mistress for one whole year; such persons, in any of these cases, shall be adjudged and deemed to gain a legal settlement in such hundred respectively where such person shall so execute an office; be charged with, and pay taxes; take such lease; or own any such freehold estate, and dwell thereon as aforesaid; or, being hired or bound, shall continue and inhabit in a hundred for one whole year as aforesaid.

SECT. 15. *And be it further enacted by the authority aforesaid,* That every indentured servant legally and directly imported from Europe into this government, shall obtain a legal settlement in the hundred in which such servant shall serve with his or her master or mistress the space of sixty days, and if afterwards such servant shall duly serve in any other hundred for the space of twelve months, such servant shall obtain a legal settlement in the hundred where such service was last performed, either with his or her first master or mistress, or on an assignment; and all mariners coming into this government, and every other healthy person directly coming from Europe into this government, shall be legally settled in the hundred in which he or she shall first settle and reside for the space of twelve months.

How and where servants and mariners gain a settlement;

SECT.

CHAP.
CCXXV:
1775.

Also married
women the same.

Persons remov-
ing from one
hundred to ano-
ther to obtain a
certificate, &c.

SECT. 16. *And be it further enacted by the authority aforesaid,* That every married woman shall be deemed during coverture, and after her husband's death, to be legally settled in the place where he was last legally settled; but if he shall have no known legal settlement, then she shall be deemed, whether he is living or dead, to be legally settled in the place where she was last legally settled before her marriage.

SECT. 17. *And be it further enacted by the authority aforesaid,* That if any person or persons, after the publication of this act, shall come out of any hundred in this government into any other hundred in this government, there to inhabit and reside, and shall at the same time procure, bring and deliver unto the Overseers of the Poor of the hundred where he or she shall come to inhabit, a certificate under the hands and seals of the Overseers of the Poor of the hundred from whence he, she or they removed, to be attested by two or more credible witnesses, thereby acknowledging the person or persons mentioned in the certificate to be an inhabitant or inhabitants legally settled in that hundred, every such certificate, having been allowed of and subscribed by one or more Justices of the Peace of the county where such hundred doth lie, shall oblige the said hundred to provide for the persons mentioned in the said certificate, together with his or her family, as inhabitants of that hundred, whenever he, she or they shall happen to become chargeable to, or be obliged to ask relief of, the hundred to which such certificate was given, and into which he, she or they were received by virtue of the said certificate; and then and not before it shall and may be lawful for any such person, and his or her children, though born in the hundred, and his and her servants or apprentices, not having otherwise acquired a legal settlement there, to be removed, conveyed and settled in the hundred from whence such certificate was brought; and the witnesses who attest the execution of the certificate by the Overseers, or one of the said witnesses, shall make oath or affirmation according to law, before the justices who are to allow the same, that such witness or witnesses did see the Overseers of the Poor, whose names and seals are thereun-

G H A P.
CCXXV.

1775.

to subscribed and set, severally sign and seal the said certificate, and that the names of such witnesses, attesting the said certificate, are of their own proper handwriting, which said justices shall also certify that such oath or affirmation was made before them; and every such certificate so allowed, and oath or affirmation of the execution thereof, so certified by the said justices, shall be taken and received as evidence without other proof thereof. And no person so coming by certificate into any hundred, nor an apprentice or servant to such person, shall be deemed or adjudged by any act whatsoever to have gained a legal settlement therein, unless such person shall, after the date of such certificate, execute some public annual office, being legally placed therein in the said hundred.

SECT. 18. *And be it further enacted by the authority aforesaid,* That no person whatsoever who shall come into any hundred without such certificate as aforesaid, (mariners and other healthy persons coming from Europe, as aforesaid, excepted) shall gain a legal settlement therein, unless such person shall give security, if required, at his or her coming into the same, for indemnifying and discharging the said hundred, to be allowed by any one Justice of the Peace.

otherwise shall not gain a settlement unless, &c.

SECT. 19. *And be it further enacted by the authority aforesaid,* That upon complaint being made by the Overseers of the Poor of any hundred to one or more of the Justices of the Peace of the county wherein such hundred is situate, it shall and may be lawful to and for any two Justices of the said county, where any person or persons is or are likely to become chargeable to the said hundred, in which he, she or they shall come to inhabit, by their warrant or order, directed to the said Overseers, to remove and convey such person or persons to the hundred, province or place, where he, she or they was or were last legally settled, unless such person or persons shall give sufficient security to the Overseers of the Poor to discharge and indemnify the said hundred to which he, she or they is or are likely to become chargeable as aforesaid: (i)

Two justices by their warrant may remove such poor as have no legal settlement, unless security is given, &c.

SECT.

(i) Altered and supplied in chap. 249, b. sect. 9.

C. H. A. P.
CCXXV.

1775.

Persons who shall think themselves aggrieved by such removal may appeal to the Justices of the Quarter Sessions, &c.

SECT. 20. *Provided always,* That if any person or persons shall think him, her or themselves aggrieved by any order of removal made by any of the said Justices, such person or persons may appeal to the Justices of the Peace at their next General Quarter Sessions of the Peace for the county from whence such poor persons shall be removed, and not elsewhere, which said court shall determine the same; and if there be any defects of form in such order, the Justices in the said sessions shall cause the same to be rectified and amended without any costs to the party, and, after such amendment, shall proceed to hear the truth and merits of the cause; but no such order of removal shall be proceeded upon, unless reasonable notice be given by the Overseers of the hundred appealing unto the Overseers of the hundred from which the removal shall be, the reasonableness of which notice shall be determined by the Justices at the Quarter Sessions to which the appeal is made, and if it shall appear to them that reasonable time of notice was not given, then they shall adjourn the appeal to the next Quarter Sessions and there determine the same.

who may order costs and charges to be paid, &c.

SECT. 21. *And be it further enacted by the authority aforesaid,* That, for the more effectual prevention of vexatious removals and frivolous appeals, the justices in sessions upon any appeal concerning the settlement of any poor person, or upon any proof before them there to be made of notice of any such appeal to have been given by the proper officer to the Overseers of any hundred (tho' they did not afterwards prosecute such appeal) shall at the same sessions order to the party, in whose behalf such appeal shall be determined, or to whom such notice did appear to have been given, such costs and charges as by the said justices in their discretion shall be thought most reasonable and just, to be paid by the Overseers or any other person against whom such appeal shall be determined, or by the person that did give such notice; and if the person ordered to pay such costs and charges shall live out of the jurisdiction of the said court, any justice where such person shall inhabit shall, on request to him made, and a true copy of the order for the payment of such costs and charges, certified under the hand of the

the Clerk of the Court, by his warrant cause the same to be levied by distress, and if no such distress can be had, shall commit such persons to the common gaol, there to remain without bail or mainprize, until he pays the said costs and charges. And if the said justices, on such appeal, shall determine in favour of the appellant that such poor person was unduly removed, they shall at the same Quarter Sessions order and award to such appellant so much money as shall appear to the said justices to have been reasonably paid by the hundred, on whose behalf such appeal was made, towards the relief of such poor person, between the time of such undue removal and the determination of such appeal with the costs aforesaid; the said money so awarded and the costs to be recovered in the same manner as costs and charges awarded against an appellant are to be recovered by virtue of this act as aforesaid.

C H A P.
CCXXV.

1775.

SECT. 22. *And be it further enacted by the authority aforesaid,* That if any housekeeper or inhabitant of this government shall, after the publication of this act, take into, receive or entertain in his or her house or houses any person or persons whatsoever (all mariners coming into this government, and every other healthy person coming from Europe immediately into the said government, only excepted) not being persons who have gained a legal settlement in some hundred in these counties, and shall not give notice in writing, which they are hereby required to do, within three days next after the taking into or entertaining any person or persons in his or her house, to the Overseers of the Poor of the hundred where such person dwells, such inhabitant or housekeeper, being thereof legally convicted by the testimony of one credible witness on oath or affirmation before any one Justice of the Peace of the county where such person dwells, shall forfeit and pay the sum of Twenty Shillings for every offence, the one moiety for the use of the poor of the hundred, and the other moiety to the informer; to be levied on the goods and chattels of the delinquents in the manner herein after directed, and for want of sufficient distress, the offender to be committed to the work-house of the said county, there to remain

Penalty on entertaining such persons as have not gained a legal settlement, &c.

C H A P.
CCXXV.

1775.

remain without bail or mainprize for the space of ten days. And moreover, in case the person or persons so entertained or concealed shall become poor and unable to maintain him or herself, and cannot be removed to the place of his or her last legal settlement in any other province, if any such he or she hath, or shall happen to die, and not have wherewithal to defray the charge of his or her funeral, then and in such case the housekeeper or person, convicted of entertaining or concealing such poor person against the tenor of this act, shall be obliged to provide for and maintain such poor and indigent person or persons, and in case of such poor person's death, shall pay to the Overseers of the Poor so much money as shall be expended on the burying of such poor and indigent person or persons, and upon refusal so to do, it shall be lawful for the Overseers of the Poor of the said hundred, and they are hereby required to assess a sum of money on the person or persons so convicted from time to time by a weekly assessment, for maintaining such poor and indigent person or persons, or assess a sum of money for defraying the charges of such poor person's funeral, as the case may be; and in case the party convicted shall refuse to pay the sum of money so assessed or charged to the Overseers of the Poor for the uses aforesaid, the same shall be levied on the goods and chattels of the offender in the manner herein after directed; but if such persons so convicted have no goods or chattels to satisfy the money so assessed for him or her to pay, then it shall and may be lawful for the said justices to commit the offender to prison, there to remain without bail or mainprize, until he or she hath paid the same, or until he or she shall be discharged by due order of law.

Penalty on
Overseers re-
fusing to receive
persons removed
by order of the
justices, &c.

SECT. 23. *And be it further enacted by the authority aforesaid,* That if any person be removed from one county or hundred to another by warrant or order under the hands and seals of two Justices of the Peace by virtue of this act as aforesaid, the Overseers of the Poor of the hundred, to which the said person shall be so removed, are hereby required to receive the said person; and if any of the said Overseers shall refuse or neglect so to do, he or they so offending, upon proof thereof

thereof by one or more credible witnesses upon oath or affirmation before any one of the Justices of the Peace of the county where the offender doth reside, shall forfeit for every such offence the sum of Five Pounds, to the use of the poor of the hundred from which such person was removed, to be levied by distress and sale of the offender's goods by warrant under the hand and seal of the said Justice of the Peace, which he is hereby required and impowered to make, directed to the Constable of the hundred where such offender or offenders dwell, returning the overplus, if any be, to the owner or owners; and for want of sufficient distress, then the offender to be committed to the gaol of the county where he dwells, there to remain without bail or mainprize for the space of forty days.

SECT. 24. *And whereas* it often happens that poor persons come from one hundred into another of this government, and conceal themselves until they become sick or lame, and cannot be removed; or die before they can be removed, by reason whereof the inhabitants of the hundred where such poor person or persons fell sick or died are put to charges without any means to relieve themselves from the payment of the monies expended for the maintenance or burying of such poor person or persons.

SECT. 25. *Be it therefore enacted by the authority aforesaid,* That if any poor person or persons shall come out of any hundred in this government into another hundred in this government, and shall happen to fall sick or die before he or she has gained a legal settlement in the hundred to which he or she shall come, so that such person or persons cannot be removed, the Overseers of the Poor of the hundred into which such person or persons is or are come, or one of them, shall, as soon as conveniently may be, give notice to the Overseers of the Poor of the hundred where such person or persons had last gained a legal settlement, or to one of them, of the name, circumstances and condition of such person or persons, and if the Overseers of the Poor, to whom such notice shall be given, shall neglect or refuse to pay the monies expended for the use of such poor person or persons, and to take order for relieving and maintaining such poor person or persons,

Persons unfit to be removed how to be supported: and from whom and in what manner the charges are to be recovered.

C H A P.

CCXXV.

1775.

or, in case of his, her or their death, before notice can be given as aforesaid, shall on request being made neglect or refuse to pay the monies expended in maintaining and burying such poor person or persons, then, and in every such case, it shall be lawful for any two Justices of the Peace of the county where such poor person or persons was or were last legally settled, and they are hereby authorised and required, upon complaint made to them, to cause all such sums of money as were necessarily expended for the maintenance of such poor person or persons, during the whole time of his, her or their sickness, and in case he, she or they die, for his, her or their burial, by warrant under their hands and seals, to be directed to some Constable of the county, to be levied by distress and sale of the goods and chattels of the said Overseer or Overseers of the Poor so neglecting or refusing, to be paid to the Overseer or Overseers of the hundred where such poor person or persons happened to be sick, or to die, as aforesaid; and the overplus of monies arising by sale of such goods, remaining in the Constable's hands after the sum of money ordered to be paid, together with the costs of the distress, are satisfied, shall be restored to the owner or owners of the said goods.

Persons aggrieved
may appeal.

SECT. 26. *Provided always*, That if any of the Overseers shall think him or themselves aggrieved by any sentence of such justices, or by their refusal to make any order as is aforesaid, he or they may appeal to the Justices of the Peace at their next Court of Quarter Sessions for the county where such justices reside, and not elsewhere, who are hereby authorised and required to hear and finally determine the same.

SECT. 27. *And whereas* it sometime happens that men separate themselves without any reasonable cause from their wives and desert their children, and women also desert their children, leaving them a charge upon some hundred, although such persons may have estates which should contribute to the maintenance of such wives or children; *Be it therefore enacted by the authority aforesaid*, That it shall and may be lawful for the Overseers of the Poor of any hundred where such wife or children shall be so left, or where such wife or children

children shall be so neglected, having first obtained a warrant or order of any two Justices of the Peace of the county, to take and seize so much of the goods and chattels, and receive so much of the annual rents and profits of the lands and tenements of such husband, father or mother, as such two justices shall order and direct, for providing for such wife, and for maintaining and bringing up such child or children; which warrant or order, being confirmed at the next Quarter Sessions for the county, it shall and may be lawful for the justices there to make an order for the Overseers to dispose of such goods and chattels by sale or otherwise, or so much of them, for the purposes aforesaid, as the court shall think fit, and to receive the rents and profits, or so much of them as shall be ordered by the said sessions, of his or her lands and tenements for the purposes aforesaid; and if no estate real or personal of such husband, father or mother can be found, wherewith provision may be made as aforesaid, it shall and may be lawful to and for the said Justices in their Court of Quarter Sessions to order the payment of such sums as they shall think reasonable for the maintenance of any wife or children so neglected, and commit such husband, father or mother to the common gaol, there to remain until he or she comply with the said order, give security for the performance thereof, or be otherwise discharged by the said justices; and on complaint made to any Justice of the Peace in any county of any wife or children being so neglected, such justice shall take security from the husband, father or mother neglecting as aforesaid, for his or her appearance at the next General Quarter Sessions, there to abide the determination of the said court, and for want of security shall commit such persons. (k)

SECT. 28. *And be it further enacted by the authority aforesaid,* That the several fines, forfeitures and penalties, sum and sums of money imposed or directed to be paid by this act, and not herein otherwise directed

CHAP.
CCXXV.

1775.

How persons are to be proceeded against who desert or neglect their wives or children.

How fines are to be recovered.

10

(k) This section re-enacted in chap. 249. b. sect. 10. with such alterations only, as necessary to make it correspond with the new system.

CHAP.
CCXXV.
1775.

to be recovered, the same and every of them shall be levied and recovered by distress and sale of the goods and chattels of the delinquent or offender, by warrant under the hand and seal of any one justice of the county where the delinquent or offender dwells or is to be found, and after satisfaction made of the respective fines, forfeitures and penalties and sums of money directed to be levied by such warrant as aforesaid, together with such legal charges as shall become due on the recovery thereof, the overplus, if any, to be returned to the owner or owners of such goods and chattels, his or her executors or administrators.

Persons aggrieved may appeal.

SECT. 29. *Provided always*, That if any person or persons shall find him or themselves aggrieved with the judgment of any justice or justices given out of their sessions in pursuance of this act, such person or persons may appeal to the next General Quarter Sessions of the Peace for the county where such sentence was given, (except in cases of removals, and cases of poor persons becoming chargeable in one place who are legally settled in another, which are otherwise provided for by this act) whose decision in all such cases shall be conclusive.

Overseers, &c. may plead, &c.

SECT. 30. *And be it further enacted by the authority aforesaid*, That if any action shall be brought against any Overseer, or other person, who in his aid, and by his command, shall do any thing concerning his office, he may plead the general issue, and give this act and any special matter in evidence; and if the plaintiff shall fail in his action, discontinue the same, or become non-suit, he shall pay double costs.

Former acts repealed.

SECT. 31. *And be it further enacted by the authority aforesaid*, That all and every act and acts of General Assembly of this government heretofore made for the relief of the poor, and every article, clause and thing in all and every such act and acts contained, be, and the same are hereby repealed, annulled and made void to all intents and purposes whatsoever. (1)

SECT. 32. *Provided always, and be it further enacted by the authority aforesaid*, That nothing in this act contained

(1) For these see chaps. 88. a—106. a—163, a—179, a—190. a—202. &

contained shall be deemed or construed to extend, abridge, alter or change the powers and duties of the present respective Overseers of the Poor, or Collectors in any hundred within this government; but that they the said Overseers of the Poor and Collectors shall continue, and they are hereby impowered and required to hold, exercise, do and perform the powers and duties to their offices respectively belonging, until the next Courts of General Quarter Sessions of the Peace to be held for each of the counties in this government in February next, as fully and amply to all intents and purposes, as if this act had not been made, any thing herein contained to the contrary notwithstanding.

CHAP.
CCXV.
1775.

Passed March 29, 1775.

C H A P. CCXXVI. a.

An ACT for extending an act, entitled, An act to prevent swine running at large, without rings and yokes, in certain parts of New-Castle county within this government, to Pencader hundred, in the county aforesaid.

1775.

WHEREAS by an act of Assembly passed in Preamble. the twentieth year of the reign of his late Majesty George the Second, entitled, *An act to prevent swine running at large, without rings and yokes, in certain parts of New-Castle county, within this government,* (a) it is provided, that no swine shall run at large (unless sufficiently ringed to prevent them from rooting, and yoked to prevent them from creeping or breaking through fences) on any of the improved lands, meadows or marshes of the inhabitants of New-Castle county aforesaid, except in the several hundreds of Pencader and Appoquinimink. (b)

SECT.

(a) Chap. 113. a.

(b) After extended to that part of Appoquinimink hundred lying to the eastward of the (then) upper King's road leading through that hundred. See chap. 192. a.

C H A P.

CCXXVI.

1775.

SECTION 2. *And whereas* since the making of the same act great quantities of low and swampy ground, within the said hundred of Pencader, have been made and considerably improved into meadow, and when compleated will be of great benefit as well as to the inhabitants of said hundred as the owners thereof; but forasmuch as such improvements already have been and hereafter may be much impeded and injured by herds of swine, without rings and yokes, running at large over the same, and the owners greatly discouraged from going on with their improvements; to prevent which damages and inconveniencies for the future, and for the security and encouragement of the owners, as well of the said low grounds as of the meadows and improved lands in said hundred,

No swine to run at large in Pencader hundred except, &c.

SECT. 3. *Be it enacted by the honorable John Penn, esq. with his Majesty's royal approbation, Governor and Commander in Chief of the counties of New-Castle, Kent and Sussex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties in General Assembly met, and by the authority of the same,* That from and after the first day of May next the said recited act, and every clause, matter and thing therein contained, shall extend; and be deemed, construed and taken to extend to the said hundred of Pencader, any thing contained in the said recited act of Assembly to the contrary notwithstanding.

Passed March 29, 1775.

.. CHAP.

C H A P. CCXXVII. a.

C H A P.
CCXXVII.

1775.

An ACT for vesting the Court House and public offices with the lots of ground whereon the same are erected, together with another lot adjoining the same on the north side thereof, situate in the town of Dover, in the county of Kent, in Trustees for the uses therein mentioned.

Dob.

WHEREAS the lot of land situate in the Court House Square in the town of Dover, and described in a plot or survey thereof, recorded in the office for recording of deeds in the county of Kent, and another lot of land, divided from the same by an alley, called the Court House Alley, on the north side of the said lot first mentioned, have been and now are considered, taken and held as ground belonging to the public, and accordingly a Court House and a building for keeping the records of the said county of Kent have been erected thereon at the charge of the same county: *And whereas* there is another lot of land lying on the north side of the said lot last mentioned, and on the east side of the Court House Square aforesaid, numbered in the town plot of Dover twenty-seven, and contained within the bounds following, *to wit*: *Beginning* at a corner of the office lot, numbered in the aforesaid town plot thirty-three, and running, with the line of the said office lot, east by north ninety-seven feet; then south by east two perches to the Court House Alley; then, by the said alley, east by north six perches; then north by west three perches five and an half feet, to the corner of lot number thirty; then with the said lot west by south eleven perches fourteen and an half feet, to the Court House Square aforesaid; and then therewith south by east twenty-two feet to the place of beginning; laid out for twenty-eight and an half square perches, which hath been purchased at the expence of the said county of Kent, from a certain James Wells and Rebecca his wife, who conveyed the same by their deed, bearing date the thirteenth day of March last, to a certain Jacob Stout, esq. in trust for the inhabitants

of

Preamble.

CHAP.
CCXXXVII.

1775.

of the said county of Kent. Now, to the end and intent that the said three lots of land, and the buildings thereon erected, or hereafter to be erected, together with the said alley, so far as the first recited lot extends along the same, may be effectually secured for the public, and that the legal estate and inheritance therein may be vested in Trustees to and for the uses and purposes herein after mentioned and specified,

SECTION 1. *BE. it enacted by the honorable John Penn, esq. with his Majesty's royal approbation, Governor and Commander in Chief of the counties of New-Castle, Kent and Sussex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties in General Assembly met, and by the authority of the same,*

Lots in the town of Dover whereon the Court House and public offices are erected, hereby vested in Trustees ;

The uses.

That the said lots of land, alley and buildings, and all the immunities, improvements, advantages, hereditaments and appurtenances to the same belonging, or in any wise appertaining, and the remainder and remainders, reversion and reversions thereof shall, from and after the passing of this act, be settled upon, and vested in Cæsar Rodney, Charles Ridgely, Samuel Chew, William Killen and Jacob Stout, esquires, and the survivors and survivor of them, and the heirs and assigns of such survivor forever ; upon the trusts nevertheless, and to and for the ends, intents and purposes, and subject to the uses herein after mentioned, expressed and declared ; *That is to say,* As to the said Court House, until another shall, by order of the Levy Court for the said county of Kent, be built in the place and stead thereof, upon some part of the said lots and alley ; and such other Court House, when built, to and for the use of the Justices of the Supreme Court of this government, for the holding the said court for the said county of Kent, as long as the said court shall from time to time be adjourned and continue ; and at all other times, for the use of the Justices of the Court of Common Pleas, and Justices of the Court of Quarter Sessions for the said county of Kent, for the holding courts therein ; and for such other uses and purposes as they shall direct for

for the service of the said county; (a) and as to the said building for keeping the records of the said county of Kent, until other buildings are erected for that purpose, and such other buildings when erected, that the same shall be for the use of the Clerks of the several courts and other public officers of the said county of Kent, from time to time and at all times forever, as public offices, subject to such regulations as the Justices of the said Courts of Common Pleas and Quarter Sessions for said county shall think proper to make from time to time, concerning the same; and as to the said three lots of land and alley, whereon the same Court House and Office are built, that the same be for the use of the said county of Kent, subject to the direction of the Justices of the Courts of Common Pleas and Quarter Sessions for the said county forever: *And* upon this further trust and confidence, and to this further end, intent and purpose, that the said Cæsar Rodney, Charles Ridgely, Samuel Chew, William Killen and Jacob Stout, and the survivors and survivor of them, and the heirs of such survivor, shall, from time to time and at all times hereafter, permit and suffer such suit and suits, action and actions to be commenced and prosecuted in his or their names; and also make, seal, deliver, execute and acknowledge such deed or deeds, conveyance or conveyances, fines, recoveries or assurances in the law whatsoever, for the said three lots of land and alley, buildings, tenements and hereditaments, settled and vested in the said Trustees, as aforesaid, or any part or parcel thereof, to such person or persons, and in such manner and form, but to the uses aforesaid, as the Justices of the Courts of Common Pleas and Quarter Sessions for the county of Kent aforesaid shall, at any time or times hereafter, direct and appoint; so always that the said Cæsar Rodney, Charles Ridgely, Samuel Chew, William Killen and Jacob Stout, and their heirs, executors and administrators, and every of them, be well and truly indemnified, saved and kept harmless

VOL. I.

3 Z

of

C H A P.
CCXXXVII.
1775.

(a) See also chap. 220. h. sects. 1, 2. passed Jan. 29, 1791.—and chap. 88. d. sect. 3. passed Feb. 7, 1795.

CHAP.
CCXXVII.

1775.

Present alley
may be stopped
and another
opened by Com-
missioners of the
town lots.

of and from any costs, charges, trouble and molestation whatsoever, which may arise for or by reason of such suits, deeds, conveyances, fines, recoveries or assurances, so to be commenced, prosecuted, made and executed.

SECT. 2. *And whereas* it may be found convenient to erect a building upon the alley before mentioned, called the Court House Alley, whereby the same will be stopped to the injury of the owners of lands lying to the eastward of the lots herein before described, *Be it enacted by the authority aforesaid*, That in such case, it may and shall be lawful to and for the Commissioners for disposing of lots in the town of Dover, and they are hereby required to lay out another alley of the same width with the present Court House Alley, through the said lots situate to the north thereof, as a passage for the owners of lands adjoining the same, and return a description of such alley in writing, under their hands, into the office of the Clerk of the Peace for the said county of Kent, there to be entered of record; which alley so to be laid out, shall continue open forever; any thing herein contained to the contrary notwithstanding.

Declared a public act.

SECT. 3. *And be it further enacted by the authority aforesaid*, That this act shall be deemed, adjudged and taken to be a public act, and shall be judicially taken notice of, as such, by all judges, justices and other persons whatsoever, without specially pleading the same.

Passed March 29, 1775.

C H A P. CCXXVIII. a.

1775.

An ACT for continuance of a former act, entitled, A supplementary act to an act, entitled, An act for regulating elections and ascertaining the number of Members of Assembly.

Preamble.

WHEREAS an act of Assembly was made in the eleventh year of the reign of his present Majesty

Majesty George the Third, entitled, *A supplementary act to an act, entitled, An act for regulating elections, and for ascertaining the number of the Members of Assembly, (a)* to continue in force for the term of three years, and from thence to the end of the next Session of Assembly, and no longer; Now, forasmuch as it hath been found by experience that the same is a beneficial law,

CHAP.
CCXXXVIII.
1775.

BE it enacted by the honorable John Penn, esq. with his Majesty's royal approbation, Governour and Commander in Chief of the counties of New-Castle, Kent and Suffex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties in General Assembly met, and by the authority of the same, That the said act remain, continue and be perpetual from the end of this Session of Assembly.

Former act
made perpetual;
of which see before
chap. 207.

Passed September 2, 1775.

C H A P. CCXXIX. a.

An ACT for the more effectual ascertaining and fixing the limits of the severall counties within this government, and for remedying some inconveniences that may arise by the late establishment of the boundaries and divisional lines between the same and Maryland. (b)

1775.

WHEREAS in pursuance of certain articles of agreement, made the tenth day of May in the year of our Lord One Thousand Seven Hundred Thirty and Two, between the right honorable Charles, Lord Baltimore, proprietor of the province of Maryland, and the honorable the proprietaries of these counties of New-Castle, Kent and Suffex, and the province of Pennsylvania, and of the decree of the Lord High Chancellor of England, bearing date the fifteenth

Preamble.

(a) See before chap. 207. a.

(b) See a supplementary act hereto, chap. 231. a.

CHAP.
CCXXXIX.
1775.

fifteenth day of March in the year of our Lord One Thousand Seven Hundred and Fifty, for the specific performance and execution of the said articles; and also in pursuance of certain other articles of agreement made, the fourth day of July in the year of our Lord One Thousand Seven Hundred and Sixty, between the right honorable Frederick, Lord Baltimore, son and heir of the said Charles, Lord Baltimore, and the honorable the proprietaries of these counties and the province of Pennsylvania, and of one other decree of the Lord High Chancellor of England bearing date the sixth day of March in the year of our Lord One Thousand Seven Hundred Sixty and Two, for the specific performance of the last mentioned articles; the several lines, mentioned and described in the said articles, and thereby finally agreed upon and settled by the said parties, to be and forever remain the boundaries and divisional lines between the said provinces and counties, have been run by Commissioners, for that purpose appointed and authorized by the said respective proprietors, and marked out in exact conformity to the said articles, with stones, pillars and other land-marks, and described by the said Commissioners in the return of their proceedings under their hands and seals, and in an exact plan or map thereof.

SECTION 2. *And whereas* in the year of our Lord One Thousand Seven Hundred and Sixty-seven a joint petition was preferred to his present Majesty, by the said Frederick, Lord Baltimore, and the proprietaries of these counties and the said province of Pennsylvania, reciting the before mentioned articles and decrees, and setting forth, that their Commissioners were then proceeding in the work; that they the said proprietors were desirous as much as in them lay, to quiet the minds of all his Majesty's subjects, inhabiting in the lately disputed parts of the said provinces and counties, and to promote the peace and welfare of those parts; and in order to give a further testimony of their firm agreement, and that a final end and period had been put to all their contests and litigations by their said agreement of the year One Thousand Seven Hundred and Sixty, they, by their said petition, most humbly prayed his Majesty, that he would be most

most graciously pleased to give his royal allowance, ratification and confirmation, of the severall and respective articles and enrolled decrees before mentioned, and every article, clause and thing in them and each of them contained, and that the same might be forever established between them; Whereupon his Majesty, by his order in Council dated the eleventh day of January, in the year of our Lord One Thousand Seven Hundred and Sixty-nine, was pleased to signify his royal approbation of the said agreements and proceedings mentioned in the petition of the said proprietaries; whereof as well the proprietaries of the said provinces, as all others whom it might concern, were ordered to take notice, and govern themselves accordingly.

SECT. 3. *And whereas* the honorable the Governor and Commander in Chief of these counties and the province of Pennsylvania, in pursuance of his Majesty's pleasure and permission, by his proclamation bearing date the eighth day of April, in the year One Thousand Seven Hundred and Seventy-five, did publish and make known all and singular the premises, thereby requiring (among other things) all officers and other persons, dwelling to the northward and eastward of the lines and boundaries so as aforesaid run and marked, between the province of Maryland and counties aforesaid, to yield obedience to the laws of the said counties and govern themselves according thereto. For the purpose therefore of carrying the intention of the said proclamation and the laws of this government more effectually into execution,

SECT. 4. *Be it enacted by the honorable John Penn, esq. with his Majesty's royal approbation, Governor and Commander in Chief of the counties of New-Castle, Kent and Sussex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same, That* from and after the publication of this act the line dividing the counties of New-Castle and Kent, continued from the mouth of a branch issuing from the main branch of Duck-Creek, and opposite part of Enoch Jones's land on the Kent side, and Richard Nash's land

C H A P.
CCXXXIX.

1775.

The divisional line between the counties of New-Castle and Kent continued and fixed,

H A P.
CCXXIX.
1775.

also between the
counties of Kent
and Suffex.

Persons inhabit-
ing the lately
disputed lands
shall enjoy all
rights, privi-
leges, &c.

Justices shall as-
certain the
boundaries of
the several hun-
dreds, &c.

land on the New-Castle side, and running from thence up the said branch on the several courses thereof, westwardly six hundred and two perches to a white oak corner tree of Benjamin Hazle and Richard Hollet's lands at the head of said branch; from thence continued due west one thousand seven hundred and eight perches, till it intersects the tangent or divisional line between these counties and Maryland, where the same crosses the Cyprus Branch, shall be deemed, taken and held, the boundary between the said counties of New-Castle and Kent; and that the line between the counties of Kent and Suffex, continued from a fork of Mispillion-creek, at the junction of Tan-Trough-branch, and Beaver-dam Branch, running up the Tan-Trough-branch with the several courses thereof eight hundred and eight perches to the head thereof; thence south westwardly to a small fork of a small branch of the river Nanticoke; thence down said branch to the southward end of a Beaver-dam, on the west side of a Beaver-pond; the original temporary division between Kent, Suffex and Maryland, and from thence due west two thousand eight hundred sixty and four perches to the north and south or tangent line aforesaid, shall be deemed, taken and held the boundary between the said counties of Kent and Suffex; and that all the persons inhabiting the lately disputed lands within this government shall have and enjoy all the immunities, rights, liberties and privileges, which they could or might be entitled to, as if they had always been acknowledged actually to have resided within the same.

SECT. 5. *And be it further enacted by the authority aforesaid,* That the Justices of the Peace for the several counties of this government may and shall, as soon as conveniently may be, in the Courts of General Quarter Sessions to be held for the said counties respectively, ascertain the bounds and limits of the several ancient hundreds within the same, and lay out such and so many new hundreds as may be found necessary and convenient, and, until the same shall be so fixed and laid out, that the freeholders and other electors who have heretofore resided together and been considered as inhabitants of one and the same district

or

or hundred, and now added to the county of Suffex, may and shall choose their own Inspectors and Assessors in the presence of two freeholders in each district or hundred, to be named by John Dagworthy, William Elligood, William Polke, William Holland and Jonathan Bell, esquires, or any three of them, which said freeholders are this year appointed to supply the defect of such officers in those hundreds, added as aforesaid to Suffex county, as by law are constituted judges in electing said Inspectors and Assessors, and also to maintain and support the poor and public roads, and do all and every other act or thing in like manner as the inhabitants of any ancient hundred within this government might or could do before the passing of this act.

C H A P.
CCXXXIX.

1775.

Passed September 2, 1775.

C H A P. CCXXX. a.

An ACT for emitting the sum of Thirty Thousand Pounds, in bills of credit, on loan, and providing a fund for the payment of public debts. (a)

1775.

WHEREAS through the scarcity of gold and silver in this government, occasioned by the frequent remittances thereof to Great Britain in discharge of the debts accrued by the importation of manufactures and merchandise from thence, and the constant sinking of the bills of credit emitted during the late war, and granted to his Majesty for the protection of his American dominions, the improvement and commerce of this government are obstructed:

Preamble.

SECTION 2. *And whereas* by means of the interest-money, arising on the loan of the bills of credit formerly emitted, the inhabitants of these counties have been enabled to support government in an honorable manner;

SECT.

(a) For a subsequent emission, see chap. 8. b. passed Feb. 22, 1777.

CHAP.
CCXXX

1775.

Thirty Thousand
Pounds to be
struck in bills of
credit.

SECT. 3. *Be it therefore enacted by the honorable John Penn, esq. with his Majesty's royal approbation, Governor and Commander in Chief of the counties of New-Castle, Kent and Suffex, upon Delaware, and province of Pennsylvania, by and with the advice and consenteit of the Representatives of the freemen of the said counties in General Assembly met, and by the authority of the same, That* bills of credit to the value of Thirty Thousand Pounds shall, before the first day of January next, be prepared and printed on good strong paper, under the care and direction of Thomas M^cKean, Alexander Porter and John Clowes, esquires, or any two of them, the charges whereof shall be paid out of the interest monies that shall arise upon the loan of any bills of credit to be remitted, by any Trustees of the Loan Offices of this government for the time being; which bills shall be made and prepared in manner and form following, *That is to say,*

Form of the
bills;

—according to an act of General Assembly of the counties of New-Castle, Kent and Suffex, upon Delaware, passed in the fifteenth year of the reign of his Majesty George the Third. Dated the first day of January, One Thousand Seven Hundred and Seventy-six.

SECT. 4. *And the same bills shall be printed with the arms of the King on the one side, and the sums of money for which every of the said bills is to pass shall be printed at the top of each bill in words at length, with such other devices on the said bills as the said Thomas M^cKean, Alexander Porter and John Clowes, or any two of them, shall think proper, each of which bills shall be of the several and respective denominations following, and no other, That is to say,*

their number
and denomina-
tion.

Twelve thousand of the said bills, the sum of Twenty Shillings in each of them.

Twelve thousand of the said bills, the sum of Ten Shillings in each of them.

Twelve thousand of the said bills, the sum of Six Shillings in each of them.

Twelve thousand of the said bills, the sum of Five Shillings in each of them.

Twelve

Twelve thousand of the said bills, the sum of Four Shillings in each of them.

Twelve thousand of the said bills, the sum of Two Shillings and Six-pence in each of them.

Twelve thousand of the said bills, the sum of One Shilling and Six-pence in each of them.

Twelve thousand of the said bills, the sum of One Shilling in each of them.

SECT. 5. *And* the said Thomas M^cKean, Alexander Porter and John Clowes, or any two of them, shall use their best-care, attention and diligence, during the printing the said bills, that the number and amount of them, according to their respective denominations aforesaid, be not exceeded, nor any clandestine or fraudulent practice used by the printer, his servants or others concerned therein.

SECT. 6. *And* for perfecting the said bills according to the true intent and meaning of this act, *Be it enacted by the authority aforesaid,* That all and every of the said bills shall be signed and numbered by the persons following, *That is to say,* John M^cKinly, of the county of New-Castle, Thomas Collins, of the county of Kent, and Boaz Manlove, of the county of Suffex, esquires, who are hereby nominated and appointed to be the signers of the said bills, and shall before they receive or sign any of them take an oath to the following effect;

THAT they will well and truly sign and number all the bills of credit that shall come to their hands for that purpose by the direction of this act; and the same so signed and numbered will deliver or cause to be delivered unto the Trustees of the respective General Loan Offices of this government pursuant to the direction of this act.

SECT. 7. *And* the said Thomas M^cKean, Alexander Porter and John Clowes, or any two of them, after the said bills are printed, shall deliver them into the hands of the said signers to be signed and numbered, who shall give their receipts for the said bills; and the said signers shall deliver to the Trustees hereafter named, at the respective Loan Offices, all the said bills so made, numbered and signed as aforesaid, in the respective quotas or proportions hereafter limited and appointed; of all which said bills of credit so

CHAP.
CCXXX.
1775.

and allowance.

Trustees of the
Loan Offices
appointed,

who are to give
bond, &c.

delivered to be signed and numbered, a true account shall be kept by the signers, who, upon their delivery of the said quotas or proportions of the said bills, by them signed and numbered, shall take the receipts of the said Trustees respectively, to charge them before any Committee of Assembly, to be appointed for that purpose, and to that end the said accounts and receipts shall be returned to the General Assembly of this government at their next meeting, after signing the said bills: And the said signers for their trouble, care and diligence in doing what is required of them by this act, shall each of them receive Ten Shillings for every thousand bills by them so signed and numbered, to be paid them out of the interest money to arise in the Trustees hands of the respective Loan Offices aforesaid, to be paid by the said Trustees equally. And if any of the persons, before nominated to be signers, shall happen to die or be rendered incapable of doing his or their duty by this act required, it shall and may be lawful for the Members of Assembly, of that county in this government where any such death or incapacity shall happen, with the consent of the Governor for the time being, to appoint another signer in the stead of such person so dying or rendered incapable as aforesaid; which said person or persons so to be appointed shall take the same qualifications as the signers in this act are appointed to take.

SECT. 8. *And be it further enacted by the authority aforesaid,* That the sum of Ten Thousand Pounds of the said bills of credit, being signed and numbered as aforesaid, shall be by the said signers put into the hands of Richard M'William, of New-Castle county, esq. who is hereby constituted Trustee of the General Loan Office of the said county of New-Castle; and the sum of Ten Thousand Pounds of the said bills of credit shall be put into the hands of Cæsar Rodney, of Kent county, esq. who is hereby constituted Trustee of the General Loan Office of the said county of Kent; and the sum of Ten Thousand Pounds of the said bills of credit shall be put into the hands of John Rodney, of Suffex county, esq. who is hereby constituted Trustee of the General Loan Office of the said coun-

ty

ty of Suffex; and that they the said Trustees and their successors, and every of them, before they shall enter upon the execution of their trust, or any part thereof, shall give and duly execute a bond to the Governor of these counties; for the time being and his successors, with three sufficient sureties, such as he shall approve of, in the sum of Ten Thousand Pounds, conditioned, for the faithful execution of the trust and performance of all and every the acts, matters and things enjoined and required of them by this act; and shall also take an oath or affirmation, before some Justice of the Peace, to be endorsed on the said bond in the words following, to wit;

C H A. P.
CCXXX.
1775.

I A. B. will, to the best of my skill and knowledge, and their qualifications thereon, faithfully, impartially and truly perform and discharge the trust required of me by an act of General Assembly of this government, entitled, An act for emitting the sum of Thirty Thousand Pounds, in bills of credit, on loan, and providing a fund for the payment of public debts, so that none may be prejudiced by my consent, privity or procurement; and that I will not lend out for, or apply or appropriate to, my own private use or benefit, or the use or benefit of any other person or persons whatsoever, any of the monies to me intrusted, otherwise than according to the directions, true intent and meaning of the said act.

SECT. 9. *And be it further enabled by the authority* which are to be delivered to the Prothonotaries. *aforsaid, That the said oath or affirmation so to be taken by the said Trustees, shall be endorsed on their respective bonds; which bonds with the endorsements aforsaid shall be delivered to the respective Prothonotaries for the counties of New-Castle, Kent and Suffex aforsaid, to be by them recorded; and in case the said bonds or any of them shall in anywise be forfeited, the same shall be sued and prosecuted, and the penalties thereof recovered, for the benefit, advantage and use of the government.*

SECT. 10. *And be it further enabled by the authority* Power and authority of Trustees. *aforsaid, That the said Trustees respectively are hereby authorized and impowered to receive applications from borrowers, judge of, and determine the value of the lands and tenements, rents and hereditaments offered in mortgage, and the validity of their titles; and shall have capacity and power to take, hold and enjoy*

CHA P.
CCXXX.

1775.

enjoy unto them and their successors in the said trust, all such lands, tenements, rents and hereditaments as shall be granted them in mortgage, or which hath at any time heretofore been granted to any Trustee or Trustees of the General Loan Offices of this government, for securing the re-payment of the money or bills formerly lent or hereby directed to be lent; and to sell, grant, alien and dispose of the same lands, tenements, rents and hereditaments in default of payment; and also to sue, be sued, and defend any suits brought against them; and generally to do, perform and execute all and every act, matter and thing necessary for the just and due performance and execution of the trust reposed in them by virtue of this or of any former act.

Before discharged to account and deliver up all bills, &c.

SECT. 11. *Provided also, and be it enacted by the authority aforesaid,* That none of the Trustees herein before appointed, or hereafter to be appointed, according to the direction of this act, or any of them, or any of their heirs, executors or administrators, or securities hereby directed to be given, be acquitted or discharged, for any thing done or suffered in or about the trust hereby committed to them, until they have accounted for and paid and delivered up, to the succeeding Trustees, all bills of credit, monies, securities, books of accounts, and other writings relating to or belonging to the respective Loan Offices aforesaid, and so from time to time during the continuance of this act, any thing herein contained to the contrary notwithstanding.

Sums to be lent on mortgage limited.

SECT. 12. *And be it enacted by the authority aforesaid,* That the said Trustees shall lend out the said sum of Thirty Thousand Pounds of the said bills of credit, hereby directed to be made, in the respective counties of New-Castle, Kent and Suffex, aforesaid, in the proportions herein before mentioned, for and during the space and unto the full end and term of sixteen years, from the first day of January, in the year of our Lord One Thousand Seven Hundred and Seventy-six All which loans made by virtue of this act shall be made in sums not exceeding Eighty Pounds nor less than Twenty Pounds to any one person upon mortgage of messuages, lands, tenements,
rents

rents and hereditaments, in this government, whereof the borrowers stand seized in fee-simple, in their own right, free from incumbrances, the proprietary quit-rents and other rents charged on the same, and discovered to the said Trustees, only excepted; and that the said Trustees shall inform themselves, the best they can, of the validity of the titles, and of the clear value of all messuages, lands and ground-rents offered in security, so as to be satisfied that the lands and ground-rents are held in fee-simple, and are at least of double the value of the sums requested to be lent; and that as to messuages, erected upon ground, subject to the payment of ground-rent, offered in mortgage, care shall be taken by the said Trustees, that there be no rent in arrear at the time of receiving the same in mortgage, and that the ground shall be near equal in value, above the ground-rent, to the sum lent, yet so that the house and ground be of treble the value, for the better security of the mortgage money: And thereupon the said Trustees, in pursuance of the trust hereby committed to them, shall, in the respective names and stile of, *The Trustee of the General Loan Office of the county of New-Castle*, *The Trustee of the General Loan Office of the county of Kent*, *The Trustee of the General Loan Office of the county of Sussex*, and not otherwise, take and receive deeds of mortgage, in fee-simple, of such messuages, lands, tenements, rents and hereditaments, with the appurtenances, to secure the repayment of the sums they lend, to be made yearly on the first day of January, by equal payments, with the whole interest accrued, at the rate of Five Pounds *per cent. per annum*.

SECT. 13. *Provided always and it is hereby further enacted*, That the better to enable any of the mortgagors, by any former act of Assembly to discharge their mortgages, it shall and may be lawful to and for the said Trustees, and they are hereby required, to permit those mortgagors, or their heirs, or such other person or persons to whom they have made over their right of redemption and estate in their mortgaged messuages, lands and rents, to renew their mortgages respectively, if they the said Trustees shall judge them a sufficient security for the sums thereon due and in arrear;

Mortgagors, under any former act, may renew their mortgages..

G H A P.
CCXXX.

1775.

arrear; Provided the same do not exceed Eighty Pounds as aforesaid, according to the proportions and within the times by this present act limited and appointed.

Mortgagors may
at any time pay
off.

SECT. 14. *Provided also*, That if any mortgagor of any messuages, lands or rents, mortgaged in pursuance of this act, his heirs, executors, administrators or assigns, shall be inclined to pay off and discharge his mortgage and security at any other time than according to the time specified in his mortgage deed, it shall be lawful for him, or them, so to do, by paying down the whole principal sums due, and to become due, together with the interest and charges then accrued, on the first day of January, in any year, during the continuance of this act.

Sect. 21. post.

No part of prin-
cipal to be sunk
before the first
of January,
1788.

SECT. 15. *And be it further enacted by the authority aforesaid*, That the principal sums and all and singular the parts, parcels and quotas thereof, or any of them, payable to the Trustees of the said General Loan Offices, by any mortgagor or person whatsoever, shall not be sunk or destroyed, otherwise; or at any other time, than by this present act is directed, limited and appointed; (e) any law, custom or usage, to the contrary notwithstanding; but the same principal sums, hereafter to be recovered or received by the said Trustees, before the first day of January, in the year of our Lord One Thousand Seven Hundred and Eighty-eight, shall be, from time to time, again lent out, on securities as herein before directed, for the residue of the aforesaid term of sixteen years. And also, so often as any mortgage monies, directed to be again lent out as aforesaid, shall be recovered or received before the aforesaid first day of January One Thousand Seven Hundred and Eighty-eight, the principal monies thence arising shall, in like manner from time to time, be lent out again, on the like securities as aforesaid. (f) And the said Trustees, after the receipt
of

(e) But see chap. 113. b. sects. 2, 3, 4, 5. passed Feb. 5, 1785.—directing the exchange of all bills of credit theretofore emitted at the rate of One Pound for every Seventy-five Pounds brought in, which was limited, as to residents, to the first day of August then next, and as to non-residents, to the first day of November following, and thereafter to be burnt and destroyed.

(f) See also sect. 6. of said chap. 113. b. That mortgagors under any former act may renew their mortgages, and to have a deduction of interest, &c.

of the said new Bills, signed and numbered as aforesaid, shall give due attendance at their respective offices, *That is to say*, At New-Castle, in the county of New-Castle, at Dover, in the county of Kent, and at Lewes, in the county of Suffex, on every Wednesday and Thursday at least in the first four months successively, and afterwards shall duly attend at their said offices on the first Wednesdays and Thursdays in January, May, August and December, in every year, during the continuance of this act, and at such other times as their duty and trust shall require.

CHAP.
CCXXX.

1775.

SECT. 16. *And be it enacted by the authority aforesaid*, That all and every of the said deeds of mortgage shall be fairly entered in books of large paper, to be provided by the said Trustees; attested copies of which deeds, so entered and certified by the said Trustees, or any of them, for the time being, shall be, and are hereby declared to be good evidence, to prove the mortgages thereby mentioned to be made; and on every of the aforesaid deeds of mortgage shall be endorsed or added, on oath or affirmation, to be taken by the mortgagor or mortgagors, before the said Trustees respectively, who are hereby impowered and required to administer the same, *That he, she or they, is or are seized of the hereditaments and premises thereby granted in his, her or their own right; and to his, her or their own use; and that free from any former gift, grant, sale, mortgage, judgment or any other incumbrance, to the knowledge of such mortgagor or mortgagors (the yearly quitrents thence issuing, payable to the chief lord or lords of the fee thereof, and such other rents, if any, as are therein particularly mentioned and discovered to the Trustees, only excepted.)* And the aforesaid deeds, being so executed and acknowledged, shall transfer the possession, and vest the inheritance of and in such mortgaged premises, to and in the said Trustees and their successors, as fully and effectually as deeds of feoffment with livery and seizin, or deeds enrolled in any of the King's Courts of Westminster may or can do. In all which deeds the words grant, bargain and sell, shall be adjudged, in all places and courts whatsoever within this government, to have the force and effect of a covenant, that the mortgagor, notwithstanding any act done by him, was at
the

Affidavit to be
taken by the
mortgagors.

Exposition of the
covenant in the
mortgage deeds.

C H A P.
CCXXX.

1775.

the time of execution of such deed, seized of the hereditaments and premises thereby granted of an indefeasible estate of inheritance, free from incumbrances, the rents so as aforesaid to be discovered to the said Trustees, only excepted.

Mortgagors shall execute a bond and warrant of attorney.

SECT. 17. *And be it further enacted by the authority aforesaid,* That, together with every of the aforesaid mortgage deeds, the respective mortgagor shall execute a bond, of double the mortgage money, to the respective Trustees aforesaid, conditioned for the payment of the money borrowed, with the interest, according to the proviso or condition contained in each such mortgage deed; and also a warrant of attorney, empowering such person or persons, as the said respective Trustees shall appoint, to confess or suffer judgment, which the said Trustees are hereby required to cause their Attorney to enter, in any of the Courts of Common Pleas in this government, against such mortgagor as shall make default in payment of the mortgage monies, or any part thereof, on the said bonds or mortgages, for non-performance of the conditions thereof; or in such actions of debt as the said Trustees are required to bring, for the value of the said bills of credit received by the mortgagors, whose titles shall happen to prove defective, together with the interest and costs of suit; in every of which warrant of attorney shall be inserted a release of errors by the mortgagor.

Mortgagors to enjoy the mortgaged premises until default in payment.

SECT. 18. *Provided always nevertheless,* That until some default be made in payment of some part of the mortgage monies by the mortgagors respectively, it shall and may be lawful to and for them and their heirs to hold and enjoy the mortgaged premises, any thing in this act, or in their mortgage deeds, to the contrary notwithstanding; but if default shall be made or suffered in payment of any part of the mortgage monies aforesaid, whether of the principal or interest, which the mortgagors, their heirs, executors, administrators or assigns, should or ought to pay, according to the days of payment aforesaid, in their respective deeds of mortgage specified, the respective Trustees, after six months next following such default, made as aforesaid, shall issue their precept to the Sheriff

Trustees may sell after six months default in payment.

riff of the county where the mortgaged premises shall lie, commanding him to enter upon the messuages, lands, rents and hereditaments respectively in the deeds of mortgage specified, and the same, or such part thereof as shall be sufficient to discharge and satisfy the mortgage monies with the interest thereof, and costs accruing on the sale, to sell, on the premises, by public auction or vendue, and convey to the highest bidder, after at least thirty days public notice given of such sale by advertising them in the news-papers, and by affixing advertisements in some of the most public places in the county; and out of the monies arising by such sale, to raise the principal sums due, and to become due, with the interest, costs and charges accrued, returning the overplus, if any, to the owners of such lands and hereditaments; and also to pay and deliver the said principal sums and interest to the respective Trustees, for the use of the government; which said precept the said Sheriff is hereby enjoined and required fully and impartially to execute; for which he shall have the same fees for advertising and sale, as are allowed by law for the like services, where lands are sold by a writ of *venditioni exponas*, and no more.

CHAP.
CCXXX.
1775.

SECT. 19. *And be it further enacted*, That the mortgagor and mortgagors of all such lands as shall be sold by virtue of this act, shall stand and be foreclosed of and from all right of redemption of the same.

SECT. 20. *And be it further enacted by the authority aforesaid*, That the said Trustees respectively shall endorse upon each mortgage deed their receipts of all the yearly quotas paid by the respective mortgagors, distinguishing the principal sum from the interest, which they shall also note on the counter parts to them produced when required; and upon the last payment thereof, the said Trustees shall enter in the margin of the enrolment of the mortgage deed, the time of the discharge thereof, for which, and for every receipt, they shall receive of the mortgagor Six-pence, and no more. And the said Trustees respectively shall keep distinct, fair and true accounts of all the sums they receive by virtue of this or of any former

Trustees shall endorse receipts on mortgage deeds,

and keep fair accounts?

CHAP.
CCXXX.

1775.

Their salary.

To account
with Commit-
tees of Assem-
bly.

The interest mo-
ney to be dis-
posed of by the
Governor and
Assembly.

How bills are to
be destroyed.

act, and of what they lend, emit or pay by virtue of this act, or by orders of the Governor and Assembly, in regular day-books, journals and ledgers, to be fairly kept for those purposes; and shall exhibit the same, together with their other vouchers, to the Committees of Assembly appointed for settling the public accounts, who shall adjust and settle the said accounts, and report the same to the House; and the said Trustees shall have and receive for their trouble and service Thirty Pounds *per annum* each, during the continuance of their trust, out of the interest money arising by this act.

SECT. 21. *And be it further enacted by the authority aforesaid*, That the respective Trustees shall once in every year, or oftener, exhibit their accounts aforesaid, and produce their said books and other vouchers, together with all monies remaining in their hands, unto the Committees of Assembly of this government, to be appointed for that purpose, who shall count the said money, and settle and adjust the said accounts, and make report thereof to the Assembly; (g) and all the interest money by them from time to time received, being accounted for, and the salaries and charges allowed for by this act, being deducted, the residue of the interest money arising from the loan of the said Thirty Thousand Pounds shall be disposed of as the Governor and Assembly of this government shall direct and appoint and not otherwise; and as for and concerning all yearly quotas and payments in the bills aforesaid (part of the principal sums to be emitted and re-emitted upon loan as this act directs) which by virtue hereof, or of any mortgage, or security, heretofore taken, or to be taken as aforesaid, shall be recovered or received, and remaining in the hands of the respective Trustees on the first day of January, which will

(g) See chap. 74. b. passed Feb. 12, 1781. wherein is a special appointment of persons to settle and state all the accounts of the several Loan Offices in the state, &c. from June 1, 1774. to June 1, 1781.—And see chap. 143. b. sect. 1, &c. passed Feb. 3, 1787. authorizing "The Auditor of Accounts" to call upon all persons or their representatives, who shall be possessed of any mortgages, pledges, or other securities, monies, goods or effects, belonging to this state, to account for the same.

will be in the year of our Lord One Thousand Seven Hundred and Eighty-eight, the said respective Trustees shall from time to time, as they come to their hands, exhibit the said bills of credit to the aforesaid Committees of Assembly, who, having duly examined and compared the same, shall cause the same to be burnt and destroyed in their presence. And the said Committees of the respective counties within this government shall have for their said services the sum of Five Pounds each; to be paid them annually out of the interest money arising in the said offices.

C H A P. 8
CCXXX.
1775.

Committees allow-
vance.

SECT. 22. *And*, the better to prevent inconveniences arising from indulging the mortgagors to be behind in their payments hereby directed to be made, *Be it further enacted by the authority aforesaid*, That the Trustees for the time being shall, and they are hereby required to keep the mortgagors aforesaid up to their annual payments, as by this act is directed and appointed; and the Committees of Assembly, to be annually appointed to audit the said Trustees accounts, are hereby directed not to allow of any quotas in arrear and unpaid which have been due eighteen months at the time of the settlement, but to consider and report the same as monies in the hands of the said Trustees, for which the said Trustees shall be accountable, excepting only such sums for which the said Trustees have commenced suits, or otherwise have proceeded, according to the direction of this act, for the recovery of the money due.

Trustees to keep
mortgagors up to
their annual
payment.

SECT. 23. *And be it further enacted by the authority aforesaid*, That if any of the said Trustees herein before appointed, or hereafter to be appointed by virtue of this act, shall neglect or refuse to act as Trustee, or shall happen to die, or be removed for misfeasance in his office, some other fit person shall be appointed by the Governor and Assembly, in the place or places of such Trustee or Trustees, unless such neglect, refusal, death or removal, shall happen at a time when there may be no Governor or Lieutenant Governor in this government; in which case, and not otherwise, some other fit person or persons shall be appointed by the Assembly; and the said Trustee or Trustees, so to be appointed, shall have, hold and exercise the same

How Trustees
shall be appointed
in case of de-
linquency.

C H A P.
CCXXX.

1775.

Trustees to con-
tinue four years.

Dying in the
recess of Assem-
bly how to be
supplied.

Trustees to
choose Clerks;

their duty,

and fees.

same powers and authorities, to all intents and purposes, as if he or they were appointed by this act.

SECT. 24. *Provided always,* That none of the said Trustees, appointed in and by virtue of this act, shall continue in the exercise of their said offices longer than the space of four years, from the time of the commencement of their said trust, and from thence until a new nomination and appointment shall be made by the Governor and Assembly; any thing in this act to the contrary notwithstanding. (b)

SECT. 25. *Provided also,* That if any of the said Trustees shall happen to die in the recess of Assembly, then it shall and may be lawful for the Members of Assembly of that county in this government where any such death shall happen, with the consent of the Governor or Lieutenant Governor, if any, for the time being, to appoint some other fit person as Trustee in the stead, and for the residue of the same term, of the person so dying, and the Trustee so to be appointed shall have the same powers as aforesaid.

SECT. 26. *And be it further enacted by the authority aforesaid,* That the said Trustees shall, for the better regulating of their said offices, choose and employ a fit and able person for their Clerk during their pleasure, for whom they shall be answerable, who shall prepare the deeds of mortgage, with mortgagors affidavits, bonds, warrants of attorney and release of errors, and shall have and receive the following fees, and no more, *to wit,* For every mortgage deed, recording the same, counterpart or copy thereof, the mortgagor's oath or affirmation endorsed on the mortgage deed, and the bond, warrant of attorney, and release of errors, the sum of Fifteen Shillings, and no more; to be paid by the said Trustees out of the interest money aforesaid; and the said Clerks shall keep true accounts of the names of all persons applying to borrow on securities, as this act directs, and shall record

(b) For after nominations and appointments of such Trustees, &c. see chap. 8. b. sect. 7. passed February 22, 1777—chap. 51. b. passed December 25, 1779—chap. 74. b. sect. 3. passed February 12, 1781—chap. 113. b. sect. 14. passed February 6, 1785—chap. 192. b. passed February 3, 1789—chap. 217. b. passed January 15, 1791—chap. 41. c. passed June 19, 1793—and chap. 75. c. passed January 31, 1795.

cord their deeds of mortgage in the same order of time as they were executed; and shall, once a year, make out a list of the names of all mortgagors, with the sums they borrow, and date of their mortgage deeds, and the same lists shall deliver to the Committees of Assembly to be appointed Auditors of the said Trustees accounts: But before any person so chosen to be Clerk shall enter upon the execution of his office, he shall take an oath or affirmation before some Justice of the Peace, *That he will truly and faithfully perform the office and duty that is directed and required of him by this act, wherein he will make no undue preference, unnecessary delays, or fraudulent practices.*

C H A P.
CCXXX.

1775.

Clerk's qualification.

SECT. 27. *And be it further enacted by the authority aforesaid,* That if any person or persons shall presume to counterfeit any of the said bills of credit, directed to be emitted by this act, by printing, or procuring the same to be printed, in the likeness of the said genuine bills of credit; and also, if any person or persons shall forge the name or names of the signers of the true bills of credit, to such counterfeit bills, whether the counterfeiting of the said bills, or names, be done within this government, or elsewhere, or shall utter such bills, knowing them to be so counterfeited as aforesaid, and being thereof legally convicted by confession, standing mute, or by the verdict of twelve men, in any Court of Oyer and Terminer within this government, he, she or they shall suffer death without benefit of clergy; and the discoverer or informer shall have, as an encouragement for his discovery, the sum of Fifty Pounds, to be levied out of the goods and chattels, lands and tenements of the person convicted; and if no such goods and chattels can be found, then the Trustees of the General Loan Office shall pay to such informer or discoverer, his executors, administrators or assigns, the sum of Ten Pounds. And if any person or persons shall counterfeit any of the said bills of credit of this government, by altering the denomination of the said bills, with design to encrease the value of such bills, or shall utter such bills, knowing them to be so counterfeited or altered as aforesaid, and shall thereof be legally convicted in any Court of Record in this government, such

Counterfeiting the bills of credit, &c. death without benefit of clergy.

Informer to receive 50l.

CHAP.
CCXXX.

1775.

Persons altering
the denomina-
tion of said bills
to be pillored,
&c.

such person or persons shall be sentenced to the pillory, and have both his or her ears cut off, and nailed to the pillory, and be publicly whipped on his or her bare back, with thirty one lashes well laid on; and moreover, every such offender shall forfeit the sum of One Hundred Pounds, lawful money of this Government, to be levied on his or her lands and tenements, goods and chattels; the one half to the use of the Governor, and the other half to the discoverer; and the offender shall pay to the party grieved, double the value of the damages thereby sustained, together with the costs and charges of prosecution; and in case the offender hath not sufficient to satisfy the discoverer for his or her damages and charges, and pay the forfeiture aforesaid, in such case, the offender shall, by order of the court where he or she shall be convicted, be sold for any term, not exceeding seven years, for satisfaction; and in such case the said Trustees shall reward the discoverer of such insolvent offender, to the value of Five Pounds, out of the interest money which shall be in their hands. And every such counterfeit bill shall be delivered to the said Trustees, to be burnt or destroyed by them, in the presence of a Committee of Assembly.

Made a public
act.

SECT. 28. *And it is hereby declared and enacted by the authority aforesaid, That this act shall be taken and allowed, in all courts and places within this government, as a public act, and all judges, justices, and other persons concerned, are hereby required to take notice thereof as such, without pleading the same specially.*

The proportion
of the charges.

SECT. 29. *And be it enacted by the authority aforesaid, That an act of Assembly, entitled, An act for ascertaining the proportion of the government charges hereafter to be paid by the several counties of New-Castle, Kent and Suffex, on Delaware, passed in the fifteenth year of his late Majesty's reign, (i) shall be, and the same is hereby repealed.*

Passed September 2, 1775.

CHAP.

(i) Chap. 92.

C H A P. CCXXXI. a.

C H A P.
CCXXXI.

1775.

A Supplementary ACT to the act, entitled, An act for the more effectual ascertaining and fixing the limits of the several counties within this government, and for remedying some inconveniencies that may arise by the late establishment of the boundaries and divisional lines between the same and Maryland.

WHEREAS at the time of issuing the proclamation, bearing date on the eighth day of April last past, mentioned in the act to which this present act is a supplement, (a) sundry judgments as well interlocutory, as final, had been obtained against sundry persons inhabiting and settled on lands at that time under the jurisdiction of the province of Maryland, and which now, in virtue of the said proclamation, and the said act of Assembly, are fallen within the jurisdiction of this government; and divers public taxes, stipends, allowances, assessments and officers fees were due from the said inhabitants, and in arrear and unpaid; and in many cases letters of administration, and letters testamentary, had been obtained upon the estates of intestates, and testators, at the time of their death inhabiting the lands aforesaid, which estates remain unsettled, and the accounts of them unadjusted; and many guardianships of the estates of orphans had been undertaken, and security given for the true performance of the office of such guardians according to the laws of the said province of Maryland; Now for the relief and security of the several creditors both public and private, and others concerned in such judgments, stipends, allowances, taxes, assessments and officers fees, and of the several orphans, wards and others concerned in the trusts of such executors, administrators and guardians,

SECTION 2. *BE it enacted by the honorable John Penn, esq. with his Majesty's royal approbation, Governor and Commander in Chief of the counties of New-*

(a) For the original act, see chap. 229, a.

CHAP.
CCXXXI.

1775.

Transcripts of judgments obtained in the courts in Maryland against persons resident on the lands fallen into this government, may be docketed in the courts here and proceeded on, &c.

A lien on the lands, &c.

If of one year standing to be revived by *Scire Facias*.

Saving to defendants, &c. writs of error, &c.

New-Castle, Kent and Sussex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties in General Assembly met, and by the authority of the same, That any plaintiff or plaintiffs, having a judgment obtained as aforesaid at the time aforesaid, or his, her, or their executors or administrators, shall and may procure a transcript of such judgment from the Clerk of the Provincial or County Court where the same was had and recorded, and lay the same before the Court of Common Pleas of the county within this government where the defendant in such judgment shall reside, which judgments the said court shall cause to be shortly entered upon their dockets, and the same shall from thenceforth be a judgment of the said Court of Common Pleas where the same shall be so docketed, and the plaintiff or plaintiffs aforesaid, or his, her, or their executors or administrators, shall and may proceed to writs of enquiry, or execution thereon, as the case may require, according to the laws of this government; and upon *non est inventus* returned against the principal in the said judgment upon a *capias ad satisfaciendum* issued against such defendant, the said court shall and may proceed against the special bail of such defendant (having first obtained a transcript of the recognizance of bail and filed the same as aforesaid) agreeable to the laws of this government.

SECT. 3. *Provided always,* That the lands and real estate of such defendant shall be, and remain, liable to such judgment from the time the same was obtained in the Court of Maryland, in the same manner as if the jurisdiction aforesaid had not as aforesaid been changed: *And provided also,* That if such judgment at the time aforesaid was of above one year's standing, the same, after transcript and entry as aforesaid in the court of this government, shall be revived by *scire facias* in the same manner it must have been revived had the jurisdiction not have been changed as aforesaid: *And provided also,* That nothing in this act contained shall be deemed, taken or construed to deprive any of the said defendants, their heirs, executors or administrators of their right or liberty of prosecuting their

their writs of error upon, or obtaining injunctions against such judgments, or moving against them as being obtained by fraud, practice or surprize.

C H A P .
CCXXXI.
1775.

SECT. 4. *And be it further enacted by the authority aforesaid,* That all such executors and administrators as have taken administration or letters testamentary on the estates of intestates and testators, who inhabited the said lands, and have not returned inventories, or adjusted their accounts, shall return inventories to the respective Registers for the probate of wills and granting letters of administration, and adjust their accounts with the several Orphans Courts of the counties where they reside within this government; which said estates of intestates aforesaid shall be distributed by the said Orphans Courts to such person or persons as shall be intitled to the same by the laws of the said province of Maryland: And all legacies mentioned, or contained in any last will or testament of any of the said inhabitants, where letters testamentary were obtained before the time aforesaid, shall be recoverable against such executors according to the laws of this government. And that all bonds and other securities entered into by such executors or administrators for the due administration of the estates of intestates, or testators, may be sued in this government against any such executors and administrators, and their respective sureties, for breach of their duty according to the laws of Maryland: And in any action or actions brought upon such bonds, or other security, it shall and may be lawful for the party interested therein to commence an action, or actions, in this government in the name of the proprietary of Maryland for the time being, and to proceed to judgment and execution thereon, and to produce in evidence the said original bond, or other security, or a copy thereof under the seal of the prerogative court of that province, in support of such action. And that all guardians of the estates of the orphans of such inhabitants as aforesaid, who entered into their guardianship before the time aforesaid, shall be accountable to their wards in the same manner they would have been in case the jurisdiction under which they took the said trust upon them had continued, and their bonds, or other securities, may be sued within

Inventories to be returned and accounts settled here though the letters, &c. granted in Maryland, if not done there, &c.

Distribution according to the laws of Maryland.

Legacies how recoverable.

Bonds of executors and administrators heretofore given how to be proceeded on.

Guardians how to account.

CHAP
CCXXXI.

1775.

Public taxes,
&c. may be le-
vied by Sheriffs
of Maryland.

Lands of intestate
dying before, &c. to de-
scend according
to the laws of
Maryland.

So of personal
estate.

Testamentary
and administra-
tion bonds may
be sued to in-
force payment of
balances of de-
ceased's estates.

this government, and actions upon them supported, in the same manner as herein before is ordered with respect to the bonds of executors and administrators.

SECT. 5. *And be it further enacted by the authority aforesaid,* That all public dues, stipends, taxes, assessments and officers fees, which at the time aforesaid were due from, and unpaid by, the inhabitants residing upon the lands fallen within this government by the change of jurisdiction aforesaid, shall and may be recovered and levied by the respective Sheriffs of the province of Maryland in the same manner as if the change of jurisdiction had not happened.

SECT. 6. *And be it further enacted by the authority aforesaid,* That where any person, whose land by the change of jurisdiction aforesaid is fallen within this government, died intestate before the time aforesaid, such land, and other real estate, of such person dying intestate before the time aforesaid, shall be deemed and taken in law to descend to the person or persons intitled to the same, according to the laws of the said province of Maryland. *And* where no administration of the estate of such person was obtained before the time aforesaid, the same may be obtained of the Register for the probate of wills and granting letters of administration of the county of this government into which the said lands have fallen, or shall fall, and the personal estate be distributed according to the laws of Maryland. *And* where the administration account of the estate of any testator or intestate, who lived on the lands aforesaid, hath been made up and adjusted in the proper office in Maryland, but the person or persons intitled to the balance thereof hath, or have, not yet been paid or satisfied, the testamentary or administration bond of such estate may be sued in this government to enforce the payment of such balance, and actions thereon supported in the same manner as herein before is directed in cases of unfinished administrations.

Passed October 28, 1775.

END OF THE FIRST VOLUME.

APPENDIX

[The following text is extremely faint and largely illegible due to the quality of the scan. It appears to be a list or index of items, possibly names of individuals or locations, arranged in columns. Some words are difficult to discern but may include names like 'John', 'Mary', 'James', etc.]

APPENDIX,

CONTAINING

Various Public Papers,

INCLUDING

CERTAIN LEGISLATIVE ACTS, WHICH, ALTHOUGH
EXPIRED, ALTERED, OR REPEALED, ARE NECESSARY
TO BE KNOWN AND PRESERVED.

*The Duke of York's Deed of Feoffment of New-Castle,
and twelve miles circle, to William Penn,*

August 24,
1682.

THIS indenture, made the four and twentieth day
of August, in the four and thirtieth year of
the reign of our Sovereign Lord Charles the Second,
by the grace of God of England, Scotland, France
and Ireland, King, defender of the faith, &c. *annoque*
Domini One Thousand Six Hundred and Eighty-two,
between the most illustrious Prince his Royal High-
ness James Duke of York and Albany, Earl of Ul-
ster, &c. of the one part, and William Penn, esq.
son and heir of Sir William Penn, Knight, deceased,
of the other part, witnesseth, That his said Royal
Highness, out of a special regard to the memory and
many faithful and eminent services heretofore per-
formed by the said Sir William Penn to his said Ma-
jesty and Royal Highness; and for the good will
which his said Royal Highness hath and beareth to
the said William Penn; and for and in consideration
of

1682.

of the sum of Ten Shillings to him in hand paid by the said William Penn at and before the enfealing and delivery hereof, the receipt whereof is hereby acknowledged; and for other good causes and considerations, doth bargain, sell, enfeoff and confirm unto the said William Penn, his heirs and assigns for ever, all that the town of New-Castle, otherwise called Delaware, and all that tract of land lying within the compass or circle of twelve miles about the same, situate, lying, and being upon the river Delaware, in America; and all islands in the said river Delaware, and the said river and soil thereof, lying north of the southermost part of the said circle of twelve miles about the said town, together with all rents, services, royalties, franchises, duties, jurisdictions, liberties and privileges thereunto belonging; and all the estate, right, title, interest, powers, property, claim and demand whatsoever of his said Royal Highness, of, in, or to, the same, or any part or parcel thereof: Saving always and reserving to his said Royal Highness, his agents and servants, free use of all ports, ways and passages into, through and out of the bargained premises, and every part and parcel thereof; To have and to hold the said town and circle of twelve miles of land about the same, islands, and all other the before mentioned or intended to be hereby bargained premises, with their appurtenances, unto the said William Penn, his heirs and assigns, to the only use and behoof of him the said William Penn, his heirs and assigns, for ever, yielding and paying therefore yearly and every year unto his said Royal Highness, his heirs and assigns, the sum of Five Shillings of lawful money of England, at the feast of St. Michael the Archangel only. And the said William Penn, for himself, his heirs and assigns, doth covenant and grant to and with his said Royal Highness, his heirs and assigns, by these presents, that he the said William Penn, his heirs and assigns, shall and will well and truly pay, or cause to be paid to his said Royal Highness, his heirs and assigns, the said yearly rent of Five Shillings at the days whereon the same is reserved to be paid as aforesaid. And his said Royal Highness for himself, his heirs and assigns, doth covenant

venant and grant to and with the said William Penn, his heirs and assigns, by these presents, that his said Royal Highness, his heirs and assigns, will at any time or times hereafter, during the space of seven years next ensuing the date hereof, upon the request, and at the costs and charges in the law of the said William Penn, his heirs and assigns, do, make, and execute, or cause or procure to be made, done and executed, all and every such further act and acts, conveyances and assurances in the law whatsoever, for the further conveying and assuring the said towne and circle of twelve miles of land about the same, and islands, and all other the premises, with the appurtenances, unto the said William Penn, his heirs and assigns, for ever, as by the counsel learned in the law of the said William Penn, his heirs or assigns, shall be reasonably devised, advised, or required. *And* his said Royal Highness hath hereby made, constituted and appointed John Moll of New-Castle aforesaid, esq. and Ephraim Harman of New-Castle aforesaid, gentleman, jointly, and either of them severally, his true and lawful Attornies; and by these presents doth give and grant unto the said John Moll and Ephraim Harman, his said Attornies, or either of them, full power and authority for him, and in his name and stead, into all and singular the premises herein before mentioned, or intended to be hereby aliened, enfeoffed and confirmed, and into every, or any part or parcel thereof, in the name of the whole, to enter, and quiet and peaceable possession and seisin thereof, or of any part or parcel thereof, in the name of the whole, to enter and receive. And after peaceable possession thereof had and taken as aforesaid, to deliver quiet and peaceable possession and seisin thereof, or of any part or parcel thereof, in the name of the whole, to the said William Penn, his heirs or assigns, or to his or their lawful Attorney or Attornies, sufficiently authorised to receive and take the same, and him or them to leave in the quiet and peaceable possession thereof, according to the true intent and meaning of these presents. *And* his said Royal Highness doth hereby allow of, ratify and confirm whatsoever the said John Moll and Ephraim Harman, his said Attornies,

168z.

1682.

Attornies, shall lawfully do, or cause to be done in and about the premises, by virtue of these presents, to be as good and effectual in the law, to all intents and purposes whatsoever, as if his said Royal Highness had done the same in his own person, or had been present at the doing thereof. In witness whereof his said Royal Highness hath to these presents set his hand and seal, the day and year first above written.

JAMES'S. (L.S.)

Sealed and delivered in the presence of

J. WERDEN,
GEORGE MANN.

August 24.
1682

The Duke of York's Deed of Feoffment of a tract of land twelve miles south from New-Castle to the Whorekills, to William Penn,

THIS indenture, made the four and twentieth day of August, in the four and thirtieth year of the reign of our Sovereign Lord Charles the Second, by the grace of God of England, Scotland, France and Ireland, King, defender of the faith, &c. *annoque Domini* One Thousand Six Hundred and Eighty-two, between the most illustrious Prince his Royal Highness James Duke of York and Albany, Earl of Ulster, &c. of the one part, and William Penn, esq. son and heir of Sir William Penn, Knight, deceased, of the other part, witnesseth, That his said Royal Highness, out of a special regard to the memory and many faithful and eminent services heretofore performed by the said Sir William Penn to his said Majesty and Royal Highness; and for the good will which his said Royal Highness hath and beareth to the said William Penn; and for and in consideration of the sum of Ten Shillings to him in hand paid by the said William Penn at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged; and of the rent and covenants herein

herein after reserved and contained, doth bargain, sell, enfeoff and confirm unto the said William Penn, his heirs and assigns, for ever, all that tract of land upon Delaware river and bay, beginning twelve miles south from the town of New-Castle, otherwise called Delaware, and extending south to the Whorekills, otherwise called Cape Henlopen, together with free and undisturbed use and passage into and out of all harbours, bays, waters, rivers, isles, and inlets, belonging to, or leading to the same; together with the soil, fields, woods, underwoods, mountains, hills, fens, isles, lakes, rivers, rivulets, bays and inlets, situate in, or belonging unto, the limits and bounds aforesaid; together with all sorts of minerals; and all the estate, interest, royalties, franchises, powers, privileges and immunities whatsoever of his said Royal Highness therein, or in, or unto any part or parcel thereof: Saving always and reserving to his said Royal Highness, his agents and servants, free use of all ports, ways and passages into, through and out of the said bargained premises, and every part and parcel thereof; To have and to hold the said tract of land, and all and singular other the premises, with the appurtenances, unto the said William Penn, his heirs and assigns, to the only use and behoof of him the said William Penn, his heirs and assigns, for ever, to be holden of his said Royal Highness and his heirs, as of their castle of New-York, in free and common soccage, yielding and paying therefor yearly and every year, to his said Royal Highness, his heirs and assigns, one rose, at the feast of St. Michael the Archangel, yearly, if demanded. *And* the said William Penn, for himself, his heirs and assigns, doth covenant and agree to and with his said Royal Highness, his heirs and assigns, that he the said William Penn, his heirs or assigns, shall and will, within the space of one year next ensuing the date of these presents, erect, or cause to be erected, and set up, one or more public Office or Offices of Registry in or upon the said bargained premises, wherein he, or they, or some of them, shall and will, amongst other things, truly and faithfully account, set down, and register, all and all manner of rents, and other profits, which
he,

1682.

he, or they, or any of them, shall by any ways or means make, raise, get, or procure, of, in, or out of the said bargained premises, or any part or parcel thereof: And shall and will at the feast of St. Michael the Archangel yearly, and every year, well and truly yield, pay, and deliver, unto his said Royal Highness, his heirs and assigns, one full moiety of all and all manner of rents, issues and profits, as well extraordinary as ordinary, as shall be made or raised upon, or by reason of, the premises, or any part thereof. And if it shall happen the same shall be behind, and unpaid, in part, or in all, by the space of twenty days next after the same ought to be yielded, paid, or delivered, that then, and so often, it shall be lawful to and for his said Royal Highness, his heirs and assigns, to enter in and upon the said premises, or any part or parcel thereof, and there to distrain, and the distress and distresses there taken, to take and detain, until the said moiety and arrears thereof shall be well and truly satisfied and paid, together with all costs and damages for the same. *And* his said Royal Highness for himself, his heirs and assigns, doth covenant and grant to and with the said William Penn, his heirs and assigns, by these presents, that his said Royal Highness, his heirs and assigns, will, at any time or times hereafter, during the space of seven years next ensuing the date hereof, upon the request, and at the costs and charges in the law of the said William Penn, his heirs and assigns, do, make, and execute, or cause or procure to be made, done and executed, all and every such further act and acts; conveyances and assurances, in the law whatsoever, for the further conveying and assuring the said tract of land, and all and singular other the premises, with the appurtenances, unto the said William Penn, his heirs and assigns, for ever, as by the counsel learned in the law of the said William Penn, his heirs or assigns, shall be reasonably devised, advised, or required. *And* his said Royal Highness hath hereby made, constituted and appointed John Moll of New-Castle aforesaid, esq. and Ephraim Harman of New-Castle aforesaid, gentleman, jointly, and either of them severally, his true and lawful Attornies; and by these presents
doth

doth give and grant unto the said John Moll and Ephraim Harman, his said Attornies, or either of them, full power and authority for him, and in his name and stead, into all and singular the premises herein before mentioned, or intended to be hereby aliened, enfeoffed and confirmed, and into every, or any part or parcel thereof, in the name of the whole, to enter, and quiet and peaceable possession and seisin thereof, or of any part or parcel thereof, in the name of the whole, to take and receive. And after peaceable possession thereof had and taken as aforesaid, to deliver quiet and peaceable possession and seisin thereof, or of any part or parcel thereof, in the name of the whole, to the said William Penn; his heirs or assigns, or to his or their lawful Attorney or Attornies, sufficiently authorised to receive and take the same, and him or them to leave in the quiet and peaceable possession thereof, according to the true intent and meaning of these presents. And his said Royal Highness doth hereby allow of, ratify and confirm, whatsoever the said John Moll and Ephraim Harman, his said Attornies shall lawfully do, or cause to be done, in and about the premises, by virtue of these presents, to be as good and effectual in the law, to all intents and purposes whatsoever, as if his said Royal Highness had done the same in his own person, or had been present at the doing thereof. In witness whereof his said Royal Highness hath to these presents set his hand and seal, the day and year first above written.

7682.

JAMES. (L. S.)

Sealed and delivered in the presence of

J. WERDEN,

GEORGE MANN.

34 Charles II.
A. D.
1682.

An ACT of union, for annexing and uniting of the counties of New-Castle, Jones's, and Whorekills, alias New-Dale, to the province of Pennsylvania; and of naturalization of all foreigners, in the said province and counties annexed.

SINCE by the good Providence of God, it hath graciously pleased King Charles the II. of England, &c. for divers good considerations, to grant by his letters patents, under the Great Seal of England to William Penn, esq. son and heir of Sir William Penn, deceased, and to his heirs and assigns for ever, this province of Pennsylvania, according to the bounds therein expressed; with all requisite powers for the good government thereof, by such laws as he and they shall make, by and with the advice and consent of the freemen of the said province or their deputies, not repugnant to their faith and allegiance to the legal government of the said realm: And it having also favourably pleased James, Duke of York and Albany, Earl of Ulster, &c. to release his right and claim to all and every part thereof, unto the said William Penn, his heirs and assigns; whereby he, the said William Penn is become the undoubted and rightful Proprietary and Governor of the province of Pennsylvania, and is hereby freely and fully so recognized and acknowledged. And as a beneficial and requisite addition to the territory of the said Proprietary and Governor, it hath also pleased the said James, Duke of York and Albany, &c. for divers good considerations, to grant unto the said William Penn, and his heirs and assigns, all that tract of land, from twelve miles northward of New-Castle, on the river Delaware, down to the south-cape, commonly called Cape Henlope, and by the Proprietary and Governor now called Cape James, lying on the west side of the said river and bay, formerly possessed by the Dutch, and bought by them of the natives, and first surrendered upon articles of peace to the King's Lieutenant Governor, Colonel Nicholls, and a second time to Sir Edmund Andross, Lieutenant Governor to the said Duke, and hath been by him quietly possessed and enjoyed; as also the said river of Delaware, and

soil

soil thereof, and all islands therein, lately cast into three counties, called New-Castle, Jones's and Whorekills, *alias* New-Dale; together with all royalties, powers and jurisdictions thereunto belonging, as by two deeds of feoffment, bearing date the twenty-fourth of the sixth month called August, One Thousand Six Hundred and Eighty-two, doth more at large appear. And forasmuch as there must always be a people before there can be a government, and that people must be united and free, in order to settle and encourage them, for the prosperity of the government: And since the inhabitants of the tract of land, lately passed from the Duke, as aforesaid, are not yet thereby under the same capacity that those are that belong to the province of Pennsylvania: *And whereas* the freemen of the said counties have, by their deputies, humbly besought their present Proprietary and Governor, to annex the said counties to the province of Pennsylvania, and to grant unto them the same privileges; and that they may live under the same laws and government that the inhabitants of the said province of Pennsylvania, now do, or hereafter shall enjoy: *And* since the union of the two distinct people that are under one Governor, is both most desirable in itself and beneficial to the public, and that it cannot be so cordially and durably maintained, to the mutual benefits of each other, as by making them equally sharers in benefits and privileges;

BE it enacted by the Proprietary and Governor aforesaid, by and with the advice and consent of the deputies of the freemen of the province, and counties aforesaid, in Assembly met, That the counties of New-Castle, Jones's, and Whorekills, *alias* New-Dale, shall be annexed, and by the authority aforesaid, are hereby annexed unto the province of Pennsylvania, as of the proper territory thereof; and the people therein shall be governed by the same laws, and enjoy the same privileges in all respects, as the inhabitants of Pennsylvania do, or shall enjoy from time to time therein, any thing in this law, or any other law, act or thing in this province, to the contrary thereof in anywise notwithstanding. *And* forasmuch as it is apparent, that the just encouragement of the inhabitants of this province,

34 Charles II.
A. D.
1682.

The three lower counties annexed to the province.

34 Charles II.
A. D.
1682.

All foreigners
promising alle-
giance, &c. na-
turalized.

vince, and territories thereunto belonging, is likely to be an effectual way for the improvement thereof: And since some of the people that live therein, and are like to come thereinto, are foreigners, and so not freemen, according to the acceptation of the laws of England, the consequences of which may prove very detrimental to them in their estates and traffic, and so injurious to the prosperity of this province, and territories thereof, *Be it enacted by the Proprietary and Governor of the province, and counties aforesaid, by and with the advice and consent of the deputies of the freemen thereof, in Assembly met;* That all persons, who are strangers and foreigners, that now do inhabit this province, and counties aforesaid, that hold land in fee in the same, according to the law of a freeman, and who shall solemnly promise, within three months after the publication hereof, in their respective county courts where they live, upon record, faith and allegiance unto the King of England; and his heirs and successors; and fidelity and lawful obedience to the said William Penn, Proprietary and Governor of the said province and territories, and his heirs and assigns, according to the King's letters patents, and deeds aforesaid, shall be held and reputed freemen of the province, and counties aforesaid, in as ample and full manner as any person residing therein. *And it is hereby further enacted by the authority aforesaid;* That when at any time, any person that is a foreigner, shall make his request to the Proprietary and Governor of this province and territories thereof, for the aforesaid freedom, the said person shall be admitted on the conditions hereip expressed, paying at his admission Twenty Shillings sterling, and no more, any thing in this law, or any other law, act or thing in this province, to the contrary in anywise notwithstanding.

GIVEN at Chester, alias Upland, the seventh day of the tenth month, called December, One Thousand Six Hundred and Eighty-two, under the hand and broad seal of William Penn, Proprietary and Governor of this province, and territories thereunto belonging, being the second year of his government, by the King's authority.

W. PENN.

§ 45.

§ 45. *What wills shall convey lands as well as chattels.* 34 Charles II.

A. D.
1682.

AND be it enacted, &c. That all wills in writing attested by two sufficient witnesses, shall be of the same force to lands, as to other conveyances, being legally proved, within forty days, either within or without the province.

§ 51. *How lands and goods shall pay debts.*

31 Charles II.
A. D.
1682.

AND be it enacted, &c. That all lands and goods shall be liable to pay debts, except where there shall be legal issue, and then all the goods, and one half of the land only, in case the land was bought before the debts were contracted.

§ 62. *The act of settlement.*

34 Charles II.

WHEREAS William Penn, Proprietary and Governor of the province of Pennsylvania, and territories thereunto belonging, hath, out of his great kindness and goodness to the inhabitants thereof, been favourably pleased to give and grant unto them a charter of liberties and privileges, dated the twenty-fifth day of the second month, One Thousand Six Hundred and Eighty-two; by which charter it is said that the government shall consist of the Governor and freemen of the said province, in the form of a Provincial Council, and General Assembly; and that the Provincial Council shall consist of seventy-two Members, to be chosen by the freemen, and that the General Assembly may, the first year, consist of the whole body of the freeholders, and ever after, of an elected number, not exceeding two hundred persons, without the consent of the Provincial Council, and General Assembly; and such Assembly to sit yearly, on the twentieth day of the third month, May, as in the first, second, third, sixth, fourteenth and sixteenth articles of the charter, reference being thereunto had, doth more at large appear. *And forasmuch*

Made at Chester, tenth month, 1682.

34 Charles II.
A. D.
1682.

as this charter was the first of those probatory laws that were agreed to and made by and between the Proprietary and Governor, and the freeholders in England, purchasers in this province; which said laws, in the whole and every part thereof, were to be submitted to the explanation and confirmation of the first Provincial Council and General Assembly, that was to be held in this province, as by the title and first law of the said agreement doth plainly appear. *And whereas* the Proprietary and Governor hath according to that charter issued out writs to the respective Sheriffs of the six counties of this province, (a) to summon the freemen thereof to choose in each county twelve persons of most note for their sobriety, wisdom and integrity to serve in Provincial Council; and also to inform the freemen that they might come for this time in their own persons, to make up a General Assembly, according to charter; and that the said respective Sheriffs, by their returns, and the freemen, by their petitions to the Proprietary and Governor, have plainly declared, that the fewness of the people, their inability in estate, and unskilfulness in matters of government, will not permit them to serve in so large a Council and Assembly, as by the charter is expressed; and therefore do desire, that the Members now chosen to be their deputies and representatives, may serve both for Provincial Council and General Assembly, *That is to say*, Three out of each county for the Provincial Council, and the remaining nine for the General Assembly, according to act as fully and amply as if the said Provincial Council and General Assembly had consisted of the said numbers of Members mentioned in the charter of liberties: Upon consideration of the premises, and that the Proprietary and Governor may testify his great willingness to comply with that which may be most easy and pleasing to the people, he is willing that it be enacted, *And be it enacted*, by the Proprietary and Governor, by and with the unanimous advice and consent of the freemen of this province, and territories

(a) Viz. Philadelphia, Chester and Bucks counties in Pennsylvania, and New-Castle, Kent and Sussex counties on Delaware.

ritories thereunto belonging, in Provincial Council, and General Assembly met, that the numbers* desired by the inhabitants in their several petitions and expressed to be their desires by the Sheriffs returns, to the Proprietary and Governor, to serve as the Provincial Council and General Assembly, be allowed and taken, to all intents and purposes, to be the Provincial Council and General Assembly of this province. And that the quorums shall be proportionably settled, according to the method expressed in the fifth article; *That is to say*, Two thirds to make a quorum in extraordinary cases, as is provided in the said fifth article; which said Provincial Council and General Assembly so already chosen, are and shall be held and reputed the legal Provincial Council and General Assembly of this province, and territories thereof, for this present year; and that from and after the expiration of this present year, the Provincial Council shall consist of three persons out of each county as aforesaid, and the Assembly shall consist of six persons out of each county; which said Provincial Council and General Assembly may be hereafter enlarged, as the Governor, Provincial Council and Assembly shall see cause, so as the said number do not at any time exceed the limitations expressed in the third and sixteenth articles of the charter, any thing in this act, or any other act, charter or law to the contrary in any wise notwithstanding. *And* because the freemen of this province, and territories thereof, are deeply sensible of the good and kind intentions of the Proprietary and Governor, in this charter, and of the singular benefit that redounds to them thereby, and are desirous that it may in all things best answer his design for the public good, the freemen of the said province and territories thereof in Provincial Council and General Assembly met, having unanimously requested some variations, explanations and additions, of, in and to the said charter, he the Proprietary and Governor hath therefore yielded, that it be enacted, *And it is hereby enacted*, That the time for the meeting of the freemen of this province, and territories thereof, to choose their deputies, to represent and serve them in Provincial Council and General Assembly,

34 Charles II.
A. D.
1682.

Quorum settled

Provincial
Council regulated.

Times of meeting appointed.

34 Charles II.
A. D.
1682.

bly, shall be yearly hereafter on the tenth day of the first month March; which Members so chosen for the Provincial Council, shall make their appearance, and give their attendance in Provincial Council within twenty days after their elections; and the said Members elected to serve in General Assembly, shall yearly meet and assemble on the tenth day of the said third month, to the end and purposes declared in the charter, at and in such place as is limited in the said charter, unless the Governor and Provincial Council shall at any time see cause to the contrary. *And whereas* it is expressed in the said charter, that the Governor and Provincial Council shall prepare and propose to the General Assembly, all bills which they shall think fit to pass into laws within the said province.

Governor and
Council to pre-
pare bills;

which shall be
published, &c.

Personal mat-
ters to be decid-
ed by ballot, &c.

Name or stile of
the Assembly,
&c.

Be it enacted, by the authority aforesaid, That the Governor and Provincial Council shall have the power of preparing and proposing to the General Assembly, all bills which they shall jointly assent to, and think fit to have passed into laws in the said province, and territories thereof, that are not inconsistent with, but according to the powers granted by the King's letters patents to the Proprietary and Governor aforesaid; which bills shall be published in the most noted towns or places in the said province, and territories thereof, twenty days before the meeting of the General Assembly aforesaid. *And* for the better decision and determination of all matters and questions in Provincial Council and General Assembly, *It is hereby enacted,* That all questions upon elections of Representatives, and debates in Provincial Council and General Assembly, in personal matters, shall be decided by the ballot, and all questions about preparing and enacting of laws, shall be determined by the vote. *And* that so united an interest may have an united term or stile to be expressed by, *It is hereby declared and enacted,* That the General Assembly shall be henceforth termed or called, *The Assembly*; and the meeting of the Governor, Provincial Council and Assembly, and their acts and proceedings, shall be stiled and called, *The Meetings, Sessions, Acts or Proceedings of the General Assembly of the province of Pennsylvania, and the territories thereunto belonging.* And that the freemen of this province,

province, and territories thereof, may not on their parts seem unmindful or ungrateful to their Proprietary and Governor, for the testimony he hath been pleased to give of his great good will towards them and theirs, nor be wanting of that duty they owe to him and themselves, they have prayed leave hereby to declare their most hearty acceptance of the said charter, and their humble acknowledgments for the same, solemnly promising that they will inviolably observe and keep the same, (except as is therein excepted;) and they will neither directly nor indirectly contrive, propose, enact, or do, any thing or things whatsoever, by virtue of the power, thereby granted unto them, that shall or may redound to the prejudice or disadvantage of the Proprietary and Governor, his heirs and successors, in their just rights, properties and privileges, granted to him and them, by the King's letters patents, and deeds of release and feoffment, made to him by James, Duke of York and Albany, &c. and whom they desire may be hereby recognized and acknowledged the true and rightful Proprietaries and Governors of this province of Pennsylvania, and territories thereunto annexed, according to the King's letters patents, and deeds of release and feoffment from James, Duke of York and Albany, &c. unto the said Proprietary and Governor, his heirs and successors, any thing in this act, or any other act, grant, charter or law, to the contrary of these things herein and hereby explained, altered, limited, promised, declared and enacted, in anywise notwithstanding.

34 Charles II.
A. D.
1682.

Charter except-
ed.

§ 78. *Forms of grants of estates of inheritance for life, lives or years.*

35 Charles I.
A. D.
1625.

BE it enacted, &c. That for avoiding long and tedious conveyances and the many contentions which may arise about the variety of estates, all grants of estates shall be either of the inheritance, or for life or lives, or for years, any number not exceeding fifty years, which grants shall be thus contracted in these words, A. B. the &c. day of &c. in the year according to the English account 16, &c.

35 Charles II. &c. from him and his heirs and assigns, grants his (describe
 A. D. the bounds) with all its appurtenances, lying in the county
 1683. of containing acres or thereabouts to C. D.
 and his heirs [if in fee] or to E. F. for his life (if for
 lives) or to G. H. for one hundred years, if I. K. L.
 M. N. O. shall so long live, or to P. Q. for fifty years,
 for the consideration of Pounds in money paid, and
 of the yearly rent to be paid to A. B. and his heirs and
 assigns, upon the &c. day of &c. In witness whereof he
 sets his hand and seal. Sealed and delivered in the
 presence of R. S. T. acknowledged in open court,
 and certified under the Clerks hand and court seal,
 the &c. day of &c. 16. &c. and registered the &c.
 day of &c. 16. &c.

35 Charles II. § 79. Form of possession in transferring of titles, &c. &c.
 A. D. 1683.

BE it enacted, &c. That all deeds of sale, mortgages,
 settlements, conveyances, except leases for a year,
 shall be declared and acknowledged in open court;
 and the form of possession in transferring of titles shall
 be by the party, or his Attorney, delivering the said
 deed of gift in open court into the hands of him or
 his Attorney to whom it is made, and that to stand
 good to all intents and purposes.

35 Charles II. § 109. How the estate of any person shall be disposed of
 A. D. at his death.
 1683.

BE it enacted, &c. That whatsoever estate any per-
 son hath, in this province or territories thereof
 at the time of his death, unless it appear that an equal
 provision be made elsewhere, shall be thus disposed of;
That is to say, One third to the wife of the party de-
 ceased, one third to the children equally, and the other
 third as he pleaseth, and in case his wife be deceased
 before him, two thirds shall go to the children equally,
 and the other third to be disposed of as he shall think
 fit, his debts being first paid.

§ 110.

§ 110. *How the estate of an intestate shall be disposed of.* 33 Charles II.

A. D.
1683.

BE it enacted, &c. That the estate of an intestate shall go to his wife, his child or children, and if he leave no wife, child or children, it shall go to his brothers and sisters, if any be, or to the children of such brothers or sisters: And in case no such be, one half shall go to the parents and the other half to the next of kin: And for want of parents one half shall go to the Governor, and for want of kin, the other half to the public. *Providing always*, That the time of claiming exceed not three years after the death of such intestate.—Vid. § 172.

§ 172. *How the estate of an intestate shall be disposed of.* 33 Charles II.

A. D.
1683.

THAT the estate of an intestate, shall be thus disposed of, *That is to say*, One third of his personal estate, shall go to his wife, and further one third of his lands and tenements to his wife during her natural life, the remainder, together with the other two thirds of his estate shall go to his children, his eldest son having a double part or share; And in case the intestate leaves no child, then half the personal estate to the widow and the moiety of the real estate during her natural life, the remainder thereof to the next of her husbands kin. And if he leaveth no wife, child, or children, it shall go to his brothers and sisters, if any be, or to the children of such brothers and sisters; and in case no such be, one half shall go to the parents, and one half shall go to the Governor. And for want of kin, the other half to the public stock of the county. And the estate of an intestate widow, shall go to her child or children, to be divided and shared as before; and if she leave no child or children, the estate to be disposed of as aforesaid if any be. And the estate of an intestate single man or woman, shall go to his or her brother and sister if any be, and for want of such, as before limited. *Provided*, That his or her debts be first paid;

c

and

35 Charles II. and that the time of claiming, be within three years
 A. D. after the decease of the intestate party.
 1683.

4 James II. § 188. *In what cases the Orphans Court with consent of*
 A. D. *the Governor and Council may sell intestates lands.*
 1688.

BE it enacted, &c. That any person, who died or shall die intestate, being owner of lands within this province or territories, and hath or shall leave legal issue, it shall be lawful for the Court of Orphans with the approbation of the Governor and Council to empower the widow or administrator, in case of considerable debts, charge of child or children, to make sale of such parts or tracts of the said land as the council and court shall judge met direct towards the defraying of such just debts, the education of such child or children, support of the widow and the better improving the remainder of the estate to their advantage, and that this law continue and be in force for one whole year and no longer.

4 James II.
 A. D.
 1688.

§ 189. *Lands lyable to pay debts.*

FORASMUCH, as by a law made at Upland, it was enacted, that all lands were made lyable to pay debts with such restrictions and limitations as are therein exprest, for the fuller and more satisfactory explanation and alteration of the same, *It is hereby enacted.* That all lands whatsoever, and houses shall be liable to sale upon judgment and execution obtained against the defendant, his heirs, executors or administrators, with this due proviso, that the messuage and plantation with its appurtenances upon which the defendant is chiefly seated, may not be exposed to sale, till the expiration of one year after the judgment obtained, to the intent that the owner or any on his behalf, may endeavour the redemption of the same, and before such sale shall be made, the appraisement thereof shall be by twelve honest and discreet men of the neighbourhood; and that after such sale and appraisement

praifement as aforefaid, the lands fhall be and remain as a free and clear eftate, to the purchafer or creditor, his heirs and affigns for ever, as ever it was to the debtor. *Provided always*, That lawful intereft be allowed to the creditor from the time of the faid judgment obtained, until the faid time of fale or fatisfaction. *Provided alfo*, That the chief plantation or meffuage, fhall be the laft, to be executed. And that this law continue for one whole year and till the rifing of the next General Affembly, and until twenty days after and no longer.

4 James II.
A. D.
1688.

§ 190. *Recording of writings.*

4 James II.
A. D.
1688.

FORASMUCH as the forty-fourth chapter of laws enjoins the recording of all charters, gifts, grants, conveyances of land, bills, bonds and fuch writings therein mentioned, and within the time therein expreffed, otherwife to be void in law. *It is hereby enacted*, &c. That for the prevention of great inconveniences, and for the fatisfaction of feveral owners of lands, that all fuch charters, gifts, grants and conveyances of lands, bills, bonds and fuch writings, though they are neither recorded nor recorded; according to law yet they are hereby indemnified and are declared as good and authentic as if they had been duly enrolled and registered. *Provided always*, That all gifts, grants and conveyances of lands or fufficient memorandums of the fame, in this government, but made out of the fame, may be brought to be recorded in the Enrolment Office within twelve months; and all fuch instruments made of lands within this province or territories, may be brought to be registered within fix months, otherwife to be void, as in the faid law is declared: And further, it is the full intent and true meaning of this law that no bills, bonds or specialties, fhall be required to be recorded under the penalty mentioned, but that all fuch bills, bonds and specialties, which fhall be enrolled or recorded in the faid office, the record of the fame fhall in all Courts of Judicature be allowed and adjudged as valid as the original. And that this law continue for

4 James II.
A. D.
1688.

for one whole year and till the rising of the next General Assembly and until twenty days after and no longer.

5 Wm. & Mary.
A. D.
1693.

§ 14. *The law about testates and intestates estates.*

AND be it further enacted by the authority aforesaid, That all real estates and lands, tenements and hereditaments, and all personal estates which any person hath in this province and territories at the time of his decease shall be liable, either by conveyance or bill of sale, duly executed by the lawful executor or administrator of such deceased, and approved and acknowledged in open court, according to law, or by judgment and order of the respective Courts of Record, upon due procedure therein had, to be seized and sold for payment of the decedent's just debts, so far as the same estate shall extend, in due order of law; *That is to say*, First funeral expences, then debts and duties due to the Governor, then judgments, then debts by recognizance, then debts by obligation, then bills, then rents, then servants and workmens wages, then merchants books, lately contracted, and promises by word, arrears of accounts, and such like, which said sale and seizures are hereby declared to be binding and conclusive against such deceaseds and their heirs, and all claiming under them.

And after all debts are paid as aforesaid, then the surplusage or residue, if any be, of all the testator's said personal estate, shall be by the executors divided and proportionably distributed according to their last wills.

And that the surplusage or residue of an intestates personal estate, (all debts being paid as aforesaid) shall be thus disposed of and distributed, *to wit*, one third part thereof to the wife of the intestate, the residue amongst his children and such as legally represent them, (if any of them be dead) the eldest son having a double part or share: And if there be no children nor legal representatives of them, one moiety shall be allotted to the wife, the residue equally to the next of kindred to the intestate in equal degree, and those who

who represent them, and if the intestate leaveth no wife, child or children, it shall go to his brothers and sisters, if any be, or to the children of such brothers and sisters: And in case no such be, it shall go to the parents, and for want of kindred, the one half to the Governor for the time being, and the other half to the public stock of the county, where such estate lieth.

5 Wm. & Mary.
A. D.
1693.

And the personal estate of an intestate widow, shall go to her child or children, the same to be disposed of as aforesaid.

And the personal estate of a single man or woman, dying intestate, shall go to his and their brothers and sisters, if any be, and for want of such, then as before limited.

Provided always, That where such testators or intestators said personal estates are sufficient to pay all debts and damages, owing by them at the time of their decease, with all charges incident thereunto, that then the respective real estate aforesaid, shall be disposed of and distributed in manner following, *That is to say*, All testators real estate to be invested and remain, as their last wills and testaments devise the same, and one third part of all intestates lands and tenements to the wife for her life, the residue and remainder thereof to be allotted and distributed in the same manner, as the surplusage of the intestates personal estate, as above limited and directed.

All which distributions of the remainders and surplusages as well of the testates, as intestates estates, are to be made by the Register General, for the time being, within twelve months after the decedents death. And every one to whom any shares shall be allotted, shall give bond with securities to the said Register General, that if debts afterwards be made to appear, he or she, shall refund his or her rateable part thereof, and of the executors or administrators charges accruing thereby.

And that all such of the intestates relations and persons concerned, who shall not lay legal claims to the said estates within three years next after the decease of the intestate party, shall be debarred for ever.

And

5 Wm. & Mary.
A. D.
1693.

And be it further enacted, by the authority aforesaid, That all executors and guardians to persons under age, shall give sufficient bond to the Court of Orphans in the precincts where they live, faithfully to discharge their trust; and that the said obligations shall stand in full force and virtue, till they have passed their accounts in court, and are legally discharged. And if any man shall refuse this honest care and charge in the government, unless he have five children to take care of, or is already executor to one will, or hath persons nearer related to him, who in all likelihood, will impose that charge upon him, he shall be fined at the discretion of the aforesaid court, who shall appoint one to administer in the room of such person, to the ends expressed in the will of the testator.

5 Wm. & Mary.
A. D.
1693.

§ 23. *The law about the recording of deeds.*

TO prevent any damage or inconveniency that may arise for not recording of deeds, gifts, grants and charters, enjoined by the late laws of this government, *Be it enacted by the authority aforesaid,* That such writings, though they were never recorded nor enrolled, according to law, yet they are hereby indemnified, and are declared as good and authentic as if they had been duly entered and enrolled; and it is the true meaning of this act, that no deeds or other writings, shall be required to be recorded, but that such deeds and writings, as shall be enrolled or registered in the Rolls Office; and the exemplification of the records of the same, in all Courts of Judicature, shall be allowed and judged as valid as the original.

6 Wm. & Mary.
A. D.
1694.

§ 5. *The law about taking land in execution for debts, &c.*

FORASMUCH as by a law made at Upland, it was enacted that all lands were made liable to pay debts with such restrictions and limitations, as are

are therein expressed; for the fuller and more satisfactory explanation and alteration of the same, *It is hereby enacted*, That all lands whatsoever, and houses, shall be liable to sale upon judgment and execution obtained against the defendant, his heirs, executors or administrators, with this due proviso, that the messuage and plantation, with its appurtenances, upon which the defendant is chiefly seated, may not be exposed to sale till the expiration of one year after the judgment obtained; to the intent that the owner, or any on his behalf, may endeavour the redemption of the same. And before such sale shall be made, the appraisement thereof, shall be by twelve honest and discreet men of the neighbourhood; and that after such sale and appraisement as aforesaid, the land shall be and remain as a free and clear estate to the purchaser or creditor, his heirs and assigns for ever, as ever it was to the debtor. *Provided always*, That lawful interest be allowed to the creditor from the time of the said judgment obtained, until the said time of sale or satisfaction. *Provided also*, That the chief plantation or messuage, shall be the last to be executed.

6 Wm. & Mary.
A. D.
1694.

§ 6. *The law about sale of intestates lands by the widow or administrator.*

6 Wm. & Mary.
A. D.
1694.

BE it enacted by the authority aforesaid, That any person, who died or that shall die intestate, being owner of lands within this province or territories thereunto belonging, and hath left or shall leave legal issue, it shall be lawful for the widow or administrator, in case of considerable debts, charge of child or children, to make sale of such parts or tracts of the said lands, as the council or county court shall think meet, towards the defraying of such just debts, the education of such child or children, support of the widow and the better improving the remainder of the estate to their advantage.

9 William III.
A. D.
1697.

§ 4 *The law about testates and intestates estates.*

AND *be it further enacted by the authority aforesaid,* That all real estates and lands, tenements, and hereditaments, and all personal estates, which any person hath in this province and territories, at the time of his deceate, shall be liable, either by conveyance or bill of sale, duly executed by the lawful executor or administrator, of such deceased, and approved and acknowledged in open court, according to law, or by judgment and order of the respective Courts of Record, upon due procedure therein had, to be seized and sold for payment of the decedents just debts, so far as the same estate shall extend in due order of law; *That is to say,* First funeral expences, then debts and duties due to the Governor, then judgments, then debts due by recognizance, then debts due by obligation, then bills, then rents, then servants and workmen's wages, then merchants books, lately contracted, and promises by word, arrears of accounts, and such like: Which said sales and seizures are hereby declared to be binding and conclusive against such deceaseds, and their heirs and all claiming under them. And after all debts are paid, as aforesaid, then the surplusage, or residue, if any be, of all the testators said personal estate, shall be by the executors divided and proportionably distributed according to their last wills. *Always provided,* That his widow have not less than one third part of the said personal estate, except where due and equivalent provision hath been made before by the testator. And that the surplusage or residue of an intestate's personal estate, (all debts being paid as aforesaid) shall be thus disposed of and distributed, *to wit,* one third part thereof to the wife of the intestate, the residue amongst his children and such as legally represent them, if any of them be dead, the eldest son having a double part or share: And if there be no children nor legal representatives of them, one moiety shall be allotted to the wife, the residue equally to the next of kindred to the intestate, in equal degree and those who represent them. And if the intestate leaveth no wife, child nor children, it shall go to his brothers and sisters,

if any be, or to the children of such brothers and sisters, and in case no such be, it shall go to the parents: And for want of kindred, the one half to the Governor for the time being, and the other half to the public stock of the county, where such estate lieth. And the personal estate of an intestate widow, shall go to her child or children, the same to be disposed of as aforesaid. And the personal estate of a single man or woman dying intestate, shall go to his and their brothers and sisters, if any be, and for want of such, then as before limited. *Provided always*, That where such testators or intestators said personal estates are sufficient to pay all debts and damages, owing by them, at the time of their decease, with all charges incident thereunto, that then their respective real estates aforesaid, shall be disposed of and distributed in manner following, *That is to say*, All testators real estates, to be invested and remain as their last wills and testaments devise the same. *Provided always*, That no less than one third part of the said real estate, be allowed and invested in the widow, during her natural life, except where due and equivalent provision hath been made before by the testator. And one third part of all intestates lands and tenements, to the wife for her life, the residue and remainder thereof, to be allotted and distributed in the same manner as the surplusage of the intestates personal estate as above limited and directed. All which distributions of the remainders and surplusages as well of the testators, as intestators estates, are to be made by the Register General, for the time being, within twelve months after the decedents death, and every one to whom any share shall be allotted, shall give bond with securities, to the said Register General, that if debts afterwards be made to appear, he or she shall refund his or her rateable part thereof, and of the executors or administrators charges accruing thereby. And that all such of the intestates relations and persons concerned, who shall not lay legal claims to the said estates within seven years after the decease, of the intestate parties, shall be debarred for ever.

And be it further enacted by the authority aforesaid,

d

That .

9 William III.
A. D.
1697.

9 William III. That all executors and guardians to persons under
 A. D. age, shall give sufficient bond to the Court of Or-
 1697. phans, in the precincts, where they live, faithfully
 to discharge their trust, and that the said obligations
 shall stand in full force and virtue, till they have
 passed their accounts in court and are legally dis-
 charged.

Chap. 6. a.
 12 William III.
 A. D.
 1700.

§ 31. *An ACT for ascertaining the descent of lands, and better disposition of the estates of persons intestate.*

FOR the prevention of disputes and contests at law, or otherwise, concerning estates, real and personal, of persons dying intestate, and for the more equal payment of their debts, *Be it enacted, by the Proprietary and Governor, by and with the advice and consent of the freemen of this province, and counties annexed, in General Assembly met, and by the authority of the same,* That all lands, tenements and hereditaments, and all personal estates whatsoever, which any person hath or is seized or possessed of, in his or her own right at the time of his or her decease, within this province and territories, shall be liable to be seized and sold by the lawful executor or administrator of the deceased, by any lawful deed or conveyance, duly executed and approved and acknowledged in open court, according to law, or by judgment or order of the respective Courts of Record, upon due procedure therein respectively had for the payment of the decedents just debts, so far as the said estates shall extend in due order of law, *That is to say,* First, funeral expences; secondly, debts and duties due to the King, and Proprietary and Governor; thirdly, judgments; fourthly, debts due by recognizance; fifthly, debts due by obligation; sixthly, bills; seventhly, rents; eighthly, servants and workmen's wages; ninthly, merchants and traders books and promises by word; arrears of accounts and such like; which said seizures, sales and payment, shall be binding and conclusive against such decedents, their heirs, and all persons whatsoever, claiming by, from, or under them, or any of them. And after all debts and dues paid
 and

and satisfied as aforesaid, the surplufage or residue (if any be) of all the testators said personal estate shall be by the executors divided and proportionably distributed according to the said testators last wills. *Provided always*, That the widow shall not have less than one third part of the said clear personal estate, except where equivalent provision hath before been made for her by the testator, and that the residue of the personal estates of intestates (all their debts being first paid as aforesaid) shall be disposed of, and distributed in manner following, *That is to say*, One third part thereof, to the relict or widow of the intestate aforesaid, and all the residue by equal portions to and amongst the children of the intestate and such persons as legally represent such children in case any of the children be then dead, other than such child or children, who shall have any estate, by the settlement of the intestate, or shall be advanced by the intestate in his or her lifetime, by portion or portions equal to the share, which shall by such distribution be allotted to the other children, to whom such distribution is to be made. *And in case* any child, who shall have any estate, by settlement, from the said intestate, or shall be advanced by the said intestate in his or her lifetime, by portion not equal to the share, which will be due to the other children by such distribution as aforesaid, then so much of the surplufage of the said intestates estate, shall be distributed to such child or children, as shall have any land by settlement, from the intestate or were advanced, in the lifetime of the intestate, as shall make the estates, of all the said children to be equal, or as near as can be estimated. *Provided*, That the first born, if a son, of the said intestate, shall have a double portion or share of such clear residue of the intestates estate as aforesaid, the widow's third, being first therefrom divided. *And in case*, there be no children nor legal representatives of them, then one moiety of such estate, shall be allotted to the widow of the intestate, and the residue of the estate distributed equally to every of the next of kindred of the intestate, who are in equal degree, and those, who legally represent them. *Provided*, That there shall be no representations admitted among

12 William III.
A. D.
1700.

12 William III.
A. D.
1700.

among collaterals after brothers and sisters children ; and in case the intestate shall have no widow, then all the said estate, shall be distributed equally to and among the children (the first born, if a son, having a double share as aforesaid.) And in case there be no child, then to the next of kindred of the intestate in equal degree and their legal representatives as aforesaid, and in no other manner whatsoever:

And be it further enacted by the authority aforesaid, That in case such intestate, shall leave no known kindred; then all his lands, tenements and hereditaments, shall descend and go to the immediate landlord, of whom such lands are held, his heirs and assigns, and if held immediately of the Proprietary, then to the Proprietary, his heirs and assigns, and all the goods, chattels and personal estate whatsoever, of such person dying intestate, and without kindred as aforesaid, shall go to the Proprietary and Governor, his heirs and assigns : Provided always, and be it further enacted by the authority aforesaid, That where such testators or intestates personal estates are sufficient to pay all debts and damages, owing by them respectively, at the time of his, her or their deaths, with all charges incident thereunto, then the real estates, lands, tenements and hereditaments, of such testators and intestates, shall be disposed of and distributed in manner following ; all testators real estate, shall be disposed, and remain according to the last will and testament of the testator. Provided always, That no less than one third part of any real estate be allotted to the widow of such testator, during her natural life, except where due and equivalent provision hath been made, before by the testator. And one third part of all lands, tenements and hereditaments of or belonging to any person dying intestate, shall go and be allotted to his widow for her life, and the residue and remainder thereof, shall be distributed and allotted in the same manner as the surplusage of the intestates personal estates above limited and directed ; all which distributions of the remainders and surplusages as well of testators, as intestates estates, shall be made by the respective Registers of the counties, where such testators or intestates estates shall lye for the time being, within twelve months

months next after the decedents death, and every one to whom any share in the distribution, shall be allotted, shall give bond with sufficient sureties to the said Register, that if any debt or debts, truly owing by the intestate, shall afterwards be sued for and recovered or otherwise duly made to appear that then and in every such case he or she, shall refund and pay back to the administrator, his or her rateable part of such debt or debts, and of the costs of suit, and charges to the administrator by reason of such debt accruing out of the part or share, to him or her allotted as aforesaid, thereby to enable the said administrator to pay and satisfy the said debt or debts, discovered after the distribution is made as aforesaid, and that all such of the intestates relations and persons concerned, who shall not lay legal claim to their respective shares of such estates within seven years after the decease of the intestates, shall be debarred from the same for ever.

12 William III.
A. D.
1700.

§ 43. *An ACT confirming devises of lands, and validity of nuncupative wills.*

Chap. 7. a.
12 William III.
A. D.
1700.

TO the end that lands and hereditaments may be enjoyed by the devisee and his heirs as amply as lands granted by deed by the grantee; *Be it enacted by the Proprietary and Governor, by and with the advice and consent of the freemen of this province and territories, in General Assembly met, and by the authority of the same,* That all wills in writing, wherein or whereby any lands, tenements, or hereditaments within this province or territories, are or shall be devised, shall be as good and authentic in law (according to the tenor thereof) as any other conveyance for granting of such lands and premises, whether the said wills be made within or out of this province or territories, provided the same be legally proved within this province or territories, within six months after the death of the testator, or within eighteen months, if the devisee live out of this government.

Wills to be authentic in conveying lands, &c.

And, for the preventing of all disadvantages and hardships that may accrue to any person for want of due

Nuncupative wills how to be proved, &c.

12 William III. due proof of nuncupative or verbal wills, or by any
 A. D. pretending the same where no such will really is; *Be*
 1700. *it enacted by the authority aforesaid,* That all nuncupa-
 tive wills made within this province or territories,
 shall be of full force for all goods and chattels there-
 by devised or bequeathed: *Provided always,* That
 the said nuncupative wills shall be reduced into writ-
 ing within two days after the decease of the said testa-
 tor, and subscribed by two sufficient witnesses, who
 were present and heard the testator make the will,
 to be attested by any Justice of the Peace of the truth
 of the said nuncupative or verbal will, within ten days
 after the death of the said testator; which said will
 being proved in the Register's Office in this province
 and territories, within six months next after the testa-
 tor's death, shall be good and valid in law, accord-
 ing to the purport thereof, for all goods and chattels
 therein bequeathed, as if the same had been originally
 made in writing by the testator, and duly executed
 as aforesaid.

And be it further enacted by the authority aforesaid,
 That no will or testament, or nuncupative will of any
 person *non compos mentis*, or not in his or her right
 mind or understanding at the time of the making
 thereof, shall be good and valid in law.

Chap. 8. 2.
 12 William III.
 A. D.
 1700.

§ 46. *An ACT for empowering widows and administra-
 tors, to sell so much of the lands of intestates as may be
 sufficient to clear their debts, &c.*

BE it enacted by the Proprietary and Governor, by and
 with the advice and consent of the freemen of this
 province and territories, in General Assembly met, and by
 the authority of the same, That if any person that dies
 intestate, being owner of lands within this province or
 territories thereof, and leave legal issue behind him,
 but no sufficient personal estate for their maintenance
 or paying of debts, in such case, it shall be lawful for
 the widow or administrator to make sale of such part
 or parcel of the said lands, as the Orphans Court shall
 think fit, towards the defraying of the just debts of such
 intestate,

intestate; the education of his children, and the improving the remainder of the estate (if any be) to their advantage.

12 William III.
A. D.
1700.

§ 88. *An ACT for the effectual establishment and confirmation of the freeholders of this province and territories, their heirs and assigns, in their lands and tenements.*

Chap. 10. 3.
12 William III.
A. D.
1700.

WHEREAS at the first laying out and settling of lands in this province of Pennsylvania and territories thereunto belonging, many great neglects and errors have been committed, through the want of experience and care both in officers and the people, as well to the wrong of the Proprietary, as the insecurity of the said people, and the great inconveniency of both: For remedy whereof, and for the safety of the said province and territories, in general, and that the inhabitants may be compleatly and absolutely settled, and fully secured in their rights and titles to land, and all occasions of difference and contest thereupon may forever hereafter be prevented and removed, *Be it enacted by the Proprietary and Governor, by and with the advice and consent of the freemen of this province and territories, in General Assembly met, and by the authority of the same,* That all tracts and parcels of land taken up within this province and territories, and duly seated by virtue of letters patents or warrants, obtained from Governors or lawful Commissioners, under the crown of England, before the King's grant to the Proprietary and Governor for this province (except the same was had by fraud or deceit) shall be quietly enjoyed by the actual possessors, their heirs and assigns: And that all lands and tracts of land, duly taken up by virtue of warrants obtained pursuant to purchases made and had from the Proprietary and Governor, or in pursuance of any commission or power granted by the Proprietary to any other person (except as before excepted, and except where the same does interfere with other persons just rights and claims) shall be quietly and peaceably enjoyed by, and confirmed to the possessor (according to the said warrants)

his

12 William III.
A. D.
1709.

his heirs and assigns for ever; and although no patent hath been granted, yet, if peaceable entry and possession hath been obtained, by warrants, or otherwise, as aforesaid, and thereupon quiet possession hath been held during the space of seven years, or more, such possession, or such entry as aforesaid shall give an unquestionable title to all such lands, according to the quantity they were taken up for, and shall be deemed and held good; and be confirmed by the Proprietary to the seaters or possessors thereof, their heirs and assigns, for ever.

And be it further enacted by the authority aforesaid, That all grants for lands from the Proprietary, shall be henceforth under the Great Seal of this province and territories; which grants shall give the respective grantees an absolute title for all the lands therein to be granted or confirmed, be they more or less than laid out for, and shall never more thereafter be subject or liable to any further survey. And that all grants and patents heretofore granted, whether under the broad or lesser seal, either by the Proprietary himself or his Commissioners, as aforesaid, shall be firm and good, to all intents and purposes, for the quantity of land in such grants expressed, for ever after the time herein limited, without any further dispute.

And whereas several mistakes and errors have happened through the negligence, ignorance or fraud of surveyors or chain carriers, and many surveys have thereby been made erroneous: For the rectifying whereof, *Be it enacted by the authority aforesaid,* That it shall and may be lawful for the Proprietary and Governor, and his heirs, by his and their lawful surveyors, at any time within the space of two years after publication hereof, to re-survey, or cause to be re-surveyed, any person's land within this province or territories; and if upon such re-survey, allowing four acres in the hundred, over or under, for the difference of surveys, there be more land found in the number of acres than the tract so surveyed was laid out for, allowing also six *per cent.* for roads and highways, all such overplus lands shall be to the Proprietary, and the possessor thereof shall have the refusal of it from the Proprietary, at reasonable rates: And if the Proprietary

etary and the said possessor do not agree, then, and in such case, the Proprietary shall choose two men and the purchaser or renter shall choose two more who shall either fix a price on the said overplus land, to be paid by the possessor, or otherwise appoint where it shall be taken off for the Proprietary in one entire piece, and at an outside, saving to the purchaser or renter his improvements, and best conveniencies; any three of whom agreeing shall be conclusive; and the charges of re-surveying such lands shall be bore by him to whom the overplus land shall fall, *That is to say,* By the purchaser or renter of the main tract if he buy the overplus, or if not, by the Proprietary.

12 William III.
A. D.
1766.

And be it further enacted by the authority aforesaid, That if any purchaser or tenant, having procured his land to be again surveyed by any of the lawful Surveyors, shall find the same to be deficient of the quantity it was before laid out for and should contain (allowance for difference of surveys, roads and highways being first made, as above expressed) all such deficiencies shall be made good by the Proprietary and Governor according as he receives for the overplus land as aforesaid.

And that the people in the said surveys may have the greater satisfaction, *Be it further enacted by the authority aforesaid,* That no Surveyor shall enter upon any person's land to make a re-survey of the same, without first giving notice to the owner or possessor thereof, or leaving notice at his house, if he dwell near the same, and if he do not know him, and the said owner dwell not in the precinct or township, that then such Surveyor shall give notice thereof to the two next neighbours, under the penalty of Twenty Pounds, to be forfeited to such owner. And in case any Surveyor shall hereafter wilfully or negligently survey any lands to the prejudice of the possessor or owner, he shall make good double damages to the party grieved.

And be it further enacted by the authority aforesaid, That the first hundred purchasers of land in the province shall be preferred, and have liberty to take up their lands before any after purchasers, so that they make application for the same within four months after publication hereof.

And be it further enacted, That where any lands have been

12 William III.

A. D.

1700.

been purchased or taken up in copartnership, and either of the parties die before division be made thereof, the survivor shall claim his equal and just share and proportion, and the heirs and assigns of the deceased partner shall hold and enjoy the part belonging to such deceased as firmly as when all the parties were living, unless it shall appear that there has been some contract or agreement made to the contrary.

And whereas it may sometimes happen, that where some have purchased a parcel of land (for instance, a thousand acres) and the same has been surveyed and laid out; but upon a re-survey of such tract it is found to contain twelve hundred acres, of which the purchaser, having been wholly ignorant, hath sold either part of it or the whole to several persons, or has given it to several children, under the notion of only a thousand acres, upon re-survey of which, by the Proprietary's order, the overplus may happen to fall within several small plantations, or to consist entirely of one of them; *Be it therefore enacted by the authority aforesaid,* That in such cases the Proprietary's overplus shall not be taken off any one particular of the said several plantations, but off the rough land remaining undisposed of in the whole tract, if any such be; and if there be no such, then to be taken off every particular plantation proportionably: And the charges of running the division lines shall be always borne by the respective owners of the several plantations. And where the overplus is taken in one entire piece off the whole, it shall and may be lawful for the first purchaser to cause the several tracts by him sold to any mean purchaser or purchasers to be re-surveyed by any lawful Surveyor; and the overplus found in such tracts or mean purchasers above what they were sold or rented for, shall go to the person of whom they were bought, in like manner as the overplus lands in general go to the Proprietary and Governor.

And whereas our Proprietary and Governor did formerly, in a clause of our charter of privileges, give and grant to all and every one of the inhabitants of this province and territories full and quiet enjoyment of their respective lands to which they had any lawful or equitable claim, saving only such rents and services for
the

the same as were or customarily ought to be reserved to the Proprietary, his heirs and assigns; (a) which clause, upon delivering up our said charter, was reserved, and our said Proprietary and Governor was pleased to reserve to us; We therefore desire that it may be enacted, *And be it enacted by the authority aforesaid*, That the said clause shall be in as full force, power and virtue, as if the surrender of the charter as aforesaid had never been made. *Provided always*, That nothing in this act shall be construed to confirm any lands to the prejudice of the right of infants, married women, lunatics or persons beyond the seas; any thing herein to the contrary in any wise notwithstanding.

12 William III.
A. D.
1700.

And for the satisfaction and encouragement of aliens, coming into this province or counties annexed, *Be it further enacted by the authority aforesaid*, That if any alien, who is or shall be a purchaser, or who doth or shall inhabit in this province or territories thereof, shall decease at any time before he can well be naturalized, his right and interest therein shall notwithstanding descend to his wife and children, or other his relations, be he testate or intestate, according to the laws of this province and territories thereof in such cases provided, in as free and ample manner, to all intents and purposes, as if the said alien had been naturalized.

And whereas divers persons beyond seas are and have been owners of lands within this province and territories, and such persons have usually appointed attornies to sell and dispose of the same; to the end therefore that the several persons that have so purchased, their heirs and assigns, may forever hereafter be secured in their titles and covenants, *Be it enacted by the authority aforesaid*, That all sales of lands, tenements and hereditaments made by lawful attornies, especially granted to sell such lands, are and shall be deemed and adjudged good and effectual in law to all intents, constructions and

(a) The charter is dated April 2d, 1683, and the place referred to in the above law is as followeth: And that all inhabitants of this province and territories thereof, whether purchasers or others may have the last worldly pledge of my good and kind intentions to them and theirs: I do give, grant, and confirm to all and every one of them, full and quiet possession of their respective lands, to which they have any lawful or equitable claim: Saving only such rents and services for the same, as are or customarily ought to be reserved to me, my heirs or assigns.

12 William III.
A. D.
1700.

and purposes whatsoever, as if the said owners of such lands had, by their own deeds, bargains and sales, actually and really sold, conveyed and executed the same; and all and singular the lands, tenements and hereditaments sold and conveyed as aforesaid shall be and remain to such purchasers respectively, their heirs and assigns forever, as they might or ought to have done to the owner or owners of such lands and premises so employing his or their attorney or attorneys as aforesaid;

*And be it it further enacted by the authority aforesaid, That all lands, tenements and hereditaments, that hereafter shall be sold by virtue of any letter of attorney, shall be good and valid respectively to the purchasers, their heirs and assigns, forever, as aforesaid; Provided the said letters of attorney be attested before some Magistrate or Public Notary, where the same shall be made and executed, and certified under their respective hands and public seals, and be proved within this province or territories *in voce*, by two witnesses at least.*

Chap. 9. s.
12 William III.
A. D.
1700.

An ACT for taking lands in execution for the payment of debts, where the Sheriff cannot come at other effects to satisfy the same.

TO the end that no creditors may be defrauded of the just debts, due to them by persons of this province or territories, who have sufficient real-estates, if not personal, to satisfy the same, *Be it enacted by the Proprietary and Governor, 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 all lands and houses whatsoever within this government, shall be liable to sale, upon judgment and execution obtained against the defendant, the owner, his heirs, executors or administrators, where no sufficient personal estate is to be found; with this due proviso, That the messuage and plantation, with its appurtenances, upon which the defendant is chiefly leased, shall not be exposed to sale before the expiration of one whole year after judgment is obtained; to the intent

Real estates liable to sale for payment of debts.

But the chief house a year after judgment.

intent that the defendants, or any other, on his behalf, may endeavour the redemption of the same: And before any such lands, messuages or houses, or any other lands, or houses whatsoever, taken in execution, shall be sold, they shall be duly appraised by twelve honest and discreet men of the neighbourhood; and that then it shall and may be lawful for the Sheriff to make sale of and convey the same under his hand and seal. After which sale and appraisement made as aforesaid, such land and houses shall be and remain a free and clear estate to the purchaser or creditor to whom they are so made over or sold, his heirs and assigns forever, as fully and amply as ever they were to the debtor.

12 William III.
A. D.
1700.

All the lands to be appraised.

Provided always, and be it further enacted, That lawful interest shall be allowed to the creditor for the sum or value he obtained judgment for, from the time the said judgment was obtained till the time of sale, or till satisfaction be made.

The creditors to have interest till satisfaction.

Provided also, That the chief plantation or messuage shall be the last taken in execution; and that where the appraisement of the lands taken in execution amounts to more than the debt, costs and damage, the creditor shall not be obliged in such case to take the whole, and pay the overplus; but shall only take so much as to satisfy the execution, and no more.

And so much of the land as will pay the debts, &c.

The Charter of Privileges, granted by William Penn, esq. to the inhabitants of Pennsylvania, and territories.

13 William III.
October 28th,
A. D.
1701.

WILLIAM PENN, Proprietary and Governor of the province of Pennsylvania and territories thereunto belonging, to all to whom these presents shall come, sendeth greeting. *Whereas* King Charles the Second by his letters patents, under the Great Seal of England, bearing date the fourth day of March, in the year One Thousand Six Hundred and Eighty, was graciously pleased to give and grant unto me, and my heirs and assigns for ever, this province of Pennsylvania,

Preamble.

73 William III.
A. D.
1701.

Pennsylvania, with divers great powers and jurisdictions for the well government thereof.

And whereas the King's dearest brother, James Duke of York and Albany, &c. by his deeds of feoffment, under his hand and seal duly perfected, bearing date the twenty-fourth day of August, One Thousand Six Hundred Eighty and Two, did grant unto me, my heirs and assigns, all that tract of land, now called the territories of Pennsylvania, together with powers and jurisdictions for the good government thereof.

And whereas, for the encouragement of all the freemen and planters, that might be concerned in the said province and territories, and for the good government thereof, I the said William Penn, in the year One Thousand Six Hundred Eighty and Three, for me, my heirs and assigns, did grant and confirm unto all the freemen, planters and adventurers therein, divers liberties, franchises and properties, as by the said grant, entituled, *The frame of the government of the province of Pennsylvania, and territories therunto belonging, in America*, may appear; which charter or frame being found, in some parts of it, not so suitable to the present circumstances of the inhabitants, was in the third month, in the year One Thousand Seven Hundred, delivered up to me, by six parts of seven of the freemen of this province and territories, in General Assembly met, provision being made in the said charter, for that end and purpose.

And whereas I was then pleased to promise, That I would restore the said charter to them again, with necessary alterations, or in lieu thereof, give them another, better adapted to answer the present circumstances and conditions of the said inhabitants; which they have now, by their representatives in General Assembly met at Philadelphia, requested me to grant.

Know ye therefore, That for the further well being and good government of the said province, and territories; and in pursuance of the rights and powers before mentioned, I the said William Penn do declare, grant and confirm, unto all the freemen, planters and adventurers, and other inhabitants in this province and territories, these following liberties, franchises and privileges, so far as in me lieth, to be held

held, enjoyed and kept, by the freemen, planters and adventurers, and other inhabitants of and in the said province and territories thereunto annexed, for ever.

13 William III.
A. D.
1701.

I. *Because* no people can be truly happy, though under the greatest enjoyment of civil liberties, if abridged of the freedom of their consciences, as to their religious profession and worship: And Almighty God being the only Lord of conscience, Father of lights and spirits; and the Author as well as Object of all divine knowledge, faith and worship, who only doth enlighten the minds, and persuade and convince the understandings of people, I do hereby grant and declare, That no person or persons, inhabiting in this province or territories, who shall confess and acknowledge One Almighty God, the Creator, Upholder and Ruler of the world; and profess him or themselves obliged to live quietly under the civil government, shall be in any case molested or prejudiced, in his or their person or estate, because of his or their consciencious persuasion or practice, nor be compelled to frequent or maintain any religious worship, place or ministry, contrary to his or their mind, or to do or suffer any other act or thing, contrary to their religious persuasion.

No person be-
lieving in One
God, &c. shall
be molested on
account of his
religious persua-
sion;

nor be compel-
led to frequent
or maintain any
worship contra-
ry to his mind,
&c.

And that all persons who also profess to believe in Jesus Christ, the Saviour of the world, shall be capable (notwithstanding their other persuasions and practices in point of conscience and religion) to serve this government in any capacity, both Legislatively and Executively, he or they solemnly promising, when lawfully required, allegiance to the King as Sovereign, and fidelity to the Proprietary and Governor, and taking the attests as now established by the law made at New-Castle, in the year One Thousand and Seven Hundred, entitled, *An act directing the attests of several officers and ministers*, as now amended and confirmed this present Assembly.

Christians of all
denominations
are capable of
offices, promiss-
ing allegiance to
the King, &c.

II. For the well governing of this province and territories, there shall be an Assembly yearly chosen, by the freemen thereof, to consist of four persons out of each county, of most note for virtue, wisdom and ability, (or of a greater number at any time, as the Governor and Assembly shall agree) upon the first day

An Assembly
shall be chosen
yearly

13 William III.

A. D.

1701.

Their powers
and privileges.

day of October for ever; and shall sit on the fourteenth day of the same month, at Philadelphia, unless the Governor and Council for the time being, shall see cause to appoint another place within the said province or territories: Which Assembly shall have power to chuse a Speaker and other their officers; and shall be judges of the qualifications and elections of their own Members; sit upon their own adjournments; appoint Committees; prepare bills in order to pass into laws; impeach criminals, and redress grievances; and shall have all other powers and privileges of an Assembly, according to the rights of the freeborn subjects of England, and as is usual in any of the King's plantations in America.

Two thirds
met shall have
the power of the
whole.

And if any county or counties, shall refuse or neglect to chuse their respective Representatives as aforesaid, or if chosen, do not meet to serve in Assembly, those who are so chosen and met, shall have the full power of an Assembly, in as ample manner as if all the Representatives had been chosen and met, provided they are not less than two thirds of the whole number that ought to meet.

The qualifica-
tions of electors
and elected.

And that the qualifications of electors and elected, and all other matters and things relating to elections of Representatives to serve in Assemblies, though not herein particularly expressed, shall be and remain as by a law of this government, made at New-Castle, in the year One Thousand Seven Hundred, entitled, *An act to ascertain the number of Members of Assembly, and to regulate the elections.*

Power to chuse
Sheriffs and
Coroners.

III. That the freemen in each respective county, at the time and place of meeting for electing their Representatives to serve in Assembly, may as often as there shall be occasion, chuse a double number of persons to present to the Governor for Sheriffs and Coroners, to serve for three years, if so long they behave themselves well; out of which respective elections and presentments, the Governor shall nominate and commissionate one for each of the said offices, the third day after such presentment, or else the first named in such presentment, for each office as aforesaid, shall stand and serve in that office for the time before respectively limited; and in case of death or default

default; such vacancies shall be supplied by the Governor, to serve to the end of the said term.

13 William III.
A. D.
1701.

Provided always, That if the said freemen shall at any time neglect or decline to choose a person or persons for either or both the aforesaid offices, then, and in such case, the persons that are or shall be in the respective offices of Sheriffs or Coroners, at the time of election, shall remain therein, until they shall be removed by another election as aforesaid.

And that the Justices of the respective counties shall or may nominate and present to the Governor three persons; to serve for Clerk of the Peace for the said county, when there is a vacancy, one of which the Governor shall commissionate within ten days after such presentment; or else the first nominated shall serve in the said office during good behaviour.

Clerk of the Peace to be nominated by the Justices, &c.

IV. *That* the laws of this government shall be in this file, *viz.* By the Governor, with the consent and approbation of the freemen in General Assembly met; and shall be, after confirmation by the Governor, forthwith recorded in the Rolls Office, and kept at Philadelphia; unless the Governor and Assembly shall agree to appoint another place.

Style of the laws.

V. *That* all criminals shall have the same privileges of witnesses and council as their prosecutors.

Criminals may have council; &c.

VI. *That* no person or persons shall or may, at any time hereafter, be obliged to answer any complaint, matter or thing whatsoever, relating to property, before the Governor and Council, or in any other place, but in ordinary course of justice; unless appeals thereunto shall be hereafter by law appointed.

None shall be obliged to answer, but in ordinary course of justice.

VII. *That* no person within this government, shall be licensed by the Governor to keep an ordinary, tavern, or house of public entertainment, but such who are first recommended to him, under the hands of the Justices of the respective counties, signed in open court; which Justices are and shall be hereby empowered, to suppress and forbid any person keeping such public house as aforesaid, upon their misbehaviour, on such penalties as the law doth or shall direct; and to recommend others, from time to time, as they shall see occasion.

Tavern-keepers, &c. to be recommended before licensed.

VIII. *If* any person, through temptation or melancholy,

13 William III.
A. D.
1701.

The estate of
persons destroy-
ing themselves,
shall descend to
their heirs.

No law, &c.
shall alter this
charter, with-
out, &c.

The article re-
lating to liberty
of conscience
shall be invio-
lable for ever.

The Proprietary
solemnly con-
firm this char-
ter.

Date.

choly, shall destroy himself, his estate, real and personal, shall notwithstanding descend to his wife and children, or relations, as if he had died a natural death; and if any person shall be destroyed or killed by casualty or accident, there shall be no forfeiture to the Governor by reason thereof.

And no act, law or ordinance whatsoever, shall at any time hereafter, be made or done, to alter, change or diminish the form or effect of this charter, or of any part or clause therein, contrary to the true intent and meaning thereof, without the consent of the Governor for the time being, and six parts of seven of the Assembly met.

But, because the happiness of mankind depends so much upon the enjoying of liberty of their consciences, as aforesaid, I do hereby solemnly declare, promise and grant, for me, my heirs and assigns, That the first article of this charter relating to liberty of conscience, and every part and clause therein, according to the true intent and meaning thereof, shall be kept and remain, without any alteration, inviolably for ever.

And lastly, I the said William Penn, Proprietary and Governor of the province of Pennsylvania, and territories thereunto belonging, for myself, my heirs and assigns, have solemnly declared, granted and confirmed, and do hereby solemnly declare, grant and confirm, That neither I, my heirs or assigns, shall procure or do any thing or things whereby the liberties in this charter contained and expressed, nor any part thereof, shall be infringed or broken: And if any thing shall be procured or done, by any person or persons, contrary to these presents, it shall be held of no force or effect.

In witness whereof, I the said William Penn, at Philadelphia in Pennsylvania, have unto this present charter of liberties, set my hand and broad seal, this twenty-eighth day of October, in the year of our Lord One Thousand Seven Hundred and One, being the thirteenth year of the reign of King William the Third, over England, Scotland, France and Ireland, &c. and the twenty-first year of my government.

And notwithstanding the closure and test of this present

sent

sent charter as aforesaid, I think fit to add this following proviso thereunto, as part of the same, *That is to say,* That notwithstanding any clause or clauses in the above mentioned charter, obliging the province and territories to join together in legislation, I am content, and do hereby declare, that if the Representatives of the province and territories shall not hereafter agree to join together in legislation, and that the same shall be signified unto me, or my deputy, in open Assembly, or otherwise, from under the hands and seals of the Representatives; for the time being, of the province and territories, or the major part of either of them, at any time within three years from the date hereof, that in such case, the inhabitants of each of the three counties of this province, shall not have less than eight persons to represent them in Assembly, for the province; and the inhabitants of the town of Philadelphia (when the said town is incorporated) two persons to represent them in Assembly; and the inhabitants of each county in the territories, shall have as many persons to represent them in a distinct Assembly for the territories, as shall be by them requested as aforesaid.

13 William III.
A. D.
1701.

Proviso, that the
province and
territories may
separate in le-
gislation :

Notwithstanding which separation of the province and territories, in respect of legislation, I do hereby promise, grant and declare, That the inhabitants of both province and territories, shall separately enjoy all other liberties, privileges and benefits, granted jointly to them in this charter, any law, usage or custom of this government, heretofore made and practised, or any law made and passed by this General Assembly, to the contrary hereof, notwithstanding.

And shall never-
theless enjoy se-
parately the pri-
vileges granted
to them jointly.

WILLIAM PENN.

THIS

13 William III.
A. D.
1701.

Acceptation.

THIS Charter of Privileges being distinctly read in Assembly; and the whole, and every part thereof, being approved of, and agreed to, by us, we do thankfully receive the same from our Proprietary and Governor, at Philadelphia, this twenty-eighth day of October, One Thousand Seven Hundred and One. Signed on behalf, and by order of the Assembly, per

JOSEPH GROWDON, Speaker.

EDWARD SHIPPEN,
PHINEAS PEMBERTON,
SAMUEL CARPENTER,

GRIFFITH OWEN,
CALEB PUSEY,
THOMAS STORY,

Proprietary and Governor's Council.

Note, That the foregoing Charter of Privileges was signed and accepted as aforesaid on the last day of a session of the General Assembly of the said province of Pennsylvania and the territories, which had commenced on the fifteenth day of September preceding, that during this session a bill for the confirmation of the laws at New-Castle, of the preceding year One Thousand Seven Hundred, had been brought into the House of Representatives by two Members of Council, and on " the vote being put, (to wit, the " tenth day of October) whether the said bill for " confirmation of laws should pass into a law, with " such amendments as may be thought needful? " several members rose up and left the house, viz. Jasper Yeates, John Donaldson, Richard Hallowell, " Adam Peterson, William Rodney, John Brinkloe, " John Walker, William Morton and Luke Watson, junior—and the vote was immediately carried " in the affirmative by the remaining members, being fourteen in number, N. C. D.—to wit, the twelve members from the three counties of the province, and two of the members from the county of Suffex, namely, William Clark and Samuel Preston, the remaining member from that county, Joseph Booth, being sick, attended not during that session, and the absenting members aforesaid not returning until the fifteenth day of October, " They then came " into the House and declare—They are willing to " join

A. D.

1791.

“ join with the rest of the members, provided they
 “ might have liberty to enter their dissent to the bill
 “ for the confirming of the laws, and that nothing
 “ may be carried over their heads by over-voting
 “ them; and declared they are willing to do any
 “ thing for the good and tranquility of the govern-
 “ ment—upon which they withdrew. Being called
 “ into the House again, they were told they should
 “ have liberty to enter their dissent, provided they
 “ kept to the matter; but as for this House to pro-
 “ mise not to over-vote them, it was a thing so im-
 “ practicable, and such an infringement of the pri-
 “ vileges of Assemblies, that they could not yield to
 “ that.” “ The bill for confirmation of the laws of
 “ this province and territories was read—and pro-
 “ posed the reading of the laws three times over;
 “ upon which the aforesaid absenting members de-
 “ parted the House again.”

“ Put to the vote whether the laws be again read,
 “ for a second reading, and carried in the affirma-
 “ tive.”—In the afternoon of the same day, after
 the return of the House from a conference had with
 the Governor, “ The main purport of which as re-
 “ ported by the Speaker (Joseph Growdon) was to
 “ endeavour an accommodation with the absenting
 “ members, who also delivered a letter from the Go-
 “ vernor directed to the Speaker to be communicated
 “ to the whole House, which (upon the absenting
 “ members coming into the House) was read, and
 “ also a paper brought in by the said members, which
 “ was read and debated.

“ *The Governor's letter was in these words.*

“ Friends—Your union is what I desire; but your
 “ peace and accommodating of one another is what
 “ I must expect from you: The reputation of it is
 “ something, the reality much more. And I desire
 “ you to remember and observe what I say: Yield
 “ in circumstantial to preserve essentials; and being
 “ safe in one another, you will always be so in esteem:
 “ with

A. D.
1701.

“ with me. Make me not sad, now I am going to
“ leave you, since it is for you, as well as for

“ Your Friend and Proprietary and Governor,

WILLIAM PENN.

“ October 15th, 1701.

“ Jasper Yeates, Major John Donaldson, Richard
“ Hallowell, Adam Peterson, William Rodney, John
“ Brinkloe, William Morton, John Walker, and
“ Luke Watson, junior, declared their negative to
“ the passing a bill for confirmation of the laws passed
“ at New-Castle, having never disputed their validi-
“ ty, and for several reasons given in to the Gover-
“ nor against that act. On which the absenting
“ members sat down, the Governor having assured
“ this House, that nothing further than what lay
“ before them should be offered to the House from
“ him, nor received by him from them.”—After
which the said absenting members continued to act
in the House during the remaining part of that ses-
sion: But to prevent the effects of such an after con-
duct, the two last proviso sections were added to the
charter of privileges aforesaid.—After the rising of
that General Assembly and their dissolution on the
said twenty-eighth day of October One Thousand
Seven Hundred and One, the Proprietary and Go-
vernor William Penn went to England; and the Re-
presentatives of the said two districts, *to wit*, province
of Pennsylvania and territories never thereafter joined
in any acts of legislation, although many attempts
were made by the Deputy Governors and Council to
continue their union. The last of which attempts
was by Governor Evans in April One Thousand Se-
ven Hundred and Four, which ended with the re-
spective papers following addressed by each set of Re-
presentatives to the other, *to wit*,

“ *To the Representatives of the Province of Pennsylvania.*

“ WE the Representatives of the counties of New-
“ Castle, Kent and Suffex (being by virtue of the Go-
“ vernor’s

A. D.
1704.

“ vernor’s writ for election) met at Philadelphia, on
 “ the tenth day of this instant, in expectation to
 “ have joined in Assembly with the Representatives
 “ for the province of Pennsylvania, found ourselves
 “ disappointed therein, by their pretending a former
 “ separation; wherefore we think it our duty to ma-
 “ nifest and declare, how unwilling we are to ad-
 “ mit of any such thing as a disunion, being afraid
 “ that the consequences thereof must of necessity
 “ prove prejudicial to the peace and interest of the
 “ Proprietary and government. We therefore, being
 “ very sensible of the same, do declare, that for the
 “ quietness and prosperity of the government, we are
 “ satisfied and content to accept of the charter given
 “ and granted by William Penn, esq. Proprietary
 “ and Governor, &c. dated at Philadelphia the
 “ twenty-eighth day of October, One Thousand Se-
 “ ven Hundred and One; according to the true in-
 “ tent and meaning of the same; and as it was then
 “ given (*That is to say,*) If the province will join with
 “ us in representing the same by four Members out
 “ of each county, so that our Representatives may
 “ be equal in number, conform to the second arti-
 “ cle of the said charter, and the ancient use and
 “ practice of this government; the which is now of-
 “ fered by us; not doubting of your satisfactory an-
 “ swer in writing. Signed by

“ JAMES COUTS,	“ WILLIAM MORTON,
“ JOHN HEALY,	“ ARTHUR MESTON,
“ ROELOF DE HAES,	“ JOHN HILL,
“ ISAAC GOODING,	“ WILLIAM BAGWELL,
“ WILLIAM RODNEY,	“ ROBERT BURTON,
“ JOHN BRINKLOE,	“ RICHARD PAINTER,

“ Dated at Philadelphia, April 13, 1704.”

“ *To the Representatives of the freemen of the territories of
 “ the province of Pennsylvania.*

“ WE the Representatives of the freemen of the
 “ said province in Assembly met, this thirteenth day
 “ of the month called April, One Thousand Seven
 “ Hundred and Four, having received this day a
 “ certain

A. D.

1794.

“ certain paper of proposals from you, return for answer,

“ That we are sorry you should in that paper pretend you met here in expectation of joining with us in Assembly; whereas yourselves declared in the conference we had with you yesterday, that you could not act in conjunction with us, in regard you were called by the Governor's writ, and we by the charter. We cannot conceive how you now can call the disunion a pretended one, which has been so often debated in Assembly, and which the actions of your Representatives forced upon us, by their refusing to act with us on several occasions; and particularly by your slight of the said charter, in neglecting to choose Representatives to serve in Assembly in October, One Thousand Seven Hundred and Two. And notwithstanding the then Lieutenant Governor was pleased to indulge you in issuing forth his writs, empowering the counties you represent to make a new election, which they so far complied withal, as to choose and send up their Delegates to meet those of the province upon the sixteenth of November then following; according to the tenor of the said writ: Yet your Representatives (whereas as aforesaid assembled with them of the province, after several debates between them about acting conjointly) were pleased to express their unwillingness thereunto; and further declared their dislike of the said charter, and refused to agree to join together with us, to act by it in legislation; all which was more at large signified by the Representatives of the province under their hands and seals, to the then Lieutenant Governor; whereunto they were necessitated by direction of the charter, after the opposition made to the said union by your Representatives; so that being by virtue of the said charter formed into a distinct Assembly, and our members settled accordingly, we conceive it is not now in our power to alter our said numbers without a violation of the charter and trust reposed in us by those we represent; neither can we conceive any expedient proposed by you (though desired by us in the conference yesterday)

A. D.
1704.

“ day) to reconcile your request of an union with the
 “ said charter (our present circumstances considered)
 “ which we presume is a duty incumbent on you at
 “ whose door the disunion is, since you seem to de-
 “ sire a re-uniting.

“ We need not inform you, that by this charter
 “ you still have the opportunity of forming yourselves
 “ into a distinct Assembly, and enjoying the privi-
 “ leges thereof as well as the province; which we
 “ hope, by our candour and good neighbourhood
 “ towards each other may prevent the inconveniency
 “ and prejudice you seem to doubt as the consequence
 “ of our acting separately, and not prove prejudicial
 “ to the prosperity and safety of the government, un-
 “ der the present administration.

“ This being our plain and genuine answer---we
 “ hope it will prove satisfactory to you, from your
 “ real friends and wellwishers.

“ Signed by order, and on behalf of
 “ the House of Representatives, by

DAVID LLOYD, Speaker.

The foregoing note and extracts have been made from a book, intituled, *Voices and proceedings of the House of Representatives of the province of Pennsylvania, Beginning the fourth day of December, One Thousand Six Hundred and Eighty-two, volume the first in two parts*; Printed at Philadelphia by B. Franklin and D. Hall, anno One Thousand Seven Hundred and Fifty-two.---There being no minutes of Legislative proceedings of such an early period existing in the state of Delaware, herein before stiled the territories, &c. The traditional account is that all such minutes, preceding the year One Thousand Seven Hundred and Twenty-two, were destroyed about that time by fire at the burning of Colonel John French's house in New-Castle, in which it is said they were when that accident happened.

C H A P. XI. a.

A. D.
1704.*An ACT about acknowledging and recording deeds.*

BE it enacted by the honourable John Evans, esq. with her Majesty's royal approbation, Lieutenant Governor of the counties of New-Castle, Kent and Sussex, on Delaware, and province of Pennsylvania, by and with the advice and consent of the freemen of the said counties in General Assembly met, and by the authority of the same, That all deeds, gifts, grants, sales, mortgages, leases, settlements, conveyances, releases and all other writings relating to titles of land shall be declared and acknowledged in the respective Courts of Common Pleas within this government. The form to be by the party or his lawful Attorney delivering the said deeds or other writings as aforesaid to the other party to whom made or his lawful Attorney in open Court; Which acknowledgment shall be in lieu of livery and seizin; and the same shall be available in law, &c.

And be it further enacted, That all such deeds, &c. shall be recorded or enrolled in the Rolls Office of each county within six months after passing such writings as aforesaid, to the end that all persons if they see fit may have knowledge thereof—Copies &c. of such records to be evidence, provided that they be attested by the Master of the Rolls or his deputy, who is hereby required to insert the time of recording in the record to be made thereof, *Provided also,* That the powers, &c. granted to any person for acknowledging be allowed and approved by the court and be recorded with such deeds, &c.

C H A P. XV. a.

1700.

An ACT for ascertaining the descent of lands and better disposition of the estate of persons dying intestate.

BE it enacted, &c. That all lands, &c. and all personal estate, which any person hath or is seized
or

or possessed of in his or her own right at the time of his or her decease, shall be liable to be seized and sold by the lawful executor or administrator of the deceased, by any lawful deed or conveyance duly executed and approved and acknowledged in open court, or by judgment or order of the respective Courts of Record upon due procedures therein respectively had for the payment of the decedents just debts, so far as the said estate shall extend in due order of law; *to wit*, funeral expences, &c. which said seizures, sales and payments shall be binding and conclusive against such decedents and their heirs, and all persons claiming under him or them, &c.

A. D.
1706.

Provided, That the widow of an intestate, after debts paid, shall have one third of the personal estate, and the residue to be divided amongst the children of the intestate, or such as legally represent them, in case any be dead, other than such children who shall have any estate by settlement or advanced by the intestate in his life time by portions equal to the share of the other children, and if not equal to be made so, provided the eldest son have a double share. And in case there be no child or children, nor legal representatives of them, the one moiety of such estate shall be allotted to the widow, and the residue of the said estate distributed equally to every of the next of kindred of the intestate, who are in equal degree, and those who represent them. In case the intestate shall have no widow, then all the said estate shall be distributed equally to and amongst the children, the eldest son having a double share as aforesaid; and in case there be no children then to the next of kindred of the intestate in equal degree and their legal representatives as aforesaid and in no other manner—Dying without kindred, lands to go to the immediate landlord—Lands of testators to go according to their wills, provided the widows of such have a third—Widow to have a third of her intestate's lands during life, and the residue to be distributed in the same manner as surplusage of intestate's personal estate above limited, giving refunding bonds. And that all such of intestates relations and persons concerned who shall not lay claim to their respective shares of such estates within

A. D.
1706.

within seven years after the death of the intestate shall be debarred of the same forever. *Provided, &c.* That this law extend not to persons residing within the kingdom of England having estates within this government, unless as to the payment of debts, the estate whether real or personal shall be liable to be sold therefor upon due proceeding had for the recovery thereof in any Court of Record within this government, as fully, &c. as if residents, &c.

C H A P. XVIII. a.

1706.

An ACT confirming devises of lands, and the validity of nuncupative wills.

TO the end that lands and hereditaments may be enjoyed by the devisee and his heirs as amply as lands granted by deed by the grantee; *Be it enacted by the honourable John Evans, esq. with her Majesty's royal approbation, Lieutenant Governor of the counties of New-Castle, Kent and Suffex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the freemen of the said counties, in General Assembly met, and by the authority of the same,* That all wills in writing, wherein or whereby any lands, tenements, or hereditaments, within this her Majesty's government, are or shall be devised, shall be as good and authentic in law (according to the tenor thereof) as any other conveyance for granting of such lands and premises, whether the said wills be made within or out of this government, *Provided* the same be legally proved within this government, or in the Chancery in England.

Wills to be proved, within certain times.

Provided always, That such wills as are made within this government, shall be proved within forty days after the death of such testator, and if in any other of her Majesty's governments in America, within six months, and if made in England, then within eighteen months after such testator's death, as aforesaid.

And, for the prevention of all disadvantages and hardships that may accrue to any person for want of due proof of nuncupative wills, or verbal wills, or by any

any pretending the same where no such will really is ; *Be it enacted by the authority aforesaid*, That all nuncupative wills made in this government, shall be of full force for all goods and chattels thereby devised or bequeathed : *Provided always*, That the said nuncupative wills shall be reduced into writing within two days after the decease of the said testator, and subscribed by two sufficient witnesses who were present, and heard the testator make the will, to be attested or sworn by any Justice of the Peace of the truth of the said nuncupative or verbal will, within forty days after the death of the said testator ; which said will being proved in the Register's Office in this government, within the said time limited next after the testator's death, shall be good and valid in law, according to the purport thereof, for all goods and chattels therein bequeathed, as if the same had been originally made in writing by the testator, and duly executed as aforesaid.

A. D.
1706.

Nuncupative
wills to be re-
duced to writ-
ing, &c.

And be it further enacted by the authority aforesaid, That no will or testament, or nuncupative will of any person *non compos mentis*, at the time of the making thereof, shall be good and valid in law.

C H A P. XXIII. a.

An ACT to encourage the building of good mills in this government.

1719.

WHEREAS it is greatly for the ease of the people to be commodiously served with good mills for grinding their corn, and the advantage thereof being obvious in the neighbouring governments, where good laws have been enacted for that purpose : We therefore pray that it may be enacted, Preamble.

And be it enacted by William Keith, esq. by his Majesty's royal approbation and appointment Lieutenant Governor in and over the counties of New-Castle, Kent, and Sussex, upon Delaware, by and with the consent of the Representatives of the freemen in the said counties, in Assembly met, and by the authority of the same, That on whatsoever

A. D.

1719.

Method of obtaining adjacent land for the convenience of a mill.

whatsoever creeks, rivers, or runs, within this government, any water mill is built, or intended to be built, if on either side of the said creeks, rivers or runs, if the owner or projector of the said mill or mills have a real property in a part of the land fit to be used for that purpose, or upon which he has already built a mill or mills, yet nevertheless cannot perfect or secure the same without purchasing and obtaining some other small share of adjacent land, which at the time may happen to be another man's property; in order to convey the water conveniently to and from the said mill or mills, then and in that case the owner and proprietor of such mill or mills may apply himself to any two Justices of the Peace of that county, and thereupon the said magistrates are hereby required and directed, by their precept to the Sheriff, to cause six freeholders to be summoned before them, who shall upon their oaths or affirmations determine the true and intrinsic value of the said adjacent land, not exceeding the quantity of six acres in the county of New-Castle, and two acres in each of the other counties, on either side of the said creeks, rivers, or runs, where such mill or mills are built or intended to be built; and also the damage and loss which they judge may be to the owner of such adjacent land, or any other person or persons whatsoever; and after a verdict given by the said freeholders, the said justices are likewise hereby commanded, by a certain instrument, under their hands and seals, to certify and return the verdict and determination of the said freeholders unto the next County Court, where it shall remain upon record, and shall for ever transfer a good title in fee of the said adjacent land, not exceeding the quantities aforesaid, respectively so valued to the owner or projector of such mill or mills; and also shall create a debt upon the said owner or projector's estate for the said determined value unto him and his heirs, from whom the said adjacent lands were so adjudged and taken.

Passed in 1719.

CHAP.

C H A P. XXXI. a.

A. D.
1721.*An ACT for the better settling intestates estates.*

BE it enacted by the honourable sir William Keith, baronet, with the royal approbation, Lieutenant Governor of the province of Pennsylvania, and the counties of New-Castle, Kent and Suffex, on Delaware, by and with the advice and consent of the freemen of the said counties in Assembly met, and by the authority of the same, That the Registers of the several counties of this government, having power to grant letters of administration of the goods and chattels of persons dying intestate within this government, shall upon their granting such letters of administration, take sufficient bonds with two or more able sureties (respect being had to the value of the estate) in the name of the Governor for the time being, with the condition in manner and form following, *mutatis mutandis* (viz).

Repealed, see
after in chap.
101 a.

Registers granting letters of administration shall take sufficient bonds, &c.

THE condition of this obligation is such, that if the within bounden A. B. administrator of all and singular the goods, and chattels, and credits of C. D. deceased, do make or cause to be made, a true and perfect inventory of all and singular the goods, and chattels, and credits of the said deceased, which have or shall come to the hands, possession or knowledge of him the said A. B. or unto the hands and possession of any other person or persons for him; and the same, so made, do exhibit, or cause to be exhibited into the Register's Office of the county of _____ at or before the day of _____ next ensuing; and the same goods, chattels and credits of the said decedant, at the time of his death, or which at any time after shall come to the hands or possession of the said A. B. or into the hands and possession of any other person or persons for him, do well and truly administer according to law; and further, do make or cause to be made a true and just account of his said administration at or before the day of _____ and all the rest and residue of the said goods, chattels and credits which shall be found remaining upon the said administrators account (the same being first examined and allowed of by the Orphans Court of the county where the said administration is granted) shall deliver and pay unto such person or persons respectively, as the said

Form of the condition.

A. D.
1721.

said Orphans Court in the respective county, by their decree or sentence, pursuant to the true intent and meaning of this act, shall limit and appoint: And if it shall hereafter appear, that any last will and testament was made by the said decedant, and the executor or executors therein named, do exhibit the same into the Register's Office, making request to have it allowed and approved accordingly: If the said A. B. within bounden, being thereunto required, do render and deliver the said letters of administration (approbation of such testament being first had and made in the said Register's Office) then this obligation to be void and of none effect, or else to remain in full force and virtue.

Orphans Court
may call admi-
nistrators to ac-
count, and order
distribution, &c.

Which bonds are hereby declared and enacted to be good to all intents and purposes, and pleadable in any Courts of Justice; and also that the said Orphans Court in the respective counties, shall and may, and are hereby enabled to proceed and call such administrators to account for and touching the goods of any person dying intestate; and upon hearing and due consideration thereof, to order and make just and equal distribution of what remaineth clear, (after all debts, funerals and just expences of every sort first allowed and deducted) amongst the wife and children, and childrens children (if any such be) or otherwise to the next of kindred to the deceased person, in equal degree, or legally representing their stocks, to every one his right, according to the laws in such cases, and the rules and limitations hereafter set down: And the same distributions to decree and settle, and to compel such administrators to observe and pay the same, by the due course of the laws of this government; saving to every one (supposing him or themselves grieved) their right of appeal to the Provincial or Supreme Court of this government.

Provided always, That the said Orphans Court in each county, which is by this act enabled to make distribution of the surplusage of the estate of any person dying intestate, shall distribute the whole surplusage of such estates in manner and form following, *That is to say,* One third part of the said surplusage to the wife of the intestate, and all the residue by equal portions, to and among the children of such persons dying intestate; and to such persons as shall legally

Manner of distri-
bution.

gally represent such children, in case any of the children be then dead (other than such child or children who shall have any estate by the settlement of the intestate, or shall be advanced by him in his lifetime by portion or portions, equal to the share which shall by such distribution be allotted to the other children) to whom such distributions are to be made. And in case any child, who shall have any estate by settlement from the intestate, or shall be advanced by the said intestate, in his lifetime by portion, not equal to the share which will be due to the other children by such distribution, as aforesaid; then so much of the surplusage of the estate of such intestate, to be distributed to such child or children as shall have any land by settlement from the intestate, or were advanced in the lifetime of the intestate, as shall make the estate of all the said children to be equal, as near as can be estimated as aforesaid.

A. D.
1721.

Case of children that have been advanced in the intestate's lifetime.

And in case there be no children, nor any legal representatives of them, then one moiety of the said estate to be allotted to the wife of the intestate, and the residue of the said estate to be distributed equally to every of the next kindred of the intestate, who are in equal degree to those who legally represent them.

Where there are no children, the wife to have one moiety, &c.

Provided, That there be no representatives admitted amongst collaterals; after brothers and sisters children. And in case there be no wife, then all the said estate to be distributed equally to and amongst the children, the eldest son to have two shares as aforesaid.

If no wife, eldest son to have two shares.

And in case there be no child, then to the next of kindred, in equal degree of or unto the intestate, and their legal representatives, as aforesaid, and in no other manner whatsoever.

Provided also, And to the end that a due regard be had to the creditors, that no such distribution of the goods of any person dying intestate, be made till after one year be expired after the intestate's death. And that such, and every one to whom any distribution and share shall be allotted, shall give bond, with sufficient sureties, to the said Orphans Court, in the name of the Governor for the time being, That if any debt or debts, truly owing by the intestate, shall be

No distribution to be made till after one year be expired, &c.

h

afterwards

A. D.
1721.

afterwards sued for and recovered, or otherwise duly to be made appear, that then, and in every such case, he or she shall respectively refund and pay back to the administrator, his or her rateable part of that debt or debts, and of the costs of suit and charges of the administrator, by reason of such debts, out of the part or share, so as aforesaid allotted to him or her, thereby to enable the said administrator to pay and satisfy the said debt or debts so discovered after the distribution made, as aforesaid.

Provido in case
of a testament
annexed to the
administration.

Provided always, and be it further enacted by the authority aforesaid, That in all cases where the Register hath used heretofore to grant administration, with a testament annexed, he shall continue so to do; and the will of the deceased, in such a testament expressed, shall be performed and observed in such manner as it should have been if this act had never been made.

Relations, &c.
not laying claim
in seven years to
be debarred for-
ever.

Provided also, That all such of the intestate's relations, and persons concerned, who shall not lay legal claim to their respective shares within seven years after the decease of the intestate, shall be debarred from the same forever.

Personal estate
not being suffici-
ent to pay debts,
&c. lands may
be sold.

And be it further enacted by the authority aforesaid, That if any person or persons shall die intestate, being owners of lands and tenements within this government at the time of their death, and leave lawful issue to survive them, but not a sufficient personal estate to pay their just debts and maintain their children, then, and in such case, it shall be lawful for the administrator or administrators of such decedents, to sell and convey such part or parts of the said lands or tenements for defraying their just debts, maintenance of their children, and for putting them apprentices, and teaching them to read and write, and for improvement of the residue of the estate (if any be) to their advantage, as the Orphans Court of the county where such estate lies, shall think fit to allow, order and direct from time to time.

Except lands &c.
contained in
marriage settle-
ments.

Provided always, That no lands or tenements contained in any marriage settlement, shall, by virtue of this act, be sold or disposed contrary to the form and effect of such settlement; nor shall any Orphans Court allow or order any intestates lands or tenements to be sold,

fold, before the administrator, requesting the same, doth exhibit one or more true and perfect inventories and conscionable appraisement of all the intestate's personal estate whatsoever; and also a just and true account, upon his or her solemn affirmation, of all the intestate's debts which shall be then come to his or her knowledge; and if thereupon it shall appear to the court, that the intestate's personal estate will not be sufficient to pay the debts and maintain the children until the eldest of them attains to the age of twenty-one years, or to put them out to be apprentices or teach them to read and write, then and in every such case, and not otherwise, the court shall allow such administrator to make public sale of the said lands, as the court, upon the best computation they can make of the value thereof, shall adjudge necessary for the purposes aforesaid, reserving the mansion house and most profitable part of the estate till the last. But before any such sale be made, the court shall order so many writings to be made by the Clerk upon parchment or good paper as the court shall think fit to signify, and give notice of such sales, and of the day and hour when, and the place where the same will be, and what lands are to be sold, and where they lie; which notice shall be delivered to the Sheriff or Constables, in order to be fixt in the most public places of the county, at least ten days before the sale; and the Sheriffs or Constables are hereby required to make publication accordingly: And the administrator that makes such sale, shall bring his or her proceeding therein to the next Orphans Court after the sale made. And if it shall happen that any lands be sold by virtue of this act for more than the court's computation of the value thereof, then the administrator shall be accountable for the same, as by this act is required for the intestate's personal estates.

And be it further enacted by the authority aforesaid, That the surplusage or remaining parts of the intestate's lands, tenements and hereditaments, not sold or ordered to be sold by virtue of this act, and not otherwise limited by marriage settlement, shall be divided between the intestate's children, or the survivors of them, who shall equally inherit, and make partition as tenants in common

A. D.
1721.

Proceedings in
the sale of lands
directed.

Surplusage upon
sale, how to be
divided.

A. D.
1721.

If no child, the widow to have one moiety, &c.

common may or can do, the eldest son having a double share.

But if the intestate leaves no child, then such widow or relict shall inherit one moiety or half part of said lands and tenements, and the other moiety shall descend and come to the intestate's next heir, according to the course of the common law.

If no children living, the heir at law inherits the lands, &c.

But if the intestate leaves no child living at the time of his death, or if the children all die in their minority, then the said lands and tenements shall descend and come to the intestate's heir at law, according to the course aforesaid.

Unless there be issue of children.

But if any of the intestate's children dying before the intestate, shall leave lawful issue, such issue shall equally inherit the intestate's lands and tenements with their uncles and aunts, and make partition as aforesaid.

Child having equal share by settlement, to have no share of the surplusage.

Provided always, That no child of any intestate having so much land by settlement from the said intestate, as by the said court's computation of the value thereof, shall be equal to the share or purport of the intestate's lands, which by this act, are to be allotted to any of the other children in manner aforesaid; then such child so provided for, shall have no share of the said surplusage of the intestate's other lands.

If the settlement does not amount to an equal share, it shall be made equal.

But if the value of the lands so settled by the intestate, shall not, by the computation aforesaid, amount to an equal share, then the said court shall allot to the party so much of the said land as shall make the shares or estates of all the said children equal, as near as can be estimated, the eldest son having a double share as aforesaid.

Widows of intestates shall hold a third part of the lands, &c.

Provided also, That the widows of intestates having lands and tenements in this government, shall hold and enjoy the full third part of all the lands and tenements of the intestate within this government as her dower, whereof her husband died seized, which dower she shall hold as tenants in dower do in England; and the profitable lands or tenements, and the unimproved or rough lands next adjacent thereto, shall not be sold but for payment of the intestate's debts.

Provided also, That no partition of the lands or tenements

nements which are to be divided by this act, shall be made by or for the younger children of the intestate, if the heir at law will, within the space of twelve months, pay so much money, or other effects, to the person or persons demanding such partition, as their respective shares or purports shall amount unto, by the valuation of four or more persons indifferently chosen by both parties, or by an inquest appointed by the Orphans Court, to value the same, where the parties cannot otherwise agree. And the person or persons (whether minors or others) to whom or for whose use payment or satisfaction shall be made for their respective purports, by the heir at law, in manner aforesaid, shall be for ever debarred of all the right, title and demand which he or they can or may have, of, in or to such share or purports, by virtue of this act, but the same shall be held and enjoyed by the heir at law, as freely and fully as the intestate held the same.

And in case the intestate have no known kindred but a wife, then all his lands, tenements and hereditaments, shall descend to his said wife, during her natural life; and after the death of the said wife, then all his lands, tenements and hereditaments, shall escheat or go to the immediate landlord of whom such lands are held, his heirs and assigns: And all the goods, chattels and personal estate whatsoever, of such persons dying intestate, and without wife or kindred as aforesaid, shall go to the Governor or Commander in Chief for the time being.

But if any of the said intestate's relations shall appear, and make their claims to such intestate's personal estate, within seven years after the decease of the intestate, they shall be restored thereunto.

And if the lawful heir to any such lands or tenements, shall at any time within twenty-one years after the intestate's decease, appear, he may traverse the inquisition, or office, found for the lands so escheated, and recover the same, paying the lord or person in possession for the improvements made thereupon, according to the valuation of twelve men.

And for the lessening the charge of dividing the lands of intestates amongst their children, *Be it enacted by the authority aforesaid,* That the Justices of the Or-

A. D.
1721.

No partition to be made, if the heir at law will pay the value of shares in money, &c.

If the intestate have no known kindred but a wife, the lands, &c. to be hers during life, and afterwards escheated, &c.

Personal estate goes to the Governor;

But shall be restored if relations appear in seven years.

If an heir at law appear in twenty-one years, he shall recover the escheated lands, &c.

Division of lands to be made by five men, &c.

phans

A. D.
1721.

Return to be
made of the di-
vision to the Or-
phans Court,
&c.

phans Court, of the county where the lands lie, upon application made to them by the heir at law, or any other child, when he or she shall attain to the age of twenty-one years, shall, and are hereby empowered, to appoint five honest and discreet men of the county, upon their oaths or affirmations, to go upon the lands of the intestate, and to divide the same equally amongst the children of the intestate, according to the directions and true intent and meaning of this act; which said five men, or any three of them, agreeing, shall make return of such division to the next Orphans Court; and if such division be approved of by the said court, the same shall remain firm and stable for ever.

Provided always, That such division shall not debar the eldest son from making a purchase of the share or purport of his brothers and sisters, in the manner directed in this act.

Repeal of a former act.

See before chap. 15. a.

And that an act, entitled, *An act for the settling intestates estates*; and directing the descent of lands of persons dying intestate, having lands in this government, made in the year of our Lord One Thousand Seven Hundred and Six, shall be, and is hereby repealed.

Passed October—1721.

C H A P. C I. a.

1742.

An ACT for the better settling intestates estates.

Repealed and
supplied in chap.
119. a.
24 Geo. II.

BE it enacted by the honourable George Thomas, esq. with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of Newcastle, Kent and Sussex upon Delaware, and province of Pennsylvania, under the honourable John Penn, Thomas Penn and Richard Penn, esqrs. true and absolute proprietaries of the counties and province aforesaid, by and with the advice and consent of the Representatives of the freemen of the said counties in General Assembly met, and by the authority of the same, That the Registers of the several counties

counties of this government, having power to grant letters of administration unto the widow or next of kin to the intestate, and upon their or either of their refusal to the principal creditor or creditors of the said intestate, as the Register for the probate of wills and testaments, and granting letters of administration within the counties aforesaid, shall think meet and convenient; and the said Registers shall thereupon take bond in the name of the Governor for the time being, with one or more sufficient sureties, in manner and form following, *mutatis mutandis*, viz.

THE condition of this obligation is such, that if the above bounden A. B. administrator of all and singular the goods and chattels, rights and credits of C. D. deceased, do make or cause to be made a true and perfect inventory of all and singular the said goods and chattels, rights and credits of the said deceased, which have or shall come to the hands, possession or knowledge of the said A. B. or unto the hands and possession of any other person or persons for him; and the same so made, do exhibit or cause to be exhibited unto the Register's Office of the county at or before the day of next ensuing; and the same goods and chattels, rights and credits of the said deceased at the time of his death, or which at any time after shall come to the hands or possession of the said A. B. or into the hands and possession of any other person or persons for him, do well and truly administer according to law; and further, do make or cause to be made a true and just account of his administration at or before day of and all the rest and residue of the said goods and chattels, rights and credits which shall be found remaining upon the said administrator's account, the same being first examined and allowed of by the Orphans Court of the county where the said administration is granted, shall deliver and pay unto such person or persons respectively, as the said Orphans Court in the respective counties, by their decree or sentence pursuant to the true intent and meaning of this act, shall limit and appoint: And if it shall hereafter appear that any last will and testament was made by the said deceased, and the executor or executors therein named, do exhibit the same into the Register's Office, making request to have it allowed and approved accordingly: If the said A. B. within bounden, being thereunto required, do surrender

A. D.

1742.

Form of the
bond.

A. D.
1742.

render and deliver up the said letters, of administration (approbation of such testament being first had and made in the said Register's Office;) then this obligation to be void and of none effect, or else to remain in full force and virtue.

Which bonds are hereby declared and enacted to be good, to all intents and purposes, and pleadable in any court of justice within this government. And also that the said Orphans Courts in the respective counties of this government, shall and may, and are hereby enabled to proceed, and call such administrator or administrators to account for, and touching the goods and chattels of any person dying intestate; and upon the hearing and due considering thereof (the deceased's just debts, and funeral expences being first paid and allowed) the said Orphans Court shall and are hereby fully impowered to order and make a just distribution of the surplufage, or remaining part of the personal estate of the deceased, in manner and form following,

Orphans Court
to make distribution,
&c.

Manner of distribution
of personal estates.

That is to say, One third part of the said personal estate to the wife of the said intestate for ever, besides her right of dower, or thirds in and to the lands, tenements and hereditaments of the deceased's personal estate during her natural life, where such wife shall not be otherwise provided for by marriage settlement; and the residue of the deceased's personal estate shall be distributed by equal portions to and among the children of the said deceased, and such as shall legally represent them, if any of them be dead (other than such child or children who shall have any estate by settlement of the intestate, or shall be advanced by him in his lifetime by portion or portions equal to the share which shall by such distributions be allowed to the other children) to whom such distributions are to be made.

Case of children
that have been
advanced in the
intestate's life
time.

And in case any child or children who shall have any estate by settlement from the intestate, or shall be advanced by the said intestate in his lifetime by portion or portions not equal to the share which will be due to the other children by such distribution as aforesaid; then so much of the surplufage of the estate of such intestate, shall be distributed to such child or children as shall have any estate by settlement from the intestate, or were advanced in the life time of the intestate, so

as shall make the estate of all the said children to be equal, as near as can be estimated.

A. D.
1742.

And in case there be no children, nor any legal representatives of them, then one moiety of the said estate to be allotted to the wife of the intestate, and the residue of the said estate to be distributed equally to every of the next of kin to the intestate, who are in equal degree, or to those who legally represent them.

Where there are no children, the widow to have one moiety, &c.

Provided always, That there be no representatives admitted amongst collaterals (after brother's and sister's children.)

And in case there be no wife, then the said estate to be distributed equally to and amongst the children of the deceased, and their legal representatives as aforesaid.

Where no wife, the estate goes to the children, &c.

And in case there be no children, then to the next of kindred in equal degree of or unto the intestate, and their legal representatives as aforesaid, and in no other manner whatsoever.

Provided also, And to the end that a due regard be had to the creditors of the said intestate, that no such distribution of the goods and chattels of any person dying intestate, shall be made as aforesaid, until one year be expired after the intestate's death; and that every one to whom any distribution or share of the said estate shall be allotted, shall give bond, with sufficient sureties, to the Orphans Court, in the name of the Governor for the time being, that, if any debt or debts truly owing by the intestate, shall be afterwards sued for and recovered, or otherwise duly be made appear, that then, and in every such case, he, she or they shall respectively refund and pay back to the administrator or administrators, his, her or their rateable part of the said debt or debts, and costs of suit and charges of the said administrator or administrators by reason of such debt or debts, out of the parts or share so as aforesaid allotted to him, her or them, thereby to enable the said administrator or administrators to pay and satisfy the said debt or debts so recovered or made to appear after the distribution made as aforesaid.

No distribution to be made till after one year, &c.

And be it further enacted by the authority aforesaid, That if any person or persons shall die intestate, being owners

A. D.
1742.

Manner of dis-
tribution of in-
testates lands.

Children to
share equally,
except the eldest
son, who shall
have two shares.

To be divided by
five men, unless,
&c.

ers of lands and tenements within this government at the time of his or her death, and who shall not have disposed of the same in his or her lifetime by will in writing or otherwise, that then all and every such lands, tenements and hereditaments shall be subject to a division, and be alike distributed; according to the rules herein after expressed, *That is to say*, One third part of the said real estate, to the widow of the said intestate during her natural life, where such widow shall not be otherwise provided for by marriage settlement; and the residue of the said deceased's real or landed estate shall be distributed by equal portions to and amongst the children of the said deceased, and such as shall legally represent them (if any of them be dead) other than such child or children who shall have any real or landed estate by settlement, or shall be advanced by the said deceased in his or her lifetime by portion or part of such real estate, equal to the share which shall by such distribution be allotted to the other children, to whom such distributions are to be made. And in case any child or children who shall have any real estate by such settlement from the intestate, or shall be advanced by the said intestate in his lifetime by part or portion not equal to the share which shall be allotted to the other children by such distribution as aforesaid, then so much of the surplussage of the real estate of such intestate shall be distributed to such child or children as shall have any such settlement from the intestate, or were advanced in the lifetime of the intestate, as shall make the real estate of all the said children to be equal as near as can be estimated; except the eldest son, or his lawful issue (if any be) who shall have two shares, or a double portion of the whole of the real estate of his, her or their ancestors; And where there are no sons, the daughters shall inherit as co-partner in the division of the intestate's lands, tenements and hereditaments.

And be it further enacted by the authority aforesaid, That the said division shall be made by five sufficient freeholders, or any three of them, to be appointed by the Orphans Court, and sworn or affirmed by the said court for that end and purpose; unless where all the parties interested in any such lands, tenements and hereditaments,

reditaments, being legally capable to act, shall agree of and make division among themselves, and mutually give each other releases in writings under their hands and seals, which said releases shall be allowed and accounted valid in law, being first acknowledged by the parties subscribing the same in open Court of Common Pleas for the aforesaid respective counties, and duly enrolled.

A. D.
1742.

Provided nevertheless, That where any estate in lands, tenements and hereditaments cannot be divided amongst all the children of the intestate, without prejudice to or spoiling of the whole, the same being so represented and made to appear to the Orphans Court of the county where the said lands or tenements lay; then the said court may order the whole unto the eldest son; if he accept it, or to any other of the sons successively, upon the eldest son's refusal, he or they paying to the other children of the deceased, their equal or proportionable parts or shares of the true value of such lands, tenements and hereditaments, as upon a just appraisement thereof, to be made by three sufficient freeholders to be appointed by the Orphans Court and qualified as aforesaid; or giving good security to pay the same in some reasonable time as the said Orphans Court shall limit and appoint: And the person or persons, whether minors or others, to whom, or for whose use, payment or satisfaction shall be made for their respective parts or shares of the deceased's lands by the heir at law or others, in manner aforesaid, and shall be for ever debarred of all the right, title and demand, which he or they can or may have of, in or to such share or part by virtue of this act; and the same shall be held and enjoyed by the heir at law, or other purchaser, as freely and fully as the intestate held the same.

Where lands cannot be divided, the eldest son to have the whole, &c.

And if any of the children happen to die before he or she come to age or be married, the portion of such child or children shall be equally divided amongst the surviving brothers and sisters, or their legal representatives.

And in case there be no children, nor any legal representatives of them, then one moiety of the intestate's lands, tenements and hereditaments, shall be allotted to the widow of such intestate, during her natural

Where no children, who to inherit the lands, &c.

A P P E N D I X.

A. D.
1742.

natural life; and the residue of the deceased's real estate shall be equally divided to every of the next of kin of the intestate in equal degree, and to those who legally represent them; no representatives to be admitted amongst collaterals after brother's and sister's children.

Where no wife,
&c.

And if there be no wife, the same shall be distributed amongst the children; and if no children, to the next of kin to the intestate in equal degree, and their legal representatives as aforesaid, and in no other manner whatsoever.

And every one to whom any such distribution or share shall be allotted, shall give bond with sureties in the said Orphans Court (if required) that if any debts afterwards be made to appear against the deceased, to refund and pay back to the administrator his or her rateable part of that debt or debts, and of the costs of suits and charges of the said administrator by reason of such debts, out of the part or share so as aforesaid allotted to him or her, thereby to enable the said administrator to pay and satisfy the said debts so recovered, after the distribution made as aforesaid. *And* that the widow's part or portion in the real estate of the deceased, shall at the expiration of her term, be alike divided as aforesaid: Saving to any person aggrieved, at any order, sentence or decree of the Orphans Court, made for the settlement and distribution of any intestate's estates, their right of appeal unto the Supreme Court of this government, to be held for each county respectively; every person so appealing, giving security to prosecute the said appeal with effect.

Widow's part to
be also divided,
&c.

Personal estate
not being sufficient
to pay
debts, &c.
lands may be
sold;

And be it further enacted by the authority aforesaid, That if any person or persons dying intestate, being owners of lands and tenements within this government at the time of their death, and leave lawful issue to survive them, but not a sufficient personal estate to pay their just debts, and maintain their children; then and in such case it shall be lawful for the administrator or administrators of such decedents, to sell and convey such part or parts of the said lands or tenements for defraying their just debts, maintenance of their children, and putting them apprentices, and teaching them

to

to read and write; and for the improvement of the residue of the estate (if any be) to their advantage, as the Orphans Court of the counties where such estate lies, shall think fit to allow, order, and from time to time direct.

A. D.
1742.

Provided always, That no lands and tenements contained in any marriage settlement, shall by virtue of this act be sold or disposed of contrary to the form and effect of such settlement; nor shall any Orphans Court allow or order any intestate's lands and tenements to be sold before administrators requesting the same do exhibit one or more true and perfect inventory or inventories, and conscionable appraisement of all the intestate's personal estate whatsoever, and also a true and just account, upon his or her solemn oath or affirmation, of all the intestate's debts which shall be then come to his or her knowledge.

Except lands
contained in
marriage settle-
ments.

And if thereupon it shall appear to the court, that the intestate's personal estate will not be sufficient to pay the debts, and maintain the children, until the eldest of them attains to the age of twenty-one years, or to put them out to be apprentices and teach them to read and write; then and in every such case, and not otherwise, the court shall allow such administrators to make public sale of so much of the said lands, as the court, upon the best computation they can make of the value thereof, shall adjudge necessary for the purposes aforesaid, reserving the mansion house, and most profitable part of the estate, till the last. But before any such sale be made, the court shall order so many writings to be made by the Clerk, upon good paper, as the court shall think fit, to signify and give notice of such sale, and of the day and place where the said sale will be, and what lands are to be sold, and where they lie; which notices shall be by the administrator or administrators affixed in three of the most public places of the county and in the hundred where the land lies, at least twenty days before the said sale is to begin; and the administrator that makes such sale, shall bring his or her proceedings therein to the next Orphans Court after the sale made; and if it should happen that any lands be sold, by virtue of this act, for more than the court's computation of the value

Proceedings in
sale of lands
directed.

A. D.
1742.

value thereof, then the administrator or administrators shall be accountable for the surplufage of the same, to be paid and divided as by this act is before required and directed in respect of the intestate's personal estate.

Surplufage upon sale, to be divided.

And be it further enacted by the authority aforesaid, That the surplufage and remaining parts of the intestate's lands, tenements and hereditaments, not sold nor ordered to be sold by virtue of this act, and not otherwise limited by marriage settlement, shall be divided, as aforesaid, between the intestate's children, or the survivors of them, or their representatives, as aforesaid.

If the intestate have no known kindred but a wife, the land to be hers during life.

And in case the intestate have no known kindred, but a wife, then all his lands, tenements and hereditaments shall descend to his said wife during her natural life, and after the death of the said wife, then all the said lands, tenements and hereditaments shall escheat or go to the immediate landlord of whom such lands, tenements and hereditaments are held, his heirs and assigns; and all the goods, chattels and personal estate whatsoever, of such persons dying intestate and without wife or kindred as aforesaid, shall go to the Governor or Commander in Chief for the time being. But if any of the said intestate's relations shall appear, and make their claim or claims to such intestate's personal estate within seven years after the decease of the intestate, they shall be restored thereunto.

Personal estate goes to the Governor; but shall be restored if relations appear in seven years.

And if the lawful heir to any such lands or tenements shall at any time within twenty-one years after the intestate's decease appear, he may traverse the inquisition, or office found for the lands so escheated, and recover the same, paying the lord or person in possession for the improvements thereupon, according to the valuation of a jury of twelve men, to be appointed by the Court of Common Pleas for that county in which the said lands and tenements lie.

If an heir at law appear in twenty-one years, he may recover the escheated lands.

Provided always, and be it further enacted by the authority aforesaid, That in all cases where the Register hath used heretofore to grant letters of administration with testament annexed, he shall continue so to do; and the will of the deceased in such testament expressed, shall be performed and observed in such manner

ner as it should have been as if this act had never been made.

And for lessening the charge of dividing the lands of intestates amongst their children, Be it enacted by the authority aforesaid, That the Justices of the Orphans Court of the county where the lands lie, upon application made to them by the heir at law or any other child, when he, she or they shall attain to the age of twenty-one years, shall and are hereby empowered to appoint five sufficient freeholders of the county, who, upon their oaths or affirmation, shall take with them a skilful Surveyor, and go upon the lands of the intestate, and divide the same equally amongst the children or other heirs of the intestate, according to the directions and true intent and meaning of this act; which said five persons, or any three of them agreeing, shall make return of such division to the next Orphans Court; and if such division be approved of by the said court, the same shall remain firm and stable for ever.

A. D.
1742.
Division of lands
to be made by
five men, &c.

Provided always, That such division shall not debar the eldest son, or others as aforesaid, for making a purchase of the share and parts of his brothers and sisters, in the manner before directed by this act.

And be it further enacted by the authority aforesaid, That all laws or acts of Assembly heretofore made in this government for the settling intestates estates, and directing the descent of lands of persons dying intestate, and every matter, clause and thing therein contained, shall be and are hereby declared to be repealed, made null and void; any thing in the said acts, or any of them, to the contrary in any wise notwithstanding.

Repeal of former
laws.

Provided nevertheless, and be it further enacted by the authority aforesaid, That all settlements and divisions of any intestates estates, either real or personal, heretofore made pursuant to any former laws of this government, are hereby ratified, confirmed and approved of.

Passed November 4, 1742.

A. D.
1760.

C H A P. CLXXII. a.

A Supplement to an act, intituled, An act to encourage the building of good mills within this government.

WHEREAS an act, intituled, *An act to encourage the building of good mills within this government*, has not been found to answer all the good purposes intended by the same; *Be it therefore enacted by the honourable James Hamilton, esq. with his Majesty's royal approbation, Lieutenant Governor and Commander in Chief of the counties of New-Castle, Kent and Sussex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties in General Assembly met, and by the authority of the same,* That whenever freeholders are or

The freeholders appointed to value lands, &c. to be condemned for a mill, shall in their verdict return what damage the new mill may be to the water of any other mill, &c.

shall be appointed, in pursuance of the act aforesaid, to determine the value of any lands, they shall, upon their oaths and affirmations respectively, by their verdict to be thereupon given, before valuing the lands for the purposes therein mentioned, make a return to the justices summoning them of the damage or loss that any person or persons, who has, or have, a mill or mills, either above or below the place, where the person applying to the said justices has a mill, or intends to build one, may receive by taking the water out of the river, creek or run, above the mill of such person or persons, and bringing it past the same in a race, or by any obstruction or impediment caused by the back water of any person so applying to the said justices, and the said verdict being returned to the next County Court, the court shall thereupon adjudge and determine, on hearing the proofs and allegations of both parties, whether it is proper a mill should be built according to the request of the person applying to the said justices as aforesaid; and if the court shall be satisfied that the same may be built, without doing too great injury to the mills already built, they may confirm the said return, which shall create a debt upon the estate of the person applying for the condemnation of land as aforesaid, in the same manner as by the said act in other cases is provided and ordained.

Return to be made to the next County Court, who may approve or reject the same.

And

A. D.
1760.

Any person erecting a mill-dam, &c. to the injury of another mill, shall pay such damages as a jury shall assess to the owner thereof.

SECT. 2. *And be it further enacted by the authority aforesaid,* That if any owner or owners of a mill, within this government, shall be injured as aforesaid by any mill-race, mill-dam, or mill-pond, to be hereafter made, either where a verdict of a valuation shall be made in pursuance of this act, or the act aforesaid, or where any person shall make such race, dam, or pond; upon his own land, then; upon the application of such owner or owners so injured to the County Court of Common Pleas, setting forth the same, the justices of the said court shall issue a writ to the Sheriff of the county, commanding him to summon a jury of twelve men to go and view the premises, and then to appear before the said justices at the next County Court, when and where they shall, upon their oaths and affirmations respectively, after hearing the proofs and allegations of the parties, by their verdict, say and determine what damages or loss the person or persons so injured has or have sustained by reason or means of the said race, dam, or pond: And upon such verdict, so to be given, the justices of the said court shall issue an execution, to the Sheriff of the said county directed, to levy the value of the damages or loss in the said verdict mentioned, with the costs of the said proceeding, of the lands and tenements, goods and chattels, of the person or persons, for the use of whose-mill or mills the said race, dam or pond was made, and pay the same to the person or persons injured, as aforesaid.

SECT. 3. *But if the said jury shall be of opinion that the race, dam or pond, made as aforesaid, is so injurious to any mill above or below it, that such race, dam or pond, ought not to continue, they shall by their verdict say so:* And thereupon the justices of the said court shall adjudge and decree, that the erector, or maker, of any such dam, or race, shall pull down such dam, or stop up such race, as the case may require, so that the water may flow freely in the same course that it might or could have done before the erecting or making such dam or race. And if the erector or maker of such dam or race will not comply with such judgment or decree, the said court may, and are hereby required, to enforce obedience

The jury may determine whether any new erected mill-dam, &c. shall continue, or be pulled down, &c.

A. D.
1760.

to the same by imprisoning the person or persons so refusing or neglecting to comply therewith.

Passed October—1760.

DECLARATION OF INDEPENDENCE.

A. D.
1776.

In CONGRESS, July 4, 1776.

The unanimous Declaration of the Thirteen United States of America.

WHEN, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume, among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed, by their Creator, with certain unalienable rights, that among these are life, liberty and the pursuit of happiness.—That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed, that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate, that governments long established, should not be changed for light and transient causes; and accordingly all experience hath shewn, that mankind are more disposed to suffer, while evils are sufferable; than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object,
evinces

A. D.
1776.

evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government; and to provide new guards for their future security. Such has been the patient sufferance of these colonies; and such is now the necessity which constrains them to alter their former system of government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these states: To prove this, let facts be submitted to a candid world.

He has refused his assent to laws, the most wholesome and necessary for the public good.

He has forbidden his Governors to pass laws of immediate and pressing importance, unless suspended in their operation 'till his assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the Legislature, a right inestimable to them; and formidable to tyrants only.

He has called together Legislative bodies at places unusual, uncomfortable, and distant from the depository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.

He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the Legislative powers, incapable of annihilation, have returned to the people at large for their exercise; the state remaining, in the mean time, exposed to all the dangers of invasion from without, and convulsions within.

He has endeavoured to prevent the population of these states; for that purpose obstructing the laws for naturalization of foreigners; refusing to pass others to encourage their migrations hither, and raising the conditions of new appropriations of lands.

He has obstructed the administration of justice,
by

A. D.
1778.

by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of officers to harrass our people, and eat out their substance.

He has kept among us, in times of peace, standing armies, without the consent of our Legislatures.

He has affected to render the military independent of and superior to the civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his assent to their acts of pretended legislation,

For quartering large bodies of armed troops among us:

For protecting them by a mock trial, from punishment for any murders which they should commit on the inhabitants of these states:

For cutting off our trade with all parts of the world:

For imposing taxes on us without our consent:

For depriving us, in many cases, of the benefits of trial by jury:

For transporting us beyond seas to be tried for pretended offences:

For abolishing the free system of English laws in a neighbouring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies:

For taking away our charters, abolishing our most valuable laws, and altering fundamentally the forms of our governments:

For suspending our own Legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated government here, by declaring us out of his protection and waging war against us.

He

He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

A. D.
1776.

He is at this time, transporting large armies of foreign mercenaries to complete the works of death, desolation and tyranny, already begun with circumstances of cruelty and perfidy, scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

He has excited domestic insurrections amongst us, and has endeavoured to bring on the inhabitants of our frontiers, the merciless Indian savages, whose known rule of warfare, is an undistinguished destruction, of all ages, sexes and conditions.

In every stage of these oppressions, we have petitioned for redress in the most humble terms: Our repeated petitions have been answered only by repeated injury. A Prince, whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

Nor have we been wanting in attentions to our British brethren. We have warned them from time to time of attempts by their Legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which would inevitably interrupt our connexion and correspondence. They, too, have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity, which denounces our separation, and hold them as we hold the rest of mankind, enemies in war, in peace friends.

We, therefore, the Representatives of the United States of America, in General Congress assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the name, and by authority

A. D.
1776.

authority of the good people of these colonies, solemnly publish and declare, That these United Colonies are, and of right ought to be, *free and independent states*; that they are absolved from all allegiance to the British crown, and that all political connexion between them and the state of Great Britain is, and ought to be, totally dissolved; and that as *free and independent states*, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which *independent states* may of right do. And for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes, and our sacred honour.

JOHN HANCOCK.

New-Hampshire.

Josiah Bartlett,
William Whipple,
Matthew Thornton.

Massachusetts Bay.

Samuel Adams,
John Adams,
Robert Treat Paine,
Elbridge Gerry.

Rhode Island & Providence, &c.

Stephen Hopkins,
William Ellery.

Connecticut.

Roger Sherman,
Samuel Huntington,
William Williams,
Oliver Wolcott.

New-York.

William Floyd,
Philip Livingston,
Francis Lewis,
Lewis Morris.

New-Jersey.

Richard Stockton,
John Witherspoon,
Francis Hopkinson,
John Hart,
Abraham Clark.

Pennsylvania.

Robert Morris,
Benjamin Rush,
Benjamin Franklin,
John Morton,
George Clymer,
James Smith,
George Taylor,
James Wilson,
George Rofs.

Delaware.

Cæsar Rodney,
George Read.

Maryland.

Samuel Chase,
William Paca,

Thomas

Thomas Stone,
Charles Carroll, of
Carollton.

Joseph Hewes,
John Penn.

A. D.

1776.

Virginia.

George Wythe,
Richard Henry Lee,
Thomas Jefferson,
Benjamin Harrison,
Thomas Nelson, jun.
Francis Lightfoot Lee,
Carter Braxton.

South-Carolina.

Edward Rutledge,
Thomas Hayward, jun.
Thomas Lynch, jun.
Arthur Middleton.

Georgia.

Button Gwinnett,
Lyman Hall,
George Walton.

North-Carolina.

William Hooper,

A Declaration of Rights and Fundamental, Rules of the September 11,
Delaware State, formerly filed, The Government of the 1776.
counties of New-Castle, Kent and Sussex, upon Delaware.

SECTION 1. **T**HAT all government of right originates from the people, is founded in compact only, and instituted solely for the good of the whole.

SECT. 2. That all men have a natural and unalienable right to worship Almighty God according to the dictates of their own consciences and understandings; and that no man ought or of right can be compelled to attend any religious worship, or maintain any ministry contrary to or against his own free will and consent, and that no authority can or ought to be vested in, or assumed by any power whatever that shall in any case interfere with, or in any manner controul the right of conscience in the free exercise of religious worship.

SECT. 3. That all persons professing the Christian religion ought forever to enjoy equal rights and privileges in this state, unless, under colour of religion, any man disturb the peace, the happiness or safety of society.

SECT. 4. That the people of this state have the sole exclusive and inherent right of governing and regulating the internal police of the same.

SECT. 5. That persons intrusted with the Legislative and

A. D.
1776.

and Executive Powers are the Trustees and Servants of the public, and as such accountable for their conduct; wherefore whenever the ends of government are perverted, and public liberty manifestly endangered by the Legislative singly, or a treacherous combination of both, the people may, and of right ought to establish a new, or reform the old government.

SECT. 6. That the right in the people to participate in the Legislature, is the foundation of liberty and of all free government, and for this end all elections ought to be free and frequent, and every freeman, having sufficient evidence of a permanent common interest with, and attachment to the community, hath a right of suffrage.

SECT. 7. That no power of suspending laws, or the execution of laws, ought to be exercised unless by the Legislature.

SECT. 8. That for redress of grievances, and for amending and strengthening of the laws; the Legislature ought to be frequently convened.

SECT. 9. That every man hath a right to petition the Legislature for the redress of grievances in a peaceable and orderly manner.

SECT. 10. That every member of society hath a right to be protected in the enjoyment of life, liberty and property, and therefore is bound to contribute his proportion towards the expense of that protection, and yield his personal service when necessary, or an equivalent thereto; but no part of a man's property can be justly taken from him or applied to public uses without his own consent or that of his legal Representatives: Nor can any man that is conscientiously scrupulous of bearing arms in any case be justly compelled thereto if he will pay such equivalent.

SECT. 11. That retrospective laws, punishing offences committed before the existence of such laws, are oppressive and unjust, and ought not to be made.

SECT. 12. That every freeman for every injury done him in his goods, lands or person, by any other person, ought to have remedy by the course of the law of the land, and ought to have justice and right for the injury done to him freely without sale, fully without any denial,

denial, and speedily without delay, according to the law of the land.

SECT. 13. That trial by jury of facts where they arise is one of the greatest securities of the lives, liberties and estates of the people.

SECT. 14. That in all prosecutions for criminal offences, every man hath a right to be informed of the accusation against him, to be allowed counsel, to be confronted with the accusers or witnesses, to examine evidence on oath in his favour, and to a speedy trial by an impartial jury, without whose unanimous consent he ought not to be found guilty.

SECT. 15. That no man in the Courts of Common Law ought to be compelled to give evidence against himself.

SECT. 16. That excessive bail ought not to be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted.

SECT. 17. That all warrants without oath to search suspected places, or to seize any person or his property, are grievous and oppressive; and all general warrants to search suspected places, or to apprehend all persons suspected, without naming or describing the place or any person in special, are illegal and ought not to be granted.

SECT. 18. That a well regulated militia is the proper, natural and safe defence of a free government.

SECT. 19. That standing armies are dangerous to liberty, and ought not to be raised or kept up without the consent of the Legislature.

SECT. 20. That in all cases and at all times the military ought to be under strict subordination to and governed by the civil power.

SECT. 21. That no soldier ought to be quartered in any house in time of peace without the consent of the owner; and in time of war in such manner only as the Legislature shall direct.

SECT. 22. That the independency and uprightness of judges are essential to the impartial administration of justice, and a great security to the rights and liberties of the people.

SECT. 23. That the liberty of the press ought to be inviolably preserved.

A. D.
1776.

September 20,
1776.

The Constitution or System of Government, agreed to and resolved upon by the Representatives in full Convention of the Delaware State, formerly styled the Government of the counties of New-Castle, Kent and Sussex, upon Delaware; the said Representatives being chosen by the Freemen of the said state for that express purpose.

Style.

ART. 1. THE government of the counties of New-Castle, Kent and Sussex, upon Delaware, shall hereafter in all public and other writings be called, *The Delaware State*.

Of the Legislative power.

ART. 2. The Legislature shall be formed of two distinct branches: They shall meet once or oftener in every year, and shall be called, *The General Assembly of Delaware*.

House of Assembly.

ART. 3. One of the branches of the Legislature shall be called, *The House of Assembly*, and shall consist of seven Representatives, to be chosen for each county annually of such persons as are freeholders of the same.

The Council.

ART. 4. The other branch shall be called, *The Council*, and consist of nine Members, three to be chosen for each county at the time of the first election of the Assembly, who shall be freeholders of the county for which they are chosen, and be upwards of twenty-five years of age. At the end of one year after the general election, the Counsellor who had the smallest number of votes in each county shall be displaced, and the vacancies thereby occasioned supplied by the freemen of each county choosing the same or another person at a new election in manner aforesaid. At the end of two years after the first general election, the Counsellor who stood second in number of votes in each county shall be displaced, and the vacancies thereby occasioned supplied by a new election in manner aforesaid. And at the end of three years from the first general election, the Counsellor who had the greatest number of votes in each county shall be displaced, and the vacancies thereby occasioned supplied by a new election in manner aforesaid. And this rotation of a Counsellor being displaced at the end of three years in each county and his office supplied by

a new choice shall be continued afterwards in due order annually forever, whereby, after the first general election, a Counsellor will remain in trust for three years from the time of his being elected, and a Counsellor will be displaced, and the same or another chosen in each county at every election.

A. D.
1776.

ART. 5. The right of suffrage in the election of Members for both Houses shall remain as exercised by law at present; and each House shall choose its own Speaker, appoint its own officers, judge of the qualifications and elections of its own Members, settle its own rules of proceedings, and direct writs of election for supplying intermediate vacancies. They may also severally expel any of their own Members for misbehaviour, but not a second time in the same sessions for the same offence, if re-elected; and they shall have all other powers necessary for the Legislature of a free and independent state.

Of the right of
suffrage, and
powers of the
House.

ART. 6. All money bills for the support of government shall originate in the House of Assembly, and may be altered, amended or rejected by the Legislative Council. All other bills and ordinances may take rise in the House of Assembly or Legislative Council, and may be altered, amended or rejected by either.

Of originating
money bills.

ART. 7. A President, or Chief Magistrate shall be chosen by joint ballot of both Houses, to be taken in the House of Assembly, and the box examined by the Speakers of each House in the presence of the other Members, and in case the numbers for the two highest in votes should be equal, then the Speaker of the Council shall have an additional casting voice, and the appointment of the person who has the majority of votes shall be entered at large on the minutes and journals of each House, and a copy thereof on parchment, certified and signed by the Speakers respectively, and sealed with the Great Seal of the state, which they are hereby authorized to affix, shall be delivered to the person so chosen President, who shall continue in that office three years and until the sitting of the next General Assembly and no longer, nor be eligible until the expiration of three years after he shall have been out of that office. An adequate but moderate salary

Of the election
of President

A. D.
1776.

His general
powers.

salary shall be settled on him during his continuance in office. He may draw for such sums of money as shall be appropriated by the General Assembly, and be accountable to them for the same. He may by and with the advice of the Privy Council lay embargoes or prohibit the exportation of any commodity for any time not exceeding thirty days in the recess of the General Assembly. He shall have the power of granting pardons or reprieves, except where the prosecution shall be carried on by the House of Assembly, or the law shall otherwise direct, in which cases no pardon or reprieve shall be granted but by a resolve of the House of Assembly: And may exercise all the other executive powers of government, limited and restrained as by this constitution is mentioned, and according to the laws of the state. And on his death, inability or absence from the state, the Speaker of the Legislative Council for the time being shall be Vice President, and in case of his death, inability or absence from the state, the Speaker of the House of Assembly shall have the powers of a President until a new nomination is made by the General Assembly.

Of the Privy
Council.

ART. 8. A Privy Council consisting of four Members shall be chosen by ballot, two by the Legislative Council, and two by the House of Assembly: Provided, that no regular officer of the army or navy in the service and pay of the Continent, or of this, or of any other state shall be eligible. And a Member of the Legislative Council or of the House of Assembly being chosen of the Privy Council and accepting thereof shall thereby lose his seat. Three Members shall be a quorum, and their advice and proceedings shall be entered of record, and signed by the Members present, (to any part of which any Member may enter his dissent) to be laid before the General Assembly when called for by them. Two Members shall be removed by ballot, one by the Legislative Council and one by the House of Assembly at the end of two years, and those who remain the next year after, who shall severally be ineligible for the three next years. These vacancies as well as those occasioned by death or incapacity shall be supplied by new elections in the same manner. And this rotation of a Privy Counsellor shall

shall be continued afterwards in due order annually forever. The President may by summons convene the Privy Council at any time when the public exigences may require, and at such place as he shall think most convenient, when and where they are to attend accordingly.

A. D.
1776.

ART. 9. The President, with the advice and consent of the Privy Council, may embody the militia, and act as Captain General and Commander in Chief of them and the other military force of this state under the laws of the same.

Of the President's military powers.

ART. 10. Either House of the General Assembly may adjourn themselves respectively. The President shall not prorogue, adjourn or dissolve the General Assembly, but he may with the advice of the Privy Council or on the application of a majority of either House, call them before the time they shall stand adjourned, and the two Houses shall always sit at the same time and place, for which purpose immediately after every adjournment the Speaker of the House of Assembly shall give notice to the Speaker of the other House of the time to which the House of Assembly stands adjourned.

Of adjournment, and convening the General Assembly.

ART. 11. The Delegates for Delaware to the Congress of the United States of America shall be chosen annually, or superseded in the mean time, by joint ballot of both Houses in the General Assembly.

Of the appointment of Delegates,

ART. 12. The President and General Assembly shall by joint ballot appoint three Justices of the Supreme Court for the state, one of whom shall be Chief Justice, and a Judge of Admiralty, and also four Justices of the Courts of Common Pleas and Orphans Courts, for each county, one of whom in each court shall be stiled Chief Justice, (and in case of division on the ballot, the President shall have an additional casting voice) to be commissioned by the President under the Great Seal, who shall continue in office during good behaviour; and during the time the Justices of the said Supreme Court and Courts of Common Pleas remain in office they shall hold none other except in the militia—Any one of the Justices of either of said courts shall have power in case of the non coming of his brethren to open and adjourn the court. An adequate

Judges,

A. D.
1776.
Ministerial officers,

quate fixed but moderate salary shall be settled on them during their continuance in office. The President and Privy Council shall appoint the Secretary, the Attorney General, Registers for the probate of wills and granting letters of administration, Registers in Chancery, Clerks of the Courts of Common Pleas and Orphans Courts, and Clerks of the Peace, who shall be commissioned as aforesaid, and remain in office during five years, if they behave themselves well; during which time the said Registers in Chancery and Clerks shall not be Justices of either of the said courts of which they are officers, but they shall have authority to sign all writs by them issued, and take recognizances of bail. The Justices of the Peace shall be nominated by the House of Assembly, *That is to say*, They shall name twenty-four persons for each county, of whom the President, with the approbation of the Privy Council, shall appoint twelve; who shall be commissioned as aforesaid, and continue in office during seven years, if they behave themselves well; and in case of vacancies, or if the Legislature shall think proper to increase the number, they shall be nominated and appointed in like manner. The Members of the Legislative and Privy Councils shall be Justices of the Peace for the whole state, during their continuance in trust; and the Justices of the Courts of Common Pleas shall be Conservators of the Peace in their respective counties.

Justices of the Peace, &c.

Of the Chancery.

ART. 13. The Justices of the Courts of Common Pleas and Orphans Courts shall have the power of holding Inferior Courts of Chancery as heretofore, unless the Legislature shall otherwise direct.

Of the appointment of Clerks of Supreme Court and Records,

ART. 14. The Clerks of the Supreme Court shall be appointed by the Chief Justice thereof, and the Recorders of Deeds by the Justices of the Courts of Common Pleas for each county severally, and commissioned by the President under the Great Seal, and continue in office five years, if they behave themselves well.

Sheriffs and Coroners,

ART. 15. The Sheriffs and Coroners of the respective counties shall be chosen annually as heretofore; and any person having served three years as Sheriff shall be ineligible for three years after; and the President

President and Privy Council shall have the appointment of such of the two candidates returned for said offices of Sheriff and Coroner as they shall think best qualified, in the same manner that the Governor heretofore enjoyed this power.

A. D.
1776.

ART. 16. The General Assembly by joint ballot shall appoint the Generals and Field Officers, and all other officers in the army or navy of this state. And the President may appoint during pleasure, until otherwise directed by the Legislature, all necessary civil officers not herein before mentioned.

Military and
naval officers.

ART. 17. There shall be an appeal from the Supreme Court of Delaware, in matters of law and equity to a court of seven persons, to consist of the President for the time being, who shall preside therein, and six others, to be appointed, three by the Legislative Council and three by the House of Assembly, who shall continue in office, during good behaviour, and be commissioned by the President under the Great Seal, which court shall be stiled, *The Court of Appeals*, and have all the authority and powers heretofore given by law in the last resort to the King in Council under the old government. The Secretary shall be the Clerk of this Court, and vacancies therein occasioned by death or incapacity shall be supplied by new elections in manner aforesaid.

Of the Court of
Appeals.

ART. 18. The Justices of the Supreme Court and Courts of Common Pleas, the Members of the Privy Council, the Secretary, the Trustees of the Loan Office and Clerks of the Courts of Common Pleas, during their continuance in office, and all persons concerned in any army or navy contracts, shall be ineligible to either House of Assembly; and any Member of either House accepting of any other of the offices herein before mentioned (excepting the office of a Justice of the Peace) shall have his seat thereby vacated, and a new election shall be ordered.

Persons ineli-
gible to either
House of the
Legislature.

ART. 19. The Legislative Council and Assembly shall have the power of making the Great Seal of this state, which shall be kept by the President, or in his absence by the Vice-President, to be used by them as occasion may require. It shall be called, *The Great*

Great Seal.

Seal

A. D.
1776.Style of com-
missions, &c.

Seal of the Delaware State, and shall be affixed to all laws and commissions.

ART. 20. Commissions shall run in the name of *The Delaware State*, and bear test by the President. Writs shall run in the same manner, and bear test in the name of the Chief Justice or Justice first named in the commissions for the several courts, and be sealed with the public seals of such courts: Indictments shall conclude, *against the peace and dignity of the State.*

Of supplying
vacancies.

ART. 21. In case of vacancy of the offices above directed to be filled by the President and General Assembly, the President and Privy Council may appoint others in their stead until there shall be a new election.

Of the oath of
allegiance, &c.

ART. 22. Every person, who shall be chosen a Member of either House, or appointed to any office or place of trust, before taking his seat, or entering upon the execution of his office, shall take the following oath, or affirmation if conscientiously scrupulous of taking an oath, *to wit.*

I A. B. will bear true allegiance to the Delaware State, submit to its constitution and laws, and do no act willingly whereby the freedom thereof may be prejudiced.

And also make and subscribe the following declaration, *to wit.*

I A. B. do profess faith in God the Father, and in Jesus Christ his only Son, and in the Holy Ghost, one God blessed for evermore; and I do acknowledge the Holy Scriptures of the Old and New Testament to be given by divine inspiration.

And all officers shall also take an oath of office.

Of impeach-
ment.

ART. 23. The President when he is out of office and within eighteen months after, and all others, offending against the state either by mal-administration, corruption or other means, by which the safety of the commonwealth may be endangered, within eighteen months after the offence committed, shall be impeachable by the House of Assembly before the Legislative Council: Such impeachment to be prosecuted by the Attorney General or such other person or persons as the House of Assembly may appoint, according to the laws of the land. If found guilty, he or they shall be either forever disabled to hold any office

office under government, or removed from office *pro tempore*, or subjected to such pains and penalties as the laws shall direct. And all officers shall be removed on conviction of misbehaviour at common law or on impeachment, or upon the address of the General Assembly.

A. D.
1776.

ART. 24. All acts of Assembly in force in this state on the fifteenth day of May last (and not hereby altered, or contrary to the resolutions of Congress, or of the late House of Assembly of this state) shall so continue until altered or repealed by the Legislature of this state, unless where they are temporary, in which case they shall expire at the times respectively limited for their duration.

Of the laws in force.

ART. 25. The common law of England, as well as so much of the statute law as have been heretofore adopted in practice in this state, shall remain in force, unless they shall be altered by a future law of the Legislature; such parts only excepted as are repugnant to the rights and privileges contained in this constitution and the declaration of rights, &c. agreed to by this convention.

Of the common law.

ART. 26. No person hereafter imported into this state from Africa ought to be held in slavery under any pretence whatever, and no Negro, Indian or Mulatto slave, ought to be brought into this state for sale from any part of the world.

No slaves to be imported.

ART. 27. The first election for the General Assembly of this state shall be held on the twenty-first day of October next, at the Court Houses in the several counties, in the manner heretofore used in the election of the Assembly, except as to the choice of Inspectors and Assessors, where Assessors have not been chosen on the sixteenth day of September instant, which shall be made on the morning of the day of election by the electors, inhabitants of the respective hundreds in each county:—At which time the Sheriffs and Coroners for the said counties respectively are to be elected: And the present Sheriffs of the counties of New-Castle and Kent may be re-chosen to that office until the first day of October in the year of our Lord One Thousand Seven Hundred and Seventy-nine, and the present Sheriff for the county of Suffex may be re-

Of the time of holding the first election,

m

chosen

A. D.
1776.

and meeting of
the Legislature
under this con-
stitution.

chosen to that office until the first day of October in the year of our Lord One Thousand Seven Hundred and Seventy-eight, provided the freemen think proper to re-elect them at every general election; and the present Sheriffs and Coroners respectively shall continue to exercise their offices as heretofore until the Sheriffs and Coroners to be elected on the said twenty-first day of October shall be commissioned and sworn into office. The Members of the Legislative Council and Assembly shall meet for transacting the business of the state on the twenty-eighth day of October next, and continue in office until the first day of October which will be in the year One Thousand Seven Hundred and Seventy-seven; on which day, and on the first day of October in each year forever after, the Legislative Council, Assembly, Sheriffs and Coroners, shall be chosen by ballot in manner directed by the several laws of this state for regulating elections of Members of Assembly and Sheriffs and Coroners; and the General Assembly shall meet on the twentieth day of the same month for the transacting the business of the state; and if any of the said first and twentieth days of October should be Sunday, then and in such case the elections shall be held and the General Assembly meet the next day following.

Of the freedom
of election.

ART. 28. To prevent any violence or force being used at the said elections, no persons shall come armed to any of them; and no muster of the militia shall be made on that day, nor shall any battalion or company give in their votes, immediately succeeding each other, if any other voter who offers to vote objects thereto; nor shall any battalion or company in the pay of the Continent, or of this or any other state, be suffered to remain at the time and place of holding the said elections, nor within one mile of the said places respectively for twenty-four hours before the opening said elections, nor within twenty-four hours after the same are closed, so as in any manner to impede the freely and conveniently carrying on the said election: *Provided always*, That every elector may in a peaceable and orderly manner give in his vote on the said day of election.

ART. 29. There shall be no establishment of any
one

one religious sect in this state in preference to another; and no Clergyman or Preacher of the Gospel of any denomination shall be capable of holding any civil office in this state, or of being a Member of either of the branches of the Legislature while they continue in the exercise of the pastoral function.

A. D.
1776.
Exclusion of the Clergy from office.

ART. 30. No article of the declaration of rights and fundamental rules of this state, agreed to by this convention, nor the first, second, fifth (except that part thereof that relates to the right of suffrage) twenty-sixth and twenty-ninth articles of this constitution, ought ever to be violated on any pretence whatever. No other part of this constitution shall be altered, changed, or diminished, without the consent of five parts in seven of the Assembly, and seven Members of the Legislative Council.

What parts of this constitution alterable, &c.

Attest, **GEORGE READ**, President.
JAMES BOOTH, Secretary.

Articles of Confederation and perpetual Union between the States of New-Hampshire, Massachusetts-bay, Rhode-Island and Providence Plantations, Connecticut, New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina and Georgia.

A. D.
1778.

ARTICLE I. **T**HE style of this confederacy shall be *The United States of America*.

Style.

ART. 2. Each state retains its sovereignty, freedom and independence, and every power, jurisdiction and right which is not by this confederation expressly delegated to the United States, in Congress Assembled.

Sovereignty and rights retained by each state.

ART. 3. The said states hereby severally enter into a firm league of friendship with each other, for their common defence, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other, against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade or any other pretence whatever.

League for common defence, &c.

ART. 4. The better to secure and perpetuate mutual

mutual

A. D.
1778.

Freedom of in-
tercourse.

tual friendship and intercourse among the people of the different states, in this union, the free inhabitants of each of these states, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several states; and the people of each state shall have free ingress and regress to and from any other state, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions and restrictions as the inhabitants thereof respectively, provided that such restrictions shall not extend so far as to prevent the removal of property imported into any state, to any other state of which the owner is an inhabitant: *Provided also*, That no imposition, duties or restriction shall be laid by any state, on the property of the United States, or either of them.

Of fugitives
from justice.

If any person guilty of, or charged with treason, felony, or other high misdemeanour in any state, shall flee from justice, and be found in any of the United States, he shall upon demand of the Governor, or Executive power of the state from which he fled, be delivered up and removed to the state having jurisdiction of his offence.

Of records, &c.

Full faith and credit shall be given in each of these states to the records, acts and judicial proceedings of the courts and magistrates of every other state.

Of an annual
Congress.

ART. 5. For the more convenient management of the general interests of the United States, Delegates shall be annually appointed in such manner as the Legislature of each state shall direct, to meet in Congress on the first Monday in November, in every year, with a power reserved to each state, to recal its Delegates, or any of them, at any time within the year, and to send others in their stead, for the remainder of the year.

Representation
of each state.

No state shall be represented in Congress by less than two, nor more than seven Members; and no person shall be capable of being a Delegate for more than three years, in any term of six years; nor shall any person, being a Delegate, be capable of holding any office under the United States, for which he, or any other for his benefit receives any salary, fees or emolument of any kind.

Of maintenance
of Delegates.

Each state shall maintain its own Delegates in a meeting

meeting of the states, and while they act as Members of the Committee of the states.

In determining questions in the United States, in Congress assembled, each state shall have one vote.

Freedom of speech and debate in Congress shall not be impeached or questioned in any court, or place out of Congress, and the Members of Congress shall be protected in their persons from arrests and imprisonments, during the time of their going to and from, and attendance on Congress, except for treason, felony, or breach of the peace.

ART. 6. No state without the consent of the United States in Congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance or treaty with any king, prince or state; nor shall any person holding any office of profit or trust under the United States, or any of them, accept of any present, emolument, office or title of any kind whatever from any king, prince or foreign state; nor shall the United States in Congress assembled, or any of them, grant any title of nobility.

No two or more states shall enter into any treaty, confederation or alliance whatever between them, without the consent of the United States in Congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

No state shall lay any imposts or duties, which may interfere with any stipulations in treaties, entered into by the United States in Congress assembled, with any king, prince or state, in pursuance of any treaties already proposed by Congress, to the courts of France and Spain.

No vessels of war shall be kept up in time of peace by any state, except such number only, as shall be deemed necessary by the United States in Congress assembled, for the defence of such state, or its trade; nor shall any body of forces be kept up by any state, in time of peace, except such number only, as in the judgment of the United States, in Congress assembled, shall be deemed requisite to garrison the forts necessary for the defence of such state; but every state shall always

A. D.
1778.

Each state to
have one vote:

Of freedom of
debate.

Restrictions on
the powers of
the states.

A. D.

1778.

always keep up a well regulated and disciplined militia, sufficiently armed and accoutred, and shall provide and constantly have ready for use, in public stores, a due number of field pieces and tents, and a proper quantity of arms, ammunition and camp equipage.

No state shall engage in any war without the consent of the United States in Congress assembled, unless such state be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such state, and the danger is so imminent as not to admit of a delay, till the United States in Congress assembled can be consulted; nor shall any state grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the United States in Congress assembled, and then only against the kingdom or state and the subjects thereof, against which war has been so declared, and under such regulations as shall be established by the United States in Congress assembled, unless such state be infested by pirates, in which case vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue, or until the United States in Congress assembled shall determine otherwise.

Of the appointment of Regimental Officers.

ART. 7. When land forces are raised by any state for the common defence, all officers of or under the rank of Colonels, shall be appointed by the Legislature of each state respectively, by whom such forces shall be raised, or in such manner as such state shall direct, and all vacancies shall be filled up by the state which first made the appointment.

Charges incurred for common defence, &c. how defrayed.

ART. 8. All charges of war, and all other expences that shall be incurred for the common defence or general welfare, and allowed by the United States in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several states, in proportion to the value of all land within each state, granted to or surveyed for any person, as such land and the buildings and improvements thereon shall be estimated according to such mode as the United States in Congress assembled, shall from time

Altered, see Vol. 11. p. 783.

to time direct and appoint. The taxes for paying that proportion shall be laid and levied by the authority and direction of the Legislatures of the several states within the time agreed upon by the United States in Congress assembled.

A. D.
1778.

ART. 9. The United States in Congress assembled, shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth article; of sending and receiving Ambassadors; entering into treaties and alliances, provided that no treaty of commerce shall be made whereby the Legislative power of the respective states shall be restrained from imposing such imposts and duties on foreigners, as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever; of establishing rules for deciding in all cases, what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States shall be divided or appropriated; of granting letters of marque and reprisal in times of peace; appointing courts for the trial of piracies and felonies committed on the high seas, and establishing courts for receiving and determining finally appeals, in all cases of captures, provided that no Member of Congress shall be appointed a judge of any of the said courts.

Powers of the
United States in
Congress assem-
bled.

The United States in Congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting or that hereafter may arise between two or more states concerning boundary, jurisdiction or any other cause whatever; which authority shall always be exercised in the manner following: Whenever the Legislative or Executive authority or lawful agent of any state in controversy with another shall present a petition to Congress, stating the matter in question and praying for a hearing, notice thereof shall be given by order of Congress to the Legislative or Executive authority of the other state in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint by joint consent, Commissioners or Judges to constitute a court for hearing

Congress to be
the last resort on
appeal.

A. D.
1778.

hearing and determining the matter in question: But if they cannot agree, Congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven, nor more than nine names as Congress shall direct, shall in the presence of Congress be drawn out by lot, and the persons whose names shall be so drawn, or any five of them, shall be Commissioners or Judges, to hear and finally determine the controversy, so always as a major part of the judges who shall hear the cause shall agree in the determination; and if either party shall neglect to attend at the day appointed, without shewing reasons, which Congress shall judge sufficient, or being present shall refuse to strike, the Congress shall proceed to nominate three persons out of each state, and the Secretary of Congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court to be appointed, in the manner before prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence, or judgment, which shall in like manner be final and decisive, the judgment or sentence and other proceedings being in either case transmitted to Congress, and lodged among the acts of Congress for the security of the parties concerned: Provided, that every Commissioner, before he sits in judgment, shall take an oath to be administered by one of the Judges of the Supreme or Superior Court of the state, where the cause shall be tried, *well and truly to hear and determine the matter in question, according to the best of his judgment, without favour, affection, or hope of reward: Provided also,* That no state shall be deprived of territory for the benefit of the United States.

Of controversies concerning the private right of soil claimed by grants of different states.

All controversies, concerning the private right of soil claimed under different grants of two or more states, whose jurisdictions as they may respect such lands, and the states which passed such grants are adjusted, the said grants or either of them being at the same

same time claimed to have originated antecedent to such settlement of jurisdiction, shall on the petition of either party to the Congress of the United States, be finally determined as near as may be in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between different states.

A. D.
1778.

The United States in Congress assembled shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective states; fixing the standard of weights and measures throughout the United States; regulating the trade and managing all affairs with the Indians, not members of any of the states, provided that the Legislative right of any state within its own limits be not infringed or violated; establishing and regulating Post Offices from one state to another, throughout all the United States, and exacting such postage on the papers passing through the same as may be requisite to defray the expences of the said office; appointing all officers of the land forces, in the service of the United States, excepting regimental officers; appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the United States; making rules for the government and regulation of the said land and naval forces, and directing their operations.

Power of regulating the value of coin, &c. 1

The United States in Congress assembled shall have authority to appoint a Committee, to sit in the recess of Congress, to be denominated, *A Committee of the States*, and to consist of one Delegate from each state; and to appoint such other Committees and Civil Officers as may be necessary for managing the general affairs of the United States under their direction; to appoint one of their number to preside, provided that no person be allowed to serve in the office of President more than one year in any term of three years; to ascertain the necessary sums of money to be raised for the service of the United States, and to appropriate and apply the same for defraying the public expences; to borrow money or emit bills on the credit of the United States, transmitting every half year to the respective states an account of the sums of money

Of the appointment of a Committee of the States.

A. D.
1778.

borrowed or emitted; to build and equip a navy; to agree upon the number of land forces, and to make requisitions from each state for its quota, in proportion to the number of white inhabitants in such state; which requisition shall be binding, and thereupon the Legislature of each state shall appoint the Regimental Officers, raise the men, and clothe, arm and equip them in a soldier-like manner, at the expense of the United States, and the officers and men so clothed, armed and equipped shall march to the place appointed, and within the time agreed on by the United States in Congress assembled: But, if the United States in Congress assembled shall, on consideration of circumstances, judge proper that any state should not raise men, or should raise a smaller number than its quota, and that any other state should raise a greater number of men than the quota thereof, such extra number shall be raised, officered, clothed, armed and equipped in the same manner as the quota of such state, unless the Legislature of such state shall judge that such extra number cannot be safely spared out of the same, in which case they shall raise, officer, clothe, arm and equip as many of such extra number as they judge can be safely spared. And the officers and men so clothed, armed and equipped, shall march to the place appointed, and within the time agreed on by the United States in Congress assembled.

What measures
shall require the
assent of nine
states.

The United States in Congress assembled shall never engage in a war, nor grant letters of marque and reprisal, in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expences necessary for the defence and welfare of the United States, or any of them, nor emit bills, nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war, to be built or purchased, or the number of land or sea forces to be raised, nor appoint a Commander in Chief of the army or navy, unless nine states assent to the same: Nor shall a question on any other point, except for adjourning from day to day, be determin-
ed,

Robert
Robert

1755

1755

1755

1755

David McKee

1755

David McKee

1755

**END
OF
VOLUME**