

any he have, to the contrary, where, upon default of appearance or refusal to disclose upon his oath, which oath the justices of such court are impowered to administer, what goods, effects or credits of the absent or absconding person are in his hands, and to what value, then judgment shall be entred up against him of his own proper goods and estate, and execution be awarded accordingly.

Provided, nevertheless,—

And be it enacted,

Proviso.

[SECT. 6.] That if it shall appear that the attorney, factor, agent or trustee so summoned as aforesaid, and having in his hands at the time of such summons any goods, effects or credits of the absent or absconding person, hath not any ways remitted, disposed of or any ways converted the same after the summons being served on him as aforesaid; but that he hath discovered, exposed and subjected them to be taken in execution to satisfy the judgment recovered against the absent or absconding person as aforesaid, then the party who commenced the suit shall pay such attorney, agent, factor or trustee his reasonable costs, to be taxed in common form by the justices of the court from which the *scire facias* issued as aforesaid.

And be it further enacted,

Agent to be acquitted and discharged.

[SECT. 7.] That the goods, effects or credits of any absent or absconding person so taken as aforesaid by process and judgment of law out of the hands of his attorney, factor, agent or trustee by any of his creditors, shall fully acquit and forever discharge such attorney, factor, agent or trustee, his executors or administrators, of, from and against all actions and suits, damages, payments and demands whatsoever, to be asked, commenced, had, claimed or brought by his principal, his executors or administrators, of and for the same; and if any attorney, factor, agent or trustee shall be molested, troubled or sued by his principal for anything by him done in pursuance of this act, he may plead the general issue and give this act in evidence.

Provided, nevertheless,—

Proviso.

[SECT. 8.] That any absconding or absent person against whom judgment shall be recovered as aforesaid, shall be [i][e]ntitled to a review of the same at any time within three years after such recovery. [*Passed February 13; published February 14, 1759.*]

CHAPTER 11.

AN ACT TO CONFIRM AND RENDER EFFECTUAL AN AGREEMENT BETWEEN SUNDRY PERSONS CLAIMING PROPERTY AND INTEREST IN THE COMMON AND UNDIVIDED LANDS IN A NECK OF LAND IN FRAMINGHAM, IN THE COUNTY OF MIDDLESEX.

Preamble.

WHEREAS John Pike, Joseph Bixbee, Samuel Lamb, Timothy Pike, Joseph Bixbee, Jun^r., Benjamin Barnard, Samuel Frost, Richard Melin, Isaac Fisk, [*George**] Walkup, Benjamin Whitney, Mark Whitney, Daniel Haven, Nathan Carter, Abraham Pike, Joseph Buckminster, Esq^[r]., Joseph Haven, Esq^[r]., John Farrar, Moses Pike, Daniel Stone, Thomas Brown, Noah Eaton, Peter Jenison, Thomas Winch, Jun^r., David Haven, James Haven, Isaac Haven, Joseph Cozens, Silvanus Hemingway, Ralph Hemingway, Thomas Winch, James Haven, Jun^r., Ebenezer Hemingway, John Winch, Squier Haven, Micah Gibbs, Benoni Prat, Ebenezer Hagar, Ezekiel How, Jonathan Edmonds, David

* Parchment mutilated by mice.

How, Jun^r., Ephraim Power, Jeremiah Pike, Amos Darling, Amos Gates, Jonathan Barrett, Elias Whitney, James Mellin, William Ballard, Jonathan Maynard, Joseph Eames, Nathaniel Eames, John Bruce, Ebenezer Boutwell, Benjamin Haven, John Nurse, Jonathan Hemingway, John Haven, Benjamin Nurse, Joseph Hemingway, Jeremiah Belknap, Aaron Pike, Josiah Stone, Ebenezer Singletary, John Johnson, Martha Goddard, George Ca[rnel*], William Pike, William Pike, Jun^r., Elkanah Haven, persons who claim or have claimed property and interest in the common lands on a neck of land in Framingham, have represented to this court that, in consequence of a division made of said commons in pursuance of a vote of the proprietors, many disputes and two lawsuits have arisen between divers of them; that, for an amicable termination of all suits and disputes touching the premisses, they have entered into an agreement, dated Framingham, September the eighth, one thousand seven hundred and fifty-eight, an attested copy whereof has been laid before this court, which agreement hath been also ratified by vote of the proprietors in a legal proprietors' meeting; but inasmuch as some of the claims and disputes intended to be settled by said agreement are of such kind as that it is doubtful whether the same can be legally settled and made binding according to the true intent of the parties by all that hath been done or can be done by any deeds of agreement, especially as some of the proprietors are minors, and such doubt and danger must greatly interrupt the quiet of the concerned, and hinder the improvement of the lands aforesaid, to the great damage of the said town of Framingham; and have thereupon prayed, that by a private act the agreement aforesaid, mutually entered into by the persons aforesaid, might be ratified and established, so as to operate according to the true intent thereof. And it being evident that if said agreement was rendered effectual and carried into execution, it would prevent many lawsuits and promote the general good of the interested in said common land[s],—

Be it enacted by the Govern[er], Council and House of Representatives,

[SECT. 1.] That said agreement be and hereby is established and ratified; that an exact survey be taken of all the lands in the neck aforesaid, held under Joseph Buckminster, Esq^[d], deceased, at the charge of those who hold the same, by a surveyor and chainmen mutually chosen by the possessor of those lands and the proprietors of the common lands on the neck aforesaid; and in want thereof, by a committee of three persons to be appointed by the justices of the inferiour court of common pleas for the county of Middlesex.

Proprietors' agreement confirmed, &c.

[SECT. 2.] That all persons holding lands on the neck aforesaid, under any grants made by the said Buckminster, be quieted in the possession of so much thereof, and no more, than the number of acres expressly mentioned in their original grants; save only that fifty acres are allowed to the owners of the six hundred acres first granted by the said Buckminster on the neck aforesaid, by equal average.

[SECT. 3.] That if it shall appear that the said Buckminster was not [i]ntitled to those six hundred acres, and the same should hereafter in consequence thereof be recovered and set out in any part of the neck aforesaid now lying in common, the then proprietors of the common lands on the neck aforesaid who shall be so evicted, may demand and recover six hundred acres of the land aforesaid granted by the said Buckminster, or the value of the lands evicted, and the same land shall be chargeable accordingly; anything herein to the contrary notwithstanding.

* Parchment mutilated by mice.

[SECT. 4.] That if, upon the survey aforesaid, it appears that any person holds more lands on the neck aforesaid under the said Buckminster, his heirs or assigns, than the number of acres expressly mentioned in the said Buckminster's original grant, such person shall either set[t] the same off in a regular form in one [i][e]ntire peice, and resign the same to the proprietors aforesaid, or pay them the value thereof, exclusive of the improvements made thereon, upon an appraisal made by three persons mutually chosen and appointed by him and the proprietors aforesaid; and in want thereof, by a committee of three persons to be appointed by the justices of the inferio[u]r court of common pleas for the county of Middlesex.

Joseph Buckminster, Esq., to release his right in said neck.

[SECT. 5.] That Joseph Buckminster of Framingham, Esq^[r]., release to the proprietors of the common lands aforesaid on the neck, all the right and interest that he now hath in the neck aforesaid, and the same is remi[s][tt]ed to them accordingly.

Division into lots confirmed.

[SECT. 6.] That the division of the lands on the neck aforesaid into lots, made by the proprietors aforesaid, be confirmed, and that the residue of the lands there belonging to the proprietors, be laid out into such lot[t]s as may best accom[m]odate the proposed division.

Grants made by the proprietors heretofore confirmed, &c.

[SECT. 7.] That the grants heretofore made by the proprietors aforesaid of lot[t]s number fifteen and number sixteen in the river range to Joseph Haven, Esq^[r]., and also the two fifteen acre lot[t]s sold by said proprietors' committee to Benjamin Burnap, Jun^r., be and hereby are confirmed to them and their heirs; and that all the other draughts of lot[t]s made by the aforesaid proprietors be void and of no effect; and that there be a new draught of all the lots, except the four lot[t]s aforesaid.

Owners of lands held under Thomas Danforth, Esq., considered as proprietors, &c.

[SECT. 8.] That the owners of all the lands in Framingham leased by Thomas Danforth, Esq^[r]., deceased, be considered as proprietors of the common lands on the neck aforesaid; that each proprietor subscribing to said agreement draw a share thereof in proportion to the number of acres mentioned in the original title deed or the quantity found by a survey made at his own cost, at his own election; and the six hundred acres aforesaid, and also the six hundred acres adjo[y][i]ning to Sudbury line, containing Nobscot and Doeskin Hill, mentioned in said Danforth's lease to the aforesaid Joseph Buckminster, Esq^[r]., deceased, shall also draw an equal share with the other lands, and such draughts shall be and remain to and for the use of the person or persons to whom the same belongs; but the other lands on the neck aforesaid, conveyed by the said Joseph Buckminster, Esq^[r]., dece[ase]d, shall not draw any share in the division of the commons aforesaid.

Charges already arisen how to be paid.

[SECT. 9.] That the charges already incurred in bringing forward a division of the commons aforesaid, and the grants heretofore made by the proprietors to reimburse those charges, be allowed and paid by the whole propriety.

Dispute between Joseph Buckminster and Francis Brindley, Esqs., not to be affected.

[SECT. 10.] That nothing in the foregoing shall be construed to affect the dispute that is or may be between Joseph Buckminster, Esq^[r]., and Francis Brindley, Esq^[r]., who shall be [i][e]ntitled to the share or proportion of the commons that the lands sold by the same Buckminster and others to the said Brindley shall draw; and if that dispute shall be finally set[t]led in favour of the said Buckminster, so that he should hold such draughts, then the said Buckminster shall allow for the twenty acres sold to James Newton, otherwise, that the said Newton shall hold his measure, anything herein to the contrary notwithstanding.

Allowance to be made by Joseph Buckminster, Esq., in case.

[SECT. 11.] That the several clauses of this act shall operate according to the true intent of said agreement; and that all proprietors in common in said lands and persons claiming right with them, or to

any share of commonage therein, their heirs and assigns, shall and hereby are bound by the settlement aforesaid as established by this act, and according to the true intent and meaning thereof, any legal incapacity of any such proprietor or claimant, and any defect in the executing said agreement or proceedings in such proprietary meetings notwithstanding. [Passed February 13; published February 14, 1759.]

Operation of this act.

CHAPTER 12.

AN ACT FOR ERECTING THE SECOND PRECINCT IN THE TOWN OF HADLEY, IN THE COUNTY OF HAMPSHIRE, INTO A DISTRICT, BY THE NAME OF AMHERST.

WHEREAS the inhabitants of the second precinct in the town of Hadley, in the county of Hampshire, have petitioned this court, setting forth sundry difficulties they labour under by means of their not being a district, and praying they may be so erected,—

Preamble.

Be it therefore enacted by the Governour, Council and House of Representatives,

[SECT. 1.] That the said second precinct in Hadley, according to its present known bounds, be and hereby is erected into a separate and distinct district by the name of Amherst; and that the inhabitants thereof do the duties that are required, and enjoy all privileges that towns do or by law ought to enjoy in this province, that of sending a representative to the general assembly only excepted; and that the inhabitants of said district shall have full right to join with the inhabitants of the said town of Hadley in electing a representative annually, and shall be notified of the time and place of election with the inhabitants of the said town of Hadley, by a warrant from the selectmen of Hadley directed to the constable of said district, requiring him to warn the inhabitants of said district to attend the meeting for that purpose at the time and place by them assigned, which warrant shall be seasonably returned by said constable; and the representative may be chosen indifferently out of said town or either of the districts, his pay and allowance to be born by the town of Hadley and the said districts, in the proportion that they respectively pay to the province tax.

Second precinct in Hadley erected into a separate district.

Powers thereof.

And be it further enacted,

[SECT. 2.] That Isaac Ward, Reuben Ingraham, Phillip Ingraham, Isaac Hubbard, and Edward Elmor, and their respective estates lying within the bounds of the tract of seventeen hundred and seventy-seven acres petitioned for, and adjoining to the said second precinct line, be and hereby are annexed to the said district, there to enjoy privilege and do duty.

Persons and estates annexed to said district.

And be it further enacted,

[SECT. 3.] That Timothy Dwight, Esq^[r], be and hereby is directed and impowered to issue his warrant, directed to some principal inhabitant within said district, requiring him to warn the inhabitants of said district qualified to vote in town affairs, to assemble at some suitable time and place to choose such officers as are necessary to manage the affairs of said district: *provided, nevertheless,* the inhabitants of said district shall pay their proportionable part of all such town, county, and province charges as are already assessed in like manner as tho' this act had not been made. [Passed February 13; published February 14, 1759.]

Power for calling a meeting.

Proviso.