

CHAPTER 16.

AN ACT IN FURTHER ADDITION TO AN ACT ENTITLED “AN ACT FOR THE MORE SPEEDY FINISHING THE LAND-BANK OR MANUFACTORY SCHEME.”

Preamble.

1744-45, chap. 12.

It appearing to this court, notwithstanding the provision made for the speedy finishing the Land-bank or Manufactory Scheme, in the act of the seventeenth year of his present majesty's reign, intituled “An Act for the more speedy finishing the Land-bank or Manufactory Scheme,” that there are great difficulties in the way of the commissioners, by said act appointed to finish said scheme without the further aid of this court, more especially occasioned by the destruction of the books and papers of the said late Land-bank Company, and of the said commissioners, in the late burning of the court-house in Boston,—

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

Commissioners empowered and directed to assess persons according to the list.

[SECT. 1.] That the said commissioners, or a major part of them, be directed and impowered, and hereby they are directed and impowered, as soon as may be, to make an assessment on those persons mentioned in a list printed in the supplement of the “Boston Gazette,” 1745; which list is hereby declared to contain a true and exact account of the partners in said late Land-bank Scheme; and the said assessment shall be made for the full sum in said list, printed in said “Gazette,” and such further sum as said commissioners shall judge necessary to redeem all the outstanding bills of said company, principal and interest, make good deficiencies by the failing of any partners, and to defrey the just incidental charges; and every receipt from said commissioners, or other satisfactory evidence, of payment on the aforesaid assessment lately printed in the “Boston Gazette,” shall be taken and received by said commissioners as payment for the sum or sums they amount to, in the assessment now directed to; upon and according to which assessment now ordered (being first approved by the general court, after being inserted in all the weekly newspapers printed in Boston, sixty days before its presentation to the general court, that all concerned may object if they see cause) the said commissioners shall issue their warrants of distress against such partners as shall neglect to pay for sixty days after the general court's approbation: which warrant of distress shall be in the form following; viz,—

PROVINCE OF THE MASSACHUSETTS BAY.

Form thereof.

JOHN JEFFRIES, SAMUEL DANFORTH, JOHN CHANDLER, Esqrs., Commissioners for the more speedy finishing the Land-bank or Manufactory Scheme,—

[L. s.] To the Sheriff of the County of A, his undersheriff or deputy, or either of the constables of B,—Greeting:

By vertue of an act of the great and general court or assembly of said province, made at their session begun and held at Boston, upon Wednesday, the twenty-sixth day of October, 1748, intituled “An Act in further addition to an act entitled ‘An Act for the more speedy finishing the Land-bank or Manufactory Scheme,’” there was an assessment made on the late directors and partners in said scheme, for the drawing in the remainder of the outstanding bills emitted on said scheme, which assessment has been duly published in all the publick newspapers in Boston, agreeable to said act, and passed the approbation of the general court; since which more than sixty days are passed: in which assessment A. B., of C., in the county of E., a late partner in said scheme, was assessed the sum of _____, in lawful money or Manufactory bills, as his part or proportion; and altho' publick notice has been given of said assessment, as aforesaid, yet the said A. B. hitherto neglects to pay in the same, as is by said act required:—

Wherefore, by virtue of the authority to us given in and by the aforesaid act, these are, in his majesty's name, to require you to levy by distress and sale of the estate, real and personal, of the said A. B., the above sum of _____, lawful money, and bring the same to us, at our office in Boston, forthwith, returning the overplus, if any be, to the said A. B.; and if there cannot be found in your precinct estate sufficient to discharge the same, then you are to commit the said A. B., if to be found in your precinct, to the common goal of the county of E., there to remain until he has paid the said sum of _____, lawful money, and charges; for all which this shall be your sufficient warrant: save, only, that if you shall take the real estate of the said A. B., that then the said A. B., his heirs, executors, administrators or assigns, shall have liberty, for three months thereafter, to redeem the same, and if the same shall not be redeemed within three months as aforesaid, by paying said sum of _____, and charges, then you are required to sell the same as aforesaid, and return this warrant, and your doings thereon, into the office of the register of deeds for the county of E., there to be recorded.

Given, under our hands and seals, at Boston, the _____ day of _____, 174 _____, in the _____ year of our Sovereign Lord, _____, by the Grace of God King of Great Britain, &c.

J. J.
S. D.
J. C.

[SECT. 2.] And all sheriffs, their undersheriffs and deputies, and, where they are interested, all coroners, and, where the sum exceeds not ten pounds, all constables, are impowred and required to execute them on the persons whose names are contained in said list, or their estates, real or personal. Direction to the sheriffs, coroners and constables, for executing the warrants.

And as some of said partners are or may be deceased, or out of the province, before such warrants of distress shall be issued,—

[SECT. 3.] The said sheriffs, coroners and constables are hereby impowred and directed to take such estate as they may find belonged to such deceased person, or was by law liable to be taken if such deceased person or persons were then living, and in the province; the estate taken, whether real or personal, to be sold, and the overplus, if any, to be returned as by law required in ordinary cases of execution or distress: save only that the liberty of redeeming the real estate shall extend to three months only, after being taken; upon the expiration of which term of three months, if the same be not redeemed, the sheriff or other officer who took the same, shall return the warrant of distress, with his doings thereon, into the office of the register of deeds, in the county where the lands lie, there to be recorded.

[SECT. 4.] And if there shall be a surplus in the hands of the commissioners, after redeeming said bills and paying the necessary charges, the said commissioners shall divide and pay the same equitably to and among the said late partners, said division being first approved by the general court. Surplus, how to be disposed of.

And to the intent all possessors of said Land-bank bills may more readily and easily receive such sum or sums as may be due upon or for their bills,—

Be it further enacted,

[SECT. 5.] That the said commissioners, or a major part of them, shall, as soon as they are enabled to redeem them, give publick notice in all the said weekly newspapers, of the time or times, and place or places in the town of Boston, when and where they will attend to redeem them; which publick notice, being inserted six weeks successively in all the weekly newspapers printed in Boston, hereby is made and declared to be a legal tender to all and every possessor and possessors of said bills. Time and place of the commissioners' meeting for redeeming the bills to be publicly notified.

And forasmuch as, by the said burning, many papers and evidences

were lost, whereby said commissioners may be much embarrass'd, which might be cas'd by papers, books or receipts in other persons' hands,—

Be it enacted and declared,

Commissioners
empowered to
demand papers.

[SECT. 6.] That said commissioners be and hereby they are authorized and impowred to demand and receive of the late directors, treasurer, endorser, partners and clerks of the said late company, any and all papers they shall judge needful, giving receipt for them, and to examine the said persons on oath touching the affairs of said late company. And the said commissioners, or a major part of them, are directed to meet, for the first four weeks after the publication of this act, two days in each week, and for the next four weeks, one day in each week, and after that, one day each alternate or every other week, 'till the scheme be finished, and no oftener, unless, on a representation made to the governour and council, they shall direct the commissioners to meet more frequently. [*Passed January 3, 1748—49.*]

CHAPTER 17.

AN ACT IN ADDITION TO, AND FOR EXPLANATION OF, AN ACT ENTITLED "AN ACT FOR LIMITATION OF ACTIONS, AND FOR AVOIDING SUITS AT LAW, WHERE THE MATTER IS OF LONG STANDING."

Preamble.

1740-41, chap. 4,
§ 1.

WHEREAS, in and by an act made in the thirteenth year of his present majesty's reign, entitled "An Act for limitation of actions, and for avoiding suits in law where the matter is of long standing," it is, among other things, enacted, "That all actions for arrearages of rent, or grounded on any lending or contract, without specialty, should be brought within four years next after the cause of such action, in cases where the cause of action should arise after the publication of the said act, and, in those cases where the cause of action had arisen before, within four years after the publication thereof, and not afterwards"; and whereas the latter part of the said clause was, at the time of making the said act, generally understood to be meant and intended only of such actions grounded on lending or contract, without specialty, as are express'd in the act of parliament, which was pass'd in the twenty-first year of the reign of King James the First, entitled "An Act for limitation of actions and avoiding suits at law"; from which act the before-recited law of this province is, with respect to the actions therein mentioned, in a great measure copied; but yet the same, construed in it's utmost latitude, may be understood to include actions of the case upon bill or note of hand, and has lately been so adjudged by some of the courts of judicature within this province; and by the like construction may be deem'd to extend to all actions of account and upon the case, whatsoever, not excepting such accounts as concern the trade of merchandize between merchant and merchant, their factors or servants;—by which construction, in the courts of judicature, very many creditors have been greatly surprized and injured, who, upon the aforesaid general understanding of the said clause of the aforesaid provincial act, and thro' lenity to their debtors, have foreborn to bring actions for the recovery of debts due to them by promissary note, or otherwise howsoever, upon simple contract, within the time limited in the aforesaid law of this province for bringing actions grounded upon lending or contract, without specialty, and will thereby, upon the aforesaid construction of the latter part of said recited clause, be barr'd from bringing actions for the recovery of the same, and great mischief and