

shall consult, covenant with, entertain, employ, feed or reward any evil and wicked spirit, to or for any intent or purpose; or take up any dead man, woman or child, out of his, her or their grave, or any other place where the dead body resteth, or the skin, bone or any other part of any dead person, to be employed or used in any manner of witchcraft, sorcery, charm or incantment; or shall use, practice or exercise any witchcraft, incantment, charm or sorcery, whereby any person shall be killed, destroyed, wasted, consumed, pined or lamed in his or her body, or any part thereof; that then every such offender or offenders, their aiders, abettors and counsellors, being of any of the said offences duly and lawfully convicted and attainted, shall suffer pains of death, as a felon or felons.

And further, to the intent that all manner of practice, use or exercise of witchcraft, incantment, charm or sorcery should be henceforth utterly avoided, abolished and taken away,—

Be it enacted by the authority aforesaid,

[SECT. 2.] That if any person or persons shall take upon him or them, by witchcraft, incantment, charm or sorcery, to tell or declare in what place any treasure of gold or silver should or might be found or had in the earth, or other secret places; or where goods or things lost or stoln should be found or become; or to the intent to provoke any person to unlawful love; or whereby any cattel or goods of any person shall be destroyed, wasted or impaired; or to hurt or destroy any person in his or her body, although the same be not effected and done; that then all and every such person and persons so offending, and being thereof lawfully convicted, shall for the said offence suffer imprisonment by the space of one whole year, without bail or mainprize; and once in every quarter of the said year shall in some shire town stand openly upon the pillory by the space of six hours, and there shall openly confess his or her error and offence, which said offence shall be written in capital letters, and placed upon the breast of said offender. And if any person or persons, being once convicted of the same offence, and shall again commit the like offence, and being of any of the said offences the second time lawfully and duly convicted and attainted as is aforesaid, shall suffer pains of death, as a felon or felons. [*Passed December 14; published December 16.*]

“— y^e Act &c., being not found to agree with y^e Statute of King James y^e First whereby the Dower is saved to y^e Widow and y^e Inheritance to y^e heir of y^e party convicted, the same hath been repealed.”—*Letter from the Privy Council, ut supra.*

CHAPTER 41.

AN ACT FOR REGULATING THE FORMER ASSESSMENT, AND FOR GRANTING AN ADDITIONAL SUPPLY OF MONEY.

WHEREAS, by an act of this assembly, made at their first sessions, *Ante*, chap. 4. begun the eighth day of June last past, entitled, “An Act for the Granting unto Their Majesties an Assessment upon Polls and Estates,” there was granted unto their majesties for the defence of their subjects and interests, and for prosecution of the war against the French and Indian enemy, and the defraying of other publick charges of the province, a rate or tax of ten shillings per poll of all male persons of sixteen years and upwards, and a quarter part of one year’s value or income of all estates real and personal, to be assessed and levied in manner as in and by the said act is directed; and forasmuch as it

appears, that, in prosecution thereof, the rules therein given have not been fully understood, or at least not attended, which has occasioned an inequality, and the sum thereupon returned to fall greatly short of what was expected, and of answering the necessity of the publick occasions,—therefore, to the intent that there may be a regulation of the said tax and a further supply made for their majesties' service to the ends beforementioned,—

Be it ordained and enacted, by the Governour, Council and Representatives in General Court assembled, and by the authority of the same,

[SECT. 1.] That there be two commissioners appointed by this court, for each county within the province, to pass into the several towns lying within such county, at or before the twenty-second day of February next coming, who, together with the selectmen and commissioner of each town respectively, that made the lists of said assessment, shall review the same; which the said selectmen and town commissioner[s] shall then exhibit and expose, in the particulars thereof, both of polls and estate within such town, with an addition of all polls and estate which were before omitted, as well noting the names of all persons whom through age and infirmity they expect should be exempted from the poll tax as others. And the said selectmen, town and county commissioners, shall regulate, correct and perfect such lists according to the rates hereinafter mentioned, setting down the sums both for heads and estate in distinct columns; that is to say, each male person of sixteen years old and upwards (except such as are by law excepted), at ten shillings by the poll; and all houses, warehouses, tan-yards, orchards, pastures, meadows and lands, mills, cranes and wharfs, to be estimated at seven years' income, as they are or may be let for in the respective places where they lye; which seven years' income is to be esteemed and reputed the value of such estate upon said tax, and each hundred pound in value to be rated thirty shillings thereto: cattle to be valued as follows; to wit, each ox and horse kind of four years old or upwards, at forty shillings; each cow of three years old or upwards, at thirty shillings; all sheep and swine of one year old or upwards, at four pound per score; all shipping, goods, wares, merchandizes and trading stock and estate by the rule of common estimation at the best discretion of the assessors; every handiercraftsman, for his income, at discretion aforesaid; every male slave of sixteen years old or upwards, at twenty pounds estate; all which particulars of estate aforesaid, as well real as personal, shall be assessed to said tax, thirty shillings for each hundred pound in value, and so proportionably; and where any fermor or occupier of housing or lands lying within any town or precinct shall be hereafter assessed to any publick tax of the province, for such housing or lands in his occupation, the landlord shall reimburse the said fermor or occupier such sum and sums of money as he shall pay for the same, where no particular contract is made to the contrary.

And further it is enacted by the authority aforesaid,

[SECT. 2.] That every person who shall refuse or neglect to render and give in to the selectmen a particular account of his estate, shall be assessed as aforesaid at discretion; and every person who shall give in a partial account shall be alike assessed doubly for so much as he leaves out; and if any person find himself agrieved at any sum or sums that shall be set upon him by the assessors, he may make application unto them for relief; and if he be not thereby eased, may further apply unto the justices of such county at the next quarter sessions, and, making it appear to them that he is overrated, they shall order an abatement accordingly.

And it is further enacted by the authority aforesaid,

[SECT. 3.] That the lists of the respective towns, being examined, regulated and perfected as aforesaid, and signed by the selectmen and

town commissioner, shall be delivered unto the commissioners for such county, and by them brought to Boston upon the first Wednesday in March next, where the commissioners for each county, or the major part of them, then and there met, shall be a committee to take an account of the sum total of each list; and if the whole shall not amount to the sum of thirty thousand pounds (including the sum already returned unto the treasurer, for which his warrants are gone forth), then the said committee are hereby impowred to make a further addition upon each town proportionably to what shall be wanting to make up thirty thousand pounds in the whole, including as aforesaid. And if it appear unto the said committee that any town or county shall have been generally defective in not attending the rules and directions hereinbefore given for the said tax, then they are to report the same unto the general assembly at their next sitting, to be rectified and adjusted, but shall forthwith deliver the said lists, with the additional sums made to the same, unto the treasurer, who is hereby ordered and impowred upon receipt thereof to issue forth his warrants, affixed to said lists and directed to the constables or collectors for each town respectively, for the collecting and levying of the same, which is hereby granted to be paid in money or otherwise to the treasurer's satisfaction, unto the treasurer, his deputy or deputys: and for manner and time as follows; that is to say,—

Ten thousand pounds, part of said sum (besides what the treasurer's warrants are already out for), at or before the first day of May next; and the full remainder of said sum, to make up the thirty thousand pound as aforesaid, at or before the last day of February, which will be in the year of our Lord one thousand six hundred ninety-three: *provided, nevertheless*, where the treasurer shall order payment to particular persons within their respective towns or neighbourhood, for wages, or any other disbursements due, in such cases payment to be made in merchantable grain, provisions or cloathing, each at the current money price.

And it is further enacted by the authority aforesaid,

[SECT. 4.] That the commissioners for the several counties, for the ends within mentioned, be as hereafter named; that is to say, for Suffolk, Captain Penn Townsend and Mr. Timothy Tilestone; for Essex, Captain Samuel Gardner and Mr. Nehemiah Jewet; for Middlesex, Major Thomas Henchman and Mr. Matthew Johnson; for Plimouth, Captain Nathaniel Thomas and Mr. Samuel Clap; for Barnstable, Captain Thomas Tupper and Mr. John Otis; for Bristol, Captain John Brown and Mr. Samuel Peck; for Hampshire, Captain Samuel Partrigg and Mr. Joseph Hawley; for Yorkshire, Mr. John Wheelwright and Mr. James Emery; for Martha's Vineyard and Nantucket, Captain John Gardner and Mr. Joseph Norton. And if any selectmen or assessors, or town commissioner, shall wilfully neglect or refuse to perform their duty in the due and speedy execution of this present act, and be thereof convict, upon information and prosecution before the justices in quarter sessions within the county whereto such person belongs, the said court may impose upon such person or persons so refusing or neglecting any fine, not exceeding five pounds for any offence; the same to be levied and paid in to the treasurer for the use of their majesties, towards the support of the government of the province and incident charges thereof.

And it is further enacted,

[SECT. 5.] That the selectmen and assessors in each town be, and hereby are impowred (if they think fit) to nominate and appoint one or more able and sufficient persons within the bounds and limits of such town, to be collectors of the money due to their majesties by this act, for whose paying unto the treasurer, his deputy or deputies, such

money as they shall be charged withal, the town by whom they are so employed shall be answerable.

And it is further enacted,

[SECT. 6.] That if any constable or collector shall be remiss and negligent of his duty in not levying and paying unto the treasurer, his deputy or deputies, such sum and sums of money as from time to time he shall have received, and as ought by him to have been paid within the respective times set and limited by the warrant or estreat to him committed, pursuant to the acts of this assembly referring to said tax, and is not paid, by reason of his falling in doing his duty according to the directions and command therein, the treasurer is hereby impowred, by warrant under his hand and seal, after the expiration of the time so set, to levy all such sum and sums of money by distress and sale of such defective constable or collector's goods and chattels, returning the overplus (if any be), and for want of such distress to commit the offender to the common goal of the county.

Be it further enacted,

Constable's or collector's power to distrain.

[SECT. 7.] That if any person or persons shall refuse to pay the several sum and sums and proportions, as have been, or shall be further assessed upon him or them, to pay in pursuance of this or the former act relating to said tax or assessment, upon demand made by the constable or collector of the town, place or precinct, according to the precept or estreats to him delivered, it shall and may be lawful to and for such constable or collector, who are hereby thereunto authorized and required for non-payment thereof, to distrein the person or persons so refusing, by his or their goods or chattels, and the distress or distresses so taken, to keep by the space of four dayes at the cost and charges of the owner thereof. And if the said owner do not pay the sum and sums of money so assessed upon him, within the said four dayes, then the said distress or distresses to be apprizd by two or three of the inhabitants where the distress is taken, and to be sold by the said officer for payment of [*the*] said money, and the overplus coming by the said sale (if any be), over and above the charges of taking and keeping the said distress or distresses, to be immediately restored to the owner; and if any person or persons assessed as aforesaid shall refuse or neglect to pay the sum or sums so assessed, by the space of twenty dayes after demand thereof, where no sufficient distress can or may be found whereby the same may be levied, in every such case two or more of the selectmen or assessors in such town are hereby authorized, by warrant under their hands and seals, to commit such person or persons to the common goal, there to be kept without bail or mainprize until payment shall be made.

For want of distress to commit the person.

And it is further enacted,

Provision in case of person's removal.

[SECT. 8.] That where any person or persons have removed, or shall remove, from any town or place where he or they lived or had their residence at the time of making the lists of any tax or assessment, not having before paid the respective sums or proportion set upon them by said tax, it shall and may be lawful to and for the constable or collector, to whom any such tax or assessment is committed with warrant to collect, who are hereby authorized and impowred, to demand the sun or sums assessed upon such person and persons, in what town or place soever he or they may be found; and, upon refusal or neglect to pay the same, to distrein the said person or persons by his or their goods and chattels as aforesaid; and, for want of such distress, to commit the party to the common goal, there to remain until payment be made.

And for a present supply of moneys to carry on the publick occasions of the government for the ends within mentioned,—

It is further enacted and ordained by the authority aforesaid,

[SECT. 9.] That the governour and council may and hereby are impowered to borrow and take up upon loan, of any person or persons, any sum and sums of money, not exceeding five thousand pounds, upon the credit of this act; and to make over and give for security unto the person and persons so lending, the one-third part of the moneys granted and to be collected by virtue of the same, for the repayment of the moneys that shall be lent, with interest for forbearance after the rate of seven per cent per annum, the said interest money to be paid at the end of every three months until repayment of the principal.

And whereas much of the arrears of the rates and assessments, which were granted as a fund for the bills of credit emitted by the late government of the Massachusetts colony, have been, and are daily bringing in to their majesties' treasury of this their province, and employed in payment of the publick debts thereof, there being but few of those bills now standing out, except what were borrowed by the present government,—

It is therefore enacted,

[SECT. 10.] That all the said bills, as well those not endors't as others, shall be received in payment of all taxes or assessments and other publick payments whatsoever, at five pound per centum advance, any act or law to the contrary notwithstanding; and that those that have lent their bills to the treasury shall have the same allowance of five pound per centum, for so much as shall be repaid them by discount, *bona fide*, on their own account, with the treasurer, for rates, impost or excise. [*Passed December 15; published December 16.*]

Bills of credit made current in public payments.

"By an Act made the first Session &c., the fourth part of the yearly vallue or income and tenn shill^s upon each Poll was given to their Mat^{ties}, the Assessors did not observe the Act according to its extent and according to their returne the tax fell short of answering the publicke charge; But I rejected the returne and cause the matter to be regulated, whereby it will now amount to thirty thousand pounds."—*Letter from Gov. Phips to the Earl of Nottingham, Feb. 20, 1692-3.* And see chapter 4, *ante*, also notes, p. 109, *post*.

CHAPTER 42.

AN ACT FOR THE BETTER SECURING THE LIBERTY OF THE SUBJECT, AND FOR PREVENTION OF ILLEGAL IMPRISONMENT.

FOR the speedy relief of all persons imprisoned for criminal or supposed criminal matters in such cases where by law they are bailable,—

Be it enacted by the Governour, Council and Representatives in General Assembly convened, and it is enacted by the authority of the same,

[SECT. 1.] That whensoever any person or persons shall bring any *habeas corpus*, directed unto any sheriff or sheriffs, goaler, minister or other person whatsoever, for any person in his or their custody, and the said writ shall be served upon the said officer, or left at the goal or prison, with any of the underofficers, underkeepers or deputy of the said officers or keepers, that* the said officer or officers, his or their underofficers, underkeepers or deputies, shall,—within three dayes after the service thereof as aforesaid (unless the commitment aforesaid were for treason or felony, plainly and specially expressed in the warrant of commitment), upon payment or tender of the charges of bringing the said prisoner, to be ascertained by the judge or court that awarded the same, and endorsed upon the said writ, not exceeding twelvecence per mile, and upon security given, by his own bond, to pay the charges of

Disallowed by the privy council, August 22, 1695.

Writs of *habeas corpus* within three days after service to be returned, and the body brought if within twenty miles, &c.

* *Sic.*