

ment without wrong to their families; for remedy whereof, and the more effectual deterring and suppressing of such evil practices,—

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

Persons unable to pay the fine to be whipped.

[SECT. 1.] That when and so often as any person being duely convicted of keeping a common tipling-house, or selling strong beer, ale, cyder, perry, rhum, or other strong liquors or mixt drink by retail, without licence first orderly had and obtained for the same, shall be unable to answer and satisfy the fine imposed by law for such transgression, together with the charge of prosecution, or that shall not pay such fine and charges (and likewise give bond for the good behaviour, if it be a second conviction), within the space of twenty-four hours next after sentence declared in that respect, it shall and may be lawful to and for two justices of the peace, or the court before whom the conviction shall be, to order such offender to be openly whipt with so many stripes as in their discretion shall be thought fit, not less than ten nor exceeding fifteen for one offence, and to restrain the offender in prison until the fine and charges as aforesaid are paid, or the order for corporal punishment be executed.

*And be it further enacted by the authority aforesaid,*

Officer's power to seize drink found in unlicensed houses.

[SECT. 2.] That it shall and may be lawful to and for any grandjurors, constable, tithing men, and the officers employed in and about the excise, *ex officio*, to enter into the house and dependencies thereof, of any such person as aforesaid, suspected of selling strong drink without licence, having once been convicted thereof, and taking with them such assistance as they shall think needful, to make search for strong drink, and finding any quantity of any kind of the drinks herein before mentioned, to seiz and secure the same, so as it be within the space of one year next after such conviction, and to inform thereof at the next general sessions of the peace to be holden within the same county, or unto two justices of the peace (*quorum unus*) within the same. And if the quantity of drink so seized, shall be judged by such court or justices to be more than for the necessary use of the family, and what their condition may reasonably allow them to expend, or otherwise to have in their custody, it shall and may be lawful to and for such court or justices to declare all such drink to be forfeited; one moiety thereof unto the party that seized and informed of the same, and the other moiety to the selectmen or overseers of the poor of the town where it was seized, to the use of the poor there, and to order the disposal thereof accordingly: *provided, nevertheless*, that any person agrieved at the sentence of any two justices for either of the offences before mentioned, may appeal therefrom unto the next general sessions of the peace within the same county; provided such appeal be claimed in due time, and security given in manner as the law in such cases directes. [*Passed December 12.*]

Appeal from the sentence of two justices.

## CHAPTER 14.

AN ACT FOR THE FURTHER CONTINUANCE OF SEVERAL ACTS RELATING TO THE PROSECUTION OF THE WAR.

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

Prosecution of the Indian enemy &c. 1695-6, chap. 11. 1694-5, chap. 10.

[SECT. 1.] That the act entituled "An Act for the continuation of several acts therein mentioned, that are near expiring," made and passed at the session of this present general assembly, begun and held at Boston, the twenty-ninth day of May, last past; namely, "An Act for

the prosecution of the Indian enemy and rebels, and preserving such as are friends," with the several provisos and additions thereto in the said act of continuation expressed, shall be and hereby are revived and further continued to be, remain and abide in full force unto the end of the first session of the next general assembly, to be begun and held on the last Wednesday of May, one thousand six hundred ninety-six, and no longer: *provided, nevertheless*, that the saving in the said act for prosecution of the Indian enemy, &c., referring to the county of Hampshire, shall be, and hereby is repealed.

Repeal of the saving in Hampshire.

*And it is further enacted,*

[SECT. 2.] That all Indians who shall be found within five miles of Connecticut River, on the easterly side thereof, or within twenty miles on the westerly side of the same, shall be deemed and accounted to be enemies, and treated as such, and the same reward and allowance shall be made and given to any of his majestie's subjects that shall kill, or take and bring in prisoners any Indian or Indians found within the said limits, as by the said act and the act for the continuation thereof is ordered and directed for any that shall be killed or taken within other parts of this province, during the continuance of said acts.

Indians found within five miles on the east side or twenty miles on the west side of Connecticut River to be held as enemies.

*And be it further enacted by the authority aforesaid,*

[SECT. 3.] That the other act mentioned in the said act of continuation; namely, the act entituled "An Act for the giving succours and assistance to the neighbouring provinces and colonies against his majestie's enemies," to extend only unto succours and assistance for the province of New Hampshire, as need may require, and the governour, with the advice and consent of the council, shall direct and order, be and hereby is revived and further continued to be, remain and abide in full force unto the end of the first session of the next general assembly to be begun and held on the last Wednesday in May, one thousand six hundred ninety-six, and no longer. [*Passed December 11.*]

Assistance to be given to the province of Hampshire. 1694-5, chap. 11.

CHAPTER 15.

AN ACT FOR TAKING OF AFFIDAVITS OUT OF COURT.

FORASMUCH as it is often necessary that witnesses in civil causes be sworn out of court, when, by reason of their going to sea, living more than thirty miles distant from the place where the cause is to be tryed, age, sickness, or other bodily infirmity, they are rendered incapable of travail, and appearing in person at the court; to the intent, therefore, that all witnesses may indifferently testify their certain knowledge, and the whole truth in the cause they are to speak unto,—

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

[SECT. 1.] That for either of the reasons before mentioned, and not otherwise, every justice of the peace, or others lawfully commissioned and impowred thereto, by two or more of the justices of the superiour or inferiour court respectively, may take affidavits out of court, so as a notification with reasonable time be first made out and delivered to the adverse party (if within twenty miles of the place), or left at the place of his dwelling or usual abode, to be present at the time of taking such affidavit, if he think fit; and every such witness shall be carefully examined and cautioned to testify the whole truth; and being sworn, the justice shall attest the same, with the day, month and year of the caption thereof, and that the adverse party was present (if so) or that a notification was sent him, and shall seal up the testimony, and deliver

Adverse party to have notification.